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Rules and Regulations

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Friday, October 5, 2018

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0199; Airspace Docket No. 18–ANE–3]

RIN 2120–AA66

Amendment of Class E Airspace, Belfast, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface at Belfast Municipal Airport, Belfast, ME, to accommodate airspace reconfiguration due to the decommissioning of the Belfast non-directional radio beacon and cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport. This action also updates the geographic coordinates of this airport.

DATES: Effective 0901 UTC, January 3, 2019. 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 7400.11C, 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 7400.11C 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 amends Class E airspace at Belfast Municipal Airport, Belfast, ME 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 33163, July 17, 2018) for Docket No. FAA–2018–0199 to amend Class E airspace extending upward from 700 feet above the surface at Belfast Municipal Airport, Belfast, ME. 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 7400.11C dated August 13, 2018, and effective September 15, 2018, 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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C 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 amends Class E airspace extending upward from 700 feet above the surface to within a 9.4-mile (increased from a 6.4-mile) radius of Belfast Municipal Airport, Belfast, ME, due to the decommissioning of the Belfast NDB and cancellation of the NDB approach. These changes are necessary for continued safety and management of IFR operations at this airport. The geographic coordinates also are updated to be in concert with the FAA's aeronautical database.

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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, effective September 15, 2018, is amended as follows:

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

* * * * *

ANE ME E5 Belfast, ME [Amended]

Belfast Municipal Airport, ME
(Lat. 44°24′34″ N, long. 69°00′43″ W)

That airspace extending upward from 700 feet above the surface within a 9.4-mile radius of Belfast Municipal Airport.

Issued in College Park, Georgia, on September 27, 2018.

Christopher Cox,

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

[FR Doc. 2018–21657 Filed 10–4–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0896; Airspace Docket No. 18–ANM–14]

RIN 2120–AA66

Amendment of Class D Airspace; Lewiston, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends Class D airspace at Lewiston-Nez Perce County Airport, Lewiston, ID, by increasing the upward extension of Class D airspace from 2,700 feet MSL to 3,900 feet MSL. The upward extension was incorrectly lowered in the final rule published March 15, 2018.

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 7400.11C, 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 7400.11C 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: Tom Clark, Operations Support Group, Western Service Center, Federal Aviation Administration, 2200 S 216th St., Des Moines, WA 98198–6547; telephone (206) 231–2253.

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 airspace at Lewiston-Nez Perce County Airport, Lewiston, ID to support IFR operations at the airport.

History

The FAA published a final rule in the **Federal Register** (83 FR 11411; March 15, 2018) for Docket No. FAA–2017–0986 amending Class D airspace, and Class E surface airspace at Lewiston-Nez Perce County Airport, Lewiston, ID.

Subsequent to publication, the FAA discovered the upward extension of Lewiston-Nez Perce County Airport Class D airspace was incorrectly reduced from 3,900 feet MSL to 2,700 feet MSL. This rule corrects that error and restores the upward extension of Class D airspace to 3,900 feet MSL.

Class D airspace designations are published in paragraph 5000 of FAA Order 7400.11C dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR part 71.1. The Class D airspace designation 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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C 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 modifying the Class D airspace legal description for Lewiston-Nez Perce County Airport, Lewiston, ID. The Class D airspace is retained up to 3,900 feet MSL, not 2,750 feet MSL, as stated in a final rule published in the **Federal Register** of March 15, 2018 (83 FR 11411).

Accordingly, action taken herein to amend the upward extension of Class D airspace at Lewiston-Nez Perce County Airport, Lewiston, ID, is in the interest of flight safety. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, effective September 15, 2018, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM ID D Lewiston, ID [Amended]

Lewiston-Nez Perce County Airport, ID
(Lat. 46°22′28″ N, long. 117°00′55″ W)

That airspace extending upward from the surface to and including 3,900 feet MSL within a 4.1-mile radius from Lewiston-Nez Perce County Airport clockwise from the airport 290° bearing to the 066° bearing, and within a 5.1-mile radius of the airport from the 066° bearing to the airport 115° bearing and within a 6.6-mile radius of the airport from the 115° bearing to the airport 164° bearing, and within a 4.1-mile radius of the airport from the airport 164° bearing to the airport 230° bearing, and within a 6.6-mile radius of the airport from the 230° bearing to the airport 290° bearing. 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.

Issued in Seattle, Washington, on September 28, 2018.

Stephanie Harris,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2018–21660 Filed 10–4–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–6116–N–01]

RIN 2506–AC35

Section 108 Loan Guarantee Program: Announcement of Fee to Cover Credit Subsidy Costs

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notification of fees.

SUMMARY: This document announces the fee that HUD will collect from borrowers of loans guaranteed under HUD's Section 108 Loan Guarantee Program (Section 108 Program) to offset the credit subsidy costs of the guaranteed loans pursuant to commitments awarded in Fiscal Year 2019.

DATES: *Applicability date:* November 5, 2018.

FOR FURTHER INFORMATION CONTACT: Paul Webster, Director, Financial Management Division, Office of Block Grant Assistance, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 7160, Washington, DC 20410; telephone number 202–402–4563 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339. FAX inquiries (but not comments) may be sent to Mr. Webster at 202–708–1798 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2015 (division K of Pub. L. 113–235, approved December 16, 2014) (2015 Appropriations Act) provided that ''the Secretary shall collect fees from borrowers . . . to result in a credit subsidy cost of zero for guaranteeing'' Section 108 loans. Identical language was continued or included in the Department's continuing resolutions and appropriations acts authorizing HUD to issue Section 108 loan guarantees during Fiscal Years (FYs) 2016, 2017, and 2018. The Fiscal Year (FY) 2019 HUD appropriations bills under consideration in the House of Representatives (H.R. 6072) and the Senate (S. 3023), also have identical language regarding the fees and credit subsidy cost for the Section 108 Program, and the 2018 provision is carried forward in the Continuing Appropriations Act, 2019 (Pub. L. 115–952, approved September 28, 2018).

On November 3, 2015, HUD published a final rule (80 FR 67626) that amended the Section 108 Program regulations at 24 CFR part 570 to establish additional procedures, including procedures for announcing the amount of the fee each fiscal year when HUD is required to offset the credit subsidy costs to the Federal Government to guarantee Section 108 loans. For FYs 2016, 2017, and 2018, HUD issued documents to set the fees.[1]

II. FY 2019 Fee: 2.23 Percent of the Principal Amount of the Loan

This document sets the fee for Section 108 loan disbursements under loan guarantee commitments awarded for FY 2019 at 2.23 percent of the principal amount of the loan. HUD will collect this fee from borrowers of loans guaranteed under the Section 108 Program to offset the credit subsidy costs of the guaranteed loans pursuant to commitments awarded in FY 2019. For this fee document, HUD is not changing the underlying assumptions or creating new considerations for borrowers. The calculation of the FY 2019 fee uses a similar calculation model as the FY 2016, FY 2017, and FY 2018 final documents, but incorporates updated information regarding the composition of the Section 108 portfolio and the timing of the estimated future cash flows for defaults and recoveries. The calculation of the fee is also affected by the discount rates required to be used by HUD when calculating the present value of the future cash flows as part of the Federal budget process.

[1] 80 FR 67634 (November 3, 2015), 81 FR 68297 (October 4, 2016), and 82 FR 44518 (September 25, 2017) respectively.

As described in 24 CFR 570.712(b), HUD's credit subsidy calculation is based on the amount required to reduce the credit subsidy cost to the Federal Government associated with making a Section 108 loan guarantee to the amount established by applicable appropriation acts. As a result, HUD's credit subsidy cost calculations incorporated assumptions based on: (1) Data on default frequency for municipal debt where such debt is comparable to loans in the Section 108 loan portfolio; (2) data on recovery rates on collateral security for comparable municipal debt; (3) the expected composition of the Section 108 portfolio by end users of the guaranteed loan funds (*e.g.,* third-party borrowers and public entities); and (4) other factors that HUD determined were relevant to this calculation (*e.g.,* assumptions as to loan disbursement and repayment patterns).

Taking these factors into consideration, HUD determined that the fee for disbursements made under loan guarantee commitments awarded in FY 2019 will be 2.23 percent, which will be applied only at the time of loan disbursements. Note that future documents may provide for a combination of upfront and periodic fees for loan guarantee commitments awarded in future fiscal years but, if so, will provide the public an opportunity to comment if appropriate under 24 CFR 570.712(b)(2).

The expected cost of a Section 108 loan guarantee is difficult to estimate using historical program data because there have been no defaults in the history of the program that required HUD to invoke its full faith and credit guarantee or use the credit subsidy reserved each year for future losses.[2] This is due to a variety of factors, including the availability of Community Development Block Grant (CDBG) funds as security for HUD's guarantee as provided in 24 CFR 570.705(b). As authorized by Section 108 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5308), borrowers may make payments on Section 108 loans using CDBG grant funds. Borrowers may also make Section 108 loan payments from other anticipated sources but continue to have CDBG funds available should they encounter shortfalls in the anticipated repayment source. Despite the program's history of no defaults, Federal credit budgeting principles require that the availability of CDBG funds to repay the guaranteed loans cannot be assumed in the development of the credit subsidy cost estimate (see 80 FR 67629, November 3, 2015). Thus, the estimate must incorporate the risk that alternative sources are used to repay the guaranteed loan in lieu of CDBG funds, and that those sources may be insufficient. Based on the rate that CDBG funds are used annually for repayment of loan guarantees, HUD's calculation of the credit subsidy cost must acknowledge the possibility of future defaults if those CDBG funds were not available. The fee of 2.23 percent of the principal amount of the loan will offset the expected cost to the Federal Government due to default, financing costs, and other relevant factors. To arrive at this measure, HUD analyzed data on comparable municipal debt over an extended period. The estimated rate is based on the default and recovery rates for general purpose municipal debt and industrial development bonds. The cumulative default rates on industrial development bonds were higher than the default rates on general purpose municipal debt during the period from which the data were taken. These two subsectors of municipal debt were chosen because their purposes and loan terms most closely resemble those of Section 108 guaranteed loans.

In this regard, Section 108 guaranteed loans can be broken down into two categories: (1) Loans that finance public infrastructure and activities to support subsidized housing (other than financing new construction) and (2) other development projects (*e.g.,* retail, commercial, industrial). The 2.23 percent fee was derived by weighting the default and recovery data for general purpose municipal debt and the data for industrial development bonds according to the expected composition of the Section 108 portfolio by corresponding project type. Based on the dollar amount of Section 108 loan guarantee commitments awarded from FY 2013 through FY 2017, HUD expects that 35 percent of the Section 108 portfolio will be similar to general purpose municipal debt and 65 percent of the portfolio will be similar to industrial development bonds. In setting the fee at 2.23 percent of the principal amount of the guaranteed loan, HUD expects that the amount generated will fully offset the cost to the Federal Government associated with making guarantee commitments awarded in FY 2019. Note that the FY 2019 fee represents a 0.135 percent decrease from the FY 2018 fee of 2.365 percent.

This document establishes a rate that does not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this document is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Dated: September 14, 2018.

Neal Rackleff,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2018–21686 Filed 10–4–18; 8:45 am]

BILLING CODE 4210–67–P

[2] U.S. Department of Housing and Urban Development, Study of HUD's Section 108 Loan Guarantee Program, (prepared by Econometrica, Inc. and The Urban Institute), September 2012, at pages 73–74. This fact has not changed since the issuance of this report.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9787]

RIN 1545–BK29

Section 707 Regarding Disguised Sales, Generally; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9787) that were published in the **Federal Register** on Wednesday, October 5, 2016. The final regulations are under sections 707 and 752 of the Internal Revenue Code.

DATES: This correction is effective October 5, 2018 and is applicable on and after October 5, 2016.

FOR FURTHER INFORMATION CONTACT: Deane M. Burke or Caroline E. Hay at (202) 317–5279 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9787), published October 5, 2016 (81 FR 69291), that are the subject of this correction are under sections 707 and 752 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9787) contain an error that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.707–9 [Amended]

■ **Par. 2.** Section 1.707–9 is amended by revising the second sentence in paragraph (a)(1) to read as follows:

§ 1.707–9 Effective dates and transitional rules.

(a) * * *

(1) * * * For any transaction with respect to which all transfers that are part of a sale of an item of property occur after April 24, 1991, and any of such transfers occurs before October 5, 2016, §§ 1.707–3 through 1.707–6 as contained in 26 CFR part 1 revised as of April 1, 2016, apply.

* * * * *

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2018–21673 Filed 10–4–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0919]

Drawbridge Operation Regulation; Duwamish Waterway, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the South Park highway bridge (South Park Bridge), across the Duwamish Waterway mile 3.8, at Seattle, WA. The deviation allows the bridge owner to remove the drawtender during the late evening and early morning hours. This deviation authorizes the subject bridge to open during nighttime hours after receiving a 12 hour advance notice.

DATES: This deviation is effective from without actual notice from October 5, 2018 to 7 a.m. on January 17, 2019. For purposes of enforcement, actual notice will be used from 6 a.m. on September 17, 2018, to October 5, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0919 is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil*.

SUPPLEMENTARY INFORMATION: King County, WA, owns the South Park Bridge that spans across the Duwamish Waterway at mile 3.8, at Seattle, WA. King County requested a temporary deviation from the operating schedule, due to infrequent opening requests, while a rule change is being processed. This deviation will allow King County to operate without a drawtender during evening hours until an opening request has been received. The South Park Bridge operates in accordance with 33 CFR 117.1041(a)(2).

This deviation authorizes the drawtender to open the South Park Bridge after receiving a 12 hour notice from 11 p.m. to 7 a.m. including all Federal holidays, starting at 6 a.m. on September 17, 2018, through 7 a.m. on January 17, 2019. Vessels engaged in sea-trials or waterway dredging activities may request a standby drawtender to open the bridge, on demand, during sea-trials and/or dredging operations, if at least a 24 hour notice is given to the drawtender. The South Park Bridge provides a vertical clearance approximately 20 feet above mean high water when in the closed-to-navigation position. Vessels operating on the Duwamish Waterway range from small recreational vessels, sailboats, tribal fishing boats, large yachts and commercial towing vessels.

Vessels able to pass through the South Park Bridge in the closed-to-navigation position may do so at any time. The bridge will not be able to open for emergencies from 11 p.m. to 7 a.m. However, in the event of an emergency requiring a bridge opening between 11 p.m. and 7 a.m., the Seattle Department of Transportation has agreed that the bridge operator at the Fremont Bridge across the Lake Washington Ship Canal will open the South Park Bridge within 45 minutes from initial notification. The Coast Guard will inform the users of the waterway, through our Local and Broadcast Notices to Mariners, of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridges must return to their regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 1, 2018.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2018–21674 Filed 10–4–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0931]

Drawbridge Operation Regulation; Wicomico River, Salisbury, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Main Street Bridge across the Wicomico River (North Prong), mile 22.4, at Salisbury, MD. The deviation is necessary to accommodate the cleaning and painting of the bridge. This deviation allows the bridge to remain in the closed-to-navigation position and open on signal if at least 24 hours notice is given.

DATES: The deviation is effective from 6 a.m. on October 5, 2018, through 6 a.m. on December 31, 2018.

ADDRESSES: The docket for this deviation, [USCG–2018–0931] is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Martin Bridges, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6422, email *Martin.A.Bridges@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Maryland Department of Transportation State Highway Administration, who owns and operates the Main Street Bridge across the Wicomico River (North Prong), mile 22.4, at Salisbury,

MD, has requested a temporary deviation from the current operating regulation. This temporary deviation is necessary to accommodate cleaning and painting of the bridge. The bridge is a double bascule bridge and has a vertical clearance in the closed position of 1 foot above mean high water.

The current operating schedule is set out in 33 CFR 117.579. Under this temporary deviation, the bridge will be maintained in the closed-to-navigation position from 6 a.m. on October 5, 2018, through 6 a.m. on December 31, 2018. The Wicomico River is used by tug and barge, and small commercial vessels. The Coast Guard has carefully coordinated the restrictions with waterway users in publishing this temporary deviation.

The bridge will be able to open for emergencies and there is no immediate alternate route for vessels unable to pass through the bridge in the closed position. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 2, 2018.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2018–21771 Filed 10–4–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0901]

RIN 1625–AA00

Safety Zone; Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Willamette River between the Tilikum Crossing and Marquam bridges in Portland, OR. This safety zone is necessary to provide for the safety of life on these navigable waters during a fireworks display on October 27, 2018. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Columbia River or a designated representative.

DATES: This rule is effective from 6:40 p.m. to 9 p.m. on October 27, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0901 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Dixon Whitley, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9319, email *msupdxwwm@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

The Leukemia and Lymphoma Society will be conducting a fireworks display from 7:40 p.m. to 8 p.m. on October 27, 2018. The fireworks are to be launched from a barge in the Willamette River between the Tilikum Crossing and Marquam bridges in Portland, OR. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Columbia River (COTP) has determined that potential hazards associated with the fireworks to be used in this display will be a safety concern for anyone within a 450-yard radius of the barge.

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 it would be impracticable to complete a notice-and-comment rulemaking by the date of the fireworks display, October 27, 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 because an enforcement regulation is needed on October 27, 2018, to respond to the potential safety hazards associated with the fireworks display.

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 Columbia River (COTP) has determined that potential hazards associated with the fireworks display on October 27, 2018, will be a safety concern for anyone within a 450-yard radius of launch site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters from these potential hazards within the safety zone before, during and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a safety zone from 6:40 p.m. until 9 p.m. on October 27, 2018. The safety zone will cover all navigable waters within 450 yards of the barge being used to launch the fireworks display from position 45°30′23.00″ N, 122°40′4.71″ W, on the Willamette River in Portland, OR. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 7:40 p.m. to 8 p.m. fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not

been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Willamette River for less than 2.5 hours during the evening when vessel traffic is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting approximately 2.5 hours that will prohibit entry within 450 yards of a fireworks barge. 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: 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.T13–0901 to read as follows:

§ 165.T13–0901 Safety Zone; Willamette River, Portland, OR.

(a) *Safety zone.* The following area is a safety zone: Waters of the Willamette River between the Tilikum and Marquam bridges, within a 450-yard radius of the fireworks barge located at 45°30′23.00″ N, 122°40′4.71″ W in Portland, OR.

(b) *Regulations.* Under § 165.23, no person may enter or remain in the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Columbia River or his designated representative. Also, under § 165.23, no person may bring into, or allow to remain in this safety zone any vehicle, vessel, or object unless authorized by the Captain of the Port

Columbia River or his designated representative.

(c) *Enforcement period.* This section will be enforced from 6:40 p.m. to 9 p.m. on October 27, 2018.

Dated: September 19, 2018.

D.F. Berliner,

Captain, U.S. Coast Guard, Acting Captain of the Port Columbia River.

[FR Doc. 2018–21759 Filed 10–4–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0893]

RIN 1625–AA00

Safety Zone; APA Convention Fireworks; Lake Erie, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 420-foot radius of the launch site at 101 Erieside Avenue, Cleveland, OH. This safety zone is intended to restrict vessels from a portion of Lake Erie during the APA 70th Anniversary Convention fireworks displays. This temporary safety zone is necessary to protect mariners and vessels from the navigational hazards associated with a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Buffalo.

DATES: This rule is effective without actual notice from 9 a.m. on October 5, 2018 until 10:45 p.m. on October 5, 2018. For the purposes of enforcement, actual notice will be used from 9:15 p.m. October 3, 2018, until 9 a.m. on October 5, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0893 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 LT Ryan Junod, Chief of Waterways Management, U.S. Coast Guard Marine Safety Unit Cleveland; telephone 216–937–0124, email *ryan.s.junod@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

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 find that those procedures are ''impracticable, unnecessary, or contrary to 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 event sponsor did not submit notice to the Coast Guard with sufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be contrary to the public interest by inhibiting the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register** 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 ensuring safety of life on the navigable waters and protection of persons and vessels near the maritime fireworks display.

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, NY (COTP) has determined that a fireworks display presents significant risks to the public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks display takes place.

IV. Discussion of the Rule

This rule establishes a safety zone from 9:15 p.m. through 10:15 p.m. on October 3, 2018, and 9:45 p.m. through 10:45 p.m. on October 5, 2018. The safety zone will cover all navigable waters within a 420-foot radius of: 41°30′33.4″ N, 081°41′58.0″ W at 101 Erieside Avenue, Cleveland, OH.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted 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 our anticipation that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small

businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting one hour that will prohibit entry within 420 feet of the launch area for the fireworks display. 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: 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.T09–0893 to read as follows:

§ 165.T09–0893 Safety Zone; APA Convention Fireworks; Lake Erie, Cleveland, OH.

(a) *Location.* This zone will encompass all waters Lake Erie, Cleveland, OH contained within a 420-foot radius of the fireworks launch site located at position 41°30′33. 4″ N, 081°41′58.0″ W.

(b) *Effective and enforcement period.* This regulation will be enforced from 9:15 p.m. until 10:15 p.m., October 3, 2018, and from 9:45 p.m. until 10:45 p.m. on October 5, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, 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 shall 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: October 2, 2018.

Joseph S. Dufresne,

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

[FR Doc. 2018–21717 Filed 10–4–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0373; FRL–9984–96–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Interstate Transport Requirements for the 2012 Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State implementation plan (SIP) revision submitted by the State of West Virginia. This revision pertains to the infrastructure requirement for interstate transport of pollution with respect to the 2012 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on November 5, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2016–0373. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Joseph Schulingkamp, (215) 814–2021, or by email at *schulingkamp.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On November 17, 2015, the State of West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), submitted a SIP revision addressing all required infrastructure elements under CAA section 110(a) for the 2012 $PM_{2.5}$ NAAQS. As stated in the notice of proposed rulemaking (NPRM) published on August 3, 2018, EPA has previously taken action on other portions of the November 17, 2015 submittal addressing requirements in CAA section 110(a)(2) for the 2012 $PM_{2.5}$ NAAQS, and EPA is taking rulemaking action herein on only the portion of the November 12, 2015 submittal addressing requirements in CAA section 110(a)(2)(D)(i)(I) (prongs 1 and 2). *See* 83 FR 38112. In addition, EPA stated in the NPRM that the Agency had proposed separate action on the portion of the November 12, 2015 submittal addressing requirements in CAA section 110(a)(2)(D)(i)(II) (prong 4). *See* 83 FR 27734 (June 14, 2018) (proposing approval of the November 12, 2015 submittal for prong 4). EPA is not at this time taking final action on the 2015 SIP submittal addressing prong 4. For more information on particulate pollution, EPA's infrastructure requirements, and interstate transport requirements, see Section I of the August 3, 2018 NPRM.

II. Summary of SIP Revision and EPA Analysis

West Virginia's November 17, 2015 SIP submittal stated that the current West Virginia SIP contains adequate measures to ensure that the State will not cause significant contribution to nonattainment in, or interfere with the maintenance of, any other State with respect to the 2012 $PM_{2.5}$ NAAQS. West Virginia refers to the measures detailed in the section pertaining to requirements in CAA section 110(a)(2)(A), which included numerous SIP-approved measures and other federally enforceable measures, under the CAA, that apply to sources of $PM_{2.5}$ and its precursors within West Virginia.

In evaluating whether the measures identified by West Virginia addressed CAA section 110(a)(2)(D)(i), EPA used the information in the memorandum dated March 17, 2016, entitled, ''Information on the Interstate Transport ''Good Neighbor'' Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I),'' Memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, *https://www.epa.gov/sites/production/files/2016-08/documents/good-neighbor-memo_implementation.pdf* (the 2016 $PM_{2.5}$ Memorandum). This 2016 $PM_{2.5}$ Memorandum is included in the docket for this rulemaking action. After considering the 2016 $PM_{2.5}$ Memorandum and additional information, EPA came to the same conclusion as West Virginia and proposed in the NPRM that West Virginia's emissions do not significantly contribute to nonattainment or interfere with maintenance in another State with respect to the 2012 $PM_{2.5}$ NAAQS.

A detailed summary of West Virginia's submittal, EPA's review, and the rationale for EPA's conclusion approving the November 17, 2015 submittal as addressing requirements of prongs 1 and 2 are explained in the NPRM and the technical support document (TSD) that accompanied the NPRM and will not be restated here. The TSD is available online at *www.regulations.gov,* Docket number EPA–R03–OAR–2016–0373.

III. Response to Comments

EPA received a total of three comments on the August 3, 2018 NPRM. Two comments generally discussed matters irrelevant to this rulemaking. As these two comments did not concern any of the specific issues raised in the NPRM or address EPA's rationale for the proposed approval of West Virginia's submittal, EPA provides no response to these comments. EPA did receive one relevant comment; that comment, and EPA's response is discussed in this Section of this rulemaking action.

Comment: The commenter first stated that EPA did not need to analyze interstate transport of $PM_{2.5}$ emissions from West Virginia to California, Idaho, or Florida, and further questioned the likelihood of West Virginia's $PM_{2.5}$ emissions impacting those three States. The commenter then stated that EPA's time and limited resources would be better spent on other more meaningful issues, especially since it took three years to develop the analysis EPA presented.

Response: First, with respect to the period of time for EPA's analysis, CAA section 110(a)(1) requires all States to submit a SIP addressing the elements of CAA section 110(a)(2), including CAA section 110(a)(2)(D)(i)(I) on interstate transport, within three years of EPA promulgating a new or revised NAAQS. Further, CAA section 110(k)(2) and (3) requires EPA action on the SIP submission within twelve months of EPA finding the SIP submission complete. Therefore, the submission of a SIP addressing interstate transport requirements for the 2012 $PM_{2.5}$ NAAQS

in CAA section 110(a)(2)(D)(i)(I) is required by the CAA as is EPA's action on such SIP submittal. In addition, the requirement for a new infrastructure SIP submission provides an opportunity for the air agency, the public, and EPA to review the basics of the air quality management program in light of each new or revised NAAQS. In the case of CAA section 110(a)(2)(D)(i)(I), this review is specifically focused on whether a State's SIP will prevent interference with attainment or maintenance of the NAAQS in a nearby State, and meets requirements for prevention of significant deterioration and visibility in another State, as well as international pollution.

Second, with regards to EPA's analysis of West Virginia's impact on California, Idaho, or Florida, EPA disagrees that such an analysis is not necessary. As discussed in the TSD and in EPA's 2016 $PM_{2.5}$ Memorandum, most of the potential areas of concern with nonattainment or maintenance issues for the 2012 $PM_{2.5}$ NAAQS were located in California, Shoshone County, Idaho, and in Allegheny County, Pennsylvania. In addition, the 2016 $PM_{2.5}$ Memorandum noted air quality monitoring data quality problems in all or portions of Florida, Illinois, Idaho (outside of Shoshone County), Tennessee, and Kentucky. Subsequent to the 2016 $PM_{2.5}$ Memorandum's release, data quality problems were resolved for Idaho (outside of Shoshone County), Tennessee, Kentucky, and portions of Florida. Therefore, the remaining potential receptors of interest included 17 receptors in California, one receptor in Shoshone County, Idaho, one receptor in Allegheny County, Pennsylvania, four counties in Florida, and all of Illinois.[1] Based on this information from the 2016 $PM_{2.5}$ Memorandum and the resolution of the monitoring quality issues, EPA narrowed the scope of analysis down to these remaining potential receptors and did not evaluate the entire continental United States for potential contribution to downwind $PM_{2.5}$ nonattainment and maintenance receptors. While EPA agrees that the likelihood of West Virginia's sources of $PM_{2.5}$ emissions contributing to attainment or maintenance air quality issues in geographically distant areas in California, Florida, and Idaho is unlikely, EPA and the State are still obligated to analyze whether the State's sources will significantly contribute to nonattainment or interfere in the maintenance of, the NAAQS at those receptors and at receptors in other States. In addressing this obligation, EPA relied upon the information in the TSD and on the 2016 $PM_{2.5}$ Memorandum to conclude West Virginia's SIP was adequate to prevent West Virginia sources from significantly contributing to nonattainment or interfering with maintenance in other States.

[1] A receptor is a monitor within the photochemical modeling domain that is modeled as ''receiving'' emissions.

IV. Final Action

EPA is approving the November 17, 2015 SIP revision as it addresses the interstate transport requirements for the 2012 $PM_{2.5}$ NAAQS in CAA section 110(a)(2)(D)(i)(I).

V. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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 December 4, 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, addressing West Virginia's interstate transport obligations with respect to the 2012 $PM_{2.5}$ NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: September 25, 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 XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by:

■ a. Revising the entry for ''Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS''; and

■ b. Adding a second entry entitled ''Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS'' at the end of the table.

The revision and addition read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS.	Statewide	11/17/15	5/12/17, 82 FR 22078 ...	Docket #2016–0373. This action addresses the following CAA elements of section 110(a)(2): A, B, C, D(i)(II) (prong 3), D(ii), E, F, G, H, J, K, L, and M, or portions thereof.
Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS.	Statewide	11/17/15	10/5/18 [*Insert* **Federal Register** *citation*].	Docket #2016–0373. This action addresses CAA section 110(a)(2)(D)(i)(I) (prongs 1 and 2).

[FR Doc. 2018–21668 Filed 10–4–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0503; FRL–9984–95–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Minor New Source Review Permitting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of West Virginia. This revision pertains to changes to West Virginia's minor New Source Review (NSR) permit program. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on November 5, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2017–0503. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Mr. David Talley, (215) 814–2117, or by email at *talley.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On June 18, 2018 (83 FR 28179), EPA published a notice of proposed rulemaking (NPRM) for the State of West Virginia. In the NPRM, EPA proposed approval of revisions to West Virginia's minor NSR regulations, ''45CSR13—Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, Permissions to Commence Construction, and Procedures for Evaluation,'' as a revision to the West Virginia SIP. The formal SIP revision was submitted by the West Virginia Department of Environmental Protection (WVDEP) on behalf of the State of West Virginia on June 6, 2017.

Section 110(a)(2)(C) of the CAA requires SIPs to include a preconstruction permit program for both major and minor sources. More specifically, SIPs must include the permit programs required under subpart C of title I and must have minor preconstruction programs that assure that the national ambient air quality standards (NAAQS) are maintained. Additionally, 40 CFR 51.160 through 51.163 outline the federal requirements which apply to minor permit issuance, including the required administrative and federally enforceable procedures, and the procedures for public participation. Under the minor source permitting rules under the Code of State Rules (CSR) at 45CSR13, West Virginia implements minor preconstruction program requirements by issuing permits to: (1) Construct and operate new stationary sources which are not major sources, (2) modify non-major stationary sources, (3) make non-major modifications to existing major stationary sources, and (4) relocate non-major stationary sources. These rules also establish requirements for obtaining a temporary permit and Class I and Class II general permit registration. EPA last approved a revision to 45CSR13 on July 21, 2014. *See* 79 FR 42211.

II. Summary of SIP Revision and EPA Analysis

A. Summary of SIP Revision

WVDEP's June 6, 2017 SIP submittal contains a number of revisions to 45CRSR13, many of them administrative or clarifying in nature. The non-administrative changes include: (1)

Revisions to the definitions of modification and stationary source; (2) Revisions to and clarifications of the provisions allowing applicants to store equipment onsite prior to receiving a permit; and (3) Revisions to the applicability criteria for Class I and Class II administrative updates.

B. EPA Analysis

1. ''Modification'' and ''Stationary Source'' Definition Changes

WVDEP added language excluding greenhouse gas (GHG) emissions under the definitions of ''Modification'' and ''Stationary Source'' at 45CSR13 sections 45–13–2.17.a and 45–13–2.24.b, respectively. The specific language added to both definitions is as follows, '' . . . other than emissions of any one or the aggregate of all GHGs, the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.'' The addition of this language to both definitions clarifies that GHG emissions are not subject to the minor NSR permitting requirements of 45CSR13. In accordance with West Virginia's Prevention of Significant Deterioration (PSD) regulations at 45CSR14, preconstruction permitting requirements for GHG sources are only triggered for major sources or major modifications, and only when such source/modification is already ''major'' for another pollutant (*i.e.,* a source cannot be ''major'' for GHGs alone). This is consistent with the federal PSD regulations at 40 CFR 51.166 and 52.21. Additionally, these revisions are appropriate and meet the federal requirements of 40 CFR 51.160 and 51.161, and CAA section 110(a)(2)(C). Further, GHGs are not a criteria pollutant, and there are no GHG nonattainment areas. Therefore, the revisions are in accordance with section 110(l) of the CAA because they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement.

2. ''Store-on-Site'' Clarifications

WVDEP's previously approved regulations allow sources to ''(r)eceive or store on-site or off-site any equipment or supplies which make up in part or in whole an emission unit or any support equipment, facilities, building or structure,'' prior to receiving a permit under 45CSR13.[1] *See* 45CSR13 section 45–13–5.1.i. WVDEP's June 6, 2017 submittal included a revision to 45–13–5.1.i which clarifies permissible on-site activities that do not constitute commencement of construction and clarifies that such supplies etc. may be stored on-site '' . . . on its permanent pad or foundation or at any other location at the stationary source.'' In addition, section 45–13–2 has been revised to add a definition of ''store on-site'' which clarifies that any equipment stored on-site must be kept in the same condition as it was received, and not ''. . . modified, erected or installed.'' *See* 45CSR13 subsection 45–13–2.26. As discussed in the NPRM in more detail, there are no corresponding federal minor NSR regulations for the definition of ''commencement of construction,'' ''begin actual construction,'' or corresponding federal minor NSR regulations laying out what on-site activities are allowable in the absence of a permit. Because the revisions do not allow for the construction or operation of an actual emissions unit prior to issuance of a permit, there are no increased emissions associated with any of the activities allowed by WVDEP's ''store onsite'' provisions. Further, because a permit is required prior to erecting and operating any emissions units being stored on site, West Virginia's program has legally enforceable procedures to prevent construction of a minor source or the minor modification of a existing source if it would violate SIP control strategies or interfere with attainment or maintenance of the NAAQS, as required by 40 CFR 51.160(b). Therefore, EPA finds these revisions approvable because they meet the requirements of CAA section 110(a)(2)(C) for a program for regulation of modification and construction of stationary sources in areas to assure the national ambient air quality standards are achieved and are consistent with 40 CFR 51.160–51.163 for review of new minor sources and minor modifications including required procedures and public availability of information. In addition, the revisions to 45 CSR13 are essentially adding conditions to an already SIP approved regulation for what on-site activities may occur before commencement of construction. Additionally, they are consistent with CAA section 110(l) because they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement.

3. Class I and Class II Administrative Updates

WVDEP's June 6, 2017 submittal also revised the applicability criteria for sources seeking Class I and Class II administrative updates to minor NSR permits issued under 45CSR13.

The primary difference between Class I and II updates is that, pursuant to 45–13–4.1.d, public notice is not required for Class I updates. For Class II updates, WVDEP provides a 30-day public notice period, in accordance with 45–13–8.3. Additionally, sources requesting Class I amendments may make the change upon submitting the request, prior to receiving a revised permit from WVDEP. In WVDEP's currently approved SIP, only changes to permit conditions which result in a *decrease* in emissions can be approved under a Class I update. Class II updates must be used for changes which result in an increase or no change in emissions. *See* 45CSR13 sections 45–13–4.2.a.8 and 45–13–4.2.b. WVDEP's June 6, 2017 submittal revised those provisions so that rather than applying only to permit revisions which result in an emissions decrease, a Class I update can be used for a permit revision resulting in no emissions increase. A Class II update now must be used in instances where the revision would result in an emissions increase. EPA believes this is a reasonable approach to streamlining WVDEP's administrative burden, and is approving them as a revision to the West Virginia SIP because they meet the requirements of 40 CFR 51.160–51.163 and CAA section 110(a)(2)(C) for permit programs regulating modification and construction of sources not subject to major new source review. Additionally, they are consistent with CAA section 110(l) because they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement as all modifications resulting in an emissions increase are still subject to public notice and the change only affects notice on actions where there is no effect on emissions (and thus no affect likely on attainment or reasonable further progress).

4. Non-Substantive Changes

In addition to the revisions previously discussed, WVDEP's June 6, 2017 submittal included a number of non-substantive, clarifying and/or administrative changes. Some examples include the deletion of 45CSR13 section 45–13–1.5, which referenced the former version of 45CSR13, re-codifications required by insertions or deletions, (*e.g.,* 45CSR13 sections 45–13–2.26 through

[1] WVDEP's ''store on-site'' provisions do not apply to major PSD or nonattainment NSR permits issued in accordance with 45CSR14 or 45CSR19.

45–13–28), and the deletion of 45CSR13 section 45–13–5.8, which was an antiquated reference to operating permits (permits issued under 45CSR13 include authorization to construct and operate). WVDEP's submittal included an underline/strikeout version of the submittal so that all revisions to 45CSR13 can been seen. This is included in the docket for this action and online at *www.regulations.gov*.

These changes to 45CSR13 have been made in order to clarify and streamline the minor NSR program, and are appropriate and meet the federal requirements of 40 CFR 51.160 through 51.163, and CAA section 110(a)(2)(C). Additionally, the revisions are in accordance with section 110(l) of the CAA because they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement.

III. Public Comments and EPA Response

EPA received two sets of comments on the June 18, 2018 NPR. These comments are included in the docket for this action. However, one of the sets of comments did not concern any of the specific issues raised in the NPR, nor did they address EPA's rationale for the proposed approval of WVDEP's submittal. Therefore, EPA is not addressing them here. EPA did receive one set of relevant comments. Those comments, and EPA's response, are discussed below.

Comment 1: The commenter takes issue with the revision to 45–13–5.1.i, specifically the addition of the language relating to ''permanent pad(s)'' or ''foundation(s)'' to the existing provision that allows sources to store materials onsite prior to receiving a preconstruction permit from WVDEP. The commenter asserts that the addition of the reference to pads and foundations imparts implicit approval for the construction of such facilities in the absence of a permit, and therefore conflicts with the definition of ''begin actual construction'' at 40 CFR 51.165(a)(1)(xv) and 40 CFR 52.21(b)(11),[2] and also conflicts with 40 CFR 51.160 (which requires SIPs to preclude the construction or modification of sources which would interfere with attainment or maintenance of the NAAQS). In support of this assertion, the commenter submitted a letter from EPA Region IX, commenting on regulations that were submitted to the Region by Maricopa County Air Quality Department (MCAQD) as an official SIP revision request.[3] In this letter, EPA identified MCAQD's definition of ''begin actual construction'' relating to minor NSR as deficient because it '' . . . allow[ed] various activities, such as the installation of underground pipework, and building and equipment supports . . . '' contrary to the federal requirements and long standing agency policy regarding major NSR.[4] Commenter cited the EPA letter as stating such construction of building and equipment supports is not allowed without first obtaining a preconstruction permit.

EPA Response 1: In contrast to the considerable requirements prescribed for major NSR in 40 CFR 51.165, the CAA contains minimal requirements for minor NSR. CAA section 110(a)(2)(C) simply requires that each SIP include a program that provides for '' . . . regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that [NAAQS] are achieved . . . '' The implementing regulations for minor NSR at 40 CFR 51.160–51.163 are similarly non-prescriptive. As a result, states have considerable discretion with regard to the implementation of their minor NSR programs as long as the program assures the national ambient air quality standards are attained. Therefore, as discussed in more detail below, EPA disagrees with the commenter's assertion that a disapproval is warranted.

First, EPA does not interpret the inclusion of the reference to ''permanent pad(s) or foundation(s)'' in WVDEP's revised definition of ''store onsite'' relating to allowable activities that occur before the commencement of construction to impart any permission for construction activities to occur prior to permit issuance that did not already exist in WVDEP's regulations. Indeed, section 45–13–5.1.d allows sources to ''Dig and construct foundations and/or caissons and grade beams.'' While such activities would conflict with the federal definition of ''begin actual construction'' as it relates to major NSR, EPA believes it is within West Virginia's discretion to allow such activities in the context of a minor NSR program as no definition of ''begin actual construction'' constrains minor NSR programs in CAA section 110(a)(2)(C) or in 40 CFR 51.160–51.163. WVDEP's regulations are very clear that these permissions do not extend to major sources or major modifications which are subject to WVDEP's major nonattainment PSD and NSR regulations at 45CSR14 and 45CSR19, respectively (subsection 5.1). Further, they do not allow for the installation, erection, or operation of the emissions unit (subsection 5.2), and are undertaken at the sole risk of the operator (subsection 5.3). Any source operator who wishes to store equipment on a pad or foundation must still obtain a permit before erecting an emissions unit or any of the specialized appurtenances associated with the unit. Additionally, if a source operator undertakes any of the activities allowed under these minor NSR rules, and the construction or modification ends up having a potential to emit greater than major source thresholds, they are subject to major NSR liability. Any source that intends to take synthetic minor restrictions to avoid major source permitting requirements remains subject to 45CSR14 or 45CSR19 until such time as a permit with enforceable limits is issued, and is therefore not eligible for the flexibilities provided by subsections 45–13–5 and 45–13–16.[5]

EPA believes that granting the permission to store equipment on a foundation or pad prior to permit issuance of a minor NSR permit is within West Virginia's discretion and does not compromise WVDEP's ability to implement their minor NSR program in such a way to assure compliance with the NAAQS in accordance with CAA section 110(a)(2) and 40 CFR 51.160. With regard to Region IX's letter to MCAQD, the comment does not undertake any analysis of the similarities or differences between MCAQD's SIP submittal and West Virginia's proposed regulatory revisions, nor compared to WVDEP's program. Therefore, any similarities or differences between MCAQD's regulations and WVDEP's program are not relevant to the main issue in this rulemaking which is whether WVDEP's regulations may be approved for the SIP as being consistent with CAA requirements. EPA has explained in the NPR and in this rulemaking why WVDEP's revisions meet CAA requirements in both CAA section 110(a)(2)(C) and in 40 CFR 51.160–51.163. Notably, there is no federal regulatory requirement of ''begin actual construction'' for minor NSR in CAA or in 40 CFR 51.161–51.163. Further, EPA notes that in an August 17,

[2] Under both sets of regulations, and under 40 CFR 51.166, sources subject to those regulations may not ''begin actual construction'' without first obtaining the proper major source preconstruction permit.

[3] The Region IX letter is included in the docket as an attachment to the comment letter.

[4] *See* Region IX comment letter at 4.

[5] Subsection 45–13–16.2.b expressly excludes sources seeking synthetic minor limits.

2017 notice of proposed rulemaking, EPA proposed to approve for the South Carolina SIP minor NSR program similar provisions to West Virginia's relating to permissible on-site activities allowable pre-permit. In that rulemaking proposal, EPA found that provisions allowing sources to pour concrete foundations prior to issuance of a minor NSR permit were '' . . . not inconsistent with the requirements of the CAA and EPA's regulations, and are therefore approvable as part of the SIP.'' *See* 82 FR 39085. EPA made similar determinations in final rulemaking actions for Mississippi [6] and Wisconsin [7]. Thus, despite the EPA comment letter cited by commenter, EPA disagrees with commenter that EPA's action to approve the West Virginia revision contradicts EPA regulations or policy. Accordingly, EPA is approving WVDEP's June 6, 2018 submittal as a revision to the West Virginia SIP.

Comment 2: The commenter asserts that ''To allow a whole or even part of an emission unit to be stored on site before issuance of a permit to construct violates the intent of new source review permitting requirements,'' and that because West Virginia '' . . . has resubmitted Rule 45–13–5.1.i for approval into the SIP, the entire subsection is subject to review for approvability,'' and EPA should disapprove the entire subsection. Commenter also states that EPA is incorrect in finding the SIP revision will not interfere with any other applicable CAA requirement per CAA section 110(l) because the West Virginia revision is inconsistent with CAA and longstanding EPA policy.

EPA Response 2: EPA does not disagree with the commenter's assertion that the entire subsection of 45 CSR13 is subject to review for approvability. However, other than the language on revise ''on-site'' activities, commenter does not site to other inconsistencies in West Virginia's regulations. As stated above in response to the first comment, EPA disagrees that West Virginia's ''store onsite'' provisions violate the intent of NSR. The PSD provisions of the CAA prohibit commencement of construction without first obtaining the required permit authorizing construction; however, the requirement only applies to major sources, and no such restriction is specified under the minor NSR program requirements set forth in 40 CFR 51.160. In addition, EPA has made determinations which further support that limited construction may begin before a permit is issued for minor sources. For example, EPA's October 10, 1978, memorandum from Edward E. Reich to Thomas W. Devine in Region 1 discusses limited preconstruction activities allowed at a site with both PSD and non-PSD sources. This memo states that construction may begin on PSD-exempt projects before the permit is issued. EPA has established its position that such limited waivers are acceptable for true minor sources in previous rulemaking. (See 68 FR 2217 and 73 FR 12893.) In addition, in a December 18, 1978 memo entitled ''Interpretation of 'Constructed' as it Applies to Activities Undertaken Prior to Issuance of a PSD Permit,'' [8] EPA attempted to clarify activities which would, in all cases, require a source operator to obtain a major NSR permit before undertaking, as well as activities which in all cases would not: ''The new policy is that certain limited activities will be allowed in all cases. These allowable activities are planning, ordering of equipment and materials, site-clearing, grading, and *on-site storage of equipment and materials* (emphasis added).'' Clearly, if such activities are acceptable prior to issuance in the context of the considerably more prescriptive major NSR program, West Virginia is well within its discretion to allow similar on-site activities under its minor NSR program for which the CAA and federal regulations provide less regulatory requirements. Accordingly, EPA is approving WVDEP's June 6, 2018 submittal as a revision to the West Virginia SIP as nothing in the minor NSR requirements in the CAA or in 40 CFR part 51 prohibit West Virginia from allowing certain on-site activities such as those West Virginia has added prior to issuance of a construction permit.

Finally, EPA disagrees with the commenter's general assertion that EPA is incorrect in finding the SIP revision will not interfere with any other applicable CAA requirement per CAA section 110(l). As EPA has explained in response to first and second comment, there are no federal requirements in the CAA or federal regulations that address allowable on-site activities prior to issuance of a permit. As EPA has found West Virginia's regulations reasonable and within the scope of CAA requirements for minor NSR programs, EPA is approving the revisions as in accord with CAA section 110. Our approval is consistent with similar SIP revision approvals for South Carolina and Mississippi as discussed above.

IV. Final Action

EPA is approving WVDEP's June 6, 2017 SIP submittal as a revision to the West Virginia SIP because the revisions meet the requirements of 40 CFR 51.160–51.163 and CAA section 110(a)(2)(C). Additionally, they are consistent with CAA section 110(l) because they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement.

V. Incorporation by Reference

In this document, 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 WVDEP rules regarding minor source permitting requirements 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.[9]

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,

[6] *See* 71 FR 38773 (July 10, 2006).

[7] *See* 73 FR 12893 (March 11, 2008).

[8] The commenter cites this memo as well as three others in defense of their claims. *See* fn5 of comment letter. None of these memos speak directly to the issue of activities allowed pre-permit in the context of minor NSR.

[9] 62 FR 27968 (May 22, 1997).

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

- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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 December 4, 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 related to West Virginia's minor NSR program 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 24, 2018.

Cosmo Servidio,

Regional Administrator Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (c) entitled ''EPA-Approved Regulations in the West Virginia SIP'' is amended by revising the entries for sections 45–13–1 through 45–1–16, 45–13A, and 45–13B to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

State citation [chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
*	*	*	*	*
[45 CSR] Series 13 Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, Permission to Commence Construction and Procedures for Evaluation				
Section 45–13–1	General	6/1/17	10/5/18 [Insert **Federal Register** citation].	Administrative changes.
Section 45–13–2	Definitions	6/1/17	10/5/18 [Insert **Federal Register** citation].	Revised definitions of ''modification,'' ''stationary source,'' and ''store on-site.''
Section 45–13–3	Reporting Requirements for Stationary Sources.	6/1/17	10/5/18 [Insert **Federal Register** citation].	New state effective date.
Section 45–13–4	Administrative Updates to Existing Permits and General Permit Registrations.	6/1/17	10/5/18 [Insert **Federal Register** citation].	Revised sections 4.1.d, 4.2, 4.2.a.8, and 4.2.b.1.

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
Section 45–13–5	Permit Application and Reporting Requirements for Construction of and Modifications to Stationary Sources.	6/1/17	10/5/18 [Insert **Federal Register** citation].	Revised section 5.1.e, 5.1.i; deleted existing section 5.8; renumbered following sections.
Section 45–13–6	Determination of Compliance of Stationary Sources.	6/1/17	10/5/18 [Insert **Federal Register** citation].	New state effective date.
Section 45–13–7	Modeling	6/1/17	10/5/18 [Insert **Federal Register** citation].	New state effective date.
Section 45–13–8	Public Review Procedures	6/1/17	10/5/18 [Insert **Federal Register** citation].	Revised section 8.1.
Section 45–13–9	Public Meetings	6/1/17	10/5/18 [Insert **Federal Register** citation].	New state effective date
Section 45–13–10	Permit Transfer, Suspension, Revocation and Responsibility.	6/1/17	10/5/18 [Insert **Federal Register** citation].	Administrative changes.
Section 45–13–11	Temporary Construction or Modification Permits.	6/1/17	10/5/18 [Insert **Federal Register** citation].	Administrative changes.
Section 45–13–12	Permit Application Fees	6/1/17	10/5/18 [Insert **Federal Register** citation].	New state effective date.
Section 45–13–13	Inconsistency Between Rules	6/1/17	10/5/18 [Insert **Federal Register** citation].	Administrative changes.
Section 45–13–14	Statutory Air Pollution	6/1/17	10/5/18 [Insert **Federal Register** citation].	New state effective date.
Section 45–13–15	Hazardous Air Pollutants	6/1/17	10/5/18 [Insert **Federal Register** citation].	Administrative changes.
Section 45–13–16	Application for Permission to Commence Construction in Advance of Permit Issuance.	6/1/17	10/5/18 [Insert **Federal Register** citation].	Administrative changes.
Table 45–13A	Potential Emission Rate	6/1/17	10/5/18 [Insert **Federal Register** citation].	New state effective date.
Table 45–13B	De Minimus Sources	6/1/17	10/5/18 [Insert **Federal Register** citation].	Administrative changes.

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[FR Doc. 2018–21557 Filed 10–4–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2018–0550; FRL–9985–00–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; 2018 Amendments to West Virginia's Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of West Virginia. This revision updates the effective date by which the state incorporates by reference the national ambient air quality standards (NAAQS) as well as their monitoring reference and equivalent methods. EPA is approving this revision to the West Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on November 5, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2018–0550. 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: Joseph Schulingkamp, (215) 814–2021, or by email at *schulingkamp.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 31, 2018 (83 FR36823), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. In the NPR, EPA proposed approval of a formal SIP revision submitted on June 8, 2018. The formal SIP revision pertains to amendments to Legislative Rule, 45CSR8—Ambient Air Quality Standards and consists of a revised effective date of the incorporation by reference of the NAAQS and the associated monitoring reference and equivalent methods.

II. Summary of SIP Revision

This SIP revision was submitted by WVDEP in order to update the State's incorporation by reference of the primary and secondary NAAQS and the ambient air monitoring reference and equivalent methods, found in 40 CFR parts 50 and 53, respectively. Currently, 45CSR8 incorporates by reference 40 CFR parts 50 and 53 as effective on June 1, 2016. Since that date, EPA retained the standard for lead and made a technical correction to the particulate standard. *See* 81 FR 71906 and 82 FR 14325, respectively. EPA also designated one new ambient air monitoring reference method for measuring concentrations of sulfur dioxide, four new ambient air monitoring equivalent methods for measuring concentrations of fine and coarse particulate matter ($PM_{2.5}$ and $PM_{10,}$ respectively), and two new equivalent methods for measuring concentrations of nitrogen dioxide (NO_2) in ambient air. Additional information can be found in the NPR and will not be restated here.

III. Response to Comments

EPA received two anonymous comments on the July 31, 2018 NPR.

Comment: The first commenter asked why this SIP revision was ''required'' by West Virginia and how it is possible for a state to require a SIP revision. In addition, the commenter alleged that just because a state changes a date in the state's regulation does not mean it must change in the SIP. The commenter also asked EPA to clarify the relevance of the phrase, ''EPA retained the standard for lead and made a technical correction to the particulate standard,'' and to explain what incorporation by reference means in the context of this rulemaking.

Response: When a state incorporates a rule or standard by reference, the state is formally adopting the standard or rule into its own state rules without having to rewrite the entirety of the referenced rule or standard. States typically incorporate rules by reference to maintain consistency between state and federal requirements and for ease of adoption by the state. While nothing in the CAA or EPA's regulations necessitates West Virginia to incorporate by reference the NAAQS or to update the date of incorporation by reference of the NAAQS in the State's SIP, West Virginia has chosen of its own accord to incorporate by reference the NAAQS into its SIP and recognizes that it is prudent to ensure the SIP and the state's regulations match for consistent implementation and enforcement purposes. In the NPR, EPA inadvertently referred to the State's voluntary decision to submit the SIP revision incorporating the NAAQS as a ''requirement'' when the State voluntarily decided to incorporate the NAAQS and thus chose to submit its latest revised regulation for SIP approval incorporating EPA's latest revised NAAQS. Thus, EPA agrees with the commenter that the State is not required to submit this latest SIP revision; West Virginia is exercising its voluntary decision to include state regulations incorporating the NAAQS. Because West Virginia chooses to incorporate by reference the NAAQS, and because West Virginia incorporates by reference the NAAQS in its state regulations by referring to federal regulations as published on a certain date, West Virginia periodically updates its state regulations to refer to the most up to date NAAQS in current federal regulations. West Virginia identified several changes in 40 CFR parts 50 and 53 which the State determined necessitated updating the date of incorporation by reference in its own state regulations; those changes include the following: In 40 CFR part 50, a technical correction to the particulate standard, and in 40 CFR part 53, one new ambient air monitoring reference method for measuring concentrations of sulfur dioxide (SO_2), four new ambient air monitoring equivalent methods for measuring concentrations of $PM_{2.5}$ and $PM_{10,}$ respectively, and two new equivalent methods for measuring concentrations of NO_2 in ambient air.

The SIP revision submittal in this rulemaking was submitted by West Virginia because West Virginia's rule, 45CSR8—Ambient Air Quality Standards, incorporated the NAAQS and the ambient air monitoring reference and equivalent methods found in 40 CFR parts 50 and 53, respectively, as of June 1, 2016. Because West Virginia wanted to ensure the most recent ambient air quality standards and air monitoring methods are enforceable at the state level, West Virginia routinely revises 45CSR8 to update the date by which the rule incorporates the federal standards by reference. In this case, West Virginia revised the date of incorporation by reference from June 1, 2016 to June 1, 2018. By revising this date, West Virginia's ambient air quality standards and air monitoring methods would match the federal NAAQS and air monitoring methods in 40 CFR parts 50 and 53.

In October 2016 and March 2017, EPA made revisions to 40 CFR parts 50 and 53. *See* 81 FR 71906 and 82 FR 14325, respectively. In these two actions, EPA retained the NAAQS for the lead standard and made a technical correction to the particulate matter standard. After EPA made these changes, West Virginia's 45CSR8 no longer referenced the most current NAAQS and air monitoring methods; therefore, West Virginia decided to revise its state rule to reference the most recent NAAQS and air monitoring methods. In this routine update, West Virginia recognized that its newly revised 45CSR8 would no longer match the version of the same rule that was contained in its SIP, thus, a SIP revision was necessary to bring the SIP into conformance with both the state rule and the federal standards in 40 CFR parts 50 and 53. In conclusion, West Virginia's decision to incorporate the most current NAAQS was voluntary and EPA in the proposed rule inadvertently referred to West Virginia's decision to make this SIP submission as ''required.'' West Virginia decided voluntarily to incorporate the federal NAAQS and reference methods into its SIP and to submit this revision to incorporate the most recent version of 40 CFR parts 50 and 53 in its SIP. Therefore, EPA agrees with the commenter that EPA inadvertently referred to the submittal as ''required;'' however, West Virginia's SIP meets requirements in CAA section 110 as discussed in the NPR and commenter has provided no information to challenge the basis for EPA's approval under CAA section 110.

Regarding the commenter's concern about EPA's statement that ''EPA retained the standard for lead and made a technical correction to the particulate standard,'' EPA explained the basis for this in the NPR. No changes were made to the NAAQS for lead and thus no evaluation was needed for West Virginia's altered 45CSR8. EPA explained in the NPR that the Agency made a technical correction to our particulate matter NAAQS and the commenter offered no substantive questions or commentary regarding that change; thus, EPA provides no further substantive reply. Regarding an

explanation of ''what incorporation by reference means,'' EPA offers that incorporation by reference means that by this final action approving the SIP revision, EPA is including in the new version of 45CSR8 (which in turn incorporated the text of 40 CFR parts 50 and 53) in the federally approved and federally enforceable West Virginia SIP.

Comment: The second commenter asked why the State of West Virginia has to update their ambient air quality standards if the federal standards cover all states, including West Virginia. The commenter further opined that this rulemaking action is redundant and unnecessary, and thus, EPA should not approve West Virginia's submission.

Response: EPA disagrees with the commenter that EPA should disapprove West Virginia's submission based on the SIP revision being ''redundant and unnecessary.'' Section 110 of the CAA permits states to submit regulations the states deem relevant for SIP inclusion and requires EPA to approve those submissions so long as they conform with the Act. Apart from mandatory CAA requirements, states are free to submit SIP revisions which they believe are necessary for inclusion into the state's SIP. Regarding the comment as to ''why the State must update their ambient air quality standards,'' EPA's reply is that West Virginia is not ''required'' to submit this revision, as explained above. West Virginia on its own accord sought to include 45CSR8 in its SIP. EPA's decision to approve this SIP revision submittal is based on our application of section 110 of the CAA to the submittal. As the submission met the requirements of section 110 for SIP approval, EPA must approve this voluntary submission for the West Virginia SIP.

IV. Final Action

EPA is approving the West Virginia SIP revision updating the date of incorporation by reference as a revision to the West Virginia SIP. The SIP revision was submitted on June 8, 2018.

V. Incorporation by Reference

In this document, 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 45CSR8, as effective on June 1, 2018. EPA has made, and will continue to make, these materials generally available through *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.[1]

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 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 December 4, 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, updating the effective date of West Virginia's 45CSR8, 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, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

[1] 62 FR 27968 (May 22, 1997).

Dated: September 24, 2018.

Cosmo Servidio,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (c) is amended by revising the entries ''Section 45–8–1'', ''Section 45–8–2'', ''Section 45–8–3'', and ''Section 45–8–4'' to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
*	*	*	*	*
[45 CSR] Series 8	**Ambient Air Quality Standards**			
Section 45–8–1	General	6/1/18	10/5/18, [insert **Federal Register** citation].	Docket #2018–0550. Filing and effective dates are revised.
Section 45–8–2	Definitions	6/1/18	10/5/18, [insert **Federal Register** citation].	Docket #2018–0550. Previous Approval 3/23/18.
Section 45–8–3	Adoption of Standards	6/1/18	10/5/18, [insert **Federal Register** citation].	Docket #2018–0550.Effective date is revised.
Section 45–8–4	Inconsistency Between Rules	6/1/18	10/5/18, [insert **Federal Register** citation].	Docket #2018–0550. Previous Approval 3/23/18.
*	*	*	*	*

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[FR Doc. 2018–21664 Filed 10–4–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2018–0238, FRL–9984–78–Region 10]

Air Plan Approval; Oregon; Lane County Permitting and General Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, and incorporating by reference, specific changes to the Oregon State Implementation Plan (SIP) as it applies in Lane County, Oregon. The local air agency in Lane County, Lane Regional Air Protection Agency, revised its rules to align with recent changes to Oregon State regulations. The revisions, submitted on August 29, 2014 and March 27, 2018, are related to the criteria pollutants for which the EPA has established national ambient air quality standards—carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. The regulatory changes address Federal particulate matter requirements, update the major and minor source pre-construction permitting programs, add State-level air quality designations, update public processes, and tighten emission standards for dust and smoke.

DATES: This final rule is effective November 5, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2018–0238. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and is publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kristin Hall, at (206) 553–6357, or *hall.kristin@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'', or ''our'' is used, it is intended to refer to the EPA.

Table of Contents

I. Background

On August 29, 2014 and March 27, 2018, Lane Regional Air Protection Agency (LRAPA) and Oregon Department of Environmental Quality (ODEQ) submitted revisions to the SIP as it applies in Lane County, Oregon. On July 31, 2018, the EPA proposed to approve the submitted rule changes (83 FR 36824). Please see our proposed rulemaking for further explanation and the basis of our finding.

II. Comments

During the public comment period on our proposed action, we received two electronic comments covering broad topics including wildfires, forest management practices, climate change, and the National Environmental Policy

Act. We have determined the comments lack the required specificity to the Oregon SIP revisions and/or the requirements of CAA section 110 and parts C and D. Moreover, the comments do not address a specific regulation or provision in question, or recommend a different action on the SIP submissions. Therefore, we find that the submitted comments are outside the scope of this action and not adverse. The full text of the submitted comments can be found in the docket for this action. We are finalizing our action as proposed.

III. Final Action

The EPA is approving, and incorporating by reference into the Oregon SIP, rule revisions submitted on August 29, 2014 (State effective March 31, 2014) and March 27, 2018 (State effective March 23, 2018) for Lane County. We are also approving, but not incorporating by reference, regulations that provide LRAPA with authority needed for SIP approval.

As discussed in the proposal and described below, we are reviewing and approving the most recent version of the submitted rules applicable in Lane County, specifically, the most recently adopted and submitted version of each rule section. Further action on the earlier adopted version of a particular submitted rule section is not required because it is no longer in effect and has been superseded by the most recent version of that rule section submitted by the State.

As requested by LRAPA and the State, we are also removing certain rules from the SIP, because they are obsolete, redundant, or replaced by equivalent or more stringent local rules. We are deferring action on a section of rules because we intend to address them in a separate, future action.

We note that the submissions include changes to OAR 340–200–0040, a rule that describes the Oregon procedures for adopting its SIP and references all of the State air regulations that have been adopted by LRAPA and ODEQ for approval into the SIP (as a matter of State law), whether or not they have yet been submitted to or approved by the EPA. We are not approving the changes to OAR 340–200–0040 because the federally-approved SIP consists only of regulations and other requirements that have been submitted by LRAPA and ODEQ and approved by the EPA.

A. Rules Approved and Incorporated by Reference

We are approving into the Oregon SIP, and incorporating by reference at 40 CFR part 52, subpart MM, revisions to the following LRAPA rule sections. Each rule section listed is State effective March 23, 2018, unless marked with an asterisk, denoting it is effective March 31, 2014:

- Title 12—Definitions (001, 005, 010, 020, 025);
- Title 29—Designation of Air Quality Areas (0010, 0020, 0030, 0040, 0050, 0060, 0070*, 0080*, 0090*, 0300, 0310, 0320);
- Title 30—Incinerator Regulations (010, 015*, 020*—except (2) and (8), 025*—except (9), 030*—except (1)(I) and (2)(E), 035*, 040*, 045*—except (3), 050*, 055*, 060*);
- Title 31—Public Participation (0010, 0020, 0030, 0040, 0050, 0060, 0080);
- Title 32—Emission Standards (001, 005, 006, 007, 008, 009, 010, 015, 020, 030, 045, 050, 060, 065, 070, 090*, 100, 8010);
- Title 33—Prohibited Practices and Control of Special Classes of Industry (005, 060, 065, 070—except, in (1), the definitions of ''non-condensables'', ''other sources'', and ''TRS'', (3)(a), (4)(b), (5)(b), (6)(a), (6)(b), 500);
- Title 34—Stationary Source Notification Requirements (005, 010, 015, 016, 017, 020, 025, 030, 034, 035, 036, 037, 038);
- Title 35—Stationary Source Testing and Monitoring (0010, 0110, 0120, 0130, 0140, 0150*);
- Title 37—Air Contaminant Discharge Permits (0010, 0020, 0025, 0030, 0040, 0052, 0054, 0056, 0060, 0062, 0064, 0066, 0068, 0070, 0082, 0084, 0090, 0094, 8010, 8020);
- Title 38—New Source Review (0010, 0020, 0025, 0030, 0034, 0038, 0040, 0045, 0050, 0055, 0060, 0070, 0245, 0250, 0255, 0260, 0270, 0500, 0510—except (3), 0530, 0540);
- Title 40—Air Quality Analysis Requirements (0010, 0020, 0030, 0040, 0045, 0050, 0060, 0070);
- Title 41—Emission Reduction Credits (0010*, 0020, 0030);
- Title 42—Stationary Source Plant Site Emission Limits (0010, 0020, 0030, 0035, 0040, 0041, 0042, 0046, 0048, 0051, 0055, 0080, 0090);
- Title 48—Rules for Fugitive Emissions (001, 005, 010, 015);
- Title 50—Ambient Air Standards and PSD Increments (001, 005, 015, 025, 030, 035, 040, 045, 050, 055, 060*, 065); and
- Title 51—Air Pollution Emergencies (005, 007, 010, 011, 015, 020, 025, Table I, Table II, Table III).

B. Rules Approved but Not Incorporated by Reference

We are approving, but not incorporating by reference, the following LRAPA rule sections. Each rule section is State effective March 23, 2018, unless marked with an asterisk, denoting the rule is effective March 31, 2014:

- Title 13—General Duties and Powers of Board and Director (005*, 010*, 020*, 025*, 030*, 035*);
- Title 14—Rules of Practice and Procedures (110, 115, 120, 125, 130, 135, 140, 145, 147, 150, 155, 160, 165, 170, 175, 185, 190, 200, 205); and
- Title 31—Public Participation (0070).

C. Rules Removed

We are removing the following rules from the current federally-approved Oregon SIP at 40 CFR part 52, subpart MM, because they have been repealed, replaced by rules noted in paragraph A. above, or the State has asked that they be removed:

- Title 12—Definitions (001(2)), State effective March 8, 1994;
- Title 30—Incinerator Regulations (005), State effective March 8, 1994;
- Title 33—Prohibited Practices and Control of Special Classes of Industry (030, 045), State effective November 10, 1994; and
- Title 34—Stationary Source Notification Requirements (040), State effective June 13, 2000.

We also are removing the following rules in the table entitled, ''Rules Also Approved for Lane County'', State effective April 16, 2015, because LRAPA has submitted equivalent or more stringent local rules to apply in place of those requirements:

Table 5—EPA-Approved Oregon Administrative Rules (OAR) Also Approved for Lane County

- Division 200—General Air Pollution Procedures and Definitions (0020);
- Division 202—Ambient Air Quality Standards and PSD Increments (0050);
- Division 204—Designation of Air Quality Areas (0300, 0310, 0320);
- Division 208—Visible Emissions and Nuisance Requirements (0110, 0210);
- Division 214—Stationary Source Reporting Requirements (0114)(5);
- Division 216—Air Contaminant Discharge Permits (0040, 8010);
- Division 222—Stationary Source Plant Site Emission Limits (0090);
- Division 224 –New Source Review (0030, 0530);
- Division 225—Air Quality Analysis Requirements (0010, 0020, 0030, 0040, 0045, 0050, 0060, 0070);
- Division 226—General Emissions Standards (0210); and
- Division 228—Requirements for Fuel Burning Equipment and Fuel Sulfur Content (0210).

D. Rules Deferred

As stated in the proposal, we are deferring action on the following rules, State effective March 23, 2018, and intend to address them in a separate, future action:

• Title 36—Excess Emissions (001, 005, 010, 015, 020, 025, 030).

We note that each of the Title 36 rule sections revised and submitted on August 29, 2014 (State effective March 31, 2014) were also revised and resubmitted on March 27, 2018 (State effective March 23, 2018). As a result, the 2018 submitted version of Title 36 entirely supersedes the 2014 submitted version.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are finalizing the incorporation by reference as described in Section III above and the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region 10 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 the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally-enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

V. Oregon Notice Provision

Oregon Revised Statute 468.126, prohibits ODEQ from imposing a penalty for violation of an air, water or solid waste permit unless the source has been provided five days' advanced written notice of the violation and has not come into compliance or submitted a compliance schedule within that five-day period. By its terms, the statute does not apply to Oregon's title V program or to any program if application of the notice provision would disqualify the program from Federal delegation. Oregon has previously confirmed that, because application of the notice provision would preclude EPA approval of the Oregon SIP, no advance notice is required for violation of SIP requirements.

[1] *See* 62 FR 27968 (May 22, 1997).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the 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);

• 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 this action does not involve technical standards; and

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 4, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: September 18, 2018.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

For the reasons set forth in the preamble, 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 MM—Oregon

■ 2. Section 52.1970 is amended by:
■ a. In paragraph (c), revising Table 4 and removing Table 5; and
■ b. In paragraph (e), revising the table entitled ''Lane County Regional Air

Pollution Authority Regulations, Approved But Not Incorporated By Reference''.

The revisions read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

TABLE 4—EPA APPROVED LANE REGIONAL PROTECTION AGENCY (LRAPA) RULES FOR OREGON

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
Title 11—Policy and General Provisions				
11–005	Policy	10/9/1979	9/9/1993, 58 FR 47385	
11–010	Construction and Validity	10/9/1979	9/9/1993, 58 FR 47385	
Title 12—Definitions				
12–001	General	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
12–005	Definitions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
12–010	Abbreviations and Acronyms	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
12–020	Exceptions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
12–025	Reference Materials	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
Title 16—Home Wood Heating Curtailment Program Enforcement				
16–001	Purpose	7/13/1993	8/24/1994, 59 FR 43483	
16–010	Definitions	7/13/1993	8/24/1994, 59 FR 43483	
16–100	Civil Penalty Schedule	7/13/1993	8/24/1994, 59 FR 43483	
16–110	Classification of Violations	7/13/1993	8/24/1994, 59 FR 43483	
16–120	Notice of Violation	7/13/1993	8/24/1994, 59 FR 43483	
16–130	Appeal of Civil Penalty	7/13/1993	8/24/1994, 59 FR 43483	
16–140	Conducting Contested Case Evidentiary Hearings	7/13/1993	8/24/1994, 59 FR 43483	
16–150	Evidentiary Rules	7/13/1993	8/24/1994, 59 FR 43483	
16–160	Final Orders	7/13/1993	8/24/1994, 59 FR 43483	
16–170	Default Orders	7/13/1993	8/24/1994, 59 FR 43483	
Title 29—Designation of Air Quality Areas				
29–0010	Definitions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
29–0020	Designation of Air Quality Control Regions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
29–0030	Designation of Nonattainment Areas	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
29–0040	Designation of Maintenance Areas	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
29–0050	Designation of Prevention of Significant Deterioration Areas	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
29–0060	Redesignation of Prevention of Significant Deterioration Areas	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
29–0070	Special Control Areas	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	
29–0080	Motor Vehicle Inspection Boundary Designations	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	
29–0090	Oxygenated Gasoline Control Areas	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	
Designation of Areas				
29–0300	Designation of Sustainment Areas	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
29–0310	Designation of Reattainment Areas	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
29–0320	Priority Sources	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
Title 30—Incinerator Regulations				
30–010	Definitions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
30–015	Best Available Control Technology for Solid and Infectious Waste Incinerators.	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	
30–020	Emission Limitations for Solid and Infectious Waste Incinerators	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	Except (2) and (8).
30–025	Design and Operation for Solid and Infectious Waste Incinerators	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	Except (9).
30–030	Continuous Emission Monitoring for Solid and Infectious Waste Incinerators.	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	Except (1)(l) and (2)(E).
30–035	Reporting and Testing for Solid and Infectious Waste Incinerators	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	

TABLE 4—EPA APPROVED LANE REGIONAL PROTECTION AGENCY (LRAPA) RULES FOR OREGON—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
30–040	Compliance for Solid and Infectious Waste Incinerators	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	
30–045	Emission Limitations of Crematory Incinerators	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	Except (3).
30–050	Design and Operation of Crematory Incinerators	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	
30–055	Monitoring and Reporting for Crematory Incinerators	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	
30–060	Compliance of Crematory Incinerators	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	
	Title 31—Public Participation			
31–0010	Purpose	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
31–0020	Applicability	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
31–0030	Public Notice Categories and Timing	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
31–0040	Public Notice Information	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
31–0050	Public Notice Procedures	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
31–0060	Persons Required to be Notified	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
31–0080	Issuance or Denial of Permit	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
	Title 32—Emission Standards			
32–001	Definitions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
32–005	Highest and Best Practicable Treatment and Control Required	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
32–006	Pollution Prevention	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
32–007	Operating and Maintenance Requirements	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
32–008	Typically-Achievable Control Technology Requirements	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
32–009	Additional Control Requirements for Stationary Sources of Air Contaminants.	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
32–010	Visible Air Contaminant Limitations	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
32–015	Particulate Matter Emission Limitations for Sources Other than Fuel Burning Equipment, Refuse Burning Equipment, and Fugitive Emissions.	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
32–020	Particulate Matter Weight Standards—Existing Combustion Sources	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
32–030	Particulate Matter Weight Standards—New Combustion Sources	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
32–045	Process Weight Emission Limitations and Determination of Process Weight.	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
32–050	Concealment and Masking of Emissions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
32–060	Air Conveying Systems	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
	Gaseous Emission Limitations			
32–065	Sulfur Content of Fuels	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
32–070	Sulfur Dioxide Emission Limitations	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
32–090	Other Emissions	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	
32–100	Alternative Emission Controls (Bubble)	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
32–8010	Particulate Matter Emissions Standards for Process Equipment	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
	Title 33—Prohibited Practices and Control of Special Classes of Industry			
33–005	Definitions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
33–060	Board Products Industries (Hardboard, Particleboard, Plywood, Veneer).	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
33–065	Charcoal Producing Plants	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	

TABLE 4—EPA APPROVED LANE REGIONAL PROTECTION AGENCY (LRAPA) RULES FOR OREGON—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
33–070	Kraft Pulp Mills	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	Except in (1) the definitions of ''non-condensables'', ''other sources'', and ''TRS'', (3)(a), (4)(b) (5)(b), (6)(a), and (6)(b).
33–500	Particulate Matter Emissions Standards for Process Equipment	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
Title 34—Stationary Source Notification Requirements				
34–005	Definitions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
34–010	Applicability	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
34–015	Request for Information	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
34–016	Records: Maintaining and Reporting	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
34–017	Enforcement; Credible Evidence	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
34–020	Information Exempt from Disclosure	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
Registration				
34–025	Registration is General	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
34–030	Source Registration Requirements and Re-Registration and Maintaining Registration.	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
Notice of Construction and Approval of Plans				
34–034	Requirements for Construction	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
34–035	Types of Construction/Modification Changes	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
34–036	Notice to Construct	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
34–037	Construction Approval	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
34–038	Approval to Operate	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
Title 35—Stationary Source Testing and Monitoring				
35–0010	Definitions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
Sampling, Testing and Measurement				
35–0110	Applicability	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
35–0120	Program	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
35–0130	Stack Heights and Dispersion Techniques	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
35–0140	Methods	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
35–0150	LRAPA Testing	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	
Title 37—Air Contaminant Discharge Permits				
37–0010	Purpose	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
37–0020	Applicability and Jurisdiction	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
37–0025	Types of Permits	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
37–0030	Definitions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
37–0040	Application Requirements	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
37–0052	Construction ACDP	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
37–0054	Short Term Activity ACDPs	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
37–0056	Basic ACDPs	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	

TABLE 4—EPA APPROVED LANE REGIONAL PROTECTION AGENCY (LRAPA) RULES FOR OREGON—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
37–0060	General Air Contaminant Discharge Permits	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
37–0062	General ACDP Attachments	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
37–0064	Simple ACDPs	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
37–0066	Standard ACDPs	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
37–0068	Simple and Standard ACDP Attachments	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
37–0070	Permitting a Source with Multiple Activities or Processes at a Single Adjacent or Contiguous Site.	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
37–0082	Termination or Revocation of an ACDP	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
37–0084	LRAPA-Initiated Modification	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
37–0090	Sources Subject to ACDPs and Fees	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
37–0094	Temporary Closure	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
37–8010	Table 1—Activities and Sources	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
37–8020	Table 2—Air Contaminant Discharge Permits	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
	Title 38—New Source Review			
38–0010	Applicability and General Prohibitions, General Requirements and Jurisdiction.	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
38–0020	Definitions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
38–0025	Major Modification	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
38–0030	New Source Review Procedural Requirements	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
38–0034	Exemptions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
38–0038	Fugitive and Secondary Emissions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
38–0040	Review of Sources Subject to Major NSR or Type A State NSR for Compliance With Regulations.	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
	Major New Source Review			
38–0045	Requirements for Sources in Sustainment Areas	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
38–0050	Requirements for Sources in Nonattainment Areas	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
38–0055	Requirements for Sources in Reattainment Areas	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
38–0060	Records; Maintaining and Reporting	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
38–0070	Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas.	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
	State New Source Review			
38–0245	Requirements for Sources in Sustainment Areas	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
38–0250	Requirements for Sources in Nonattainment Areas	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
38–0255	Requirements for Sources in Reattainment Areas	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
38–0260	Requirements for Sources in Maintenance Areas	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
38–0270	Requirement for Sources in Attainment and Unclassified Areas	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
	Net Air Quality Benefit Emission Offsets			
38–0500	Net Air Quality Benefit for Sources Locating Within or Impacting Designated Areas.	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
38–0510	Common Offset Requirements	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	Except (3).
38–0530	Requirements for Demonstrating Net Air Quality Benefit for Non-Ozone Areas.	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
38–0540	Sources in a Designated Area Impacting Other Designated Areas	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	

TABLE 4—EPA APPROVED LANE REGIONAL PROTECTION AGENCY (LRAPA) RULES FOR OREGON—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
Title 39—Contingency for PM_{10} Sources in Eugene-Springfield Non-Attainment Area				
39–001	Purpose	11/13/1991	8/24/1994, 59 FR 43483	
39–005	Relation to Other Rules	11/13/1991	8/24/1994, 59 FR 43483	
39–010	Applicability	11/13/1991	8/24/1994, 59 FR 43483	
39–015	Definitions	11/13/1991	8/24/1994, 59 FR 43483	
39–020	Compliance Schedule for Existing Sources	11/13/1991	8/24/1994, 59 FR 43483	
39–025	Wood-Waste Boilers	11/13/1991	8/24/1994, 59 FR 43483	
39–030	Veneer Dryers	11/13/1991	8/24/1994, 59 FR 43483	
39–035	Particle Board Plants and Wood Particle Dryers	11/13/1991	8/24/1994, 59 FR 43483	
39–040	Kraft Pulp Mills	11/13/1991	8/24/1994, 59 FR 43483	
39–050	Air Conveying Systems	11/13/1991	8/24/1994, 59 FR 43483	
39–055	Fugitive Dust	11/13/1991	8/24/1994, 59 FR 43483	
39–060	Open Burning	11/13/1991	8/24/1994, 59 FR 43483	
Title 40—Air Quality Analysis Requirements				
40–0010	Purpose	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
40–0020	Definitions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
40–0030	Procedural Requirements	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
40–0040	Air Quality Models	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
40–0045	Requirements for Analysis in Maintenance Areas	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
40–0050	Requirements for Analysis in PSD Class II and Class III Areas	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
40–0060	Requirements for Demonstrating Compliance with Standards and Increments in PSD Class I Areas.	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
40–0070	Requirements for Demonstrating Compliance with Air Quality Related Values Protection.	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
Title 41—Emission Reduction Credits				
41–0010	Applicability	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	
41–0020	Definitions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
41–0030	Emission Reduction Credits	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
Title 42—Stationary Source Plant Site Emission Limits				
42–0010	Policy	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
42–0020	Applicability	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
42–0030	Definitions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
Criteria for Establishing Plant Site Emission Limits				
42–0035	General Requirements for Establishing All PSELs	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
42–0040	Generic Annual PSEL	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
42–0041	Source Specific Annual PSEL	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
42–0042	Short Term PSEL	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
42–0046	Netting Basis	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
42–0048	Baseline Period and Baseline Emission Rate	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
42–0051	Actual Emissions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
42–0055	Unassigned Emissions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
42–0080	Plant Site Emission Limit Compliance	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
42–0090	Combining and Splitting Sources and Changing Primary SIC Code	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
Title 47—Open Burning				
47–001	General Policy	3/14/2008	10/23/2015, 80 FR 64346 ..	
47–005	Exemptions from These Rules	3/14/2008	10/23/2015, 80 FR 64346 ..	

TABLE 4—EPA APPROVED LANE REGIONAL PROTECTION AGENCY (LRAPA) RULES FOR OREGON—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
47–010	Definitions	3/14/2008	10/23/2015, 80 FR 64346 ..	Except the definition of ''nuisance''.
47–015	Open Burning Requirements	3/14/2008	10/23/2015, 80 FR 64346 ..	Except 1.D, 1.H, 6.B(5).
47–020	Letter Permits	3/14/2008	10/23/2015, 80 FR 64346 ..	Except 3, 9.I, and 10.
	Title 48—Rules for Fugitive Emissions			
48–001	General Policy	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
48–005	Definitions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
48–010	General Applicability	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
48–015	General Requirements for Fugitive Emissions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
	Title 50—Ambient Air Standards and PSD Increments			
50–001	Definitions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
	Ambient Air Quality Standards			
50–005	Purpose and Scope of Ambient Air Quality Standards	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
50–015	Suspended Particulate Matter	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
50–025	Sulfur Dioxide	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
50–030	Carbon Monoxide	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
50–035	Ozone	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
50–040	Nitrogen Dioxide	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
50–045	Lead	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
	PSD Increments			
50–050	General	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
50–055	Ambient Air PSD Increments	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
50–060	Ambient Air Ceilings	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	
50–065	Ambient Air Quality Impact Levels for Maintenance Areas	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
	Title 51—Air Pollution Emergencies			
51–005	Introduction	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
51–007	Definitions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
51–010	Episode Stage Criteria for Air Pollution Emergencies	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
51–011	Special Conditions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
51–015	Source Emission Reduction Plans	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
51–020	Preplanned Abatement Strategies	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
51–025	Implementation	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
Table I	Air Pollution Episode, Alert Conditions Emission Reduction Plan	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
Table II	Air Pollution Episode, Warning Conditions Emission Reduction Plan	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
Table III	Air Pollution Episode, Emergency Conditions Emission Reduction Plan.	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	

* * * * * (e) * * *

LANE COUNTY REGIONAL AIR POLLUTION AUTHORITY REGULATIONS, APPROVED BUT NOT INCORPORATED BY REFERENCE

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanation
	Title 13—General Duties and Powers of Board and Director			
13–005	Authority of the Agency	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	
13–010	Duties and Powers of the Board of Directors	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	
13–020	Duties and Function of the Director	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	
13–025	Conflict of Interest	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	
13–030	Advisory Committee	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	
13–035	Public Records and Confidential Information	3/31/2014	10/5/2018, [Insert **Federal Register** citation].	
	Title 14—Rules of Practice and Procedure			
14–110	Definitions	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
	Rulemaking			
14–115	Rulemaking Notice	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
14–120	Rulemaking Hearings and Process	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
14–125	Temporary Rules	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
14–130	Petition to Promulgate, Amend or Repeal Rule—Content of Petition, Filing of Petition.	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
14–135	Declaratory Rulings	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
	Contested Cases			
14–140	Contested Case Proceedings Generally	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
14–145	Agency Representation by Environmental Law Specialist	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
14–147	Authorized Representative of Respondent other than a Natural Person in a Contested Case Hearing.	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
14–150	Liability for the Acts of a Person's Employees	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
14–155	Consolidation or Bifurcation of Contested Case Hearings	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
14–160	Final Orders	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
14–165	Default Orders	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
14–170	Appeal to the Board	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
14–175	Power of the Director	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
14–185	Request for Stay Pending Judicial Review	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
14–190	Request for Stay—Motion to Intervene	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
14–200	Request for Stay—Agency Determination	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
14–205	Request for Stay—Time Frames	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	
	Title 15—Enforcement Procedures and Civil Penalties			
15–001	Policy	6/13/1995	8/3/2001, 66 FR 40616	
15–003	Scope of Applicability	6/13/1995	8/3/2001, 66 FR 40616	
15–005	Definitions	6/13/1995	8/3/2001, 66 FR 40616	
15–010	Consolidation of Proceedings	6/13/1995	8/3/2001, 66 FR 40616	
15–015	Notice of Violation	6/13/1995	8/3/2001, 66 FR 40616	
15–018	Notice of Permit Violations and Exceptions	6/13/1995	8/3/2001, 66 FR 40616	
15–020	Enforcement Actions	6/13/1995	8/3/2001, 66 FR 40616	
15–025	Civil Penalty Schedule Matrices	6/13/1995	8/3/2001, 66 FR 40616	
15–030	Civil Penalty Determination Procedure (Mitigating and Aggravating Factors).	6/13/1995	8/3/2001, 66 FR 40616	
15–035	Written Notice of Civil Penalty Assessment—When Penalty Payable	6/13/1995	8/3/2001, 66 FR 40616	
15–040	Compromise or Settlement of Civil Penalty by Director	6/13/1995	8/3/2001, 66 FR 40616	
15–045	Stipulated Penalties	6/13/1995	8/3/2001, 66 FR 40616	
15–050	Additional Civil Penalties	6/13/1995	8/3/2001, 66 FR 40616	
15–055	Air Quality Classification of Violation	6/13/1995	8/3/2001, 66 FR 40616	
15–060	Selected Magnitude Categories	6/13/1995	8/3/2001, 66 FR 40616	

LANE COUNTY REGIONAL AIR POLLUTION AUTHORITY REGULATIONS, APPROVED BUT NOT INCORPORATED BY REFERENCE—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanation
15–065	Appeals	6/13/1995	8/3/2001, 66 FR 40616	
Title 31—Public Participation				
31–0070	Hearing Procedures	3/23/2018	10/5/2018, [Insert **Federal Register** citation].	

* * * * *

■ 3. Section 52.1987 is amended by revising paragraph (b) to read as follows:

§ 52.1987 Significant deterioration of air quality.

* * * * *

(b) The Lane Regional Air Protection Agency rules for the prevention of significant deterioration of air quality (provisions of LRAPA Titles 12, 29, 31, 37, 38 (except 0510(3) inter-pollutant offset ratios), 40, 42, and 50) as in effect March 23, 2018, are approved as meeting the requirements of title I, part C, subpart I of the Clean Air Act for preventing significant deterioration of air quality.

* * * * *

[FR Doc. 2018–21558 Filed 10–4–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0333; FRL–9984–01]

Flumioxazin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances with regional registrations for residues of flumioxazin in or on Grass, forage and Grass, hay. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 5, 2018. Objections and requests for hearings must be received on or before December 4, 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–2017–0333, 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, 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*.

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–2017–0333 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 December 4, 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–2017–0333, 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 October 23, 2017 (82 FR 49020) (FRL–9967–37), 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 7E8565) by IR–4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.568(c) be amended by establishing tolerances with regional registrations for residues of the herbicide flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2H-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1H-isoindole-1,3(2H)-dione, including its metabolites and degradates, determined by measuring only flumioxazin, in or on Grass, forage at 0.4 parts per million (ppm) and Grass, hay 0.05 ppm. That document referenced a summary of the petition prepared by Valent, U.S.A. Corporation, the registrant, which is available in the docket, *http://www.regulations.gov*. This petition request is associated with an application to allow use of flumioxazin on grass in the States of Washington, Idaho, and Oregon. Although comments were submitted to the docket, none were relevant to the safety of the tolerances being established in this action.

Consistent with the authority in FFDCA 408(d)(4)(A)(i), EPA is issuing a tolerance that varies from what the petitioner sought. The reason for this change is explained in Unit IV.C.

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 flumioxazin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with flumioxazin 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.

Toxicity associated with flumioxazin includes anemia and effects on the cardiovascular system and liver. Specifically, alterations in hemoglobin parameters were observed in rats, as well as increased renal toxicity in male rats, and increased absolute and relative liver weights and increased alkaline phosphate values were seen in dogs.

No evidence of neurotoxicity was seen in male or female rats in the acute or subchronic neurotoxicity studies. The oral and dermal developmental rat studies showed evidence of increased quantitative susceptibility of fetuses, as cardiovascular anomalies (ventral septal defects) were found. These developmental effects in the offspring were more severe and seen at doses lower than those that caused parental and systemic toxicity. The regulatory endpoints for flumioxazin are protective of this increased susceptibility, however, so there is low concern and no residual uncertainties for these effects.

Flumioxazin was negative for mutagenicity in most of the available studies, however, there were aberrations in a chromosomal aberration assay. The lack of carcinogenicity in mice and rats permits flumioxazin to be classified as ''not likely to be carcinogenic to humans.''

Specific information on the studies received and the nature of the adverse effects caused by flumioxazin 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 titled, ''*SUBJECT: Flumioxazin. Human Health Risk Assessment for the Proposed New Uses on Grass (Seed Crop)*'' at page 24 in docket ID number EPA–HQ–OPP–2017–0333.

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-andassessing-pesticide-risks/assessinghuman-health-risk-pesticides*.

A summary of the toxicological endpoints for flumioxazin used for human risk assessment is discussed in Unit III. B of the final rule published in the **Federal Register** of September 21, 2012 (77 FR 58493) (FRL–9358–3). One additional endpoint has since been identified, *i.e.,* the selection of an adult oral endpoint for assessing the aggregate risks from short-term and intermediate-term oral exposure: An oral NOAEL of 3 mg/kg/day based on cardiovascular effects in fetuses seen at the LOAEL of 10 mg/kg/day in the rat developmental study was used, along with a 10X interspecies uncertainty factor, a 10X intraspecies uncertainty factor, and a 1X FQPA safety factor. Long-term exposures (greater than 6 months) are not expected based on the existing flumioxazin use pattern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary

exposure to flumioxazin, EPA considered exposure under the petitioned-for tolerances as well as all existing flumioxazin tolerances in 40 CFR 180.568. EPA assessed dietary exposures from flumioxazin 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 flumioxazin for females 13–49. In estimating acute dietary exposure, EPA used food consumption information from the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 3.16. This software uses 2003–2008 food consumption data from the United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA; 2003–2008). As to residue levels in food, EPA assumed tolerance-level residues, 100% crop treated (PCT) for all commodities and DEEM–FCID version 3.16.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the DEEM–FCID Version 3.16 software which incorporates 2003–2008 food consumption data from USDA's NHANES/WWEIA. As to residue levels in food, EPA incorporated tolerance-level residues and/or 100 PCT for all commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that flumioxazin does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for flumioxazin. 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 flumioxazin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of flumioxazin. The estimated drinking water concentrations (EDWCs) are based on hydrolysis and the residues of concern for flumioxazin and its major degradates (482–HA, and APF), expressed as flumioxazin equivalents. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide*.

Based on the First Index Reservoir Screening Tool (FIRST) model, the EDWCs in surface water for acute exposures are 400 parts per billion (ppb) for flumioxazin and for chronic exposures are estimated to be 9.4 ppb, 21.6 ppb, and 110.1 ppb for flumioxazin, 482–HA and APF degradates, respectively, for a total concentration of 141 ppb. Based on the Screening Concentration in Ground Water (SCI–GROW) model, for both acute and chronic (non-cancer) exposures, the EDWCs of 482–HA and APF are estimated to be 45.27 ppb and 2.66 ppb, respectively, for ground water. EDWCs of flumioxazin are estimated to be negligible in ground water for chronic exposures. Estimates of drinking water concentrations were directly entered into the dietary exposure model as follows. The peak day zero of 400 ppb for flumioxazin (degradates 482–HA and APF were not detected) was used to assess the contribution to drinking water for the acute dietary risk assessment, and the day 30 total of 141 ppb for flumioxazin, 482–HA and APF degradates was used to assess the contribution to drinking water for the chronic dietary risk assessment.

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).

Flumioxazin is currently registered for the following uses that could result in residential exposures: Turf grass, residential lawns, ornamentals, and aquatic weeds. EPA assessed residential exposure under the assumption that homeowner handlers wear shorts, short-sleeved shirts, socks, and shoes, and that they complete all tasks associated with the use of a pesticide product including mixing/loading, if needed, as well as the application. Residential handler exposure scenarios for both dermal and inhalation are considered to be short-term only, due to the infrequent use patterns associated with homeowner products.

EPA uses the term ''post-application'' to describe exposure to individuals that occur as a result of being in an environment that has been previously treated with a pesticide. Flumioxazin can be used in many areas that can be frequented by the general population including residential areas, lakes, and ponds. As a result, individuals can be exposed by entering these areas if they have been previously treated. Therefore, short-term and intermediate-term dermal and oral post-application exposures and risks were assessed for adults and children. In addition, oral post-application exposures and risks were assessed specifically for children to be protective of possible hand-to-mouth, object-to-mouth, and soil ingestion activities that may occur on treated turf areas. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide*.

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 flumioxazin to share a common mechanism of toxicity with any other substances, and flumioxazin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that flumioxazin 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://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides*.

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 FQPA Safety Factor (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.* There is evidence of increased quantitative susceptibility of fetuses in the oral and dermal developmental rat studies, where cardiovascular abnormalities occurred in the absence of maternal toxicity. The rat reproduction study also showed evidence of qualitative and quantitative post-natal susceptibility since reproductive effects in offspring were more severe and were seen at lower doses than those that caused parental/systemic toxicity. Even with this observed increased susceptibility, the Agency has concluded there is a low concern and no residual uncertainties for pre- and/or postnatal toxicity because the developmental toxicity NOAELs/LOAELs are well-characterized after oral and dermal exposure, and the offspring toxicity NOAEL and LOAEL are well characterized in the reproduction study. Furthermore, the doses and endpoints have been selected from the developmental and reproductive toxicity studies for risk assessment of the relevant exposed populations (*e.g.,* pregnant females and children), with the exception of the chronic dietary endpoint, for which a chronic study was selected. Therefore, regulatory endpoints for flumioxazin are protective of the increased susceptibility and there are no residual concerns for these effects.

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 oral and dermal exposures, but retained the 10X FQPA database uncertainty factor (UF) for inhalation exposure and risk assessment due to the lack of an inhalation study. That decision is based on the following findings:

i. The toxicity database for flumioxazin is incomplete but sufficient for assessing the toxicity and characterizing the hazard of flumioxazin due to the absence of an acceptable inhalation study. Therefore, the Agency is retaining the 10X FQPA safety factor for assessing inhalation risk.

ii. There is no indication that flumioxazin is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is evidence that flumioxazin may result in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study. The Agency concluded that while there is an increased susceptibility, there is a low concern and no residual uncertainties for pre-and/or postnatal toxicity because the developmental toxicity NOAELs/LOAELs are well characterized after oral and dermal exposure; the offspring toxicity NOAEL and LOAEL are well characterized in the reproduction study; and the doses and endpoints have been selected from the developmental and reproductive toxicity studies for the relevant populations, except for the chronic dietary endpoint, for which a chronic study was chosen. Therefore, the regulatory endpoints for flumioxazin are protective of the increased susceptibility seen in the developmental and reproduction studies, and there are no residual concerns for these effects.

iv. There are no residual uncertainties identified in the exposure databases. The acute and chronic dietary food exposure assessments were performed based on tolerance-level residues, default processing factors, and assuming 100 PCT. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to flumioxazin in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by flumioxazin.

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 flumioxazin will occupy 76% of the aPAD for females 13–49 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 flumioxazin from food and water will utilize 44% of the cPAD for all infants <1 year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of flumioxazin is not expected.

3. *Short-term and intermediate-term risks.* Short-term and intermediate-term aggregate exposure takes into account short-term and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Flumioxazin is currently registered for uses that could result in short-term and intermediate residential exposures, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term and intermediate-term residential exposures to flumioxazin. Since the Agency has determined that the short-term and intermediate-term points of departure are the same, the aggregate risks are the same for both short-term and intermediate-term exposures.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term and intermediate-term food, water, and residential exposures result in aggregate MOEs of 110 for adult females 13–49 years and MOE of 200 for children less than 2 years. Because EPA's level of concern for flumioxazin is a MOE of 100 or below, these MOEs are not of concern.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, flumioxazin is not expected to pose a cancer risk to humans.

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 flumioxazin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography/nitrogen-phosphorus detection (GC/NPD) method, Valent Method RM30–A–1), is available to enforce the tolerance expression. The reported method limits of quantitation and detection (LOQ and LOD) for flumioxazin in/on plant commodities are 0.02 and 0.01 ppm, respectively.

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 flumioxazin in/on grass, therefore there are no international harmonization issues.

C. Revisions to Petitioned-For Tolerances

EPA is establishing a tolerance for Grass, forage at 0.40 ppm, rather than 0.4 ppm, to be consistent with its practice to provide greater precision about the levels of residues that are permitted by a tolerance. This is intended to avoid the situation where residues may be higher than the tolerance level, but as a result of rounding would be considered non-violative. For example, Grass, forage tolerance proposed at 0.4 ppm was established at 0.40 ppm, to avoid an observed hypothetical tolerance at 0.44 ppm being rounded to 0.4 ppm.

V. Conclusion

Therefore, tolerances with regional registrations are established for residues of flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2H-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1H-isoindole-1,3(2H)-dione, including its metabolites and degradates determined by measuring only flumioxazin, in or on raw agricultural commodities, in or on Grass, forage at 0.40 ppm and Grass, hay at 0.05 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); or 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 tolerance 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: September 21, 2018.

Michael L. 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 § 180.568, add alphabetically the commodities ''Grass, forage'' and ''Grass, hay'' to the table in paragraph (c) to read as follows:

§ 180.568 Flumioxazin; tolerances for residues.

* * * * *

(c) * * *

Commodity	Parts per million
* * * * *	
Grass, forage	0.40
Grass, hay	0.05
* * * * *	

[FR Doc. 2018–21746 Filed 10–4–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–8551]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *https://www.fema.gov/national-flood-insurance-program-community-status-book*.

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 212–3966.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV				
North Carolina:				
Chapel Hill, Town of, Durham and Orange Counties.	370180	February 9, 1973, Emerg; April 17, 1978, Reg; October 19, 2018, Susp.	Oct. 19, 2018 ...	Oct. 19, 2018.
Chatham County, Unincorporated Areas	370299	N/A, Emerg; March 4, 1997, Reg; October 19, 2018, Susp.	.....do*	Do.
Durham, City of, Durham County	370086	July 13, 1973, Emerg; January 17, 1979, Reg; October 19, 2018, Susp.	.....do	Do.
Durham County, Unincorporated Areas	370085	March 16, 1973, Emerg; February 15, 1979, Reg; October 19, 2018, Susp.	.....do	Do.
Orange County, Unincorporated Areas	370342	July 15, 1975, Emerg; March 16, 1981, Reg; October 19, 2018, Susp.	.....do	Do.
Region V				
Ohio:				
Butler County, Unincorporated Areas ...	390037	N/A, Emerg; October 5, 1989, Reg; October 19, 2018, Susp.	.....do	Do.
Fairfield, City of, Butler and Hamilton Counties.	390038	October 21, 1974, Emerg; March 15, 1979, Reg; October 19, 2018, Susp.	.....do	Do.
Hamilton, City of, Butler County	390039	April 4, 1974, Emerg; July 15, 1977, Reg; October 19, 2018, Susp.	.....do	Do.
Middletown, City of, Butler and Warren Counties.	390040	June 13, 1975, Emerg; March 2, 1979, Reg; October 19, 2018, Susp.	.....do	Do.
Millville, Village of, Butler County	390041	March 26, 1979, Emerg; February 4, 1981, Reg; October 19, 2018, Susp.	.....do	Do.
Monroe, City of, Butler and Warren Counties.	390042	August 18, 1975, Emerg; August 5, 1991, Reg; October 19, 2018, Susp.	.....do	Do.
New Miami, Village of, Butler County. ..	390043	October 24, 1975, Emerg; February 18, 1981, Reg; October 19, 2018, Susp.	.....do	Do.
Seven Mile, Village of, Butler County ...	390045	July 7, 1975, Emerg; August 24, 1981, Reg; October 19, 2018, Susp.	.....do	Do.
Trenton, City of, Butler County	390047	May 12, 1975, Emerg; September 3, 1979, Reg; October 19, 2018, Susp.	.....do	Do.
Region X				
Oregon:				
Beaverton, City of, Washington County	410240	October 30, 1974, Emerg; September 28, 1984, Reg; October 19, 2018, Susp.	.....do	Do.
Forest Grove, City of, Washington County.	410241	June 4, 1975, Emerg; March 15, 1982, Reg; October 19, 2018, Susp.	Oct. 19, 2018	Oct. 19, 2018.
Hillsboro, City of, Washington County ..	410243	January 20, 1975, Emerg; May 17, 1982, Reg; October 19, 2018, Susp.	.....do	Do.
King City, City of, Washington County ..	410269	November 14, 1974, Emerg; February 11, 1976, Reg; October 19, 2018, Susp.	.....do	Do.
North Plains, City of, Washington County.	410270	March 25, 1977, Emerg; April 1, 1982, Reg; October 19, 2018, Susp.	.....do	Do.
Sherwood, City of, Washington County	410273	February 4, 1981, Emerg; January 6, 1982, Reg; October 19, 2018, Susp.	.....do	Do.
Tigard, City of, Washington County	410276	February 5, 1975, Emerg; March 1, 1982, Reg; October 19, 2018, Susp.	.....do	Do.
Tualatin, City of, Clackamas and Washington Counties.	410277	July 3, 1974, Emerg; February 17, 1982, Reg; October 19, 2018, Susp.	.....do	Do.
Washington County, Unincorporated Areas.	410238	April 10, 1973, Emerg; September 30, 1982, Reg; Oct. 19, 2018, Susp.	.....do	Do.

do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: September 27, 2018.

Katherine B. Fox,

Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration—FEMA Resilience, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2018–21758 Filed 10–4–18; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 503, 515, 520, 530, 535, 540, 550, 555, and 560

[Docket No. 18–08]

RIN 3072–AC72

Update of Existing User Fees

AGENCY: Federal Maritime Commission.

ACTION: Direct final rule; request for comments.

SUMMARY: The Federal Maritime Commission (Commission) is updating its current user fees and amending the relevant regulations to reflect these updates.

DATES: The rule is effective without further action on December 19, 2018, unless significant adverse comments are

filed prior to November 5, 2018. If significant adverse comments are received, the Commission will publish a timely withdrawal of the rule in the **Federal Register** no later than November 19, 2018.

ADDRESSES: You may submit comments, identified by Docket No. 18–08, by the following methods:

- *Email: secretary@fmc.gov*. For comments, include in the subject line: ''Docket 18–08, Comments on User Fee Update.'' Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments and petitions should be submitted by email.
- *Mail:* Rachel E. Dickon, Secretary, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573–0001.

Instructions: For detailed instructions on submitting comments, including requesting confidential treatment of comments, and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to the Commission's website, unless the commenter has requested confidential treatment.

Docket: For access to the docket to read background documents or comments received, go to the Commission's Electronic Reading Room at:*http://www.fmc.gov/18-08,* or to the Docket Activity Library at 800 North Capitol Street NW, Washington, DC 20573, 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays. Telephone: (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Rachel E. Dickon, Secretary. *Phone:* (202) 523–5725. *Email: secretary@fmc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, authorizes agencies to establish charges (user fees) for services and benefits that they provide to specific recipients. Under the IOAA, charges must be fair and based on the costs to the Government, the value of the service or thing to the recipient, the public policy or interest served, and other relevant facts. The IOAA also provides that regulations implementing user fees are subject to policies prescribed by the President, which are currently set forth in Office of Management and Budget (OMB) Circular A–25, *User Charges* (revised July 8, 1993).

Under OMB Circular A–25, fees must be established for Government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. OMB Circular A–25 further provides that user fees must be sufficient to recover the full cost to the government for providing the service, resource, or good. Agencies are advised to determine or estimate costs based on the best available records in the agency and to ensure that cost computations cover the direct and indirect costs to the agency of providing the service.

OMB Circular A–25 also directs agencies to review biennially: (1) User charges for agency programs to assure that existing charges are adjusted to reflect unanticipated changes in costs or market values; and (2) all other agency programs to determine whether fees should be assessed. The Commission last reviewed and updated its user fees in 2016, when it revised its methodology for assessing fees to conform to OMB Circular A–25. 81 FR 59141 (Aug. 29, 2016).

II. Fee Adjustments

The Commission has reviewed its data on the time and cost involved in providing particular services to arrive at the updated direct and indirect labor costs for those services. As part of its assessment, the Commission utilized salaries of Full Time Equivalents (FTEs) assigned to fee-generating activities to identify the various direct and indirect costs associated with providing services. Direct labor costs include clerical and professional time expended on an activity. Indirect labor costs include labor provided by bureaus and offices that provide direct support to the fee-generating offices in their efforts to provide services, and include managerial and supervisory costs associated with providing a particular service. Other indirect costs include Government overhead costs, such as fringe benefits and other wage-related Government contributions contained in OMB Circular A–76, *Performance of Commercial Activities* (revised May 29, 2003) and office general and administrative expenses.[1] The sum of these indirect cost components gives an indirect cost factor that is added to the direct labor costs of an activity to arrive at the fully distributed cost. A more detailed description of the Commission's methodology has been included in the docket.

The Commission is increasing some fees to reflect increases in salary and indirect (overhead) costs. For some services, an increase in processing or review time may account for all or part of the increase in the amount of the fees. For other services, fees are lower than current fees due to an overall reduced cost to provide those services. One fee is being removed, and no new fees are being added.

The Commission is including in the docket two supporting documents providing detailed information on the updated user fee calculations. The first document shows the current direct and indirect costs for each service for which a fee is assessed. The second document compares the current fee amounts established in 2016 with the updated fee amounts reflecting the current costs, showing the percentage increase or decrease and change in dollar amount. We briefly describe below those changes that result in more than a 10 percent increase or decrease to a particular fee.

A. Informal Small Claims (Part 502)

The filing fee for informal small claims filed under subpart S of the Commission's Rules of Practice and Procedure (46 CFR part 502) is increasing from $85.00 to $106.00 due to a shift in some of the reviewing and processing time from Office of the Secretary staff to the Secretary.

B. Record Search and Document Duplication Fees (Part 503)

The hourly rate for document searches in response to Freedom of Information Act (FOIA) requests are increasing as follows: From $27 to $52 per hour for clerical/administrative personnel and from $57 to $81 per hours for professional executive personnel. The minimum charge for a records search is increasing from $27 to $31. The fee for the review of records to determine whether they are exempt from disclosure is increasing from $57 per hour to $105 per hour. These updated rates reflect the higher fiscal year 2017 salaries of the employees performing these tasks.

The fees for duplicating records and documents are also increasing. Similar to the search charges, the hourly rate for duplicating documents is increasing

[1] OMB Circular A–76 lists the following indirect labor costs: Leave and holidays, retirement, worker's compensation, awards, health and life insurance, and Medicare. General and administrative costs are expressed as a percentage of basic pay. These include all salaries and overhead such as rent, utilities, supplies, and equipment allocated to Commission offices that provide direct support to fee-generating offices such as the Office of the Managing Director, Office of Information Technology, Office of Human Resources, Office of Budget and Finance, and the Office of Management Services.

from $27 to $57, and the minimum duplication charge is also increasing from $5 to $6, to reflect the higher salaries of staff performing these services.

C. Certification and Validation of Documents (Part 503)

The fees for certifying and validating documents filed with or issued by the Commission is increasing from $84 to $124. This updated fee reflects the higher fiscal year 2017 salaries of the staff who perform these tasks.

D. Non-Attorney Admission To Practice (Part 503)

The application fee for non-attorneys seeking admission to practice before the Commission is increasing from $153 to $208. This updated fee reflects the higher fiscal year 2017 salaries of the employees who review and process these applications.

E. Docket Mailing List (Part 503)

The Commission is removing the $9 fee associated with being placed on a mailing list to receive all issuances pertaining to a specific docket. Docket issuances are posted in the electronic reading room on the Commission's website,[2] and mailing lists for specific dockets are therefore no longer necessary.

F. OTI Licensing Fees (Part 515)

The paper application fee for a new ocean transportation intermediary (OTI) license is increasing from $1,055 to $1,962, and the paper application fee for a change to an OTI license or license transfer is increasing from $735 to $1,548. These changes reflect increased review and processing times for these applications. Fees for electronically filed applications remain the same: $250 for new OTI licenses and $125 for changes to an OTI license or license transfer. While the automated filing system allows users to file their applications electronically, the automated system for processing the applications is still under development. As noted in the 2016 final rule, the fees for the electronic filing of OTI applications will be addressed by the Commission when the entire FMC–18 automated system is complete and operational, and the costs of the system and its impact on the review of OTI applications can be quantified.

[2] *https://www.fmc.gov/electronic_reading_room/activity_logs.aspx.*

G. Passenger Vessel Operator Performance and Casualty Certificates (Part 540)

The application fees for Certificates of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation are increasing as follows: From $2,284 to $3,272 for general applications; and from $1,224 to $1,652 for applications to add or substitute a vessel to the applicant's fleet. For Certificates of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages, the application fees are increasing as follows: From $1,085 to $1,441 for general applications; and from $593 to $718 for applications to add or substitute a vessel to the applicant's fleet. These increases are primarily due to a change in grade level of the staff reviewing and processing these applications.

This rule also corrects errors made to § 540.3(e) by the 2016 user fee rulemaking. The 2016 final rule's amendatory instructions inadvertently duplicated the first sentence of § 540.3 and deleted the last sentence. This rule restores the text (aside from the updated fee amounts) to the pre-2016 version.

III. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

You may submit your comments via email to the email address listed above under **ADDRESSES**. Please include the docket number associated with this notice and the subject matter in the subject line of the email. Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.

You may also submit comments by mail to the address listed above under **ADDRESSES**.

How do I submit confidential business information?

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following by mail to the address listed above under **ADDRESSES**:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked ''Confidential—Restricted,'' and the confidential material clearly marked on each page. You should submit the confidential copy to the Commission by mail.
- A public version of your comments with the confidential information excluded. The public version must state ''Public Version—confidential materials excluded'' on the cover page and on each affected page, and must clearly indicate any information withheld. You may submit the public version to the Commission by email or mail.

Will the Commission consider late comments?

The Commission will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. Because this is a direct final rule that will go into effect as specified in the **DATES** section in the absence of significant adverse comment received during the comment period, the Commission will not consider any comments filed after the comment closing date.

How can I read comments submitted by other people?

You may read the comments received by the Commission at the Commission's Electronic Reading Room or the Docket Activity Library at the addresses listed above under **ADDRESSES**.

IV. Rulemaking Analyses and Notices

Direct Final Rule Justification

The Commission expects the user fee updates to be noncontroversial. Under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), a final rule may be issued without notice and comment when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. This rule merely updates the user fee amounts for various services provided by the Commission based on a review of the costs to provide these services. This rule makes no substantive changes to the Commission's regulations nor does it

affect any filing or other requirement. Accordingly, the Commission has determined that providing an opportunity for comment prior to publication of this direct final rule is unnecessary under 5 U.S.C. 553(b)(B).

This rule will therefore become effective on the date listed in the **DATES** section, unless the Commission receives significant adverse comments within the specified period. The Commission recognizes that parties may have information that could impact the Commission's views and intentions with respect to the revised regulations, and the Commission intends to consider any comments filed. The Commission will withdraw the rule by the date specified in the **DATES** section if it receives significant adverse comments.

We note that the scope of the rulemaking is limited to the amounts charged for Commission services, and any changes to the underlying regulations governing those services or related requirements would be outside this scope. Accordingly, comments on the underlying regulations and related requirements will not be considered adverse. Filed comments that are not adverse may be considered for modifications to the Commission's regulations at a future date. If no significant adverse comments are received, the rule will become effective without additional action by the Commission.

Congressional Review Act

The rule is not a ''major rule'' as defined by the Congressional Review Act, codified at 5 U.S.C. 801 *et seq.* The rule will not result in: (1) An annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies. 5 U.S.C. 804(2).

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency promulgates a final rule after being required to publish a notice of proposed rulemaking under the APA (5 U.S.C. 553), the agency must prepare and make available a final regulatory flexibility analysis (FRFA) describing the impact of the rule on small entities. 5 U.S.C. 604. An agency is not required to publish a FRFA, however, for the following types of rules, which are excluded from the APA's notice-and-comment requirement: Interpretative rules; general statements of policy; rules of agency organization, procedure, or practice; and rules for which the agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to public interest. *See* 5 U.S.C. 553(b).

As discussed above, the Commission has for good cause determined that notice and comment in this case is unnecessary. Therefore, the APA does not require publication of a notice of proposed rulemaking in this instance, and the Commission is not required to prepare a FRFA.

National Environmental Policy Act

The Commission's regulations categorically exclude certain rulemakings from any requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. This rule updates user fees for services that fall within various categorical exclusions, and no environmental assessment or environmental impact statement is required. In particular, rulemakings related to the following fall under categorical exclusions: Processing OTI licenses (§ 504.4(a)(1)); certification of financial responsibility of passenger vessels under part 540 (§ 504.4(a)(2)); promulgation of procedural rules under part 502 (§ 504.4(a)(4); receipt of service contracts (§ 504.4(a)(5)); consideration of special permission applications under part 520 (§ 504.4(a)(6)); consideration of agreements (§ 504.4(a)(9)–(13), (30)–(35); action taken on special docket applications under § 502.271 (§ 504.4(a)(19)); and action regarding access to public information under part 503 (§ 504.4(a)(24)).

Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards in E.O. 12988 titled, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in rules to OMB in conjunction with the publication of a rule. 5 CFR 1320.11. This rule does not contain any collections of information as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at *http://www.reginfo.gov/public/do/eAgendaMain*.

List of Subjects

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 503

Classified information, Freedom of Information, Privacy, Sunshine Act.

46 CFR Part 515

Exports, Financial responsibility requirements, Freight forwarders, Licensing requirements, Non-vessel-operating common carriers, Ocean transportation intermediaries, Reporting and recordkeeping requirements.

46 CFR Part 520

Common carrier, Freight, Intermodal transportation, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 530

Freight, Maritime carriers, Report and recordkeeping requirements.

46 CFR Part 535

Administrative practice and procedure, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

46 CFR Part 550

Administrative practice and procedure, Maritime carriers.

46 CFR Part 555

Administrative practice and procedure, Investigations, Maritime carriers.

46 CFR Part 560

Administrative practice and procedure, Maritime carriers.

For the reasons set forth above, the Federal Maritime Commission amends 46 CFR parts 502, 503, 515, 520, 530, 535, 540, 550, 555, and 560 as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–584; 591–596; 18 U.S.C. 207; 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. 305, 40103–40104, 40304, 40306, 40501–40503, 40701–40706, 41101–41109, 41301–41309, 44101–44106; 5 CFR part 2635.

■ 2. Amend § 502.62 by revising paragraph (a)(6) to read as follows:

§ 502.62 Private party complaints for formal adjudication.

(a) * * *

(6) *Filing fee.* The complaint must be accompanied by remittance of a $272 filing fee.

* * * * *

■ 3. Amend § 502.93 by revising paragraph (a)(3) to read as follows:

§ 502.93 Declaratory orders and fee.

(a) * * *

(3) Petitions must be accompanied by remittance of a $291 filing fee.

* * * * *

■ 4. Amend § 502.94 by revising paragraph (b) to read as follows:

§ 502.94 Petitions-general and fee.

* * * * *

(b) Petitions must be accompanied by remittance of a $291 filing fee. [Rule 94.]

■ 5. Amend § 502.271 by revising paragraph (d)(5) to read as follows:

§ 502.271 Special docket application for permission to refund or waive freight charges.

* * * * *

(d) * * *

(5) Applications must be accompanied by remittance of a $113 filing fee.

* * * * *

■ 6. Amend § 502.304 by revising the last sentence of paragraph (b) to read as follows:

§ 502.304 Procedure and filing fee.

* * * * *

(b) * * * Such claims must be accompanied by remittance of a $106 filing fee.

* * * * *

PART 503—PUBLIC INFORMATION

■ 7. The authority citation for part 503 continues to read as follows:

Authority: 5 U.S.C. 331, 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 13526 of January 5, 2010 75 FR 707, 3 CFR, 2010 Comp., p. 298, sections 5.1(a) and (b).

■ 8. Amend § 503.50 by:

■ a. Revising paragraphs (c)(1)(i) and (ii), the first sentence of paragraph (c)(2), and paragraphs (c)(3)(ii) and (iii), (c)(4), and (d); and

■ b. Removing paragraph (e).

The revisions read as follows:

§ 503.50 Fees for services.

* * * * *

(c) * * *

(1) * * *

(i) Search will be performed by clerical/administrative personnel at a rate of $52 per hour and by professional/executive personnel at a rate of $81 per hour.

(ii) Unless an exception provided in paragraph (b)(2) of this section applies, the minimum charge for record search is $31.

(2) Charges for review of records to determine whether they are exempt from disclosure under § 503.33 must be assessed to recover full costs at the rate of $105 per hour. * * *

(3) * * *

(ii) By Commission personnel, at the rate of ten cents per page (one side) plus $52 per hour.

(iii) Unless an exception provided in paragraph (b)(2) of this section applies, the minimum charge for copying is $6.

* * * * *

(4) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $124 for each certification.

(d) Applications for admission to practice before the Commission for persons not attorneys at law must be accompanied by a fee of $208 pursuant to § 502.27 of this chapter.

■ 9. Amend § 503.69 by revising paragraph (b)(2) to read as follows:

§ 503.69 Fees.

* * * * *

(b) * * *

(2) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $124 for each certification.

* * * * *

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

■ 10. The authority citation for part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. 305, 40102, 40104, 40501–40503, 40901–40904, 41101–41109, 41301–41302, 41305–41307; Pub. L. 105–383,112 Stat. 3411; 21 U.S.C. 862.

■ 11. Amend § 515.5 by revising paragraphs (c)(2)(i) and (ii) to read as follows:

§ 515.5 Forms and fees.

* * * * *

(c) * * *

(2) * * *

(i) Application for new OTI license as required by § 515.12(a): Automated filing $250; paper filing pursuant to waiver $1,962.

(ii) Application for change to OTI license or license transfer as required by § 515.20(a) and (b): Automated filing $125; paper filing pursuant to waiver $1,548.

PART 520—CARRIER AUTOMATED TARIFFS

■ 12. The authority citation for part 520 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40101–40102, 40501–40503, 40701–40706, 41101–41109.

■ 13. Amend § 520.14 by revising the last sentence of paragraph (c)(1) to read as follows:

§ 520.14 Special permission.

* * * * *

(c) * * *

(1) * * * Every such application must be submitted to the Bureau of Trade Analysis and be accompanied by a filing fee of $313.

* * * * *

PART 530—SERVICE CONTRACTS

■ 14. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40301–40306, 40501–40503, 41307.

■ 15. Amend § 530.10 by revising paragraph (c) introductory text to read as follows:

§ 530.10 Amendment, correction, cancellation, and electronic transmission errors.

* * * * *

(c) *Corrections.* Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within one-hundred eighty (180) days of

the contract's filing with the Commission, accompanied by remittance of a $99 service fee, and must include:

* * * * *

PART 535—OCEAN COMMON CARRIER AND MARINE TERMINAL OPERATOR AGREEMENTS SUBJECT TO THE SHIPPING ACT OF 1984

■ 16. The authority citation for part 535 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40101–40104, 40301–40307, 40501–40503, 40901–40904, 41101–41109, 41301–41302, and 41305–41307.

■ 17. Amend § 535.401 by revising paragraph (g) and the first sentence of paragraph (h) to read as follows:

§ 535.401 General requirements.

* * * * *

(g) The filing fee is $3,529 for new agreements and any agreement modifications requiring Commission review and action; $537 for agreements processed under delegated authority (for types of agreements that can be processed under delegated authority, see § 501.27(e) of this chapter); $303 for carrier exempt agreements; and $89 for terminal exempt agreements.

(h) The fee for a request for expedited review of an agreement pursuant to § 535.605 is $151. * * *

PART 540—PASSENGER VESSEL FINANCIAL RESPONSIBILITY

■ 18. The authority citation for part 540 continues to read as follows:

Authority: 5 U.S.C. 552, 553; 31 U.S.C. 9701; 46 U.S.C. 305, 44101–44106.

■ 19. Amend § 540.4 by revising paragraph (e) to read as follows:

§ 540.4 Procedure for establishing financial responsibility.

* * * * *

(e) An application for a Certificate (Performance), excluding an application for the addition or substitution of a vessel to the applicant's fleet, must be accompanied by a filing fee remittance of $3,272. An application for a Certificate (Performance) for the addition or substitution of a vessel to the applicant's fleet must be accompanied by a filing fee remittance of $1,652. Administrative changes, such as the renaming of a vessel will not incur any additional fees.

* * * * *

■ 20. Amend § 540.23 by revising the last two sentences of paragraph (b) to read as follows:

§ 540.23 Procedure for establishing financial responsibility.

* * * * *

(b) * * * An application for a Certificate (Casualty), excluding an application for the addition or substitution of a vessel to the applicant's fleet, must be accompanied by a filing fee remittance of $1,441. An application for a Certificate (Casualty) for the addition or substitution of a vessel to the applicant's fleet must be accompanied by a filing fee remittance of $718.

* * * * *

PART 550—REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES

■ 21. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 301–307; sec. 19(a)(2), (e), (f), (g), (h), (i), (j), (k) and (l) of the Merchant Marine Act, 1920, 46 U.S.C. 42101 and 42104–42109; and sec. 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. 42301–42307.

■ 22. Revise the last sentence of § 550.402 to read as follows:

§ 550.402 Filing of petitions.

* * * The petition must be accompanied by remittance of a $291 filing fee.

PART 555—ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S.-FLAG CARRIERS THAT DO NOT EXIST FOR FOREIGN CARRIERS IN THE UNITED STATES

■ 23. The authority citation for part 555 continues to read as follows:

Authority: 5 U.S.C. 553; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. 42301–42307).

■ 24. Amend § 555.4 by revising the last sentence of paragraph (a) to read as follows:

§ 555.4 Petitions.

(a) * * * The petition must be accompanied by remittance of a $291 filing fee.

* * * * *

PART 560—ACTIONS TO ADDRESS CONDITIONS UNDULY IMPAIRING ACCESS OF U.S.-FLAG VESSELS TO OCEAN TRADE BETWEEN FOREIGN PORTS

■ 25. The authority citation for part 560 continues to read as follows:

Authority: 5 U.S.C. 553; secs. 13(b)(6), 15 and 17 of the Shipping Act of 1984, 46 U.S.C. 305, 40104, and 41108(d); sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. 42301–42307).

■ 26. Amend § 560.3 by revising the last sentence of paragraph (a)(2) to read as follows:

§ 560.3 Petitions for relief.

(a) * * *

(2) * * * The petition must be accompanied by remittance of a $291 filing fee.

* * * * *

By the Commission.

Rachel Dickon,

Secretary.

[FR Doc. 2018–21671 Filed 10–4–18; 8:45 am]

BILLING CODE 6731–AA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160426363–7275–02]

RIN 0648–XG523

Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; 2018–2019 Commercial Accountability Measure and Closure for King Mackerel in the Gulf of Mexico Western Zone

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) for commercial king mackerel in the western zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) through this temporary rule. NMFS has determined that the commercial quota for king mackerel in the western zone of the Gulf EEZ will be reached on October 5, 2018. Therefore, NMFS closes the western zone of the Gulf EEZ to commercial king mackerel fishing on October 5, 2018. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective at noon, local time, on October 5, 2018, until 12:01 a.m., local time, on July 1, 2019.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *susan.gerhart@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish includes king mackerel, Spanish

mackerel, and cobia, and is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights for Gulf king mackerel below apply as either round or gutted weight.

On April 11, 2017, NMFS published a final rule to implement Amendment 26 to the FMP in the **Federal Register** (82 FR 17387). That final rule adjusted the management boundaries, zones, and annual catch limits for Gulf migratory group king mackerel (Gulf king mackerel). The commercial quota for the Gulf king mackerel in the western zone is 1,116,000 lb (506,209 kg) for the current fishing year, July 1, 2018, through June 30, 2019 (50 CFR 622.384(b)(1)(i)).

The western zone of Gulf king mackerel is located in the EEZ between a line extending east from the border of the United States and Mexico, and 87°31.1′ W. long., which is a line extending south from the state boundary of Alabama and Florida. The western zone includes the EEZ off Texas, Louisiana, Mississippi, and Alabama.

Regulations at 50 CFR 622.388(a)(1)(i) require NMFS to close the commercial sector for Gulf king mackerel in the western zone when the commercial quota is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined the commercial quota of 1,116,000 lb (506,209 kg) for Gulf king mackerel in the western zone will be reached on October 5, 2018. Accordingly, the western zone is closed to commercial fishing for Gulf king mackerel effective at noon, local time, on October 5, 2018, through June 30, 2019, the end of the current fishing year.

During the closure, a person on board a vessel that has been issued a valid Federal commercial or charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in the western zone under the recreational bag and possession limits specified in 50 CFR 622.382(a)(1)(ii) and (a)(2), as long as the recreational sector for Gulf king mackerel is open (50 CFR 622.384(e)(1)).

Also during the closure, king mackerel from the closed zone, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to king mackerel from the closed zone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor (50 CFR 622.384(e)(2)).

Classification

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

This action is taken under 50 CFR 622.384(e) and 622.388(a)(1)(i), and is exempt from review under Executive Order 12866.

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

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the commercial quota and the associated AM has already been subject to notice and public comment, and all that remains is to notify the public of the closure. Additionally, allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the king mackerel stock. The capacity of the fishing fleet allows for rapid harvest of the commercial quota. Prior notice and opportunity for public comment would require time and could potentially result in a harvest well in excess of the established commercial quota.

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

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

Dated: October 1, 2018.

Margo B. Schulze-Haugen,

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

[FR Doc. 2018–21659 Filed 10–1–18; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 194
Friday, October 5, 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.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–84289; File No. S7–22–18]

RIN 3235–AM05

Amendments to Rules for Nationally Recognized Statistical Rating Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing amendments to rules for nationally recognized statistical rating organizations (''NRSROs'') under the Securities Exchange Act of 1934 (''Exchange Act''). The amendments would provide an exemption from a rule for NRSROs with respect to credit ratings if the issuer of the security or money market instrument referred to in the rule is not a U.S. person, and the NRSRO has a reasonable basis to conclude that all offers and sales of such security or money market instrument by any issuer, sponsor, or underwriter linked to such security or money market instrument will occur outside the United States. In addition, the amendments would make conforming changes to similar exemptions in two other Exchange Act rules. The Commission is requesting comment on the proposed rule amendments.

DATES: Comments should be received on or before November 5, 2018.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–22–18 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 S7–22–18. 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 website (*http://www.sec.gov/rules/proposed.shtml*). Comments also are 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. 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 publicly available.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the SEC's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Harriet Orol, Kevin Vasel, or Patrick Boyle, at (212) 336–9080, Office of Credit Ratings, Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, Suite 400, New York, NY 10281.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to:

Commission reference	CFR citation (17 CFR)	
Securities Exchange Act of 1934 (Exchange Act) [1]	Rule 17g–5(a)(3)	§ 240.17g–5(a)(3)
	Rule 17g–7(a)	§ 240.17g–7(a)
	Rule 15Ga–2	§ 240.15Ga–2

Table of Contents

[1] 15 U.S.C. 78a *et seq.*

I. Background

A. Rule 17g–5(a)(3)

In 2009, the Commission adopted amendments to 17 CFR 240.17g–5 (''Rule 17g–5'') designed to address conflicts of interest arising from the business of determining credit ratings, and to improve competition and the quality of credit ratings for structured finance products, by making it possible for more NRSROs to rate such securities.[2] The amendments established a program (''Rule 17g–5 Program'') by which an NRSRO that is not hired by an issuer, sponsor, or underwriter (collectively, ''arranger'') is able to obtain the same information that the arranger provides to an NRSRO hired to determine a credit rating for the structured finance product at the same time the information is provided to the hired NRSRO.[3]

The Rule 17g–5 Program operates by requiring a hired NRSRO to maintain a password-protected website containing a list of each structured finance product for which it is currently in the process of determining an initial credit rating.[4] The list must be in chronological order and identify the type of structured finance product, the name of the issuer, the date the credit rating process was initiated, and the website where the arranger of the structured finance product represents that the information provided to the hired NRSRO can be accessed by non-hired NRSROs.[5] The hired NRSRO must provide free and unlimited access to the website it maintains pursuant to the Rule 17g–5 Program to any non-hired NRSRO that provides a copy of a certification it has furnished to the Commission in accordance with 17 CFR 240.17g–5(e).[6]

The Rule 17g–5 Program also requires the hired NRSRO to obtain a written representation from the arranger of the structured finance product that can be reasonably relied on by the hired NRSRO.[7] Such representation must include: That the arranger will maintain a password-protected website that other NRSROs can access; that the arranger will post on this website all information the arranger provides to the hired NRSRO (or contracts with a third party to provide to the hired NRSRO) for the purpose of determining the initial credit rating and undertaking credit rating surveillance; and that the arranger will post this information to the website at the same time such information is provided to the hired NRSRO.[8]

Prior to the June 2, 2010 compliance date for the Rule 17g–5 Program, the Commission by order granted a temporary conditional exemption to NRSROs from Rule 17g–5(a)(3). This temporary conditional exemption (the ''existing Rule 17g–5(a)(3) exemption'') applies solely with respect to credit ratings if: (1) The issuer of the security or money market instrument is not a U.S. person (as defined under 17 CFR 230.902(k)); and (2) the NRSRO has a reasonable basis to conclude that the structured finance product will be offered and sold upon issuance, and that any arranger linked to the structured finance product will effect transactions of the structured finance product after issuance, only in transactions that occur outside the United States.[9] These conditions were designed to confine the existing Rule 17g–5(a)(3) exemption's application to credit ratings of structured finance products issued in, and linked to, financial markets outside of the United States. The Commission granted this relief in light of concerns raised by various foreign securities regulators and market participants that local securitization markets may be disrupted if the rule applied to transactions outside the United States.[10] The Commission has extended the existing Rule 17g–5(a)(3) exemption several times, most recently until the earlier of December 2, 2019, or the compliance date set forth in any final rule that may be adopted by the Commission that provides for a similar exemption.[11]

B. Rule 17g–7(a) and Rule 15Ga–2

In 2014, the Commission adopted Rule 17g–7(a) and Rule 15Ga–2. Rule 17g–7(a) requires an NRSRO, when taking a rating action, to publish an information disclosure form containing specified information about the related credit rating.[12] For example, the information disclosure form must specify, among other things, the version of the methodology used to determine the credit rating, a description of the types of data relied upon to determine the credit rating, and information on the sensitivity of the credit rating to assumptions made by the NRSRO.[13] The NRSRO must also attach to the information disclosure form an attestation affirming that no part of the credit rating was influenced by any other business activities, that the credit rating was based solely upon the merits of the obligor, security, or money market instrument being rated, and that the rating was an independent evaluation of the credit risk of the obligor, security, or money market instrument.[14]

Rule 17g–7(a) also requires an NRSRO, when taking a rating action, to publish any executed Form ABS Due Diligence–15E containing information about the security or money market instrument subject to the rating action received by the NRSRO or obtained by the NRSRO through the website maintained by an arranger under the Rule 17g–5 Program.[15] Form ABS Due Diligence–15E is the form on which a person employed by an NRSRO, issuer,

[2] *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 61050 (Nov. 23, 2009), 74 FR 63832 (Dec. 4, 2009) (''Rule 17g–5 Adopting Release''). The term ''structured finance product'' as used throughout this release refers broadly to any security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction. This broad category of financial instruments includes an asset-backed security as defined in Section 3(a)(79) of the Exchange Act (15 U.S.C. 78c(a)(79)) and other types of structured debt instruments, including synthetic and hybrid collateralized debt obligations. *See, e.g., Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 72936 (Aug. 27, 2014), 79 FR 55078, 55081 n.18 (Sept. 15, 2014) (''2014 NRSRO Amendments'').

[3] Rule 17g–5 Adopting Release, *supra* note 2, 74 FR at 63832. *See also* 17 CFR 240.17g–5. Throughout this release, an NRSRO that is not hired by an arranger is referred to as a ''non-hired NRSRO.'' An NRSRO that is hired by an arranger is referred to as a ''hired NRSRO.''

[4] *See* 17 CFR 240.17g–5(a)(3)(i).

[5] *Id.*

[6] *See* 17 CFR 240.17g–5(a)(3)(ii); 17 CFR 240.17g–5(e).

[7] *See* 17 CFR 240.17g–5(a)(3)(iii).

[8] *Id.*

[9] *See Order Granting Temporary Conditional Exemption for Nationally Recognized Statistical Rating Organizations from Requirements of Rule 17g–5 Under the Securities Exchange Act of 1934 and Request for Comment,* Exchange Act Release No. 62120 (May 19, 2010), 75 FR 28825 (May 24, 2010) (''Exemptive Order'').

[10] *Id.* at 28826–27. Such foreign securities regulators and market participants indicated that arrangers of structured finance products located outside the United States generally were not aware that they would be required to make the representations prescribed in Rule 17g–5 in order to obtain credit ratings from NRSROs and were not prepared to make and adhere to the new requirements set forth in Rule 17g–5(a)(3). These commenters also identified potential conflicts with local law in non-U.S. jurisdictions as a concern. *Id.*

[11] *See Order Extending Conditional Temporary Exemption for Nationally Recognized Statistical Rating Organizations from Requirements of Rule 17g–5(a)(3) Under the Securities Exchange Act of 1934,* Exchange Act Release No. 82144 (Nov. 22, 2017), 82 FR 56309 (No. 28, 2017).

[12] 17 CFR 240.17g–7(a)(1). Rule 17g–7(a) sets forth the required format and content of the information disclosure form and specifies that the form (and other items required by Rule 17g–7(a)) must be published in the same manner as the credit rating that is the result or subject of the rating action.

[13] *See* 17 CFR 240.17g–7(a)(1)(ii)(B), (H), and (M). For a comprehensive discussion of the required content of the form, *see 2014 NRSRO Amendments, supra* note 2, 79 FR at 55167–77.

[14] 17 CFR 240.17g–7(a)(1)(iii).

[15] 17 CFR 240.17g–7(a)(2).

or underwriter to provide third-party due diligence services in connection with an asset-backed security must, among other things, describe the scope and manner of the due diligence provided, summarize the findings and conclusions of its review, and certify that it conducted a thorough review in performing the due diligence.[16]

Rule 15Ga–2 also relates to third-party due diligence services and requires the issuer or underwriter of an asset-backed security that is to be rated by an NRSRO to furnish to the Commission Form ABS–15G containing the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.[17]

In response to concerns raised by commenters when the rules were proposed,[18] the Commission included paragraph (a)(3) in 17 CFR 240.17g–7 (''Rule 17g–7'') and paragraph (e) in Rule 15Ga–2 to provide an exemption from the disclosure requirements for certain offshore transactions.[19] The Commission closely modeled the language of the Rule 17g–7(a) exemption on the existing Rule 17g–5(a)(3) exemption.[20] The Commission noted that it was appropriate for the Rule 15Ga–2 exemption to be aligned with the Rule 17g–7(a) exemption so that there is a consistent approach to determining when the Commission's NRSRO rules apply to offshore transactions.[21]

II. Proposed Rule Amendments

A. Rule 17g–5(a)(3)

In the Exemptive Order, the Commission requested comment regarding the application of Rule 17g–5(a)(3) to transactions outside the United States, including whether any specific conflicts would arise with respect to foreign regulators, regulations, and laws.[22] In subsequent extension orders, the Commission continued to provide interested parties with the opportunity to comment. The Commission received a number of comment letters in response to these requests for comment.[23]

Commenters on the Exemptive Order and extensions generally have supported the existing Rule 17g–5(a)(3) exemption, with many commenters expressly requesting that such exemption be extended indefinitely, made permanent, or codified in Rule 17g–5(a)(3).[24] In support of the existing Rule 17g–5(a)(3) exemption, some commenters indicated that broad application of Rule 17g–5(a)(3) to credit ratings of structured finance products offered and sold by non-U.S. persons outside the United States could disrupt local securitization markets or inhibit the ability of local firms to raise capital.[25]

Specifically, some commenters discussed potentially overlapping regulatory regimes as a reason the exemption was appropriate.[26] For example, one commenter indicated that new securitization disclosure requirements in Europe take a different approach in regulating the same general activity as Rule 17g–5(a)(3).[27] In an earlier comment letter, this commenter asserted that subjecting European market participants to overlapping regulatory regimes may impose significant compliance issues and an increased execution burden.[28] In this commenter's view, the application of Rule 17g–5(a)(3) in a non-U.S. offered context may be disruptive to local markets because the rule does not reflect certain features specific to the securitization market in Europe.[29]

Commenters also supported the exemption based on the disclosure of confidential information that could result from the application of Rule 17g–5(a)(3) to non-U.S. offered transactions.[30] One commenter indicated that compliance with Rule 17g–5(a)(3) could potentially conflict with local bank confidentiality and/or data protection laws.[31] Other commenters also identified concerns regarding the posting of confidential information through the Rule 17g–5 Program, stating that a reluctance to disclose confidential information to non-hired NRSROs could cause market participants to provide less information to hired NRSROs [32] or to forgo obtaining credit ratings on structured finance products.[33]

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[16] Rule 17g–10 identifies Form ABS Due Diligence–15E as the form on which the certification required pursuant to Exchange Act Section 15E(s)(4)(B) must be set forth. *See* 17 CFR 240.17g–10; *see also* 15 U.S.C. 78o–7(s)(4)(B).

[17] *See* 17 CFR 240.15Ga–2; 17 CFR 249.1400. Forms ABS–15G are made publicly available through the Commission's EDGAR system. *See* 17 CFR 232.101(a)(xvi).

[18] With respect to Rule 17g–7(a), a commenter suggested that local laws could impede the ability of an NRSRO to obtain or disclose information about the issuer as required by the proposed rule. *See 2014 NRSRO Amendments, supra* note 2, 79 FR at 55165. Similarly, with respect to Rule 15Ga–2, a commenter indicated that application of the rule to offshore transactions may conflict with foreign securities laws and other laws, rules, and regulations. *See 2014 NRSRO Amendments, supra* note 2, 79 FR at 55184, n.1420. As discussed in Section II.A. of this release, similar concerns regarding potentially overlapping or conflicting foreign regulations have been raised by commenters with respect to Rule 17g–5(a)(3).

[19] *See 2014 NRSRO Amendments, supra* note 2, 79 FR at 55165, 55184–85. *See also* 17 CFR 240.17g–7(a)(3) (providing for an exemption if: (1) The rated obligor or issuer of the rated security or money market instrument is not a U.S. person; and (2) the NRSRO has a reasonable basis to conclude that a security or money market instrument issued by the rated obligor or the issuer will be offered and sold upon issuance, and that any underwriter or arranger linked to the security or money market instrument will effect transactions in the security or money market instrument, only in transactions that occur outside the United States); 17 CFR 240.15Ga–2(e) (providing for an exemption with respect to offerings of asset-backed securities if: (1) The offering is not required to be, and is not, registered under the Securities Act; (2) the issuer of the rated security is not a U.S. person; and (3) the security will be offered and sold upon issuance, and any underwriter or arranger linked to the security will effect transactions of the security after issuance, only in transactions that occur outside the United States).

[20] *2014 NRSRO Amendments, supra* note 2, 79 FR at 55165.

[21] *Id.* at 55185 n.1422.

[22] *See Exemptive Order, supra* note 9, 75 FR at 28825, 28828.

[23] Comment letters received in response to the request for comment regarding the application of Rule 17g–5(a)(3) to transactions outside the United States are *available at https://www.sec.gov/comments/s7-04-09/s70409.shtml.*

[24] *See, e.g.,* letter from Rick Watson, Managing Director, Association for Financial Markets in Europe/European Securitisation Forum, dated November 11, 2010 (''AFME 2010 Letter''); letter from Jack Rando, Director, Capital Markets, Investment Industry Association of Canada, dated September 22, 2010 (''IIAC Letter''); letter from Masamichi Kono, Vice Commissioner for International Affairs, Financial Services Agency, Government of Japan, dated November 12, 2010 (''Japan FSA Letter''); letter from Takefumi Emori, Managing Director, Japan Credit Rating Agency, Ltd., dated June 25, 2010 (''JCR Letter''); letter from Patrick D. Dolan, Chair, Structured Finance Committee, New York City Bar Association, dated October 20, 2016 (''NYC Bar Association Letter''); letter from Richard Johns, Executive Director, Structured Finance Industry Group, and Chris Dalton, Chief Executive Officer, Australian Securitisation Forum, dated July 19, 2017 (''SFIG/AuSF Letter''); letter from Masaru Ono, Executive Director, Securitization Forum of Japan, dated November 12, 2010 (''SFJ Letter'').

[25] *See, e.g., AFME 2010 Letter;* letter from Chris Dalton, Chief Executive Officer, Australian Securitisation Forum, dated June 25, 2010 (''AuSF Letter''); *Japan FSA Letter; JCR Letter; SFJ Letter.* Other commenters indicated more generally that such application of the rule could have a negative impact on foreign markets. *See, e.g., IIAC Letter; NYC Bar Association Letter; SFIG/AuSF Letter.*

[26] *See, e.g., AFME 2010 Letter; Japan FSA Letter;SFJ Letter.*

[27] *See* letter from Richard Hopkin, Managing Director & Head of Fixed Income, Association for Financial Markets in Europe, dated November 1, 2017 (''AFME 2017 Letter'').

[28] *See AFME 2010 Letter.*

[29] *See AFME 2010 Letter; AFME 2017 Letter.*

[30] *See, e.g., AFME 2010 Letter; JCR Letter; SFJ Letter.*

[31] *See AFME 2010 Letter.*

[32] *See SFJ Letter.* This commenter asserted that it would be difficult for Japanese market participants to obtain an adequate level of comfort regarding how non-hired NRSROs that are neither established in Japan nor have an affiliate registered in Japan would protect confidential information posted pursuant to the Rule 17g–5 Program.

[33] *See JCR Letter.* This commenter noted a concern that an arranger may ''be held liable to a third party for disclosing such party's sensitive,

Continued

One commenter also discussed business practices and characteristics of the securitization market in its jurisdiction that, according to the commenter, may make the Rule 17g–5 Program less likely to be effective.[34] Among other things, the commenter indicated that it is not customary for credit rating agencies in Japan to issue unsolicited ratings on structured finance products. [35] The commenter posited that, unless an NRSRO is established in Japan or has a Japanese affiliate, it may not have the requisite knowledge and expertise to rate Japanese structured finance products.[36] This commenter also suggested that, given the smaller and less mature securitization market in Japan as compared to the United States, market participants in Japan may utilize other sources of financing rather than bear the costs associated with the Rule 17g–5 Program.[37]

A number of commenters also advocated for the existing Rule 17g–5(a)(3) exemption based on principles related to international comity, asserting that the Commission has a limited interest in regulating securities offered and sold exclusively outside the United States and that these transactions are more appropriately regulated by the relevant local authorities.[38] A number of these commenters pointed to 17 CFR 230.901 through 230.905 (''Regulation S''), which excludes offers and sales that occur outside the United States from the registration requirements under Section 5 of the Securities Act of 1933 (''Securities Act''),[39] as evidence, in the commenters' view, of the Commission's limited interest in regulating securities offered and sold solely outside the United States.[40]

The Commission has considered the views and policy considerations expressed by commenters and preliminarily believes it is appropriate to provide relief regarding the application of Rule 17g–5(a)(3) to transactions outside the United States. The Commission is of the view that such an approach is consistent with the approach it has taken in other contexts, and with notions of international comity and the generally limited interest of the Commission in regulating securities offered and sold exclusively outside of the United States. For example, in adopting Regulation S,[41] the Commission stated that ''[p]rinciples of comity and the reasonable expectations of participants in the global markets justify reliance on laws applicable in jurisdictions outside the United States to define requirements for transactions effected offshore.'' [42] The Commission believes that the approach it articulated in adopting Regulation S applies similarly to the proposed exemption to Rule 17g–5(a)(3)—*i.e.,* that providing relief regarding the application of Rule 17g–5(a)(3) to transactions outside the United States recognizes the reasonable expectations of participants in the global markets in defining requirements for transactions effected outside the United States.

For the reasons discussed above, the Commission preliminarily believes that it is not necessary or appropriate in the public interest or for the protection of investors to require NRSROs and arrangers to comply with Rule 17g–5(a)(3) with respect to ratings of structured finance products offered and sold exclusively outside the United States and that it is therefore appropriate to propose to codify, with certain clarifying changes, the existing Rule 17g–5(a)(3) exemption.[43] The proposed exemption only applies to the provisions of paragraphs (i) through (iii) of Rule 17g–5(a)(3). It does not limit in any way the scope or applicability of the other requirements in Rule 17g–5 or other provisions of the federal securities laws, including the antifraud provisions.

Accordingly, the Commission proposes to add new paragraph (a)(3)(iv) to Rule 17g–5 to provide that the provisions of paragraphs (i) through (iii) of Rule 17g–5(a)(3) will not apply to an NRSRO when issuing or maintaining a credit rating for a security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction, if: (1) The issuer of the security or money market instrument is not a U.S. person (as defined in 17 CFR 230.902(k)); and (2) the NRSRO has a reasonable basis to conclude that all offers and sales of the security or money market instrument by any issuer, sponsor, or underwriter linked to the security or money market instrument will occur outside the United States (as that phrase is used in Regulation S).[44]

The first condition of the proposed exemption to Rule 17g–5(a)(3)—that the issuer of the structured finance product must not be a U.S. person—is designed to limit relief to non-U.S. issuers. To this end, and for purposes of the exemption, the Commission is proposing that ''U.S. person'' have the same definition as under Regulation S.[45] Consequently, to qualify for the exemption, the NRSRO would have to be determining a credit rating for a structured finance product issued by a person that is not a U.S. person. This condition is identical to the corresponding condition in the existing Rule 17g–5(a)(3) exemption.

The second condition of the proposed exemption to Rule 17g–5(a)(3)—that the NRSRO has a reasonable basis to conclude that all offers and sales of the structured finance product by any arranger linked to the structured finance product will occur outside the United States—would limit the relief to transactions offered and sold exclusively outside the United States. This condition contains certain modifications to the corresponding condition in the existing Rule 17g–5(a)(3) exemption. The Commission is proposing these modifications for two reasons: (1) To clarify the relationship between the proposed exemption and Regulation S—*i.e.,* that the exemption applies when all offers and sales of a structured finance product by any arranger linked to the structured finance product are excluded from the registration requirements of Section 5 of the Securities Act in reliance on Regulation S; and (2) to clarify that the standards in the second condition are not the same as the standards that are developing in the case law with respect to Section 10(b) of the Exchange Act following the Supreme Court's decision in Morrison v. National Australia Bank, Ltd., 561 U.S. 247 (2010). The second condition of the proposed exemption closely tracks the language of Regulation

proprietary information'' through the Rule 17g–5 Program.

[34] *See SFJ Letter.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *See, e.g., AFME 2010 Letter; AuSF Letter; IIAC Letter; Japan FSA Letter; JCR Letter; NYC Bar Association Letter; SFJ Letter.* Some of these commenters posited that these policy considerations are particularly acute given that Rule 17g–5(a)(3) impacts both the regulated entities (*i.e.,* NRSROs) and their customers (*i.e.,* the issuers of rated structured finance products). *See, e.g., NYC Bar Association Letter.*

[39] *See* 17 CFR 230.901 through 230.905.

[40] *See, e.g., AFME 2010 Letter; AuSF Letter; NYC Bar Association Letter.*

[41] 17 CFR 230.901 through 230.905.

[42] *See Offshore Offers and Sales,* Securities Act Release No. 6863 (Apr. 24, 1990). As described in the Commission's adopting release for Regulation S, Regulation S relates solely to the applicability of the registration requirements of Section 5 of the Securities Act and does not limit in any way the scope or applicability of the antifraud or other provisions of the federal securities laws.

[43] Codifying an exemption to Rule 17g–5(a)(3) also will standardize the manner in which the exemptions to Rule 17g–5(a)(3), Rule 17g–7(a), and Rule 15Ga–2 are promulgated. Unlike the existing Rule 17g–5(a)(3) exemption, the Rule 17g–7(a) and Rule 15Ga–2 exemptions are included in the rule text and not subject to expiration. *See supra* Section I.B.

[44] *See* proposed new paragraph (a)(3)(iv) of Rule 17g–5.

[45] *See* 17 CFR 230.902(k).

S[46] and specifies that the phrase ''occur outside the United States'' has the same meaning as in Regulation S. The proposed modifications are not designed to change the scope of the second condition of the proposed exemption from the corresponding condition in the existing Rule 17g–5(a)(3)exemption.[47]

The determination of whether an NRSRO would have a reasonable basis to conclude that all offers and sales of the structured finance product by any arranger linked to the structured finance product will occur outside the United States would depend on the facts and circumstances of a given situation. To have a reasonable basis to reach such a conclusion, the NRSRO generally should ascertain how any arranger linked to the structured finance product intends to market and sell the structured finance product and to engage in any secondary market activities (*i.e.,* re-sales) of the structured finance product, and whether any such efforts and activities will occur in the United States (including any ''directed selling efforts,'' as defined in Regulation S).[48]

For instance, an NRSRO could obtain from the applicable arranger a representation upon which the NRSRO can reasonably rely that all offers and sales by the arranger of the structured finance product to be rated by the NRSRO will occur outside the United States. For example, the arranger's representation could provide assurances that all such offers and sales will be conducted in accordance with the applicable safe harbor under Regulation S.[49] In determining whether it is reasonable to rely on any such representation, an NRSRO should evaluate the representation in light of other information known to the NRSRO, such as information in the relevant transaction documents, any ongoing or prior failures by the arranger to adhere to its representations, and any pattern of conduct by the arranger of it failing to promptly correct breaches of its representations.

An NRSRO generally should reevaluate the reasonableness of its basis for concluding that the structured finance product will be offered and sold outside the United States if the NRSRO obtains information during the course of its engagement that could cause it to reasonably believe there are activities inside the U.S. In this regard, the NRSRO could include in any representation obtained from an arranger a mechanism for the arranger to promptly notify the NRSRO of any change that would render the representation untrue or inaccurate.

B. Conforming Amendments to Rule 17g–7(a) and Rule 15Ga–2

As discussed in Section I.B. of this release, Rule 17g–7(a) and Rule 15Ga–2 contain exemptions similar to the existing Rule 17g–5(a)(3) exemption. The Commission closely modeled the language of the Rule 17g–7(a) exemption on the existing Rule 17g–5(a)(3) exemption.[50] The Commission then aligned the Rule 15Ga–2 exemption to the Rule 17g–7(a) exemption so that there is a consistent approach to determining when the Commission's NRSRO rules apply to offshore transactions.[51]

The Commission continues to believe that it is appropriate for there to be a consistent approach to determining how Rule 17g–5(a)(3), Rule 17g–7(a), and Rule 15Ga–2 apply to offshore transactions. Commenters raised similar concerns with respect to all three rules regarding the potential conflicts between such rules and foreign regulations and practices with respect to transactions offered and sold exclusively outside the United States.[52] As discussed in Section II.A. of this release, the Commission believes that it has a limited interest in regulating securities offered and sold solely outside the United States (a view which is also consistent with international comity).

Further, as discussed in Section II.A. of this release, the proposed modifications to the conditions of the existing Rule 17g–5(a)(3) exemption are not designed to change the scope of the exemption, but rather to clarify how the exemption relates to Regulation S. The Commission believes that clarifying the conditions to the exemption with respect to Rule 17g–5(a)(3) without also clarifying the substantially identical conditions to the exemptions in Rule 17g–7(a) and Rule 15Ga–2 could raise interpretive questions regarding the intended application of those exemptions. Accordingly, to promote clarity and consistency, the Commission proposes to amend Rule 17g–7(a) and Rule 15Ga–2 to align the exemptions to such rules with the proposed exemption to Rule 17g–5(a)(3).[53]

Specifically, the Commission proposes to amend the third condition of the Rule 15Ga–2 exemption to clarify that the exemption is available only if all offers and sales of an asset-backed security by any issuer, sponsor, or underwriter linked to the security will occur outside the United States (as that phrase is used in Regulation S).[54]

Likewise, the Commission proposes to amend the second condition of the Rule 17g–7(a) exemption to clarify that the exemption is available only if an NRSRO has a reasonable basis to conclude that: (A) With respect to any security or money market instrument issued by a rated obligor, all offers and sales by any issuer, sponsor, or underwriter linked to the security or money market instrument will occur outside the United States (as that phrase is used in Regulation S); or (B) with respect to a rated security or money market instrument, all offers and sales by any issuer, sponsor, or underwriter linked to the security or money market instrument will occur outside the United States (as that phrase is used in Regulation S).[55]

As is the case with the proposed exemption to Rule 17g–5(a)(3), the determination of whether an NRSRO would have a reasonable basis to conclude that all offers and sales of the applicable securities or money market instruments by any arranger linked to such securities or money market instruments will occur outside the United States would depend on the facts and circumstances of a given situation. The discussion in Section II.A. of this release regarding how an NRSRO may obtain such a reasonable basis for purposes of the proposed exemption to Rule 17g–5(a)(3) also applies for purposes of the proposed amendment to Rule 17g–7(a).

The proposed amendment to Rule 17g–7(a) also clarifies that the second condition of the Rule 17g–7(a) exemption applies differently in the case of rated obligors than it does in the case of rated securities or money market instruments. In the case of rated securities or money market instruments, the condition to the Rule 17g–7(a) exemption applies in the same way as the condition to the proposed Rule 17g–5(a)(3) exemption—*i.e.,* an NRSRO must have a reasonable basis to conclude that

[46] *See* 17 CFR 230.901.

[47] From its inception, the existing Rule 17g–5(a)(3) exemption has been linked to Regulation S. For instance, in the Exemptive Order, the example given of a transaction that occurs outside the United States is a transaction that complies with the applicable safe harbor under Rules 903 and 904 of Regulation S. *See Exemptive Order, supra* note 9, 75 FR at 28827.

[48] 17 CFR 230.902(c).

[49] *See* 17 CFR 230.903 and 904.

[50] *2014 NRSRO Amendments, supra* note 2, 79 FR at 55165.

[51] *Id.* at 55185 n.1422.

[52] *See supra* note 18 and Section II.A.

[53] *See supra* Section II.A.

[54] *See* proposed revised paragraph (e)(3) of Rule 15Ga–2.

[55] *See* proposed revised paragraph (a)(3)(ii) of Rule 17g–7.

all offers and sales of the rated security or money market instrument by any arranger linked to that security or money market instrument will occur outside the United States. For the Rule 17g–7(a) exemption to apply with respect to a rating of an obligor, however, an NRSRO must have a reasonable basis to conclude that the condition is satisfied with respect to all securities or money market instruments issued by that obligor. Accordingly, if any of a rated obligor's securities or money market instruments are offered and sold by an arranger linked to those securities or money market instruments within the United States, the exemption would not apply to rating actions involving the credit rating assigned to the obligor as an entity. The Commission previously discussed the distinction between the application of the exemption with respect to rated obligors and rated securities or money market instruments in the adopting release for Rule 17g–7(a).[56] The proposed amendment to Rule 17g–7(a) more clearly states this distinction in the rule text itself.

III. Request for Comment

The Commission generally requests comment on the proposal to add new paragraph (a)(3)(iv) of Rule 17g–5 and to amend paragraph (a)(3)(ii) of Rule 17g–7 and paragraph (e)(3) of Rule 15Ga–2. In addition, the Commission requests comment, including empirical data in support of comments, in response to the following questions:

1. Is it appropriate for the Commission to amend Rule 17g–5(a)(3) to provide an exemption from the rule with respect to credit ratings where the issuer of the structured finance product is not a U.S. person and the NRSRO has a reasonable basis to conclude that all offers and sales of the structured finance product by any arranger linked to the structured finance produce will occur outside the United States? Why or why not?

2. Would the proposed exemption be consistent with the Commission's general approach to regulating securities offered and sold exclusively outside the United States?

3. Is it appropriate for the Commission to amend Rule 17g–7(a) and Rule 15Ga–2 to conform to the proposed exemption in Rule 17g–5(a)(3)? Why or why not?

4. Are there other ways in which the Commission should consider amending Rule 17g–5, Rule 17g–7, and Rule 15Ga–2? Please be specific.

5. What information might an NRSRO consider in order to form a reasonable basis to conclude that all offers and sales of a structured finance product by any arranger linked to the structured finance product will occur outside the United States?

6. What actions might an NRSRO take to ensure that it continues throughout the ratings process to have a reasonable basis to conclude that all offers and sales of a structured finance product by any arranger linked to the structured finance product will occur outside the United States? In what circumstances might an NRSRO need to reevaluate its conclusion?

7. Should Rule 17g–5(a)(3) be amended to require an NRSRO to take specific actions in order to obtain and continue to ensure that it has a reasonable basis to conclude that all offers and sales of a structured finance product by any arranger linked to the structured finance product will occur outside the United States? If so, how? For example, should an NRSRO be required to obtain from the applicable arranger a representation upon which the NRSRO can reasonably rely that all offers and sales by the arranger of the structured finance product to be rated by the NRSRO will occur outside the United States?

8. If the Exemptive Order were allowed to expire without amending Rule 17g–5(a)(3) as proposed, are there any jurisdictions where applicable law would preclude compliance with Rule 17g–5(a)(3)? If so, what impact would application of Rule 17g–5(a)(3) to structured finance products offered and sold in such jurisdictions have on NRSROs? Would NRSROs and their affiliates be precluded from issuing ratings of structured finance products in such jurisdictions?

9. What actions would NRSROs and arrangers need to take in order to comply with Rule 17g–5(a)(3) if the Exemptive Order were allowed to expire without codifying the existing Rule 17g–5(a)(3) exemption? How much advance notice would market participants currently relying on the Exemptive Order require in order to prepare to comply with Rule 17g–5(a)(3)?

10. If the Exemptive Order were allowed to expire without codifying the existing Rule 17g–5(a)(3) exemption, would any NRSROs use information available through the websites maintained by arrangers under the Rule 17g–5 Program to determine and monitor credit ratings with respect to transactions that would be exempted by the proposed rule?

In responding to the specific requests for comment above, the Commission encourages interested persons to provide supporting data and analysis and, when appropriate, suggest modifications to the proposed rule text. Responses that are supported by data and analysis assist the Commission in considering the practicality and effectiveness of a proposed new requirement as well as evaluating the benefits and costs of the proposed rule.

IV. Paperwork Reduction Act

The proposed amendments to Rule 17g–5(a)(3) and Rule 17g–7(a) contain new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[57] The Commission will submit the proposed rule amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[58] 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 control number.

The titles and OMB control numbers for the collections of information are:

(1) Rule 17g–5, Conflicts of interest (OMB control number 3235–0649); and

(2) Rule 17g–7, Disclosure requirements (OMB control number 3235–0656).

The amendments to Rule 15Ga–2 do not contain a collection of information requirement within the meaning of the PRA.

A. Summary of Collection of Information Under the Proposed Rule Amendments and Proposed Use of Information

1. Proposed Amendments to Rule 17g–5(a)(3)

The Commission is proposing amendments to Rule 17g–5(a)(3) that would provide an exemption to the rule with respect to credit ratings of structured finance products if the issuer of the structured finance product is not a U.S. person and the NRSRO has a reasonable basis to conclude that all offers and sales of the structured finance product by any arranger linked to the structured finance product will occur outside the United States.[59] In order to have a reasonable basis for such a conclusion, an NRSRO may collect information from an arranger. For instance, an NRSRO may elect to obtain a representation from an arranger regarding the manner in which the structured finance product will be

[56] *See 2014 NRSRO Amendments, supra* note 2, 79 FR at 55165 n.1107.

[57] 44 U.S.C. 3501 *et seq.*

[58] *See* 44 U.S.C. 3507(d); 5 CFR 1320.11.

[59] *See* proposed paragraph (a)(3)(iv) of Rule 17g–5; *see also supra* Section II.A. (discussing the proposed exemption in more detail).

offered and sold. Such information regarding the manner in which the structured finance product will be offered and sold may be necessary for an NRSRO to determine whether the proposed exemption applies with respect to the rating of the structured finance product.

2. Proposed Amendments to Rule 17g–7(a)

The Commission is proposing amendments to an existing exemption in Rule 17g–7(a). The proposed amendment would clarify that, in order for the exemption to apply, an NRSRO must have a reasonable basis to conclude that: (A) With respect to any security or money market instrument issued by a rated obligor, all offers and sales by any issuer, sponsor, or underwriter linked to the security or money market instrument will occur outside the United States; or (B) with respect to a rated security or money market instrument, all offers and sales by any issuer, sponsor, or underwriter linked to the security or money market instrument will occur outside the United States.[60] In order to have a reasonable basis for such a conclusion, an NRSRO may collect information from an arranger or obligor. For instance, an NRSRO may elect to obtain a representation from an arranger regarding the manner in which a rated security or money market instrument will be offered and sold or from an obligor regarding the manner in which all its securities and money market instruments have been offered and sold. Such information may be necessary for an NRSRO to determine whether the proposed exemption applies with respect to a rating action.

B. Respondents

Rule 17g–5(a)(3) applies to NRSROs that rate structured finance products. Currently, there are seven NRSROs that are registered in the issuers of asset-backed securities ratings class that could rely on the proposed exemption to Rule 17g–5(a)(3).

Rule 17g–7(a) applies to all rating actions taken by an NRSRO. There are currently ten credit rating agencies registered with the Commission as NRSROs that could rely on the proposed exemption to Rule 17g–7(a).

C. Burden and Cost Estimates Related to the Proposed Amendments

1. Proposed Amendments to Rule 17g–5(a)(3)

The Commission is proposing amendments to Rule 17g–5(a)(3) that would provide an exemption to the rule with respect to ratings of certain structured finance products if, among other things, the NRSRO has a reasonable basis to conclude that all offers and sales of the structured finance product by any arranger linked to the structured finance product will occur outside the United States.[61] The proposed amendment would codify the existing Rule 17g–5(a)(3) exemption, with certain clarifying changes.

The Commission preliminarily believes that NRSROs will modify their processes to reflect the clarifying changes being proposed to the exemption. For instance, an NRSRO that currently seeks written representations from an arranger to support the reasonable belief required under the existing Rule 17g–5(a)(3) exemption may modify the form of the representation to conform to the language of the condition as proposed. The Commission estimates that it would take an NRSRO approximately five hours to update its process for obtaining a reasonable basis to reflect the clarifying language in the proposed exemption, for an industry-wide one-time burden of approximately 35 hours.[62]

In order to have a reasonable basis to conclude that all offers and sales of the structured finance product by any arranger linked to the structured finance product will occur outside the United States, the Commission preliminarily believes that NRSROs will likely seek information from arrangers, thereby resulting in associated costs. The Commission estimates that an NRSRO would spend approximately two hours per transaction gathering and reviewing information received from arrangers to determine if the exemption applies. The Commission also currently estimates that approximately 267 rated transactions would be eligible for the proposed exemption in a given year and that each transaction is rated by approximately two NRSROs,[63] resulting in a total aggregate annual hour burden of 1,068 hours.[64]

2. Proposed Amendments to Rule 17g–7(a)

The Commission is proposing conforming and clarifying amendments to an existing exemption in Rule 17g–7(a). The proposed amendment would clarify that, in order for the exemption to apply, an NRSRO must have a reasonable basis to conclude that: (A) With respect to any security or money market instrument issued by a rated obligor, all offers and sales by any issuer, sponsor, or underwriter linked to the security or money market instrument will occur outside the United States; or (B) with respect to a rated security or money market instrument, all offers and sales by any issuer, sponsor, or underwriter linked to the security or money market instrument will occur outside the United States.[65]

The Commission preliminarily believes that NRSROs will modify their processes to reflect the proposed amendments to the Rule 17g–7(a) exemption. For instance, an NRSRO that currently seeks written representations from an obligor or arranger to support the reasonable belief required under the Rule 17g–7(a) exemption, as currently in effect, may modify the form of the representation to conform to the language of the condition as proposed to be amended. The Commission estimates that it would take an NRSRO approximately five hours to update its process for obtaining a reasonable basis to reflect the proposed amendment to the Rule 17g–7(a) exemption, for an industry-wide one-time burden of approximately 50 hours.[66]

D. Collection of Information is Required To Obtain a Benefit

The proposed collection of information is required to obtain or maintain a benefit. In order to form a reasonable basis to conclude that all offers and sales of the structured finance

[60] *See* proposed paragraph (a)(3)(ii) of Rule 17g–7; *see also supra* Section II.B. (discussing the proposed amendments in more detail).

[61] *See* proposed paragraph (a)(3)(iv)(B) of Rule 17g–5; *see also supra* Section II.A. (discussing the proposed exemption in more detail).

[62] 5 hours × 7 NRSROs registered to rate asset-backed securities = 35 hours.

[63] These estimates were calculated using information, as of September 5, 2018, from the databases maintained by Asset-Backed Alert and Commercial Mortgage Alert. Isolating the transactions coded in the databases as ''Non-U.S.'' offerings provided an estimate of the number of transactions that would have been eligible for the proposed exemption. The databases also specify the number of NRSROs rating each transaction, which was used to calculate the average number of NRSROs per transaction (1.90). For purposes of the Commission's estimates, the number of NRSROs per transaction was rounded to the nearest whole number. The estimates represent the average number of transactions and NRSROs per transaction for the years ended December 31, 2015, 2016, and 2017.

[64] 2 hours × 267 transactions × 2 NRSROs per transaction = 1,068 hours.

[65] *See* proposed paragraph (a)(3)(ii) of Rule 17g–7; *see also supra* Section II.B. (discussing the proposed amendments in more detail).

[66] 5 hours × 10 NRSROs = 50 hours.

product will occur outside the United States, an NRSRO likely will gather certain information from the arranger including, for example, obtaining from the arranger a representation to that effect. The determination of a reasonable basis would be necessary for the proposed exemption to Rule 17g–5(a)(3) and the proposed amended exemption to Rule 17g–7(a) to apply.

E. Confidentiality

Any information obtained by an NRSRO from an obligor or arranger to establish a reasonable basis will not be made public, unless the NRSRO, obligor, or arranger chooses to make it public. Information provided to the Commission in connection with staff examinations or investigations would be kept confidential, subject to the provisions of applicable law.

F. Request for Comment

The Commission requests comment on the proposed collections of information in order to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology.

Persons who desire to submit comments on the collection of information should direct their comments to the OMB, Attention: Desk Officer for the U.S. Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–22–18. Requests for materials submitted to the OMB with regard to these collections of information should be in writing, refer to File No. S7–22–18, and be submitted to the U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Economic Analysis

A. Introduction

As discussed above, the Commission is proposing to amend Rule 17g–5(a)(3) to provide an exemption from the rule with respect to credit ratings where the issuer of the structured finance product is not a U.S. person, and the NRSRO has a reasonable basis to conclude that all offers and sales of the structured finance product by any arranger linked to the structured finance product will occur outside the United States. The Commission is also proposing conforming amendments to similar exemptions set forth in Rule 17g–7(a) and Rule 15Ga–2. The Commission is sensitive to the costs and benefits of its rules. When engaging in rulemaking that requires the Commission to consider or determine whether an action is necessary or appropriate in the public interest, Section 3(f) of the Exchange Act requires that the Commission consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[67] In addition, Section 23(a)(2) of the Exchange Act requires the Commission to consider the effects on competition of any rules the Commission adopts under the Exchange Act, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[68]

The Commission has considered the effects of the proposed amendments on competition, efficiency, and capital formation. Many of the benefits discussed below are difficult to quantify, in particular when considering the potential impact on conflicts of interest or competition. Consequently, while the Commission has, wherever possible, attempted to quantify the economic effects expected to result from this proposal, much of the discussion below is qualitative in nature. Moreover, because the existing Rule 17g–5(a)(3) exemption is currently in effect (and has been in effect since May 19, 2010—*i.e.,* prior to the compliance date for Rule 17g–5(a)(3)), there has been no effect on transactions outside the United States because changes in the market related to the application of Rule 17g–5(a)(3) have not occurred with respect to these transactions as a consequence of the Exemptive Order. Where the Commission is unable to quantify the economic effects of the proposed amendment, the Commission provides a qualitative assessment of the potential effects and encourages commenters to provide data and information that could help quantify the costs, benefits, and the potential impacts of the proposed amendment to Rule 17g–5(a)(3) on efficiency, competition, and capital formation.

The Commission's preliminary view is that the codification of current practices with respect to Rule 17g–5(a)(3) is appropriate when compared to the alternative of allowing the existing Rule 17g–5(a)(3) exemption to expire, as discussed below. This view was shared by the various commenters who requested that the existing Rule 17g–5(a)(3) exemption be extended indefinitely, made permanent, or codified in Rule 17g–5(a)(3).[69]

As discussed in Section II.B. of this release, the amendments to Rule 17g–7(a) and Rule 15Ga–2 are conforming and clarifying in nature. Further, unlike the existing Rule 17g–5(a)(3) exemption, the Rule 17g–7(a) and Rule 15Ga–2 exemptions are already included as part of the rule text, and thus not subject to expiration. Therefore, the Commission's preliminary view is that the proposed amendments to Rule 17g–7(a) and Rule 15Ga–2 will not have a material impact on efficiency, competition, and capital formation or impose new costs of any significance.

B. Baseline and Affected Parties

The Exemptive Order serves as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation, of the proposed codification of the existing Rule 17g–5(a)(3) exemption is considered.

Currently, pursuant to the Exemptive Order, NRSROs are exempt from the requirements of paragraphs (i) through (iii) of Rule 17g–5(a)(3) for credit ratings where: (1) The issuer of the security or money market instrument is not a U.S. person (as defined under 17 CFR 230.902(k)); and (2) the NRSRO has a reasonable basis to conclude that the structured finance product will be offered and sold upon issuance, and that any arranger linked to the structured finance product will effect transactions of the structured finance product after issuance, only in transactions that occur outside the United States. As a result, with respect to such structured finance products, NRSROs are currently not required to comply with the requirements of Rule 17g–5(a)(3),

[67] *See* 15 U.S.C. 78c(f).

[68] *See* 15 U.S.C. 78w(a)(2).

[69] *See supra* note 24 and accompanying text.

including the requirement to obtain from the arranger a representation that the arranger will maintain a website containing all information the arranger provides to the hired NRSRO in connection with the rating.

Similarly, the existing exemptive language of paragraph (a)(3) of Rule 17g–7 and paragraph (e) of Rule 15Ga–2 serves as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation, of the amendments to such rules are considered. As previously noted, the Commission believes the amendments to Rule 17g–7(a) and Rule 15Ga–2 are clarifying and conforming in nature and do not substantively deviate from the baseline.

The economic and regulatory analysis in this section reflects structured finance product markets and the credit rating industry as they exist today. We begin with a summary of the approximate number of NRSROs that would be directly affected by the proposed codification and features of the regulatory and economic environment in which the affected entities operate. A discussion of the current economic environment will provide a framework for assessing how the proposed regulation may impact efficiency, competition, and capital formation in this market.

Currently, ten credit rating agencies are registered with the Commission as NRSROs.[70] Of the ten NRSROs, seven are currently registered in the class of credit ratings for issuers of asset-backed securities.[71] Among these seven, three of the larger NRSROs accounted for approximately 96 percent of credit ratings outstanding as of December 31, 2017;[72] these three firms have operations outside of the United States.

The credit rating industry is highly concentrated and this market structure persists, in part, as a result of the costs associated with building the necessary reputational capital. In addition, large and incumbent NRSROs benefit from economies of scale, as well as from switching costs that issuers are likely to bear if they were to consider using different NRSROs. These costs provide incentives for issuers to use the services of NRSROs that they have preexisting relationships with and represent a barrier that newcomers entering the market for credit ratings would need to overcome to compete with incumbent credit rating agencies.

In addition to the above economic barriers to entry, there exist some commercial and other barriers to entry.[73] For instance, the investment guidelines of fixed income mutual fund managers and pension plan sponsors often specify use of the ratings of particular credit rating agencies, and many of these guidelines refer to the larger NRSROs by name. Some fixed income indices also require ratings by specific NRSROs, thus increasing the demand for ratings from those NRSROs. However, it has been reported that some investors are changing their guidelines to include ratings from additional NRSROs, and several of the smaller NRSROs have reported success in gaining market share with respect to the issuers of asset-backed securities.[74]

Gathering comprehensive data on foreign issuances of asset-backed securities is difficult given the breadth of markets and products one needs to consider and that data may not be available for several lesser-developed markets. Further, it is often not clear whether these issuances are made by non-U.S. persons. However, there has been an increase in the issuances of asset-backed securities worldwide since 2011, with the issuances amounting to approximately $693.9 billion in 2017.[75] For example, when considering all underwriters for deals in Europe, while the trend has varied over the past five years, the two highest annual issuance totals over such period were achieved in 2016 and 2017.[76] Asset-backed securities constitute a growing market in Europe and other major financial markets, and, as discussed below, any application of Rule 17g–5(a)(3) to transactions outside the United States could affect the functioning of these foreign markets.[77]

C. Anticipated Costs and Benefits, Including Potential Effects on Efficiency, Competition, and Capital Formation

1. Potential Benefits

As discussed above, the Commission issued the Exemptive Order in 2010, and an extension of the Exemptive Order is currently in effect. Because the proposed exemption to Rule 17g–5(a)(3) and amendments to Rule 17g–7(a) and Rule 15Ga–2 would generally maintain the status quo,[78] we do not expect the amendments would result in any major economic effects. For the same reason, we also do not expect this rulemaking to affect efficiency, competition, or capital formation in any major way.

To the extent that the proposed amendments to Rule 17g–5(a)(3) would enhance the certainty of the future status of an exemption to this rule, they could result in marginal economic benefits to arrangers, NRSROs, and regulators. Specifically, if NRSROs and arrangers expect to be required to comply with Rule 17g–5(a)(3) in the future, they may allocate personnel and financial resources to correspond with foreign and U.S. regulators and to set up applicable websites in anticipation of

[70] The following credit rating agencies are currently registered as NRSROs: A.M. Best Rating Services, Inc. (''A.M. Best''); DBRS, Inc. (''DBRS''); Egan-Jones Ratings Company; Fitch Ratings, Inc. (''Fitch''); HR Ratings de México, S.A. de C.V. (''HR Ratings''); Japan Credit Rating Agency, Ltd. (''JCR''); Kroll Bond Rating Agency, Inc. (''KBRA''); Moody's Investors Service, Inc. (''Moody's''); Morningstar Credit Ratings, LLC (''Morningstar''); and S&P Global Ratings (''S&P'').

[71] The seven NRSROs registered to rate asset-backed securities are: A.M. Best; DBRS; Fitch; KBRA; Moody's; Morningstar; and S&P.

[72] The three NRSROs are Fitch, Moody's, and S&P. The percentage of credit ratings outstanding attributable to Fitch, Moody's, and S&P was calculated using information reported by each NRSRO on Item 7A of Form NRSRO with respect to its annual certification for calendar year 2017. Annual certifications on Form NRSRO must be filed with the Commission on EDGAR pursuant to Rule 17g–1(f) and made publicly and freely available on each NRSRO's website pursuant to Rule 17g–1(i). The number of outstanding credit ratings for each class of credit ratings for which an NRSRO is registered is reported on Item 7A of Form NRSRO.

[73] *See 2017 Annual Report on Nationally Recognized Statistical Rating Organizations, available at https://www.sec.gov/ocr/reportspubs/annual-reports/2017-annual-report-on-nrsros.pdf,* 24–25 (discussing various potential barriers to entry including economic, commercial, and regulatory barriers).

[74] *See id.* at 21–24.

[75] *See* Asset-Backed Alert (Rankings for Issuers of Worldwide Asset- and Mortgage-Backed Securities), *available at https://www.abalert.com/rankings.pl?Q=100. See also* Commercial Mortgage Alert (CMBS Summary—Global CMBS Issuance in 2017), *available at https://www.cmalert.com/rankings.pl?Q=67.* The information on these websites, reported as of September 5, 2018, indicates that, notwithstanding a slight decline in issuances in 2016, there has been an upward trend in the total annual issuances of asset-backed securities from 2011 through 2017.

[76] *See* Asset-Backed Alert (Rankings for Bookrunners of European Structured Finance Deals), *available at https://www.abalert.com/rankings.pl?Q=98,* information reported as of September 5, 2018. Total issuances in Europe amounted to approximately $101.1 billion in 2016 and approximately $95.5 billion in 2017. *Id.*

[77] *See, e.g.,* the SIFMA databases that cover historical issuances and outstanding values in Europe, the United States, and Australia for the following: asset-backed securities, collateralized debt obligations/collateralized loan obligations, commercial mortgage-backed securities, and residential mortgage-backed securities, *available at http://www.sifma.org.*

[78] Although the language of the second condition of the proposed exemption to Rule 17g–5(a)(3) differs from the comparable condition set forth in the Exemptive Order, and conforming changes are being proposed to the corresponding conditions in Rule 17g–7(a) and Rule 15Ga–2, the changes are clarifying in nature and the Commission does not believe they will alter the status quo. *See supra* Section II. The conforming changes being proposed in Rule 17g–7(a) and Rule 15Ga–2, however, could result in changes from the current state. Specifically, those changes could avoid potential confusion by arrangers and NRSROs that could result from differences in the language of the conditions set forth in the rules.

future compliance. By promulgating an exemptive rule without a set termination date, the Commission preliminarily believes the proposed amendment would eliminate the need to incur such costs. Furthermore, by reducing the need to incur such costs, the proposed amendment could allow issuers and smaller NRSROs to expand in the global structured finance market, and could improve competition.

The proposed exemption would not necessarily result in more intense competition between issuers and other intermediaries because issuers would continue to offer structured finance products as they do under the current regulatory regime. Further, all existing NRSROs rating structured finance products could continue to rely on the exemption as they do currently under the extended Exemptive Order; therefore, competition among these existing credit rating agencies would most likely not be affected by the proposed exemption.

2. Potential Costs and Other Anticipated Effects

Similarly, because the existing Rule 17g–5(a)(3) exemption is currently in effect, the proposed amendment to Rule 17g–5(a)(3) should not impose any significant additional costs on NRSROs or arrangers of structured finance products relative to the baseline.

However, as is the case with the existing Rule 17g–5(a)(3) exemption, issuers and NRSROs may incur some expenses in relying on the proposed exemption to Rule 17g–5(a)(3), which is conditioned on an NRSRO having a reasonable basis to conclude that all offers and sales of the structured finance product by any arranger linked to the structured finance product will occur outside the United States. In order to have a reasonable basis for such a conclusion, the Commission preliminarily believes that NRSROs will likely seek representations from arrangers, thereby resulting in associated costs. The Commission currently estimates that approximately 267 rated transactions would be eligible for the proposed exemption in a given year.[79] To the extent that NRSROs seek representations to support their reasonable belief, the Commission estimates that it would cost an arranger approximately $720 per transaction to provide such representations,[80] for total aggregate annual costs for all arrangers of approximately $192,240.81.[81]

Similarly, for an NRSRO that chooses to seek representations to support its reasonable belief, the Commission estimates that it would cost the NRSRO approximately $720 per transaction.[82] The Commission further estimates that each transaction is rated by approximately two NRSROs,[83] for total aggregate annual costs for all NRSROs of $384,480.[84] Thus, to the extent that all NRSROs seek representations for all transactions eligible to rely on the proposed exemption to Rule 17g–5(a)(3) each year, the Commission estimates the proposed amendment would result in total annual costs of $576,720.[85]

In addition, although the conditions with respect to the exemption to Rule 17g–5(a)(3) are substantially the same under the Exemptive Order, NRSROs may incur a modest one-time cost to conform their processes to reflect the clarifying change being proposed to one of the conditions to the exemption. For instance, an NRSRO that currently seeks written representations from an arranger to support the reasonable belief required under the Exemptive Order may modify the form of the representation to conform to the language of the condition as proposed. The Commission expects an NRSRO's in-house attorney would oversee revisions to the form representation and that there would be a one-time burden of five hours for the language to be revised, approved, and documented. Accordingly, the Commission estimates a one-time aggregate cost of $12,600 for NRSROs to adjust their procedures to reflect the clarifying language of the proposed exemption.[86]

Similarly, additional one-time costs may be incurred by NRSROs to modify their processes to reflect the proposed conforming amendments to the conditions with respect to the Rule 17g–7(a) exemption. The Commission expects the one-time costs incurred by such NRSROs to approximate the costs set forth with respect to Rule 17g–5(a)(3) above. As with Rule 17g–5(a)(3), the Commission expects an NRSRO's in-house attorney would oversee revisions to the form representation with respect to the Rule 17g–7(a) exemption and that there would be a one-time burden of five hours for the language to be revised, approved, and documented. Accordingly, the Commission estimates a one-time aggregate cost of $18,000 for NRSROs to adjust their procedures to reflect the proposed conforming changes to the Rule 17g–7(a) exemption.[87]

The Commission believes that no similar costs will be incurred by issuers and underwriters as a result of the proposed amendment to Rule 15Ga–2, given that such rule relates to an obligation of the issuer or underwriter of a structured finance product and there is no equivalent need to obtain information from a third party to determine if the Rule 15Ga–2 exemption applies.

3. Alternative Considered: Allow Exemptive Order to Expire

The Commission considered the alternative of allowing the current extension of the Exemptive Order to expire without codifying an exemption to Rule 17g–5(a)(3). The Commission preliminarily believes that this alternative is not consistent with notions of international comity or the Commission's limited interest in regulating securities offered and sold exclusively outside the United States. As discussed in Section II.A. of this release, the Commission believes principles of international comity and reasonable expectations of participants would be better served by not allowing the expiration of the current extension of the Exemptive Order. The Commission has nevertheless considered the economic effects of this alternative, and, as with its economic analysis of the proposed exemption to Rule 17g–5(a)(3), the Commission

[79] *See supra* note 63.

[80] Calculated as 2 hours per transaction × legal fee for a compliance attorney at $360 per hour = $720. The Commission estimates the wage rate associated with these burden hours based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (SIFMA). For example, the estimated wage figure for compliance attorneys is based on published rates for compliance attorneys, modified to account for a 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding an effective hourly rate for 2013 of $334 for compliance attorneys. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013. These estimates are adjusted for inflation based on Bureau of Labor Statistics data on CPI–U between January 2013 (230.280) and January 2018 (247.873). Therefore, the 2018 inflation-adjusted effective hourly wage rates for compliance attorneys are estimated at $360 ($334 × 247.873/230.280). All effective hourly wage rates discussed throughout the release rely on the same SIFMA data inflation adjusted to January 2018.

[81] Calculated as $720 per transaction × 267 annual transactions = $192,240.

[82] Calculated as 2 hours per transaction × legal fee for a compliance attorney at $360 per hour = $720.

[83] *See supra* note 63.

[84] Calculated as $720 per transaction × 267 annual transactions × 2 NRSROs per transaction = $384,480.

[85] Calculated as $720 per transaction × 267 annual transactions (for arrangers) + $720 per transaction × 267 annual transactions × 2 NRSROs per transaction (for NRSROs) = $576,720.

[86] Calculated as 5 hours per NRSRO × legal fee for a compliance attorney at $360 per hour × the 7 NRSROs registered to rate asset-backed securities = $12,600.

[87] Calculated as 5 hours per NRSRO × legal fee for a compliance attorney at $360 per hour × all 10 NRSROs = $18,000.

solicits comment, including estimates and data from interested parties, which could help it refine its analysis of the economic effects of this alternative.

a. Benefits

This alternative offers several potential economic benefits. The last three decades have witnessed an increase in the globalization of financial markets and in cross-border trading. Greater international capital flows can contribute to the development of new product markets and industries by enabling issuers to raise capital in markets around the world. The Commission considered the potential implications of the expiration of the existing Rule 17g–5(a)(3) exemption on cross-listing activity for U.S. and non-U.S. issuers.[88] One possible factor that hypothetically could affect the flow of capital from U.S. markets to foreign alternative trading venues is the costs associated with complying with U.S. securities laws. If complying with Rule 17g–5(a)(3) implies higher costs for issuers of structured finance products, and the costs affect the choice of an issuer's venue, non-U.S. issuers may benefit from the current exemptive relief by obtaining funding at a lower all-in cost than similarly situated U.S. issuers. If the Exemptive Order were to expire, however, such non-U.S. issuers would be unable to pursue such a strategy because they would have the same regulatory treatment as U.S. issuers. As a result, if the existing Rule 17g–5(a)(3) exemption were to expire, U.S. and non-U.S. issuers may compete for funding on more even terms.

Investors and issuers globally could obtain potential economic benefits, such as reduced conflicts of interest and informational efficiency in credit ratings, if arrangers were required to comply with the Rule 17g–5 Program. With respect to certain debt and structured finance products, credit ratings provided by non-hired NRSROs using information provided pursuant to the Rule 17g–5 Program could serve a verification function in capital markets by offering market participants a broader set of opinions on the creditworthiness of those products.[89] This information could help investors in their decisions to augment the risk profiles of their portfolios through economic exposure to investment opportunities.[90]

Globalization, however, can be a conduit of risk and could lead to problems in one market or jurisdiction spilling over to other markets or jurisdictions.[91] If the existing Rule 17g–5(a)(3) exemption were to expire, then it is possible that any benefits of this rule with respect to the credit rating industry in the United States may apply to foreign markets as well, potentially reducing the risk of spillovers that may result from conflicts of interest that Rule 17g–5(a)(3) was designed to address.[92] Specifically, arrangers that engage in structured finance transactions in foreign markets would also need to maintain websites containing all information provided to hired NRSROs with respect to the rating of such structured finance products and provide access to any non-hired NRSRO that makes the required certifications. This may permit non-hired NRSROs to provide ratings of these products. The availability of additional ratings from an independent source may provide incentives to hired NRSROs to provide more accurate and unbiased ratings due to reputational concerns. Any additional ratings by non-hired NRSROs could, in turn, provide investors with independent views on the risk profiles of the structured finance products and improve the reliability of the credit ratings of these products.[93] The potential improvement in the quality of ratings in foreign markets could attenuate the risk of spillovers, which could benefit financial markets globally.

The Commission notes, however, that the possible benefits attributable to the expiration of the Exemptive Order for Rule 17g–5(a)(3) should be viewed in light of the concerns expressed by commenters (as described in Section II.A. of this release). If any foreign laws limit the information an arranger is able to post on the website maintained pursuant to the Rule 17g–5 Program, a hired NRSRO may not have sufficient information on which to base a credit rating or, if the arranger provides information to a hired NRSRO that it cannot also post to the website, the hired NRSRO will not be able to reasonably rely on the representation it received from the arranger.[94] In either case, NRSROs effectively would be precluded from rating structured finance products in such jurisdictions, attenuating the benefits described above.

b. Costs

Several costs of expiration of the existing Rule 17g–5(a)(3) exemption are relevant to consider. As mentioned earlier, the Commission currently estimates that approximately 267 rated transactions would be eligible for the proposed exemption to Rule 17g–5(a)(3) in a given year.[95] If the existing Rule 17g–5(a)(3) exemption were allowed to expire, the requirements of Rule 17g–5(a)(3) would apply with respect to these transactions. The Commission preliminarily estimates the following costs as a result of expiration of the existing Rule 17g–5(a)(3) exemption.

The Commission believes that expiration of the existing Rule 17g–5(a)(3) exemption would result in an annual increase in costs of $155,916 for NRSROs for additional website maintenance and associated compliance costs.[96] The Commission also estimates

[88] Although the Commission regulations are designed to promote competition, efficiency, and capital formation in U.S. markets and to protect U.S. investors, the Commission recognizes that some of its regulations impact market participants globally. When applicable, the economic effects to those market participants are discussed.

[89] *See Rule 17g–5 Adopting Release, supra* note 2, 74 FR at 63857.

[90] *See e.g.,* Arthur R. Pinto, *Control and Responsibility of Credit Rating Agencies in the United States,* American Journal of Comparative Law, Vol. 54 at 341–56 (2006). *See also* John R.M. Hand *et al., The Effect of Bond Rating Agency Announcements on Bond and Stock Prices,* Journal of Finance, Vol. 47, No. 2 at 733–52 (1992).

[91] For instance, the European sovereign debt crisis renewed the debate on the role credit rating agencies play during crises and the interdependence between different financial markets. This debt crisis has included sovereign credit rating downgrades, widening of sovereign bond and credit default swap spreads, and pressures on stock markets. *See, e.g.,* Manfred Gärtner *et al., PIGS or Lambs? The European Sovereign Debt Crisis and the Role of Rating Agencies,* International Advances in Economic Research, Vol. 17, No. 3 at 288 (2011). *See also* Valerie De Bruyckere *et al., Bank/Sovereign Risk Spillovers in the European Debt Crisis,* Journal of Banking & Finance, Vol. 37, Issue 12 at 4793–809 (2013).

[92] See *Rule 17g–5 Adopting Release, supra* note 2, 74 FR at 63857.

[93] *See, e.g.,* Daniel Covitz and Paul Harrison, *Testing Conflicts of Interest at Bond Rating Agencies with Market Anticipation: Evidence that Reputation Incentives Dominate,* Federal Reserve Board Working Paper No. 2003–68 (2003), for evidence on the role of reputation among credit rating agencies. However, there is also some evidence to the contrary, wherein the argument is that if reputation losses are lower in an industry due to increased competition, then there are lesser incentives to provide accurate ratings. *See* Bo Becker and Todd Milbourn, *How Did Increased Competition Affect Credit Ratings?,* Journal of Financial Economics, Vol. 101, No. 3 at 493–514 (2011).

[94] *See supra* notes 7–8 and accompanying text.

[95] *See supra* note 63.

[96] The Commission estimates that it will take approximately one hour per transaction for website maintenance and that an NRSRO would have a webmaster perform these responsibilities, at a cost of $244 per hour. The Commission further estimates that each transaction will be rated by approximately two NRSROs (*see supra* note 63). Therefore, the estimated annual cost for website maintenance by NRSROs involved with 267 structured finance ratings would be $130,296 (267 transactions × 1 hour per transaction × $244 per hour × 2 NRSROs per transaction). In addition, the Commission estimates that compliance personnel at an NRSRO will spend, on average, one hour per month to monitor compliance with the requirements of the

Continued

an annual increase in costs of $45,924 for arrangers to post information about new structured finance product transactions to the related websites.[97] Additionally, if certain sponsors do not also currently issue rated structured finance products in transactions that occur within the United States (which are currently subject to the requirements of Rule 17g–5(a)(3)), then they may incur one-time costs to set up websites. The Commission estimates that it would take a sponsor 300 hours to develop a system, as well as the policies and procedures governing the disclosures, resulting in a total of up to 41,400 hours across 138 sponsors.[98] The Commission estimates that the average one-time cost to each sponsor would be $81,300, and the total aggregate one-time cost across all sponsors would be up to $11,219,400.[99] Finally, on an ongoing basis, the Commission estimates an annual increase in costs of $2,231,453 for arrangers to make additional information about these transactions available on the related websites each month and to monitor compliance with its obligations over the life of the structured finance products.[100]

In addition to these direct compliance costs, expiration of the existing Rule 17g–5(a)(3) exemption could result in costs that are difficult to quantify. For instance, an incremental increase in costs resulting from the applicability of the Rule 17g–5 Program may vary significantly from transaction to transaction, contributing to the difficulty in quantifying such costs. A bespoke transaction may require significantly more communications between the arranger and the hired NRSRO than a transaction by a frequent issuer of similar securities, resulting in the incurrence of higher costs to arrangers. Moreover, the Rule 17g–5 Program requires that information must be posted to the arranger's website at the same time such information is provided to a hired NRSRO. If the exemption were to expire, information that may have previously been communicated verbally to a hired NRSRO may need to be memorialized in writing. In certain cases, an arranger may enlist outside counsel to draft or review materials to be provided to a hired NRSRO, resulting in additional costs.

Further, there are potential negative economic consequences. Since the global financial crisis there have been other efforts, in addition to the Dodd-Frank Wall Street Reform and Consumer Protection Act,[101] to assess and regulate the credit rating industry as well as to encourage market participants to establish stronger internal credit risk assessment practices. As discussed in Section II.A. of this release, commenters have expressed concerns that the requirements of Rule 17g–5(a)(3) could potentially be duplicative of or conflict with regulations applicable to NRSROs and arrangers in foreign markets, and thus harm the competitive position of NRSROs in those markets.[102] Failure to provide relief regarding the application of Rule 17g–5(a)(3) to transactions offered and sold exclusively outside the United States may be viewed as inconsistent with notions of international comity.

The expiration of the existing Rule 17g–5(a)(3) exemption may lead to losses for NRSROs if, as commenters suggest, conflicts exist between the requirements of the Rule 17g–5 Program and foreign laws that limit the information available to NRSROs. Some NRSROs could be precluded from rating structured finance products in such jurisdictions, which could lead to loss of revenue associated with credit ratings that NRSROs currently provide under the existing Exemptive Order. NRSROs may also experience losses as a result of the expiration of the existing Rule 17g–5(a)(3) exemption due to competitive pressures in the foreign markets from credit rating agencies that are not registered as NRSROs (''non-NRSRO rating agencies'') and therefore not subject to Rule 17g–5(a)(3). Expiration of the existing Rule 17g–5(a)(3) exemption may also lead to new compliance costs for NRSROs and arrangers relating to posting information on the websites with respect to credit ratings maintained by NRSROs that had previously been subject to the exemption. From the point of view of arrangers, additional costs of compliance could result in a decline in their issuances of structured finance products if alternative non-NRSRO rating agencies are unavailable or unacceptable to arrangers or investors.

Finally, if the existing Rule 17g–5(a)(3) exemption were allowed to expire, this could also raise legal barriers to entry for smaller NRSROs that may be planning to expand their

Rule 17g–5 Program. Staff estimates a $305 per hour figure for a compliance manager. Therefore, the estimated annual compliance cost would be $25,620 (12 months per year × 1 hour per month × $305 per hour × 7 NRSROs registered to rate asset-backed securities). As a result, the total estimated annual cost for NRSROs would be $155,916 ($130,296 website maintenance cost + $25,620 compliance cost).

[97] The Commission estimates that it will take an arranger approximately one hour per transaction to post the information it provides to a hired NRSRO to the related website. The Commission believes that an arranger would have a junior business analyst perform these responsibilities, at a cost of $172 per hour. Therefore, based on the estimate of 267 rated transactions per year, the estimated annual cost for arrangers to make such information available on the related website would be $45,924 (267 transactions × 1 hour per transaction × $172 per hour).

[98] Total hours to develop systems would be 41,400 (138 sponsors × 300 hours per sponsor). The number of sponsors was estimated using information as of September 5, 2018 from the Asset-Backed Alert and Commercial Mortgage Alert databases. Isolating the transactions coded in the database as ''Non-U.S.'' offerings and sorting the data by sponsor (in the case of the Asset-Backed Alert database) or seller (in the case of the Commercial Mortgage Alert database) enables an estimate of the number of separate sponsors that would be eligible for the exemption. The estimate represents the average number of such sponsors for the years ended December 31, 2015, 2016, and 2017. We note that the estimate of the aggregate hours across all sponsors represents upper bounds, as it is plausible that some sponsors also issue structured finance products in U.S.-based transactions and would have already incurred any such one-time costs.

[99] As discussed in the Rule 17g–5 Adopting Release, the Commission believes that a sponsor would use a compliance manager and a programmer analyst to perform these functions, and each would spend 50% of the estimated hours conducting these tasks. The average hourly cost for a compliance manager is $305 and the average hourly cost for a programmer analyst is $237. Therefore, the average one-time cost to a sponsor would be $81,300 ([150 hours × $305 per hour] + [150 hours × $237 per hour]). The aggregate cost across all sponsors would be up to $11,219,400 (138 sponsors × $81,300 per sponsor). We note that these estimates represent upper bounds. As noted in note 98, some sponsors may have already incurred any one-time set up costs in connection with U.S.-based issuances. In addition, it is plausible that sponsors will obtain these services for a much lower cost from web service providers.

[100] The Commission estimates that it will take an arranger approximately half an hour per month for each transaction to make such information available on the related website. The hourly burden per transaction for a year is 6 hours (0.5 hours per month × 12 months). The Commission believes that an arranger would have a junior business analyst perform these responsibilities at a rate of $172. Further, we relied on the Rule 17g–5 Adopting Release to infer the total number of outstanding deals under surveillance. In that release, the Commission indicated that, on average, an arranger will issue 20 new deals a year and will have 125 outstanding deals, or 6.25 outstanding deals for every new deal. Combining this with our estimate of 267 new transactions per year yields an estimate of 6.25 × 267 = 1,669 outstanding deals. Combining these estimates, the annual cost for arrangers to provide information on ongoing deals is $1,722,408 (1,669 outstanding transactions × $172 per hour × 6 hours per year). In addition, the Commission estimates that compliance personnel at an arranger will spend, for each outstanding transaction, one hour per year to monitor compliance with its requirements in connection with the Rule 17g–5 Program. The Commission estimates a $305 per hour figure for a compliance manager. Therefore, the estimated annual compliance cost would be $509,045 (1 hour per transaction, per year × $305 per hour × 1,669 outstanding transactions). As a result, the total estimated annual ongoing cost for arrangers would be $2,231,453 ($1,722,408 website maintenance cost + $509,045 compliance cost).

[101] Public Law 111–203, 124 Stat. 1376, H.R. 4173 (July 21, 2010).

[102] *See supra* notes 26–33 and accompanying text.

foreign ratings business.[103] The increased set-up costs may lower such NRSROs' incentives to rate structured finance products in those foreign markets.

VI. Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [104] the Commission must advise OMB as to whether the proposed regulation constitutes a ''major rule.'' Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in: (i) An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (ii) a major increase in costs or prices for consumers or individual industries; or (iii) a significant adverse effect on competition, investment, or innovation. If a rule is ''major,'' its effective date will generally be delayed for 60 days pending Congressional review.

The Commission requests comment on the potential annual economic impact of the proposed amendments to Rule 17g–5(a)(3), Rule 17g–7(a), and Rule 15Ga–2, any potential increase in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VII. Regulatory Flexibility Act Certification

Section 603(a) of the Regulatory Flexibility Act of 1980 (''RFA'') [105] requires the Commission to undertake an initial regulatory flexibility analysis of the proposed rule amendments on small entities unless the Commission certifies that the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.[106] Pursuant to 5 U.S.C. 605(b), the Commission hereby certifies that the proposed amendments to Rule 17g–5(a)(3), Rule 17g–7(a), and Rule 15Ga–2 would not, if adopted, have a significant economic impact on a substantial number of small entities.

The proposed amendment to Rule 17g–5(a)(3) would provide an exemption from the requirements of paragraphs (i) through (iii) of Rule 17g–5(a)(3) with respect to credit ratings if the issuer of the structured finance product is not a U.S. person, and the NRSRO has a reasonable basis to conclude that all offers and sales of the structured finance product by any arranger linked to the structured finance product will occur outside the United States. The proposed amendments to Rule 17g–7(a) and Rule 15Ga–2 conform the existing exemptions with respect to such rules to the proposed amendment to Rule 17g–5(a)(3) in order to reflect certain clarifying changes to the conditions thereof.

The Commission's rules do not define ''small business'' or ''small organization'' with respect to NRSROs. However, 17 CFR 240.0–10(a) provides that, for purposes of the RFA, a small entity ''[w]hen used with reference to an 'issuer' or a 'person' other than an investment company'' means ''an 'issuer' or 'person' that, on the last day of its most recent fiscal year, had total assets of $5 million or less.'' [107] The Commission has stated in the past that an NRSRO with total assets of $5 million or less would qualify as a ''small'' entity for purposes of the RFA.[108] The Commission continues to believe this threshold of total assets of $5 million or less would qualify an NRSRO as ''small'' for purposes of the RFA.[109]

Currently, there are ten credit rating agencies registered with the Commission as NRSROs and, based on their most recently filed annual reports pursuant to 17 CFR 240.17g–3,[110] two NRSROs are small entities under the above definition. Neither of these two NRSROs is currently registered for the class of credit ratings for issuers of asset-backed securities.

The Commission preliminarily believes that the proposed amendments to Rule 17g–5(a)(3) would not, if adopted, have a significant economic impact on a substantial number of ''small entities'' as defined by the RFA. The proposed amendment to Rule 17g–5(a)(3) applies exclusively to rated structured finance products and the NRSROs that are considered small under the above definition are not currently registered for the class of credit ratings for issuers of asset-backed securities.

The Commission preliminarily believes that the proposed amendments to Rule 17g–7(a) would not, if adopted, have a significant economic impact on a substantial number of ''small entities'' as defined by the RFA. Although Rule 17g–7(a) applies to all NRSROs, including the two NRSROs that qualify as ''small'' for purposes of the RFA, the Commission preliminarily believes that the economic impact of the proposed amendments to Rule 17g–7(a) would not be significant. The Rule 17g–7(a) exemption is already included as part of the rule text, and the proposed amendments to such exemption are clarifying in nature.[111] The Commission preliminarily believes NRSROs may incur modest one-time costs to modify their processes to reflect the proposed amendments to the Rule 17g–7(a) exemption,[112] but that any ongoing annual costs related to the exemption, amended as proposed, are likely to be unchanged relative to the existing exemption.

The adopting release for Rule 15Ga–2 certified that Rule 15Ga–2 and the amendments to Form ABS–15G will not have a significant economic impact on a substantial number of small entities.[113] As is the case with Rule 17g–7(a), the Rule 15Ga–2 exemption is already included as part of the rule text, and the proposed amendments to such exemption are clarifying in nature.[114] In addition, Rule 15Ga–2 relates to an obligation of the issuer or underwriter of a structured finance product and there is no need to obtain information from a third party to determine if the 15Ga–2 exemption applies. As such, the Commission preliminarily believes that

[103] Three of the four smaller NRSROs registered in the class of credit ratings for issuers of asset-backed securities list foreign affiliates as credit rating affiliates on their most recently filed Form NRSRO. Form NRSRO filings can be accessed through the Commission's EDGAR system.

[104] 123 Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. and 15 U.S.C., including as a note to 5 U.S.C. 601).

[105] 5 U.S.C. 601 *et seq.*

[106] *See* 5 U.S.C. 605(b).

[107] *See* Rule 0–10(a).

[108] *See, e.g., Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 55857 (June 5, 2007), 72 FR 33564, 33618 (June 18, 2007); *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 59342 (Feb. 2, 2009), 74 FR 6456, 6481 (Feb. 9, 2009); *Rule 17g–5 Adopting Release, supra* note 2, 74 FR at 63863.

[109] Under Section 601(3) of the RFA, the term ''small business'' is defined as having ''the same meaning as the term 'small business concern' under Section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[110] *See* Rule 17g–3.

[111] *See supra* Section II.B. (discussing the proposed amendments to Rule 17g–7(a) in more detail).

[112] The Commission estimates that it will take an NRSRO approximately 5 hours to modify its processes to reflect the proposed amended language of the exemption. The Commission believes that the work will likely be completed by a compliance attorney at $360 per hour, resulting in a cost of $1,800 for each NRSRO. *See supra* note 87 and accompanying text.

[113] *See 2014 NRSRO Amendments, supra* note 2, 79 FR at 55257.

[114] *See supra* Section II.B. (discussing the proposed amendments to Rule 17g–7(a) in more detail).

no costs will be incurred by issuers and underwriters as a result of the proposed amendment to the Rule 15Ga–2 exemption.

The Commission encourages written comments regarding this certification. We solicit comment as to whether the proposed amendments to Rule 17g–5(a)(3), Rule 17g–7(a), and Rule 15Ga–2 could have a significant economic impact on a substantial number of small entities. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

VIII. Statutory Authority

The Commission is proposing an amendment to 17 CFR 240.17g–5(a)(3), 17 CFR 240.17g–7(a), and 17 CRF 240.15Ga–2 pursuant to the authority conferred by the Exchange Act, including Sections 15E, 17(a), and 36 (15 U.S.C. 78o–7, 78q, and 78mm).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendment

In accordance with the foregoing, the Commission proposes that title 17, chapter II of the Code of Federal Regulations be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.;* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1887 (2010); and secs. 503 and 602, Pub. L. 112–106, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Section 240.15Ga–2 is also issued under sec. 943, Public Law 111–203, 124 Stat. 1376.

* * * * *

Section 240.17g–7 is also issued under sec. 943, Public Law 111–203, 124 Stat. 1376.

* * * * *

■ 2. Amend § 240.15Ga–2 by revising paragraph (e) to read as follows:

§ 240.15Ga–2 Findings and conclusions of third-party due diligence reports.

* * * * *

(e) The requirements of this rule would not apply to an offering of an asset-backed security if certain conditions are met, including:

(1) The offering is not required to be, and is not, registered under the Securities Act of 1933;

(2) The issuer of the rated security is not a U.S. person (as defined in § 230.902(k)); and

(3) All offers and sales of the security by any issuer, sponsor, or underwriter linked to the security will occur outside the United States (as that phrase is used in §§ 230.901 through 230.905 (Regulation S)).

* * * * *

■ 3. Amend § 240.17g–5 by adding paragraph (a)(3)(iv) to read as follows:

§ 240.17g–5 Conflicts of interest.

(a) * * *

(3) * * *

(iv) The provisions of paragraphs (a)(3)(i) through (iii) of this section will not apply to a nationally recognized statistical rating organization when issuing or maintaining a credit rating for a security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction, if:

(A) The issuer of the security or money market instrument is not a U.S. person (as defined in § 230.902(k) of this chapter); and

(B) The nationally recognized statistical rating organization has a reasonable basis to conclude that all offers and sales of the security or money market instrument by any issuer, sponsor, or underwriter linked to the security or money market instrument will occur outside the United States (as that phrase is used in §§ 230.901 through 230.905 (Regulation S) of this chapter).

* * * * *

■ 4. Amend § 240.17g–7 by revising paragraph (a)(3) to read as follows:

§ 240.17g–7 Disclosure requirements.

(a) * * *

(3) *Exemption.* The provisions of paragraphs (a)(1) and (2) of this section do not apply to a rating action if:

(i) The rated obligor or issuer of the rated security or money market instrument is not a U.S. person (as defined in § 230.902(k) of this chapter); and

(ii) The nationally recognized statistical rating organization has a reasonable basis to conclude that:

(A) With respect to any security or money market instrument issued by a rated obligor, all offers and sales by any issuer, sponsor, or underwriter linked to the security or money market instrument will occur outside the United States (as that phrase is used in §§ 230.901 through 230.905 (Regulation S) of this chapter); or

(B) With respect to a rated security or money market instrument, all offers and sales by any issuer, sponsor, or underwriter linked to the security or money market instrument will occur outside the United States (as that phrase is used in §§ 230.901 through 230.905 (Regulation S) of this chapter).

* * * * *

By the Commission.

Dated: September 26, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–21295 Filed 10–4–18; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0864]

RIN 1625–AA00

Safety Zone; Tumon Bay, Tumon, GU

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for navigable waters within a 190 yard radius of a fireworks barge located in Tumon Bay for the New Year's Eve Fireworks display. The Coast Guard believes this safety zone is necessary to protect the public from potential hazards created by the fireworks display fallout. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Guam (COTP). We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before November 5, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0864 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Chief Todd Wheeler, Waterways Management, U.S. Coast Guard; telephone 671–355–4566, email *wwmguam@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, Purpose, and Legal Basis

The fireworks display is anticipated to be from midnight on December 31, 2018 through 00:30 a.m. on January 1, 2019, to celebrate New Year's Eve. The fireworks are to be launched from a barge in Tumon Bay approximately 350 yards north of Joseph F. Flores Beach Park. Hazards from fireworks displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The COTP has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 190 yard radius of the barge.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 190 yard radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 9 p.m. on December 31, 2018 through 1 a.m. on January 1, 2019. The safety zone would cover all navigable waters within 190 yards of the fireworks barge. The safety zone will cover all navigable waters within a 190 yards of the barge. The duration of the zone is intended to protect the public before, during, and after the fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

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 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance, it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of Tumon Bay for 4 hours. This is a low traffic area that consists mainly of outrigger canoes and sail boards during daylight hours. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the safety zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves a safety zone lasting 4 hours that would prohibit entry within 190 yards of a fireworks barge. Normally such actions are 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 preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. 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 eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *https://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, you may go to the online docket and sign up for email alerts, and you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record-keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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: 3 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.T14–0864 to read as follows:

§ 165. T14–0864 Safety Zone; Tumon Bay, Tumon, GU.

(a) *Location.* The following areas, within the Guam Captain of the Port (COTP) Zone (See 33 CFR 3.70–15), all navigable waters on the surface and below the surface within 190 yards of the fireworks barge participating in the New Year's Eve Fireworks display.

(1) *Location.* The following position 13 degrees 30 minutes 24.99 seconds N Latitude, 144 degrees 47 minutes 21.93 seconds E Longitude are to be used as a guide to the location of the barge.

(b) *Effective Dates.* This rule is effective from 9 p.m. on December 31, 2018 through 1 a.m. on January 1, 2019.

(c) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other COTP representative permitted by law, may enforce this temporary safety zone.

(d) *Waiver.* The COTP may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime security.

(g) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: October 1, 2018.

Christopher M. Chase,

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

[FR Doc. 2018–21621 Filed 10–4–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2017–0145; 9983–65–Region 6]

Approval and Promulgation of State Implementation Plan, Oklahoma; Supplemental Notice of Proposed Rulemaking

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking, withdrawal of proposed rule.

SUMMARY: In this supplemental notice of proposed rulemaking, the Environmental Protection Agency (EPA) is supplementing our proposed approval published on March 22, 2018, of revisions to the State Implementation Plan (SIP) for Oklahoma, as submitted by the State of Oklahoma designee with a letter dated February 14, 2017. First, we are reopening the comment period based on information submitted by Oklahoma in a letter dated July 31, 2018, and our analysis of it. Second, EPA is withdrawing its proposed action on the Commercial and Industrial Solid Waste Incineration Units rule because the State did not submit it for approval as a SIP revision.

DATES: Written comments must be received on or before November 5, 2018.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2017–0145, at *http://www.regulations.gov* or via email to *shar.alan@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. Alan Shar, (214) 665–6691, *shar.alan@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 the 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. Alan Shar, (214) 665–6691; *shar.alan@epa.gov*. To inspect the hard copy materials, please schedule an appointment with Mr. Alan Shar.

SUPPLEMENTARY INFORMATION:

Throughout this document, ''we,'' ''us,'' or ''our'' refer to EPA.

I. Background

On March 22, 2018 (83 FR 12514), we published a proposed rulemaking action to approve certain revisions to the Oklahoma SIP, as submitted by Oklahoma on February 14, 2017. The submittal covers updates to the Oklahoma SIP, as contained in annual SIP updates for 2013, 2014, 2015, and 2016, and incorporates the latest changes to the EPA regulations. Specifically, the March 22, 2018 proposal concerned revisions to the following rules in the Oklahoma Administrative Code (OAC)—OAC 252:100–13 Open Burning, OAC 252:100–17 Incinerators, OAC 252:100–25 Visible Emissions and Particulates, OAC 252:100–31 Control of Emission of Sulfur Compounds, OAC 252:100, Appendix E Primary Ambient Air Quality Standards, and OAC 252:100, Appendix F Secondary Ambient Air Quality Standards. Comments on the proposal were required to be received by April 23, 2018.

II. Additional information submitted by Oklahoma

After the close of the public comment period, the Oklahoma Department of Environmental Quality (ODEQ) submitted additional information, by letter dated July 31, 2018, concerning the SIP rule revisions in our March 22, 2018 proposal. ODEQ provided this information in response to adverse comments (EPA–R06–OAR–2017–0145–022) submitted to the EPA during the initial comment period. The information submitted by ODEQ is intended to clarify the rule revisions and their applicability as well as to further demonstrate how the revisions improve the Oklahoma SIP. In particular, ODEQ provided additional information related to the following four rule revisions included in the March 22, 2018 proposal: (1) A revision to OAC 252:100–9(4) that exempts opening burning allowed under OAC 252:100–13–7(6)(B) and OAC 252:100–13–8 from the time restrictions otherwise applicable to opening burning; (2) a revision to OAC 252:100–17–2 adding NSPS Subpart AAAA and NSPS Subpart CCCC to the list of sources exempt from the requirements for general purpose incinerators; (3) a revision to OAC 252:100–25–5(c) eliminating the words ''and EPA'' from the rule's requirement concerning alternative monitoring; and (4) a revision to OAC 252:100–31 which replaces SO_2 ambient standards (exposure limits) in the existing SIP at OAC 252:100–31–12 (renumbered OAC 252:100–31–7) with EPA's 2010 SO_2 National Ambient Air Quality Standards.

III. EPA's Evaluation and Analysis of ODEQ's July 31, 2018 Letter

We have evaluated the information contained in ODEQ's July 31, 2018 letter and find that it affirms our determination that the submitted revisions included in the March 22, 2018 proposal meet SIP requirements, as provided by CAA section 110 and EPA's implementing regulations at 40 CFR part 51. We have included our evaluation of ODEQ's July 31, 2018 letter and our additional analysis of the four rule revisions identified in part II above in a supplement to the Technical Support Document (TSD) which may be found in the docket. See Supplement 3 to the TSD in the docket for this action. The result of our evaluation and analysis continues to support the proposed approval of the rule revisions identified in the March 22, 2018 proposal, with the recognition of one inadvertent oversight on our part described below.

The March 22, 2018 proposal inadvertently includes a proposal to approve rule revisions to OAC 252:100–17, Part 9 Commercial and Industrial Solid Waste Incineration Units—specifically OAC 252:100–17–60 through 17–76. We are withdrawing our proposal action on these provisions because we lack the authority to act on them under section 110 as a SIP revision. Moreover, these provisions were not submitted to EPA for SIP approval as part of the February 14, 2017 SIP submittal and include provisions that pertain to CAA sections 111(d) and 129, instead, which will be acted upon separately in the future.[1]

[1] Those provisions are not directly related to CAA section 110 (State implementation Plans for NAAQS) and pertain to CAA sections 111(d) (Standards of performance for existing sources; remaining useful life of source) and 129 (Solid waste combustion) standards. These Subchapter 17 revisions were submitted by the Oklahoma Department of Environmental Quality to EPA, by letter dated September 15, 2017, as an update to Oklahoma's Air Quality State Plan for Commercial and Industrial Solid Waste Incinerators (CISWI) units, under CAA sections 111(d) and 129. Pursuant to those statutory provisions and EPA's implementing regulations related thereto, EPA will be evaluating and acting upon the September 15, 2017 Submittal in a separate action.

IV. Supplemental Proposed Action

In summary, EPA proposed to approve certain revisions to the Oklahoma SIP, as submitted by Oklahoma on February 14, 2017, in our March 22, 2018 proposal (83 FR 12514). In this supplemental proposed action, we are withdrawing the proposed action on the revisions to OAC 252:100–17, Part 9 (Part 9), because Part 9 was not included in Oklahoma's February 14, 2017 SIP submittal. We lack the authority to act on this Part 9 under CAA section 110 because the State did not submit it as a SIP revision for approval. We are proposing to affirm the approvability of the other rule revisions contained in the March 22, 2018 proposal based upon the supplemental information in ODEQ's July 31, 2018 letter, as well as additional information included in Supplement 3 to the TSD. The scope of this supplemental notice and the reopening of the comment period is strictly limited to only the supplemental information and our evaluation of it. The EPA is not reopening the comment period on any other aspect of the March 22, 2018 proposal, as an adequate opportunity to comment on those issues has already been provided. The EPA will not respond to comments received during the reopened comment period outside the above-defined scope. This action will allow interested persons additional time to review the supplemental information to prepare and submit relevant comments. The EPA will address all comments received on the original proposal and on this supplemental action in our final action.

V. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to Oklahoma's regulations, as described in part IV above. The EPA has made, and will continue to make, these documents generally available electronically through

www.regulations.gov and in hard copy at the EPA Region 6 office.

VI. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: September 18, 2018.

David Gray,

Acting Regional Administrator, Region 6.

[FR Doc. 2018–21718 Filed 10–4–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0681; FRL–9984–98–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Attainment Plan for the Beaver, Pennsylvania Nonattainment Area for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision, submitted by the Commonwealth of Pennsylvania through the Pennsylvania Department of Environmental Protection (PADEP), to EPA on September 29, 2017, for the purpose of providing for attainment of the 2010 sulfur dioxide (SO_2) primary national ambient air quality standard (NAAQS) in the Beaver County, Pennsylvania SO_2 nonattainment area (hereafter referred to as the ''Beaver Area'' or ''Area''). The Beaver Area is comprised of a portion of Beaver County (Industry Borough, Shippingport Borough, Midland Borough, Brighton Township, Potter Township and Vanport Township) in Pennsylvania. The SIP submission is an attainment plan which includes the base year emissions inventory, an analysis of the reasonably available control technology (RACT) and reasonably available control measure (RACM) requirements, a reasonable further progress (RFP) plan, a modeling demonstration of SO_2 attainment, contingency measures for the Beaver Area, and Pennsylvania's new source review (NSR) permitting program. As part of approving the attainment plan, EPA is also proposing to approve into the Pennsylvania SIP new SO_2 emission limits and associated compliance parameters for the FirstEnergy Generation, LLC (FirstEnergy) Bruce Mansfield Power Station (Bruce Mansfield Facility) and a consent order with Jewel Acquisition Midland steel plant (Jewel Facility). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before November 5, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2017–0681 at *http://www.regulations.gov,* or via email to *spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockts*.

FOR FURTHER INFORMATION CONTACT: Megan Goold (215) 814–2027, or by email at *goold.megan@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background for EPA's Proposed Action

On June 2, 2010, the EPA Administrator signed a final rule establishing a new SO_2 NAAQS as a 1-hour standard of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. *See* 75 FR 35520 (June 22, 2010), codified at 40 CFR 50.17(a)–(b). This action also revoked the existing 1971 primary annual and 24-hour standards, subject to certain conditions.[1] EPA established the NAAQS based on significant evidence and numerous health studies demonstrating that serious health effects are associated with short-term exposures to SO_2 emissions ranging from 5 minutes to 24 hours with an array of adverse respiratory effects including narrowing of the airways which can cause difficulty breathing (bronchoconstriction) and increased asthma symptoms. For more information regarding the health impacts of SO_2, please refer to the June 22, 2010, final rulemaking. *See* 75 FR 35520. Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. On August 5, 2013, EPA promulgated initial air quality designations for 29 areas for the 2010 SO_2 NAAQS (78 FR 47191), which became effective on October 4, 2013, based on violating air quality monitoring data for calendar years 2009–2011, where there was sufficient data to support a nonattainment designation.[2]

Effective on October 4, 2013, the Beaver Area was designated as nonattainment for the 2010 SO_2 NAAQS for an area that encompasses several past and current sources of SO_2 emissions and the nearby SO_2 monitor (Air Quality Site ID: 42–007–0005). The October 4, 2013 final designation triggered a requirement for Pennsylvania to submit a SIP revision with an attainment plan for how the Area would attain the 2010 SO_2 NAAQS as expeditiously as practicable, but no later than October 4, 2018, in accordance with CAA section 192(a).

For a number of areas, including the Beaver Area, EPA published a notice on March 18, 2016, effective April 18, 2016, that Pennsylvania and other pertinent states had failed to submit the required SO_2 attainment plan by this submittal deadline. *See* 81 FR 14736. This finding initiated a deadline under CAA section 179(a) for the potential imposition of new source review and highway funding sanctions. However, pursuant to Pennsylvania's submittal of September 29, 2017, and EPA's subsequent letter dated October 5, 2017, to Pennsylvania finding the submittal complete and noting the stopping of these sanctions' deadline, these sanctions under section 179(a) will not be imposed as a consequence of Pennsylvania's missing the SIP submission deadline. Additionally, under CAA section 110(c), the March 18, 2016 finding triggers a requirement that EPA promulgate a federal implementation plan (FIP) within two years of the finding unless, by that time the state has made the necessary complete submittal and EPA has approved the submittal as meeting applicable requirements. EPA's obligation to promulgate and implement a FIP will not apply if EPA makes final the approval action proposed here.

II. Requirements for SO_2 Nonattainment Area Plans

Attainment plans must meet the applicable requirements of the CAA, and specifically CAA sections 110, 172, 191, and 192. The required components of an attainment plan submittal are listed in section 172(c) of Title 1, part D of the CAA. The EPA's regulations governing nonattainment SIPs are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements residing at subparts F and G, respectively. Soon after Congress enacted the 1990 Amendments to the CAA, EPA issued comprehensive guidance on SIPs, in a document entitled the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' published at 57 FR 13498 (April 16, 1992) (General Preamble). Among other things, the General Preamble addressed SO_2 SIPs and fundamental principles for SIP control strategies. *Id.* at 13545–49, 13567–68. On April 23, 2014, EPA issued recommended guidance (hereafter 2014 SO_2 Nonattainment Guidance) for how state submissions could address the statutory requirements in SO_2 attainment plans.[3] In this guidance, EPA described the statutory requirements for an attainment plan, which include: An accurate base year emissions inventory of current emissions for all sources of SO_2 within the nonattainment area (172(c)(3)); an attainment demonstration that includes a modeling analysis showing that the enforceable emissions limitations and other control measures taken by the state will provide for expeditious attainment of the NAAQS (172(c)); demonstration of RFP (172(c)(2)); implementation of RACM, including RACT (172(c)(1)); NSR (172(c)(5)); and adequate contingency measures for the affected area (172(c)(9)). A synopsis of these requirements is also provided in the notice of proposed rulemaking on the Illinois SO_2 nonattainment plans, published on October 5, 2017 at 82 FR 46434.

In order for the EPA to fully approve a SIP as meeting the requirements of CAA sections 110, 172 and 191–192 and EPA's regulations at 40 CFR part 51, the SIP for the affected area needs to demonstrate to EPA's satisfaction that each of the aforementioned requirements have been met. Under CAA sections 110(l) and 193, the EPA may not approve a SIP that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement, and no requirement in effect (or required to be adopted by an order, settlement, agreement, or plan in effect before November 15, 1990) in any area which is a nonattainment area for any air pollutant, may be modified in any manner unless it ensures equivalent or

[1] EPA's June 22, 2010 final action revoked the two 1971 primary 24-hour standard of 140 ppb and the annual standard of 30 ppb because they were determined not to add additional public health protection given a 1-hour standard at 75 ppb. *See* 75 FR 35520. However, the secondary 3-hour SO_2 standard was retained. Currently, the 24-hour and annual standards are only revoked for certain of those areas the EPA has already designated for the 2010 1-hour SO_2 NAAQS. *See* 40 CFR 50.4(e).

[2] EPA is continuing its designation efforts for the 2010 SO_2 NAAQS. Pursuant to a court-order entered on March 2, 2015, by the U.S. District Court for the Northern District of California, EPA must complete the remaining designations for the rest of the country on a schedule that contains three specific deadlines. *Sierra Club, et al.* v. *Environmental Protection Agency,* 13–cv–03953–SI (2015).

[3] *See* ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions'' (April 23, 2014), available at *https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.*

greater emission reductions of such air pollutant.

III. Attainment Demonstration and Longer Term Averaging

CAA section 172(c)(1) directs states with areas designated as nonattainment to demonstrate that the submitted plan provides for attainment of the NAAQS. 40 CFR part 51, subpart G further delineates the control strategy requirements that SIPs must meet, and EPA has long required that all SIPs and control strategies reflect four fundamental principles of quantification, enforceability, replicability, and accountability. General Preamble, at 13567–68. SO_2 attainment plans must consist of two components: (1) Emission limits and other control measures that assure implementation of permanent, enforceable and necessary emission controls, and (2) a modeling analysis which meets the requirements of 40 CFR part 51, Appendix W which demonstrates that these emission limits and control measures provide for timely attainment of the primary SO_2 NAAQS as expeditiously as practicable, but by no later than the attainment date for the affected area. In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures and must be quantifiable (*i.e.,* a specific amount of emission reduction can be ascribed to the measures), fully enforceable (specifying clear, unambiguous and measurable requirements for which compliance can be practicably determined), replicable (the procedures for determining compliance are sufficiently specific and non-subjective so that two independent entities applying the procedures would obtain the same result), and accountable (source specific limits must be permanent and must reflect the assumptions used in the SIP demonstrations).

EPA's 2014 SO_2 Nonattainment Guidance recommends that the emission limits established for the attainment demonstration be expressed as short-term average limits (*e.g.,* addressing emissions averaged over one or three hours), but also describes the option to utilize emission limits with longer averaging times of up to 30 days so long as the state meets various suggested criteria. *See* 2014 SO_2 Nonattainment Guidance, pp. 22 to 39. The guidance recommends that—should states and sources utilize longer averaging times—the longer term average limit should be set at an adjusted level that reflects a stringency comparable to the 1-hour average limit at the critical emission value shown to provide for attainment that the plan otherwise would have set.

The 2014 SO_2 Nonattainment Guidance provides an extensive discussion of EPA's rationale for concluding that appropriately set comparably stringent limitations based on averaging times as long as 30 days can be found to provide for attainment of the 2010 SO_2 NAAQS. In evaluating this option, EPA considered the nature of the standard, conducted detailed analyses of the impact of use of 30-day average limits on the prospects for attaining the standard, and carefully reviewed how best to achieve an appropriate balance among the various factors that warrant consideration in judging whether a state's plan provides for attainment. *Id.* at pp. 22–39, Appendices B, C, and D.

As specified in 40 CFR 50.17(b), the 1-hour primary SO_2 NAAQS is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour concentrations is less than or equal to 75 ppb. In a year with 365 days of valid monitoring data, the 99th percentile would be the fourth highest daily maximum 1-hour value. The 2010 SO_2 NAAQS, including this form of determining compliance with the standard, was upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *Nat'l Envt'l Dev. Ass'n's Clean Air Project* v. *EPA,* 686 F.3d 803 (D.C. Cir. 2012). Because the standard has this form, a single exceedance does not create a violation of the standard. Instead, at issue is whether a source operating in compliance with a properly set longer term average could cause exceedances, and if so the resulting frequency and magnitude of such exceedances, and in particular, whether EPA can have reasonable confidence that a properly set longer term average limit will provide that the average fourth highest daily maximum value will be at or below 75 ppb. A synopsis of how EPA evaluates whether such plans ''provide for attainment,'' based on modeling of projected allowable emissions and in light of the NAAQS' form for determining attainment at monitoring sites follows.

For plans for SO_2 based on 1-hour emission limits, the standard approach is to conduct modeling using fixed emission rates. The maximum emission rate that would be modeled to result in attainment (*i.e.,* an ''average year'' [4] shows three, not four days with maximum hourly levels exceeding 75 ppb) is labeled the ''critical emission value.'' The modeling process for identifying this critical emissions value inherently considers the numerous variables that affect ambient concentrations of SO_2, such as meteorological data, background concentrations, and topography. In the standard approach, the state would then provide for attainment by setting a continuously applicable 1-hour emission limit at this critical emission value.

EPA recognizes that some sources have highly variable emissions, for example due to variations in fuel sulfur content and operating rate, that can make it extremely difficult, even with a well-designed control strategy, to ensure in practice that emissions for any given hour do not exceed the critical emission value. EPA also acknowledges the concern that longer term emission limits can allow short periods with emissions above the ''critical emissions value,'' which, if coincident with meteorological conditions conducive to high SO_2 concentrations, could in turn create the possibility of a NAAQS exceedance occurring on a day when an exceedance would not have occurred if emissions were continuously controlled at the level corresponding to the critical emission value. However, for several reasons, EPA believes that the approach recommended in its guidance document suitably addresses this concern. First, from a practical perspective, EPA expects the actual emission profile of a source subject to an appropriately set longer term average limit to be similar to the emission profile of a source subject to an analogous 1-hour average limit. EPA expects this similarity because it has recommended that the longer term average limit be set at a level that is comparably stringent to the otherwise applicable 1-hour limit (reflecting a downward adjustment from the critical emissions value) and that takes the source's emissions profile into account. As a result, EPA expects either form of emission limit to yield comparable air quality.

Second, from a more theoretical perspective, EPA has compared the likely air quality with a source having maximum allowable emissions under an appropriately set longer term limit, as compared to the likely air quality with the source having maximum allowable

[4] An ''average year'' is used to mean a year with average air quality. While 40 CFR 50 Appendix T provides for averaging three years of 99th percentile daily maximum values (*e.g.,* the fourth highest maximum daily concentration in a year with 365 days with valid data), this discussion and an example below uses a single ''average year'' in order to simplify the illustration of relevant principles.

emissions under the comparable 1-hour limit. In this comparison, in the 1-hour average limit scenario, the source is presumed at all times to emit at the critical emission level, and in the longer term average limit scenario, the source is presumed occasionally to emit more than the critical emission value but on average, and presumably at most times, to emit well below the critical emission value. In an ''average year,'' compliance with the 1-hour limit is expected to result in three exceedance days (*i.e.,* three days with hourly values above 75 ppb) and a fourth day with a maximum hourly value at 75 ppb. By comparison, with the source complying with a longer term limit, it is possible that additional exceedances would occur that would not occur in the 1-hour limit scenario (if emissions exceed the critical emission value at times when meteorology is conducive to poor air quality). However, this comparison must also factor in the likelihood that exceedances that would be expected in the 1-hour limit scenario would not occur in the longer term limit scenario. This result arises because the longer term limit requires lower emissions most of the time (because the limit is set well below the critical emission value), so a source complying with an appropriately set longer term limit is likely to have lower emissions at critical times than would be the case if the source were emitting as allowed with a 1-hour limit.

As a hypothetical example to illustrate these points, suppose a source that always emits 1000 pounds of SO_2 per hour, which results in air quality at the level of the NAAQS (*i.e.,* results in a design value of 75 ppb). Suppose further that in an ''average year,'' these emissions cause the 5-highest maximum daily average 1-hour concentrations to be 100 ppb, 90 ppb, 80 ppb, 75 ppb, and 70 ppb. Then suppose that the source becomes subject to a 30-day average emission limit of 700 pounds per hour. It is theoretically possible for a source meeting this limit to have emissions that occasionally exceed 1000 pounds per hour, but with a typical emissions profile emissions would much more commonly be between 600 and 800 pounds per hour. In this simplified example, assume a zero background concentration, which allows one to assume a linear relationship between emissions and air quality. (A nonzero background concentration would make the mathematics more difficult but would give similar results.) Air quality will depend on what emissions happen on what critical hours, but suppose that emissions at the relevant times on these 5 days are 800 pounds/hour, 1100 pounds per hour, 500 pounds per hour, 900 pounds per hour, and 1200 pounds per hour, respectively. (This is a conservative example because the average of these emissions, 900 pounds per hour, is well over the 30-day average emission limit.) These emissions would result in daily maximum 1-hour concentrations of 80 ppb, 99 ppb, 40 ppb, 67.5 ppb, and 84 ppb. In this example, the fifth day would have an exceedance that would not otherwise have occurred, but the third and fourth days would not have exceedances that otherwise would have occurred. In this example, the fourth highest maximum daily concentration under the 30-day average would be 67.5 ppb.

This simplified example illustrates the findings of a more complicated statistical analysis that EPA conducted using a range of scenarios using actual plant data. As described in Appendix B of EPA's 2014 SO_2 Nonattainment Guidance, EPA found that the requirement for lower average emissions is highly likely to yield better air quality than is required with a comparably stringent 1-hour limit. Based on analyses described in Appendix B of its 2014 SO_2 Nonattainment Guidance, EPA expects that an emission profile with maximum allowable emissions under an appropriately set comparably stringent 30-day average limit is likely to have the net effect of having a *lower* number of exceedances and better air quality than an emission profile with maximum allowable emissions under a 1-hour emission limit at the critical emission value. This result provides a compelling policy rationale for allowing the use of a longer averaging period, in appropriate circumstances where the facts indicate this result can be expected to occur.

The question then becomes whether this approach, which is likely to produce a lower number of overall exceedances even though it may produce some unexpected exceedances above the critical emission value, meets the requirement in section 110(a)(1) and 172(c)(1) for SIPs to ''provide for attainment'' of the NAAQS. For SO_2, as for other pollutants, it is generally impossible to design a nonattainment plan in the present that will guarantee that attainment will occur in the future. A variety of factors can cause a well-designed attainment plan to fail and unexpectedly not result in attainment, for example if meteorology occurs that is more conducive to poor air quality than was anticipated in the plan. Therefore, in determining whether a plan meets the requirement to provide for attainment, EPA's task is commonly to judge not whether the plan provides absolute certainty that attainment will in fact occur, but rather whether the plan provides an adequate level of confidence of prospective NAAQS attainment. From this perspective, in evaluating use of a 30-day average limit, EPA must weigh the likely net effect on air quality. Such an evaluation must consider the risk that occasions with meteorology conducive to high concentrations will have elevated emissions leading to exceedances that would not otherwise have occurred, and must also weigh the likelihood that the requirement for lower emissions on average will result in days not having exceedances that would have been expected with emissions at the critical emissions value. Additional policy considerations, such as in this case the desirability of accommodating real world emissions variability without significant risk of violations, are also appropriate factors for EPA to weigh in judging whether a plan provides a reasonable degree of confidence that the plan will lead to attainment. Based on these considerations, especially given the high likelihood that a continuously enforceable limit averaged over as long as 30 days, determined in accordance with EPA's guidance, will result in attainment, EPA believes as a general matter that such limits, if appropriately determined, can reasonably be considered to provide for attainment of the 2010 SO_2 NAAQS.

The 2014 SO_2 Nonattainment Guidance offers specific recommendations for determining an appropriate longer term average limit. The recommended method starts with determination of the 1-hour emission limit that would provide for attainment (*i.e.,* the critical emission value), and applies an adjustment factor to determine the (lower) level of the longer term average emission limit that would be estimated to have a stringency comparable to the otherwise necessary 1-hour emission limit. This method uses a database of continuous emission data reflecting the type of control that the source will be using to comply with the SIP emission limits, which (if compliance requires new controls) may require use of an emission database from another source. The recommended method involves using these data to calculate a complete set of emission averages, computed according to the averaging time and averaging procedures of the prospective emission limitation. In this recommended method, the ratio of the 99th percentile among these long term averages to the 99th percentile of the 1-hour values represents an adjustment factor that may

be multiplied by the candidate 1-hour emission limit to determine a longer term average emission limit that may be considered comparably stringent.[5] The 2014 SO_2 Nonattainment Guidance also addresses a variety of related topics, such as the potential utility of setting supplemental emission limits, such as mass-based limits, to reduce the likelihood and/or magnitude of elevated emission levels that might occur under the longer term emission rate limit. Preferred air quality models for use in regulatory applications are described in Appendix A of EPA's *Guideline on Air Quality Models (40 CFR part 51, Appendix W).*[6] In 2005, EPA promulgated the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) as the Agency's preferred near-field dispersion modeling for a wide range of regulatory applications addressing stationary sources (for example in estimating SO_2 concentrations) in all types of terrain based on extensive developmental and performance evaluation. Supplemental guidance on modeling for purposes of demonstrating attainment of the SO_2 standard is provided in Appendix A to the April 23, 2014 SO_2 nonattainment area SIP guidance document referenced above. Appendix A provides extensive guidance on the modeling domain, the source inputs, assorted types of meteorological data, and background concentrations. Consistency with the recommendations in this guidance is generally necessary for the attainment demonstration to offer adequately reliable assurance that the plan provides for attainment.

As stated previously, attainment demonstrations for the 2010 1-hour primary SO_2 NAAQS must demonstrate future attainment and maintenance of the NAAQS in the entire area designated as nonattainment (*i.e.,* not just at the violating monitor) by using air quality dispersion modeling (*see* Appendix W to 40 CFR part 51) to show that the mix of sources and enforceable control measures and emission rates in an identified area will not lead to a violation of the SO_2 NAAQS. For a short-term (*i.e.,* 1-hour) standard, EPA believes that dispersion modeling, using allowable emissions and addressing stationary sources in the affected area (and in some cases those sources located outside the nonattainment area which may affect attainment in the area) is technically appropriate, efficient and effective in demonstrating attainment in nonattainment areas because it takes into consideration combinations of meteorological and emission source operating conditions that may contribute to peak ground-level concentrations of SO_2.

The meteorological data used in the analysis should generally be processed with the most recent version of AERMET. Estimated concentrations should include ambient background concentrations, should follow the form of the standard, and should be calculated as described in section 2.6.1.2 of the August 23, 2010 clarification memo on ''Applicability of Appendix W Modeling Guidance for the 1-hr SO_2 National Ambient Air Quality Standard'' (U. S. EPA, 2010a).

IV. Pennsylvania's Attainment Plan Submittal for the Beaver Area

In accordance with section 172(c) of the CAA, the Pennsylvania attainment plan for the Beaver Area includes: (1) An emissions inventory for SO_2 for the plan's base year (2011); (2) an attainment demonstration including an analysis that locates, identifies, and quantifies sources of emissions contributing to violations of the 2010 SO_2 NAAQS and a dispersion modeling analysis of an emissions control strategy for the primary remaining SO_2 sources in the area and which also accounts for smaller sources within the Area in the background concentration, showing attainment of the SO_2 NAAQS by the October 4, 2018 attainment date; (3) a determination that the control strategy for the primary remaining SO_2 sources within the nonattainment area constitutes RACM/RACT; (4) requirements for RFP toward attaining the SO_2 NAAQS in the Area; (5) contingency measures; and (6) the assertion that Pennsylvania's existing SIP-approved NSR program meets the applicable requirements for SO_2. The Pennsylvania attainment plan for the Beaver Area also includes the request that emission limitations and compliance parameters contained in a consent order with Bruce Mansfield and a consent order with Jewel be incorporated into the SIP.

V. EPA's Analysis of Pennsylvania's Attainment Plan for the Beaver Area

Consistent with CAA requirements (*see* section 172), an attainment demonstration for a SO_2 nonattainment area must show that the area will attain the 2010 SO_2 NAAQS as expeditiously as practicable. The demonstration must also meet the requirements of 40 CFR 51.112 and 40 CFR part 51, Appendix W, and include inventory data, modeling results, and emissions reductions analyses on which the state has based its projected attainment. EPA is proposing that the attainment plan submitted by Pennsylvania is sufficient, and EPA is proposing to approve the plan to ensure ongoing attainment.

A. Pollutants Addressed

Pennsylvania's SO_2 attainment plan evaluates SO_2 emissions for the Area within the portion of Beaver County (Industry Borough, Shippingport Borough, Midland Borough, Brighton Township, Potter Township and Vanport Township) that is designated nonattainment for the 2010 SO_2 NAAQS. There are no precursors to consider for the SO_2 attainment plan. SO_2 is a pollutant that arises from direct emissions, and therefore concentrations are highest relatively close to the sources and much lower at greater distances due to dispersion. Thus, SO_2 concentration patterns resemble those of other directly emitted pollutants like lead, and differ from those of photochemically-formed (secondary) pollutants such as ozone.

B. Emissions Inventory Requirements

States are required under section 172(c)(3) of the CAA to develop comprehensive, accurate and current emissions inventories of all sources of the relevant pollutant or pollutants in the nonattainment area. These inventories provide detailed accounting of all emissions and emissions sources by precursor or pollutant. In addition, inventories are used in air quality modeling to demonstrate that attainment of the NAAQS is as expeditious as practicable. The 2014 SO_2 Nonattainment Guidance provides that the emissions inventory should be consistent with the Air Emissions Reporting Requirements (AERR) at Subpart A to 40 CFR part 51.[7]

For the base year inventory of actual emissions, a ''comprehensive, accurate and current'' inventory can be represented by a year that contributed to the three-year design value used for the original nonattainment designation. The 2014 SO_2 Nonattainment Guidance notes that the base year inventory should include all sources of SO_2 in the nonattainment area as well as any sources located outside the nonattainment area which may affect

[5] For example, if the critical emission value is 1000 pounds of SO_2 per hour, and a suitable adjustment factor is determined to be 70 percent, the recommended longer term average limit would be 700 pounds per hour.

[6] The EPA published revisions to the *Guideline on Air Quality Models* on January 17, 2017.

[7] The AERR at Subpart A to 40 CFR part 51 cover overarching federal reporting requirements for the states to submit emissions inventories for criteria pollutants to EPA's Emissions Inventory System. EPA uses these submittals, along with other data sources, to build the National Emissions Inventory.

attainment in the area. Pennsylvania appropriately elected to use 2011 as the base year, as the Area was designated nonattainment with monitor data from 2009–2011. Actual emissions from all the sources of SO_2 in the Beaver Area were reviewed and compiled for the base year emissions inventory requirement. One additional source located outside the area was included in the inventory due to its proximity to the Area. The source is IPSCO Koppel Tubular (Koppel) with 2011 emissions of 130.42 tons per year (tpy). Table 1 shows the level of emissions, expressed in tpy, in the Beaver Area for the 2011 base year by emissions source category. The point source category includes all sources within the nonattainment area and one source (Koppel) just outside the area.

TABLE 1—2011 BASE YEAR SO_2 EMISSIONS INVENTORY FOR THE BEAVER AREA

Emission source category	SO_2 Emissions (tpy)
Point	26,591.051
Area	29.784
Non-road	0.111
On-road	1.530
Total	26,622.476

TABLE 2—POINT SOURCE 2011 ACTUAL SULFUR DIOXIDE EMISSION INVENTORY

Facility	SO_2 Emissions (tpy)
AES BEAVER VALLEY	3,085.634
BRUCE MANSFIELD	21,195.710
HORSEHEAD	2,014.920
IPSCO KOPPEL TUBULARS/KOPPEL *	130.420
JEWEL	162.100
SHELL	0.000
All Other Point Sources Combined	2.267
Total	26,591.051

* IPSCO KOPPEL TUBULARS/KOPPEL is not physically in the Beaver Area, but modeling shows it has a small impact on it. Another source located near the Area, Anchor Hocking/Monaca, which had 2011 SO_2 emissions of 26.068 tons, was also evaluated. Based on the modeling analysis, Anchor Hocking/Monaca does not have significant impacts in the Beaver Area and is not included in the inventory.

A more detailed discussion of the emissions inventory for the Beaver Area can be found in Pennsylvania's September 29, 2017 submittal, as well as, the emissions inventory Technical Support Document (TSD), which can be found under Docket ID No. EPA–R03–OAR–2017–0681 and is available online at *www.regulations.gov*. EPA has evaluated Pennsylvania's 2011 base year emissions inventory for the Beaver Area and has made the determination that this inventory was developed consistently with section 172(c)(3) and EPA's guidance as discussed in detail in the inventory TSD. Therefore, EPA is proposing to approve Pennsylvania's 2011 base year emissions inventory for the Beaver Area.

The attainment plan also provides for a projected attainment year inventory that includes estimated emissions for all emission sources of SO_2 which are determined to impact the Beaver Area for the year in which the area is expected to attain the NAAQS. Pennsylvania provided a 2018 projected emissions inventory for all known sources included in the 2011 base year inventory and one additional source, Shell Chemical Appalachia LLC's recently permitted petrochemicals complex. This source will not start operation until after 2018 but has been included to provide assurance that the NAAQS will be attained and maintained notwithstanding commencement of its operation.

The projected 2018 emissions are shown in Table 3 and Table 4. Projected allowable emissions for 2018 exceed the 2011 emissions inventory; however, projected actual emissions for 2018 are below the 2011 emissions inventory. It should be noted that the sources most likely causing impacts at the previously violating monitor, including AES Beaver Valley and Horsehead, have closed or remain idled such as the Jewel Facility's Meltshop. The remaining primary SO_2 sources with their new allowable emissions may be above the total 2011 actual emissions in the Area; however, the remaining primary sources were modeled using emissions above their new allowable emissions (as listed in Table 4) and demonstrate attainment as discussed subsequently in this Notice. SO_2 impacts are very source specific and assumptions cannot be made merely related to the total amount of emissions in an area. Also, as discussed in the submittal, the projected actual emissions are based on business projections of 2018 operations, and allowable maximum 2018 emissions are assuming that the plant is operating 8,760 hours per year and in compliance with the comparably stringent longer term average limit. The allowable maximum provides the worst-case emissions for the facilities versus the actual anticipated emissions which are based on typical operating hours and on projected business demand. In this case, the modeled maximum SO_2 emissions were not set equal to the allowable maximum emissions, but were greater than the allowable maximum emissions. For Bruce Mansfield, the 2018 maximum modeled emissions were 45,038.226 tpy. The 2018 modeled maximum emissions for Koppel and Shell were 306.6 tpy and 22.0 tpy, respectively.

Reductions in projected 2018 SO_2 emissions in the onroad, nonroad and nonpoint source categories can be attributed to lower sulfur content limits for gasoline and diesel fuels for the onroad and nonroad sector, and more stringent sulfur content limits on home heating oil and other distillate/residual fuel oils for the nonpoint sector which limits are included in the Pennsylvania SIP. A detailed discussion of projected emissions for the Beaver Area can be found in Pennsylvania's September 29, 2017 submittal which can be found under Docket ID No. EPA–R03–OAR–2017–0681 and online at *www.regulations.gov*.

TABLE 3—2018 PROJECTED SO_2 EMISSION INVENTORY FOR THE BEAVER AREA

Emission source category	SO_2 emissions (tpy) anticipated actual	SO_2 emissions (tpy) *includes allowable emissions for all point sources
Point	14,679.771	32,420.050
Area	22.586	22.586
Non-road	0.057	0.057
On-road	0.590	0.590
Total	14,703.004	32,443.283

TABLE 4—2018 PROJECTED POINT SOURCE EMISSIONS FOR THE BEAVER AREA

Facility	2018 Allowable Max SO_2 (tpy)	2018 Anticipated Actual SO_2 (tpy)
AES BEAVER VALLEY	0.000	0.000
BRUCE MANSFIELD	32,245.560	14,542.309
HORSEHEAD	0.000	0.000
IPSCO KOPPEL TUBULARS/KOPPEL*	149.500	133.472
JEWEL	1.603	1.603
SHELL**	21.000	0.000
All Other Point Sources Combined	2.387	2.387
Total	32,420.050	14,679.771

* IPSCO KOPPEL TUBULARS/KOPPEL is not physically in the nonattainment area, but modeling shows it has a small impact on it. It is included in the 2011 base year and 2018 attainment year inventories.

** Shell does not anticipate startup to occur prior to the end of 2018. Annual emissions after startup are limited by the facility's Plan Approval to less than 21 tons SO_2 per year.

C. Air Quality Modeling

The SO_2 attainment demonstration provides an air quality dispersion modeling analysis to demonstrate that control strategies chosen to reduce SO_2 source emissions will bring the Area into attainment by the statutory attainment date of October 4, 2018. The modeling analysis, conducted pursuant to recommendations outlined in Appendix W to 40 CFR part 51 (EPA's Modeling Guidance), is used for the attainment demonstration to assess the control strategy for a nonattainment area and establish emission limits that will provide for attainment. The analysis requires five years of meteorological data to simulate the dispersion of pollutant plumes from multiple point, area, or volume sources across the averaging times of interest. The modeling demonstration typically also relies on maximum allowable emissions from sources in the nonattainment area. Though the actual emissions are likely to be below the allowable emissions, sources have the ability to run at higher production rates or optimize controls such that emissions approach the allowable emissions limits. A modeling analysis that provides for attainment under all scenarios of operation for each source must therefore consider the worst-case scenario of both the meteorology (*e.g.* predominant wind directions, stagnation, etc.) and the maximum allowable emissions. In this case, the modeled maximum SO_2 emissions were greater than the allowable maximum SO_2 emissions.

PADEP's modeling analysis was developed in accordance with EPA's Modeling Guidance and the 2014 SO_2 Nonattainment Guidance, and was prepared using EPA's preferred dispersion modeling system, AERMOD. A more detailed discussion of PADEP's modeling analysis for the Beaver Area can be found in Pennsylvania's September 29, 2017 submittal as well as the modeling TSD, which can be found under Docket ID No. EPA–R03–OAR–2017–0681 which is available online at *www.regulations.gov*.

For its modeling demonstration, PADEP evaluated SO_2 emissions from the Bruce Mansfield Facility located in Shippingport Borough and potential SO_2 emissions from Shell Chemical Appalachia LLC's (Shell Chemical Appalachia) planned petrochemicals complex to be located in Potter and Center Townships. SO_2 emissions from Koppel, located outside the Beaver Area were also included in the modeling. The Jewel Facility Meltshop was idled in 2015 and its emissions were not included in the attainment modeling demonstration. To resume operation, the Meltshop must comply with a Consent Order and Agreement (COA) described in section D of this notice.

EPA has reviewed the modeling that Pennsylvania submitted to support the attainment demonstration for the Beaver Area and has determined that this modeling is consistent with CAA requirements, Appendix W, and EPA's Guidance for SO_2 attainment demonstration modeling. The modeling properly characterized source limits, local meteorological data, background concentrations, and provided an adequate model receptor grid to capture maximum modeled concentrations. Using the EPA conversion factor for the SO_2 NAAQS, the modeled design values for the Beaver Area are less than 75 ppb as shown in Table 5 below.[8] EPA's analysis of the modeling is discussed in

[8] The SO_2 NAAQS level is expressed in ppb but AERMOD gives results in micrograms per meter cubed ($\mu g/m^3$). The conversion factor for SO_2 (at the standard conditions applied in the ambient SO_2 reference method) is 1ppb = approximately 2.619 $\mu g/m^3$. *See* Pennsylvania's SO_2 Round 3 Designations Proposed Technical Support Document at *https://www.epa.gov/sites/production/files/2017-08/documents/35_pa_so2_rd3-final.pdf.*

more detail in EPA's modeling TSD, which can be found under Docket ID No. EPA–R03–OAR–2017–0681. EPA proposes to conclude that the modeling provided in the attainment plan shows that the Beaver Area will attain the 2010 1-hour primary SO_2 NAAQS by the attainment date and proposes to approve the attainment demonstration.

D. RACM/RACT

CAA section 172(c)(1) requires that each attainment plan provide for the implementation of all RACM as expeditiously as practicable for attainment of the NAAQS. EPA interprets RACM, including RACT, under section 172, as measures that a state determines to be both reasonably available and contribute to attainment as expeditiously as practicable ''for existing sources in the area.'' In addition, CAA section 172(c)(6) requires plans to include enforceable emission limitations and control measures as may be necessary or appropriate to provide for attainment by the attainment date.

Pennsylvania's September 29, 2017 submittal discusses federal and state measures that will provide emission reductions leading to attainment and maintenance of the 2010 SO_2 NAAQS. With regards to state rules, Pennsylvania cites its low sulfur fuel rules, which were SIP-approved on July 10, 2014 (79 FR 39330). Pennsylvania's low sulfur fuel oil provisions apply to refineries, pipelines, terminals, retail outlet fuel storage facilities, commercial and industrial facilities, and facilities with units burning regulated fuel oil to produce electricity and domestic home heaters. These low sulfur fuel oil rules reduce the amount of sulfur in fuel oils used in combustion units, thereby reducing SO_2 emissions and the formation of sulfates that cause decreased visibility.

Pennsylvania's attainment plan submittal discusses facility closures and facility-specific control measures. Pennsylvania's submittal indicates that two of the three largest sources in the Beaver Area were permanently shut down prior to January 2, 2017. The Horsehead facility closed in the spring of 2014 and has been demolished. AES Beaver Valley was a coal fired power plant that permanently shut down in the fall of 2015. Appendix A of the state submittal includes PADEP's approval letters of Emission Reduction Credits for these facilities which indicate permanent facility closure. The Jewel Facility is currently idled and has agreed in a Consent Order and Agreement with PADEP that its Meltshop cannot emit any SO_2 emissions unless additional modeling is done to support attainment and new SO_2 emissions limitations are established for the SIP as necessary. This restriction is established in a COA (*see* Appendix C of the September 29, 2017 submittal) between PADEP and the Jewel Facility which PADEP seeks to have incorporated by reference into the SIP, thereby making it permanently federally enforceable under the CAA. In addition to these actual emission reductions in the Area of 5,100.554 tpy, new SO_2 emission limits were developed through air dispersion modeling (AERMOD) submitted by PADEP as discussed below, and in section IV.C. Air Quality Modeling of this proposed rulemaking as well as in the modeling TSD.

In order to ensure that the Beaver Area demonstrates attainment with the SO_2 NAAQS, PADEP asserts that the following combination of emission limits at the Bruce Mansfield Facility are sufficient for the Beaver Area to meet the SO_2 NAAQS and serve as RACM/RACT. For the Bruce Mansfield Facility, the new emission limits are established in a COA (*see* Appendix C of the September 29, 2017 submittal) between PADEP and FirstEnergy for the Bruce Mansfield Facility, which PADEP has also submitted for incorporation into the SIP as permanently federally enforceable limits under the CAA.

The Facility's SO_2 emission sources include three coal-fired boilers (Unit 1, Unit 2, and Unit 3) that were included in the air dispersion modeling. The SO_2 emissions from each of the three boilers are controlled by three individual Flue Gas Desulfurization (FGD) systems. Unit 1 and Unit 2 each vent through two flues within a common stack. Unit 3 vents through two flues in the other stack. To demonstrate compliance with the 2010 1-hour SO_2 NAAQS, FirstEnergy requested that the Unit 1 and Unit 2 combined emission limit be established as a function of the Unit 3 emission limit. On and after October 1, 2018, FirstEnergy shall begin calculating a pound per hour (lb/hr) 30-operating day rolling average SO_2 emission rate for Unit 1 (Source ID 031) and Unit 2 (Source ID 032) from Chimney 1 (Stacks S01–S04), and a lb/hr 30-operating day rolling average SO_2 emission rate for Unit 3 (Source ID 033) from Chimney 2 (Stacks S05 and S06), using data from the PADEP-certified Continuous Emission Monitoring Systems (CEMS) at the Bruce Mansfield Facility. The 30-operating day rolling average SO_2 emissions rates shall be calculated using the procedures outlined in the Mercury and Air Toxics Standards (MATS) regulations in 40 CFR parts 60 and 63. The 30-operating day rolling average SO_2 emissions rate for Units 1 and 2 cannot exceed the result of equation one (EQ–1), below, with Chimney 1 (CH1) and Chimney 2 (CH2) in service, calculated daily. In addition, the 30-operating day rolling average emissions rate cannot exceed 7,362 lb/hr for Units 1 and 2 combined. The 30-operating day rolling average SO_2 emissions rate cannot exceed 3,584 lb/hr for Unit 3. The results of EQ–1 are only valid when Unit 3 emissions are less than or equal to 3,584 lb/hr.

EQ–1: $CH1SO_2\ Lim = -1.38E{-}04 \times CH2SO_2{}^2 - 0.920 \times CH2SO_2 + 7100$

Where:

$CH1SO_2$ Lim: Chimney 1 SO_2 lb/hr 30-day rolling average Limit

$CH1SO_2$ Lim ≤7,362 lb/hr

$CH2SO_2$: Chimney 2 SO_2 lb/hr 30-day rolling average.

$CH2SO_2$ ≤3,584 lb/hr

Also, FirstEnergy is required by the COA to use its PADEP-certified CEMS to demonstrate compliance with the new emission restrictions as detailed in the COA (Paragraph 3.a. of the COA). In accordance with the current version of PADEP's Continuous Source Monitoring Manual, FirstEnergy is required by the COA to continue to provide quarterly reports of emissions data as recorded by the CEMS to PADEP.

Additionally, FirstEnergy shall achieve as detailed in the COA at least a 95% removal efficiency from the FGDs following the general requirements contained in 25 Pa. Code Chapter 139.11. FirstEnergy shall annually test for removal efficiency of the FGDs by using a combination of CEMS data and coal sampling in accordance with the procedures outlined in 40 CFR part 60, Appendix A, Method 19. Three test runs shall be conducted concurrently in the two flues that feed each unit during the annual tests. Each test run shall be a minimum of sixty minutes in duration. A report of the efficiency test shall be provided annually to PADEP. The first report shall be submitted within one (1) year of the final execution of this COA and annually thereafter. FirstEnergy shall maintain records of the operation of and emissions monitoring from the FGDs, including the annual efficiency report.

The auxiliary boilers located at the Bruce Mansfield Facility are limited by an existing federally enforceable operating permit to a capacity factor of less than 5% in any 12-consecutive month period. PADEP stated this existing federally enforceable limitation has reduced the potential to emit SO_2 to levels at which additional SO_2 controls are not feasible. Thus PADEP concluded the permit restrictions are RACM and no

further control is needed from these auxiliary boilers for the Area to attain the NAAQS or to reflect RACT from these boilers. EPA finds Pennsylvania's conclusion for the auxiliary boilers reasonable given the existing permit limitations and low potential to emit SO_2.

Operating restrictions are also placed on the Jewel Facility as RACM/RACT. To ensure that the Beaver Area will demonstrate attainment with the 2010 1-hour SO_2 NAAQS, the Jewel Facility has agreed to conditions in a COA which specifies zero SO_2 emissions from the Meltshop, which is the Jewel Facility Source ID 106. Other SO_2 emission sources at the facility were addressed in the modeling analysis as part of the ''background'' sources as discussed in section V. C. of this notice. The COA also requires additional modeling and SO_2 emission limitations for the SIP as necessary to assure attainment before the Jewel Facility would be able to operate the Meltshop. EPA is proposing here to approve the requirement for zero emissions from the Meltshop as RACM/RACT; any authorization of nonzero emissions from this Meltshop source would need to be subject to EPA review as a SIP revision with required modeling analysis showing continued attainment of the NAAQS.

Based on the modeling analysis discussed in section V.C. Air Quality Modeling above, the collective emission limits and related compliance parameters for the Bruce Mansfield Facility, along with the operating restrictions at the Jewel Facility, have been proposed as RACM/RACT and for incorporation into the SIP, therefore making them federally enforceable. PADEP asserts that this proposed control strategy as demonstrated by the modeling analysis is sufficient for the Beaver Area to attain the 2010 SO_2 NAAQS.

To establish the emission limit equation (EQ–1) described earlier in this section, Pennsylvania conducted a modeling analysis that included eleven modeling runs, supplemented with six additional modeling runs performed by FirstEnergy, to determine the range of emission rates for the three Units at the Bruce Mansfield Facility that provide for attainment. In each of these runs, the model demonstrates that the respective set of hourly emissions would result in the 5-year average of the 99th percentile of daily maximum hourly SO_2 concentrations below the level of the 1-hour NAAQS. The modeling results are presented in Table 5.

TABLE 5—SUMMARY OF AIR DISPERSION MODELING RESULTS FOR FIRSTENERGY BRUCE MANSFIELD 1-HOUR SO_2 MODELED EMISSION VALUES

Model run	Unit 1 & unit 2 combined 1-hour SO_2 rate (lb/hr)	Unit 3 1-hour SO_2 rate (lb/hr)	Maximum modeled 1-hour SO_2 design concentration ($\mu g/m^3$)
1	10,282.70	0.00	196.17563
2	9,254.43	761.19	196.18089
3	8,226.16	1,482.72	196.17966
1FE*	7,484.24	2,006.14	196.18033
4	7,197.89	2,206.62	196.17977
2FE*	6,765.97	2,507.57	196.14426
5	6,169.62	2,885.44	196.18044
3FE*	5,952.47	3,009.17	196.07897
6	5,141.35	3,469.90	196.17912
4FE*	5,051.66	3,510.68	196.11106
7	4,113.08	3,985.46	196.17974
5FE*	4,015.93	4,012.20	196.04158
8	3,084.81	4,407.53	196.18032
6FE*	2,857.18	4,513.72	196.10031
9	2,056.54	4,743.88	196.18082
10	1,028.27	4,956.43	196.18081
11	0.00	5,041.58	196.17832

* FirstEnergy model run.

FirstEnergy developed adjustment factors to convert the 1-hour emission rates (Table 5) to comparably stringent 30-operating day emission rates for each unit at the Bruce Mansfield Facility. To do this, historic operating data for 2012–2016 from EPA's Clean Air Markets Database (CAMD) were used in accordance with the methods EPA recommended in Appendix C and Appendix D of EPA's 2014 SO_2 Nonattainment Guidance. The SO_2 emission limit adjustment factor was calculated as 0.59 for Unit 1, 0.717 for Unit 2, and 0.794 for Unit 3. The adjustment factor for Unit 2 was applied to Unit 1 as First Energy deemed it a more representative correction factor for Unit 1. It was noted in Pennsylvania's submittal that Unit 2's hourly emissions have a tendency to be higher more frequently than Unit 1. Given this fact, Pennsylvania asserted that applying the adjustment factor developed for Unit 2 (higher frequency of higher emissions) to Unit 1 will continue to protect the NAAQS. EPA's SO_2 Nonattainment Guidance allows for using a unit more representative of planned operations going forward under the newly established emission limits stating ''. . . data from other sources of comparable source type, size, operation, fuel, and control type may be more useful for these comparisons.'' In addition, Unit 2's adjustment factors of 0.717 is very similar to the average adjustment factor for 30-day emission values (0.71) listed in Appendix D of EPA's SO_2 Nonattainment Guidance for sources with wet scrubbers (the same control technology that Unit 1 and 2 have in place). For these reasons, EPA believes it is appropriate to utilize 0.717 as the adjustment factor for Unit 1.

The unit specific adjustment factors (0.717 for Units 1 and 2, and 0.794 for Unit 3) were multiplied by the 1-hour modeled emission rates shown in Table 5, resulting in the corresponding 30-day average emission rates shown in

columns three and five in Table 6. These corresponding 30-day average emission rates show a series of 30-day average limits for Units 1 and 2 combined emissions and for Unit 3 emissions, respectively. Pennsylvania then determined an equation (EQ–1), identified above, that can be used to interpolate additional combinations of emissions that would also result in attainment.

Table 6 addresses the relationship between the modeling results and Pennsylvania's emission limit in particular addressing whether the modeling demonstrates that Pennsylvania's compliance equation provides for attainment throughout the range of possible combinations of allowable emissions. For each model run, Table 6 shows the modeled emission rates for Units 1 + 2 (reflecting the sum of emissions from the two units) and for Unit 3, along with the corresponding 30-day average emission rates. EPA calculated the sixth column of Table 6 by plugging in the Unit 3 30-day average emission rates (from the fifth column, Table 6) into the equation, and determining the limit for Units 1 and 2. In three cases, the entry in the sixth column is ''Disallowed,'' because the emission rate for Unit 3 is higher than the 30-operating day average limit (3,584 lbs/hr) that independently applies to Unit 3. An important feature of Table 6 is that the limit on the sum of emissions from Units 1 and 2 computed using the equation (EQ–1), in all cases is lower than the 30-day average sum of Units 1 and 2 emissions that was calculated as comparably stringent to the modeled 1-hour sum of Units 1 and 2 emissions. For a full range of cases, Pennsylvania demonstrated that its equation required a level of emissions that is lower than the level (adjusted to reflect comparable stringency) demonstrated to result in attainment. In other words, the equation (EQ–1) used to calculate the 30-day average limits is slightly more stringent than the comparably stringent adjusted 30-day average limits. By this means, Pennsylvania demonstrated that the compliance equation that it adopted, supplemented by independent limits on the emissions of Unit 3 and on the sum of emissions from Units 1 and 2, provides for attainment.

TABLE 6—FIRSTENERGY BRUCE MANSFIELD 30-DAY AVERAGE SO_2 EMISSION LIMITS

Model run	Modeled emissions for units 1 + 2 (lb/hr)	Corresponding 30-day average emissions for units 1 + 2 (lb/hr) **	Modeled emissions for unit 3 (lb/hr)	Corresponding 30-day average emissions for unit 3 (lb/hr) **	30-day average SO_2 limit for units 1 + 2 based on 30-day average equivalent to modeled unit 3 emissions (lb/hr) ***
1	10,282.70	7,372.70	0.00	0.00	7100.0
2	9,254.43	6,635.43	761.19	604.38	6493.6
3	8,226.16	5,898.16	1,482.72	1,177.28	5825.6
1FE *	7,484.24	5,366.20	2,006.14	1,592.88	5284.4
4	7,197.89	5,160.89	2,206.62	1,752.06	5064.5
2FE *	6,765.97	4,851.20	2,507.57	1,991.01	4721.2
5	6,169.62	4,323.62	2,885.44	2,291.04	4267.9
3FE *	5,952.47	4,267.92	3,009.17	2,389.28	4114.1
6	5,141.35	3,686.35	3,469.90	2,755.10	3517.8
4FE *	5,051.66	3,622.04	3,510.68	2,787.48	3463.3
7	4,113.08	2,949.08	3,985.46	3,164.46	2806.8
5FE *	4,015.93	2,879.42	4,012.20	3,185.69	2768.7
8	3,084.81	2,211.81	4,407.53	3,499.58	2190.3
6FE *	2,857.18	2,048.60	4,513.72	3,583.89	2030.3
9	2,056.54	1,474.54	4,743.88	3,766.64	Disallowed
10	1,028.27	737.27	4,956.43	3,935.41	Disallowed
11	0.00	0.00	5,041.58	4,003.01	Disallowed

* FirstEnergy model run.

** Corresponding 30-day average emission rates were calculated by multiplying the modeled 1-hour emission rates from Table 5 by PADEP's adjustment ratios (0.717 for Units 1 and 2; 0.794 for Unit 3).

*** The limit that would result from the compliance equation (EQ–1) using the Unit 3 30-operating day average emission rate that corresponds to the modeled 1-hour rate (from fifth column of this table).

EPA's guidance for longer term average limits states that plans based on such limits can be considered to provide for attainment where appropriate as long as the longer term limit is comparably stringent to the 1-hour limit that would otherwise be set, and as long as EPA can have reasonable confidence that occasions of emissions above the CEV will be limited in frequency and magnitude. To address this latter criterion, Pennsylvania has provided an analysis of historic emissions, assessing the frequency of elevated emissions. This analysis used 2012–2016 CAMD data. Pennsylvania established a limit based on an equation involving the emissions from multiple units. The equation was derived from the modeled CEV values (from Table 5). These values were used to develop a polynomial equation which was plotted on a graph and compared to the 2012–2016 CAMD data. This comparison demonstrates that during 2012–2016, the Bruce Mansfield Facility only exceeded the 1 hour emissions formula for 0.50% of the hours.[9] PADEP's CEV analysis is

[9] Appendix E–1 of Pennsylvania's September 29, 2017 submittal included a statement that ''[p]rior to the implementation of the new emissions limits associated with the 2010 standard, the occasions when emissions have exceeded the proposed CEVs have been relatively few. In fact, it has only occurred 13% of the time during the period of 2012–2016.'' Pennsylvania submitted a correction to this statement and the corresponding emissions analysis on June 11, 2018 via email which is included in Docket ID No. EPA–R03–OAR–2017–

Continued

provided in an excel spreadsheet in the Docket at *www.regulations.gov*.

Accordingly, EPA believes that PADEP has demonstrated that its limit for the Bruce Mansfield facility will assure that occasions of emissions exceeding critical levels will be limited. More generally, EPA believes that PADEP has met EPA's recommended criteria for longer term average limits and believes that the emission limits proposed by PADEP for the Bruce Mansfield Facility will provide reasonable assurance that the Area will attain the standard.

Additional information on the development of the adjustment factor and limits, including statistical analyses performed to develop the limits in accordance with the 2014 SO_2 Nonattainment Guidance, can be found in Section IV: Control Strategies and in Appendices D and E of the Pennsylvania attainment plan submittal of September 29, 2017. These adjustment factors are reasonably consistent with the average adjustment factor identified in Appendix D of the 2014 SO_2 Nonattainment Guidance for units controlled with wet FGDs (an adjustment factor of 0.71). EPA reviewed the modeling which shows the Beaver Area attaining the NAAQS with these limits at the Bruce Mansfield Facility and reviewed the methodology used to develop the 30-operating day limits and agrees that the limits are reasonable and follow EPA's 2014 SO_2 Nonattainment Guidance. EPA is proposing to approve the emission limits for the Bruce Mansfield Facility Units 1, 2 and 3 as representing RACM/RACT.

EPA finds that the proposed SO_2 control strategy at the Bruce Mansfield Facility and Jewel Facility, the only remaining significant SO_2 sources in the Area after the closure of Horsehead and AES Beaver Valley, constitute RACM/RACT for sources in the Beaver Area based on the modeling analysis previously described which demonstrates the Beaver Area is projected to attain the SO_2 NAAQS by the 2018 attainment date. Furthermore, with our final approval of Pennsylvania's attainment plan, the emission limits described for the three units at the Bruce Mansfield Facility and corresponding compliance parameters found in the COA for the Bruce Mansfield Facility as well as the operating restrictions on the Jewel Facility will become permanent and enforceable SIP measures to meet the requirements of the CAA. EPA proposes that Pennsylvania has satisfied the requirements in CAA sections 172(c)(1) and 172(c)(6) to adopt and submit all RACM and enforceable emission limitations and control measures as needed to attain the standard as expeditiously as practicable.

E. RFP Plan

Section 172(c)(2) of the CAA requires that an attainment plan includes a demonstration that shows reasonable further progress (*i.e.,* RFP) for meeting air quality standards will be achieved through generally linear incremental improvement in air quality. Section 171(1) of the CAA defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part (part D) or may reasonably be required by EPA for the purpose of ensuring attainment of the applicable NAAQS by the applicable attainment date.'' As stated originally in the 1994 SO_2 Guidelines Document [10] and repeated in the 2014 SO_2 Nonattainment Guidance, EPA continues to believe that this definition is most appropriate for pollutants that are emitted from numerous and diverse sources, where the relationship between particular sources and ambient air quality are not directly quantified. In such cases, emissions reductions may be required from various types and locations of sources. The relationship between SO_2 and sources is much more defined, and usually there is a single step between pre-control nonattainment and post-control attainment. Therefore, EPA interpreted RFP for SO_2 as adherence to an ambitious compliance schedule in both the 1994 SO_2 Guideline Document and the 2014 SO_2 Nonattainment Guidance. The control measures for attainment of the 2010 SO_2 NAAQS included in Pennsylvania's submittal have been modeled to achieve attainment of the NAAQS. The SO_2 emission reductions from the permanent shutdowns at Horsehead and AES Beaver Valley along with the COAs including specific emission limits and compliance parameters which are effective at the Bruce Mansfield Facility on October 1, 2018, and operating restrictions on the Jewel Facility effective on October 1, 2018, show the resulting emission reductions to be achieved as expeditiously as practicable for the Area. EPA guidance recommends a compliance date of January 1, 2017 for purposes of providing for a calendar year of meeting the standard, however in this plan some sources in the area did not have any emissions for several years while other sources still in operation such as the Bruce Mansfield and Jewel facilities will have new limits effective October 1, 2018. However, air quality data in this area has shown attainment of the NAAQS since 2015. Also based on air quality modeling reviewed by EPA, the new limits and shutdowns result in modeled attainment of the SO_2 NAAQS for the Beaver Area. Therefore, EPA has determined that PADEP's SO_2 attainment plan for the Beaver Area fulfills the RFP requirements for the Area. EPA does not anticipate future nonattainment, or that the Area will not meet the October 4, 2018 attainment date. EPA proposes to approve Pennsylvania's attainment plan with respect to the RFP requirements.

F. Contingency Measures

In accordance with section 172(c)(9) of the CAA, contingency measures are required as additional measures to be implemented in the event that an area fails to meet the RFP requirements or fails to attain the standard by its attainment date. These measures must be fully adopted rules or control measures that can be implemented quickly and without additional EPA or state action if the area fails to meet RFP requirements or fails to meet its attainment date, and should contain trigger mechanisms and an implementation schedule. However, SO_2 presents special considerations. As stated in the final 2010 SO_2 NAAQS promulgation on June 22, 2010 (75 FR 35520) and in the 2014 SO_2 Nonattainment Guidance, EPA concluded that because of the quantifiable relationship between SO_2 sources and control measures, it is appropriate that state agencies develop a comprehensive program to identify sources of violations of the SO_2 NAAQS and undertake an aggressive follow-up for compliance and enforcement.

The Bruce Mansfield Facility COA (*see* Appendix C of the September 29, 2017 submittal) contains the following measures that are designed to keep the Area from triggering an exceedance or violation of the SO_2 NAAQS: (1) If the SO_2 emissions from Units 1, 2 or 3 exceed 99% of the limits set forth in paragraph 3A of the COA, FirstEnergy shall, within 48 hours, begin a full system audit of Units 1, 2, and 3 SO_2 controls. The audit shall document the operating parameters of the sources and their control devices and evaluate whether the units and control devices were operating effectively. If the units and/or control devices were not operating effectively, FirstEnergy shall

0681. EPA has reviewed the correction and agrees with the assessment.

[10] SO_2 Guideline Document, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, EPA–452/R–94–008, February 1994. Located at: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

identify corrective actions to be implemented to ensure that the limits in Paragraph 3(a) of the COA are not exceeded. Only one audit in a seven operating day period is required if SO_2 emissions from Units 1, 2, and 3 exceed 99% of the limits in Paragraph 3(a) of the COA. The audit shall be documented and records maintained on site, and a report documenting the audit provided to PADEP within 45 days of completing the audit. (2) At any time after October 1, 2018, if any PADEP SO_2 monitor within the Beaver Area measures a 1-hour concentration exceeding 75 ppb, PADEP will notify the Jewel Facility, Koppel, Shell, and FirstEnergy in writing. A 1-hour SO_2 concentration that exceeds 75 ppb at any PADEP SO_2 monitor in the Beaver Area will be a ''daily exceedance.'' FirstEnergy shall identify whether Unit 1, Unit 2, and/or Unit 3 were running at the time of the exceedance and within a reasonable time period leading up to the exceedance. If Unit 1, Unit 2, and/or Unit 3 were running at the time of the exceedance, and within a reasonable time period leading up to the exceedance, FirstEnergy shall perform an analysis of meteorological data on the day the daily exceedance occurred to ensure that the daily exceedance was not due to SO_2 emissions from that source. The meteorological data analysis may include trajectories run at three different heights (one at stack height and two more within the boundary layer) by NOAA's Hysplit program or an equivalent program, hourly meteorological data collected at the FirstEnergy Beaver Valley nuclear power station to determine stability parameters within the river valley, and/or an analysis of Pittsburgh International Airport's radiosonde data and modeled upper air data. The overall goal of the meteorological data analysis is to investigate if emissions from the source could have potentially mixed down to the SO_2 monitor measuring the exceedance. The source's finding must be submitted in writing to PADEP within 45 days of PADEP notifying FirstEnergy. These measures will be incorporated into the Pennsylvania SIP upon EPA's final approval of this attainment plan.

There is also one contingency measure pertaining to the Jewel Facility. According to the COA with the facility, if the Jewel Facility Meltshop is reactivated and if any of PADEP's monitors in the Beaver Area measure a 1-hour SO_2 concentration of 75 ppb or greater, PADEP will notify the Jewel Facility both verbally and in writing. The Jewel Facility shall notify PADEP of the operational status of the Meltshop within 10 days of the notice.

Additionally, PADEP states in its attainment plan that if PADEP identifies a 1-hour daily maximum concentration at a PADEP operated SO_2 ambient air quality monitor in the Beaver Area that registers a concentration exceeding 75 ppb, PADEP would proceed with the following actions and enforcement as appropriate: (1) Within 5 business days, the PADEP Bureau of Air Quality Monitoring Division will contact the Air Resource Management Division Chief and the Southwest Regional Office (SWRO) Air Program Manager to report the monitored value. (2) Within 5 business days, SWRO staff will contact FirstEnergy and the Jewel Facility, if reactivated, to trigger the implementation of their contingency measures found in the COAs. If necessary, section 4(27) of the Pennsylvania Air Pollution Control Act (APCA), 35 P.S. § 4004(27), authorizes PADEP to take any action it deems necessary or proper for the effective enforcement of the APCA and the rules and regulations promulgated under the APCA. Such actions include the issuance of orders (*i.e.,* enforcement orders and orders to take corrective action to address air pollution or the danger of air pollution from a source) and the assessment of civil penalties. A more detailed description of the contingency measures can be found in section VIII of the September 27, 2017 submittal as well as in the COAs included in the submittal and included for incorporation by reference into the SIP.

EPA is proposing to find that Pennsylvania's September 29, 2017 submittal includes sufficient measures to expeditiously identify the source of any violation of the SO_2 NAAQS and for aggressive follow-up including enforcement measures within PADEP's authority under the APCA as necessary. Therefore, EPA proposes that the contingency measures submitted by Pennsylvania follow the 2014 SO_2 Nonattainment Guidance and meet the section 172(c)(9) requirements.

G. New Source Review [11]

Section 172(c)(5) of the CAA requires that an attainment plan require permits for the construction and operation of new or modified major stationary sources in a nonattainment area. Pennsylvania has a fully implemented Nonattainment New Source Review (NNSR) program for criteria pollutants in 25 Pennsylvania Code Chapter 127, Subchapter E, which was originally approved into the Pennsylvania SIP on December 9, 1997 (62 FR 64722). On May 14, 2012 (77 FR 28261), EPA approved a SIP revision pertaining to the pre-construction permitting requirements of Pennsylvania's NNSR program to update the regulations to meet EPA's 2002 NSR reform regulations. EPA then approved an update to Pennsylvania's NNSR regulations on July 13, 2012 (77 FR 41276). These rules provide for appropriate new source review as required by CAA sections 172(c)(5) and 173 and 40 CFR 51.165 for SO_2 sources undergoing construction or major modification in the Beaver Area without need for modification of the approved rules. Therefore, EPA concludes that the Pennsylvania SIP meets the requirements of section 172(c)(5) for this Area.

VI. EPA's Proposed Action

EPA is proposing to approve Pennsylvania's SIP revision, its attainment plan for the Beaver Area, as submitted through PADEP to EPA on September 29, 2017, for the purpose of demonstrating attainment of the 2010 1-hour SO_2 NAAQS. Specifically, EPA is proposing to approve the base year emissions inventory, a modeling demonstration of SO_2 attainment, an analysis of RACM/RACT, an RFP plan, and contingency measures for the Beaver Area and is proposing that the Pennsylvania SIP has met requirements for NSR for the 2010 1-hour SO_2 NAAQS. Additionally, EPA is proposing to approve into the Pennsylvania SIP specific SO_2 emission limits and compliance parameters and control measures established for the SO_2 sources impacting the Beaver Area.

EPA has determined that Pennsylvania's SO_2 attainment plan for the 2010 1-hour SO_2 NAAQS for Beaver

[11] The CAA new source review (NSR) program is composed of three separate programs: Prevention of significant deterioration (PSD), Nonattainment NSR (NNSR), and Minor NSR. PSD is established in part C of title I of the CAA and applies in undesignated areas and areas that meet the NAAQS— designated ''attainment areas''—as well as areas where there is insufficient information to determine if the area meets the NAAQS—designated ''unclassifiable areas.'' The NNSR program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS —''nonattainment areas.'' The Minor NSR program addresses construction or modification activities that do not qualify as ''major'' and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as the NSR programs. Section 173 of the CAA lays out the NNSR program for preconstruction review of new major sources or major modifications to existing sources, as required by CAA section 172(c)(5). The programmatic elements for NNSR include, among other things, compliance with the lowest achievable emissions rate and the requirement to obtain emissions offsets.

County meets the applicable requirements of the CAA and EPA's 2014 SO_2 Nonattainment Guidance. Thus, EPA is proposing to approve Pennsylvania's attainment plan for the Beaver Area as submitted on September 29, 2017. EPA's analysis for this proposed action is discussed in Section V of this proposed rulemaking. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Final approval of this SIP submittal will remove EPA's duty to promulgate and implement a FIP for this Area.

VII. Incorporation by Reference

In this document, EPA is proposing to include regulatory text in a final rule that includes incorporation by reference. In accordance with requirements of 40 CFR 51.5, EPA is proposing to incorporate by reference the portions of the COAs entered between Pennsylvania and FirstEnergy and Pennsylvania and Jewel included in the PADEP submittal of September 29, 2017 that are not redacted. This includes emission limits and associated compliance parameters, recording-keeping and reporting, and contingency measures. 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).

VIII. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, concerning the SO_2 attainment plan for the Beaver nonattainment area in Pennsylvania, 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: September 24, 2018.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2018–21667 Filed 10–4–18; 8:45 am]

BILLING CODE 6560–50–P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1152

[Docket No. EP 749; Docket No. EP 749 (Sub-No. 1)]

National Association of Reversionary Property Owners—Petition for Rulemaking; Limiting Extensions of Trail Use Negotiating Periods

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) grants in part a petition by the National Association of Reversionary Property Owners (NARPO) and opens a proceeding in Docket No. EP 749 (Sub-No. 1) to consider revising regulations related to the National Trails System Act. The Board proposes to modify its regulations to limit the number of 180-day extensions of a trail use negotiating period to a maximum of six extensions, absent extraordinary circumstances.

DATES: Comments are due by November 1, 2018; replies are due by November 21, 2018.

ADDRESSES: Comments and replies may be submitted either via the Board's e-filing format or in paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's website at ''*www.stb.gov*'' at the ''E–FILING'' link. Any person submitting a filing in paper format should send an original and 10 paper copies of the filing to: Surface Transportation Board, Attn: Docket No. EP 749 (Sub-No. 1), 395 E Street SW, Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Sarah Fancher, (202) 245–0355. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On June 14, 2018, NARPO filed a petition for rulemaking requesting that the Board consider issuing three rules related to 16 U.S.C. 1247(d), the codification of section 8(d) of the National Trails System Act (Trails Act), Public Law 90–543, section 8, 82 Stat. 919 (1968). Specifically, NARPO asks that the Board open a proceeding to consider rules that would: (1) Limit the number of 180-day extensions of a trail use negotiating period to six; (2) require a rail carrier or trail sponsor negotiating an interim trail use agreement to send notice of the issuance of a Certificate of Interim Trail Use (CITU) or Notice of Interim Trail

Use (NITU) [1] to landowners adjacent to the right-of-way covered by the CITU/NITU; and (3) require all entities, including government entities, filing a request for a CITU/NITU, or extension thereof, to pay a filing fee.

On July 5, 2018, the Association of American Railroads (AAR) replied in opposition to the changes proposed in NARPO's petition.[2] Thereafter, late-filed letters in support of NARPO's petition were filed by the Community Council Railroad Committee, Save Taxes & Our Property (STOP), and several individuals. Comments in opposition to the petition were late-filed by the Madison County Mass Transit District (MCMTD), the Iowa Natural Heritage Foundation (INHF), the City of Seattle, Wash. (City of Seattle), and the Rails-To-Trails Conservancy (RTC). RTC also requested a 30-day extension of time to respond to NARPO's petition. In the interest of compiling a complete record, the late-filed pleadings were accepted into the record, but RTC's extension request was denied. *Nat'l Ass'n of Reversionary Prop. Owners—Pet. for Rulemaking,* EP 749 (STB served Aug. 14, 2018).

The Board has broad discretion when determining whether to initiate a rulemaking. *See, e.g., Defenders of Wildlife* v. *Gutierrez,* 532 F.3d 913, 919 (DC Cir. 2008). After considering the petition for rulemaking and the comments received, the Board will grant NARPO's petition in part and institute a rulemaking proceeding in Docket No. EP 749 (Sub-No. 1) to propose modifications to the Board's rules related to extensions of the trail use negotiating period. The Board will deny NARPO's petition with regard to its other two proposed rules. Because the Board is proposing a rule change in a separate sub-docket, the docket in Docket No. EP 749 will be closed.

Background

The Trails Act was established in 1968 to create a nationwide system of recreational trails. In 1983, Congress added a rail section, codified at 16 U.S.C. 1247(d). This addition to the Trails Act was the ''culmination of congressional efforts to preserve shrinking rail trackage by converting unused rights-of-way to recreational trails.'' *Preseault* v. *ICC,* 494 U.S. 1, 5 (1990). Under the Trails Act, the Board must ''preserve established railroad rights-of-way for future reactivation of rail service'' by prohibiting abandonment where a trail sponsor agrees to assume full managerial, tax, and legal liability for the right-of-way for use in the interim as a trail. 16 U.S.C. 1247(d); *Nat'l Wildlife Fed'n* v. *ICC,* 850 F.2d 694, 699–702 (D.C. Cir. 1988). The statute expressly provides that ''if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for [any] purposes . . . as an abandonment. . . .'' Section 1247(d). Instead, the right-of-way is ''rail-banked,'' which means that the railroad is relieved of the current obligation to provide service over the line but that the railroad (or any other approved rail service provider) may reassert control over the right-of-way to restore service on the line in the future. *See Birt* v. *STB,* 90 F.3d 580, 583 (D.C. Cir. 1996); *Iowa Power—Const. Exemption—Council Bluffs, Iowa,* 8 I.C.C.2d 858, 866–67 (1990); 49 CFR 1152.29.[3] If a line is railbanked and designated for trail use, any reversionary interests that adjoining landowners might have under state law upon abandonment are not activated. *Preseault,* 494 U.S. at 8; *Birt,* 90 F.3d at 583.

The Trails Act is invoked when a prospective trail sponsor files a request with the Board to railbank a line that a carrier has proposed to abandon. The trail sponsor's request must include a statement of willingness to assume responsibility for management, legal liability, and payment of taxes, and an acknowledgement that interim trail use is subject to restoration of rail service at any time. 49 CFR 1152.29(a). Pursuant to 49 CFR 1152.29(c)(1) and (d)(1), if the railroad indicates its willingness to negotiate a railbanking/interim trail use agreement for the line, the Board will issue a CITU (in an abandonment application proceeding) or a NITU (in an abandonment exemption proceeding) for the line. The CITU/NITU grants parties a 180-day period (which can be extended by Board order) to negotiate a railbanking agreement. 49 CFR 1152.29(c)(1), (d)(1); *Preseault,* 494 U.S. at 7 n.5; *Birt,* 90 F.3d at 583 (affirming the agency's authority to grant ''reasonable'' extensions of the Trails Act negotiating period). *See also Grantwood Vill.* v. *Missouri Pac. R.R.,* 95 F.3d 654, 659 (8th Cir. 1996) (ICC ''was free to extend [the 180-day CITU/NITU] time period for an agreement'').

If parties reach an agreement during the trail use negotiating period, the CITU/NITU automatically authorizes railbanking/interim trail use. *Preseault,* 494 U.S. at 7 n.5. Without further action from the Board,[4] the trail sponsor may assume management of the right-of-way, subject to the right of a railroad to reassert control of the property for restoration or reconstruction of rail service and the terms of the agreement. 49 CFR 1152.29(c)(2), (d)(2); *Birt,* 90 F.3d at 583. If no railbanking/interim trail use agreement is reached by the expiration of the CITU/NITU 180-day negotiation period (and any extension thereof), the CITU/NITU authorizes the railroad to ''exercise its option to fully abandon'' the line by consummating the abandonment, without further action by the agency, 49 CFR 1152.29(c)(1), (d)(1), provided that there are no unmet conditions imposed on the abandonment authority that must be satisfied prior to consummation. *See Consummation of Rail Line Abans. That Are Subject to Historic Pres. & Other Envtl. Conditions,* EP 678, slip op. at 3–4 (STB served Apr. 23, 2008).

The Board retains jurisdiction over a rail line throughout the CITU/NITU negotiating period, any period of railbanking/interim trail use, and any period during which rail service is restored. Only after a CITU/NITU is no longer in effect and the railroad has lawfully consummated its abandonment authority is the Board's jurisdiction terminated. *See* Section 1247(d); *Hayfield N. R.R.* v. *Chi. & N. W. Transp. Co.,* 467 U.S. 622, 633 (1984). At that

[1] As explained below, the issuance of a CITU/NITU by the Board provides time for the parties to negotiate an interim trail use arrangement. NARPO's proposed rules only refer to NITUs, but, presumably, NARPO intended to propose the same changes to CITU procedures as there are no substantive differences between CITUs (issued in an abandonment application proceeding) and NITUs (issued in an abandonment exemption proceeding).

[2] On July 23, 2018, NARPO filed a reply, which was accepted into the record. *Nat'l Ass'n of Reversionary Prop. Owners—Pet. for Rulemaking,* EP 749, slip op. at 1 n.1 (STB served Aug. 14, 2018).

[3] The Board, and its predecessor, the Interstate Commerce Commission (ICC), has promulgated, modified, and clarified its rules to implement the Trails Act a number of times. *See, e.g., Nat'l Trails System Act & R.R. Rights-of-Way,* EP 702 (STB served Apr. 30, 2012); *Aban. & Discontinuance of Rail Lines & Rail Transp. Under 49 U.S.C. 10903,* 1 S.T.B. 894 (1996); *Policy Statement on Rails to Trails Conversions,* EP 272 (Sub-No. 13B) (ICC served Jan. 29, 1990); *Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures,* 4 I.C.C.2d 152 (1987); *Rail Abans.—Use of Rights-of-Way as Trails,* 2 I.C.C.2d 591 (1986).

[4] The trail sponsor and railroad are required to notify the Board that an agreement has been reached, 49 CFR 1152.29(h), but the Board's overall role under the Trails Act is limited. *Citizens Against Rails-to-Trails* v. *STB,* 267 F.3d 1144, 1151–52 (D.C. Cir. 2001); *Goos* v. *ICC,* 911 F.2d 1283, 1295 (8th Cir. 1990) (agency has ''little, if any, discretion to forestall a voluntary agreement to effect a conversion to trail use''). Once the railroad and trail sponsor have reached a trail use agreement, ''the Board's chief concern . . . is that the statutory railbanking conditions not be compromised and that nothing occur that would preclude a railroad's right to reassert control over the right-of-way at some future time to revive active service.'' *Sunflower Rails-Trails Conservancy, Inc.—Pet. for Declaratory Order—Sale of Railbanked Right-of-Way,* FD 36034, slip. op. at 4 (STB served Feb. 23, 2017).

point, the right-of-way may revert to reversionary landowner interests, if any, pursuant to state law. *Preseault,* 494 U.S. at 5, 8.

NARPO's Petition for Rulemaking and Comments Received

Limiting CITU/NITU Extension Requests. In its petition for rulemaking, NARPO proposes that the Board limit the number of 180-day extensions of a trail use negotiating period to six. (NARPO Pet. 2.) NARPO identifies several proceedings in which the Board extended the 180-day trail use negotiating period for what it terms excessive periods of time (*e.g.,* nearly 10 years). (*Id.* at 2–4.) NARPO argues that the Board must impose a reasonable limit on the number of extensions granted for trail use negotiations. (*Id.* at 4.) NARPO contends that its proposed rule calling for a maximum of six 180-day extensions strikes a reasonable balance between the time legitimately required for trail use negotiations, and the abuse of trail use procedures that results from repeated extensions over a lengthy period of time. (*Id.*)

A few commenters support NARPO's proposal to limit the number of extensions granted during the trail use negotiation period. (*E.g.,* Tomani Comments 1; Rood Comments 1.) Other commenters, however, oppose NARPO's proposal. Some argue that NARPO has failed to justify that its proposed rule is needed or to demonstrate how any of its members might be prejudiced by the extensions. (MCMTD Comments 2; City of Seattle Comments 2–3.) Others contend that the ability to extend the trail use negotiating period is critical as delays may be a result of factors not attributable to the trail sponsor (*e.g.,* proceedings involving an Offer of Financial Assistance, delays resulting from compliance with environmental and historic preservation conditions, and carrier negotiations with salvage operators). (RTC Comments 3; City of Seattle Comments 4.) RTC argues that the Board has held that CITU/NITU extensions should be liberally granted because of the ''strong Congressional policy favoring trails use/railbanking.'' (RTC Comments 3.) RTC also asserts that negotiating a railbanking/interim trail use agreement is a complex undertaking, requiring the potential trail sponsor to assume extensive liabilities and long-term financial responsibilities for the management of the corridor. (RTC Comments 3.) Thus, RTC argues that NARPO's proposed limit of six extensions for NITUs would undermine the implementation and effectiveness of the federal railbanking law. (*Id.*) AAR also opposes NARPO's proposal, arguing (along with RTC) that the Board may evaluate NITU extension requests on a case-by-case basis to determine if they are reasonable. (AAR Comments 4, RTC Comments 4.)

Having considered this aspect of NARPO's petition and the comments filed in this docket, the Board concludes that proposing a rule imposing limits on the availability of extensions is reasonable and warranted. The agency has granted CITU/NITU extensions liberally in the past and, at times, Trails Act negotiations have gone on for many years. The courts have noted that extensions ''ad infinitum'' could have the undesirable effect of ''allowing the railroad to stop service without either relinquishing its rights to the easement or putting the right-of-way to productive use.'' *Birt,* 90 F.3d at 589. While the Trails Act process (which depends on a railroad and a trail sponsor negotiating a voluntary agreement) clearly contemplates that sufficient time is needed to determine if a specific rail corridor can be railbanked, the process must also be concluded after a reasonable period of time and provide administrative finality.[5] By allowing a maximum of six 180-day extensions (absent extraordinary circumstances), the Board could appropriately foster the interests of administrative efficiency and clarity by limiting negotiations to a reasonable period while still ensuring that parties also have the time required to take the many steps that may be part of the process involved in negotiating an agreement.

Notice to Landowners. In its petition, NARPO also proposes that the Board require a rail carrier or trail sponsor to ''send notice'' to adjoining landowners following the issuance of a CITU/NITU. (NARPO Pet. 4.) Reasserting an argument raised in several prior proceedings before the Board and the ICC, NARPO argues that effective notice of a CITU/NITU is essential for property owners to adequately protect their interests. (NARPO Pet. 5; NARPO Reply 6–7.)

NARPO argues that it would no longer be unduly burdensome for railroads or trail sponsors to send individual notice to each adjoining landowner because, according to NARPO, practically every county in the United States now has its property records stored electronically. (NARPO Pet. 5.) NARPO concludes that a rail carrier or trail sponsor could easily search county records, or retain a title company to do so, thereby obtaining the information needed to contact adjoining landowners. (*Id.*) Given the supposed ease of identifying and providing individual notice to property owners, NARPO maintains that **Federal Register** notice and local newspaper publication are no longer sufficient. (*Id.*) Commenters that support NARPO's proposal ask the Board to implement the individual notice requirement and assert that such notice to landowners could be accomplished easily. (*E.g.,* STOP Comments 1.)

Several commenters oppose NARPO's proposal, contending that the agency has already considered and rejected similar proposals by NARPO in the past, and that locating all adjacent landowners would be time-consuming, expensive, and burdensome. (RTC Comments 4; INHF Comments 2; City of Seattle Comments 5.) They further point out that NARPO provides no support for its argument that its proposed notice requirement could be ''easily'' accomplished because many jurisdictions maintain computerized land records. (RTC Comments 4; City of Seattle Comments 5; MCMTD Comments 2.) Some commenters also claim that NARPO's proposed rule would be inconsistent with the Board's limited role in administering the Trails Act, and contrary to the purpose of the Trails Act, which is to encourage and facilitate interim trail use of railroad rights-of-way that would otherwise be abandoned. (AAR Comments 2; INHF Comments 2.) Some commenters further argue that the existing notice procedures are sufficient. (AAR Comments 3; MCMTD Comments 2; City of Seattle Comments 6.)

The Board's regulations at 49 CFR 1105.12 require, in every abandonment exemption case, that the rail carrier certify that it has published a notice in a newspaper of general circulation in each county in which the line is located. *See Nat'l Trails Sys. Act & R.R. Rights-of-Way,* EP 702, slip op. at 7 (STB served Feb. 16, 2011); *see also Citizens Ass'n of Georgetown* v. *FAA,* 896 F.3d 425, 435–36 (D.C. Cir. 2018) (holding Federal Aviation Administration satisfied notice obligation through publication in local newspapers). Such a notice of the proposed abandonment provides information about available reuse alternatives, including trail use and public use, and informs the public how it may participate in the Board proceeding. *See* 49 CFR 1105.12. Moreover, **Federal Register** notice is also provided in every abandonment proceeding. 49 CFR 1152.22(i),

[5] The Board is also aware that courts have held that the timing of a CITU/NITU notice and the length of the negotiation period can potentially have impacts on takings claims proceedings. *See Caldwell* v. *United States,* 391 F.3d 1226, 1233 (Fed. Cir. 2004); *Ladd* v. *United States,* 630 F.3d 1015, 1024–26 (Fed. Cir. 2010).

1152.50(d)(3), 1152.60(a). Courts have repeatedly held that publication in the **Federal Register** is legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance. *See Friends of Sierra R.R.* v. *ICC,* 881 F.2d 663, 667–68 (9th Cir. 1989); *Fed. Crop Ins. Corp.* v. *Merrill,* 332 U.S. 380, 384–85 (1947); *Gov't. of Guam* v. *United States,* 744 F.2d 699, 701 (9th Cir. 1984); *Bennett* v. *Dir., Office of Workers' Comp. Programs,* 717 F.2d 1167, 1169 (7th Cir.1983); *N. Ala. Express, Inc.* v. *United States,* 585 F.2d 783, 787 n. 2 (5th Cir. 1978).

The Board and the ICC previously considered similar notice proposals by NARPO. Both the Board and the ICC declined to adopt such a rule, finding that providing direct notice to adjacent landowners would be time-consuming, burdensome, and unnecessary. *Nat'l Ass'n of Reversionary Prop. Owners* v. *STB,* 158 F.3d 135 (D.C. Cir. 1998); *see Nat'l Trails System Act & R.R. Rights-of-Way,* EP 702, slip op. at 7–8 (STB served Feb. 16, 2011; *Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures,* EP 274 (Sub-No. 13) (ICC served July 28, 1994). The Board finds that NARPO has not provided a sufficient basis for altering the existing notice requirements. A requirement that a rail carrier or trail sponsor identify, locate, and notify all adjacent landowners would be time-consuming and burdensome, even if electronic property records for each parcel located adjacent to the railroad right-of-way are available. Such a burdensome process could result in confusion and significant delay in the interim trail use process due to chain-of-title errors, multiple tenants-in-common, or claims by third parties against particular property owners. Further, NARPO does not support its claim that electronic property records are widely available. Therefore, the Board will not further consider this aspect of NARPO's petition.

Filing Fees for CITU/NITU Extension Requests. NARPO requests that the Board require public entities to pay filing fees for CITU/NITU extensions, as is currently required for non-public entities. (NARPO Pet. 5.) According to NARPO, non-payment of filing fees for CITU/NITU extensions requested by public entities burdens both the Board and non-public entities. (*Id.*) NARPO claims that extensive waivers of filing fees unduly burden Board staff because staff incurs the same labor cost for an extension request filed by a public entity as it would for a non-public entity. (*Id.* at 6.) NARPO also argues that non-public entities are burdened because their filing fees are higher than they would otherwise be to account for the numerous waivers granted for public entities. (*Id.*)

While some commenters support NARPO's proposal to require public entities to submit filing fees for NITU extensions (*e.g.,* Tomani Comments 1; Rood Comments 1), others oppose it. Generally, those opposing commenters contend that, pursuant to 49 CFR 1002.2(e)(1), no other filings submitted to the Board by federal, state, or local entities require fees, and that a NITU extension should be no different. (AAR Comments 4; City of Seattle Comments 7; INHF Comments 2.) The City of Seattle and MCMTD also contend that there is no evidence that the Board raises the price for fee payers due to fee exemptions granted to government entities. (City of Seattle Comments 7; MCMTD Comments 3.) RTC further argues that NARPO has failed to articulate why requiring public agencies to pay fees would in any way protect legitimate interests of adjacent landowners or reversionary interest holders. (RTC Comments 5.) AAR submits similar comments in opposition to NARPO's proposal and states that the Board need not address NARPO's request in a rulemaking as the Board can evaluate each request for a fee waiver on its own merit. (AAR Comments 4–5.) AAR also notes that the Board has concluded that third parties have no standing to challenge the grant or denial of a party's fee waiver request because it has no bearing on the merits of that party's claims and that there is no private right of action to enforce the Independent Offices Appropriations Act, 31 U.S.C. 9701, which regulates fees collected by government agencies. *See Hartwell First United Methodist Church—Adverse Aban. & Discontinuance—The Great Walton R.R., in Hart Cty., Ga.,* AB 1242 (STB served June 2, 2017) (citing *Byers* v. *Intuit, Inc.,* 564 F. Supp. 2d 385, 414–19 (E.D. Pa. 2008).

The Board finds NARPO's proposal lacks merit. The Board's rules are clear that filing fees are waived for *any* ''application or other proceeding''—including a CITU/NITU extension request—that is filed by a federal government agency, or a state or local government entity. 49 CFR 1002.2(e)(1). NARPO has failed to explain why an exception from this rule of general applicability should be made only in the CITU/NITU context. The Board evaluates each fee waiver request on its own merits and waivers do not affect the level of fees charged to other entities. *See Regulations Governing Fees for Servs. Performed in Connection with Licensing & Related Servs.,* 1 I.C.C.2d 60, 64 (1986) (''An agency may impose a reasonable charge on recipients for an amount of work from which they benefit. The fees must be for specific services to specific persons.'').[6] Therefore, the Board will not further consider this aspect of NARPO's petition.

Proposed Rules

For the reasons discussed above, and as set forth below, the Board proposes to limit the number of 180-day extensions of a trail use negotiating period to six, unless the requesting party can demonstrate that extraordinary circumstances justify the grant of a further extension. The Board seeks comments concerning whether capping extensions at a maximum of six, with a very limited opportunity for an additional extension in extraordinary circumstances, strikes an appropriate balance between reasonably limiting the negotiating period and permitting parties enough time to finalize their negotiations.

The Board proposes to make the new rules applicable to both new CITUs/NITUs and cases where the CITU/NITU negotiating period, or any extension thereof, has not yet expired when the rules become effective. For cases where a CITU/NITU has been issued or extended prior to the effective date of the rules—and the CITU/NITU negotiating period, or any extension, has not yet expired—parties (absent a showing of extraordinary circumstances) would be limited to a maximum of six 180-day extensions following the expiration of the initial 180-day negotiation period. For example, in a Trails Act case where two 180-day extensions have already been granted, parties would be limited to requesting a maximum of four more 180-day extensions, absent extraordinary circumstances. In such Trails Act proceedings (including those where extensions might have already have exceeded the maximum limit of six), the Board may more liberally provide additional extensions for extraordinary circumstances.[7] Interested

[6] Courts have recognized that there is no private right of action to enforce the Independent Offices Appropriations Act, 31 U.S.C. 9701, which regulates fees collected by government agencies. *See Hartwell,* AB 1242, slip op. at 1–2 (citing *Byers,* 564 F. Supp. 2d at 414–19). Moreover, the Board has held that third parties have no standing to oppose the grant or denial of a party's fee waiver request, as the fee waiver has no bearing on the merits of the party's underlying application. *Id.* at 2.

[7] Although the proposed rule would apply to new extension requests in proceedings where a current

Continued

persons may comment on the proposed rule by November 1, 2018; replies to comments may be filed by November 21, 2018.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. Sections 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, section 603(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities,'' section 605(b). Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

The Board's proposed changes to its regulations here are intended to improve and expedite its trail use procedures and do not mandate or circumscribe the conduct of small entities. Effective June 30, 2016, for the purpose of RFA analysis for rail carriers subject to our jurisdiction, the Board defines a ''small business'' as only including those rail carriers classified as Class III rail carriers under 49 CFR 1201.1–1. *See Small Entity Size Standards Under the Regulatory Flexibility Act,* EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting).[8] The changes proposed here are largely procedural and would not have a significant economic impact on the Class III rail carriers to which the RFA applies, as participation in a negotiation under the Trails Act is voluntary for both the railroad and the trail sponsor. Therefore, the Board certifies under 5 U.S.C. 605(b) that these proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. The proposed rules, if promulgated, would limit the number of 180-day extensions of a trail use negotiating period to six extensions, absent extraordinary circumstances.

This decision will be served upon the Chief Counsel for Advocacy, Offices of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

It is ordered:

1. The Board proposes to amend its rules as set forth in this decision. Notice of the proposed rules will be published in the **Federal Register**.

2. The procedural schedule is established as follows: Comments regarding the proposed rules are due by November 1, 2018; replies are due by November 21, 2018.

3. The Board terminates the proceeding in Docket No. EP 749.

4. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

5. This decision is effective on its service date.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts.

Decided: October 1, 2018.

By the Board, Board Members Begeman and Miller.

Jeffrey Herzig,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1152 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

■ 1. The authority citation for Part 1152 continues to read as follows:

Authority: 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; 45 U.S.C. 744; and 49 U.S.C. 1301, 1321(a), 10502, 10903–10905, and 11161.

■ 2. Amend § 1152.29 as follows:

■ a. Add the following sentences to the end of paragraph (c)(1): ''Parties may request a Board order to extend the 180-day interim trail use negotiation period. A maximum of six 180-day extensions may be granted. Requests for additional extensions beyond six are not favored and will be granted only if the requestors demonstrate that extraordinary circumstances warrant a further extension.''

■ b. Add the following sentences to the end of (d)(1): ''Parties may request a Board order to extend the 180-day interim trail use negotiation period. A maximum of six 180-day extensions may be granted. Requests for additional extensions beyond six are not favored and will be granted only if the requestors demonstrate that extraordinary circumstances warrant a further extension.''

[FR Doc. 2018–21760 Filed 10–4–18; 8:45 am]

BILLING CODE 4915–01–P

NITU may be expiring, there would be no retroactivity concern because parties have no vested right to a newly requested extension of the negotiating period. *See Empresa Cubana Exportadora de Alimentos y Productos Varios* v. *U.S. Dept. of Treasury,* 638 F.3d 794, 798–800 (D.C. Cir. 2011). Each extension request is considered on its own merits.

[8] Class III carriers have annual operating revenues of $20 million or less in 1991 dollars or $37,108,875 or less when adjusted for inflation using 2017 data. Class II rail carriers have annual operating revenues of less than $250 million or $463,860,933 when adjusted for inflation using 2017 data. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its website. 49 CFR 1201.1–1.

Notices

Federal Register
Vol. 83, No. 194
Friday, October 5, 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

Forest Service

Idaho (Boise, Caribou-Targhee, Salmon-Challis, and Sawtooth National Forests and Curlew National Grassland); Nevada (Humboldt-Toiyabe National Forest); Utah (Ashley, Dixie, Fishlake, Manti-La Sal, and Uinta-Wasatch-Cache National Forests); Wyoming (Bridger-Teton National Forest); and Wyoming/Colorado (Medicine Bow-Routt National Forest and Thunder Basin National Grassland) Amendments to Land Management Plans for Greater Sage-Grouse Conservation

AGENCY: Forest Service, USDA.

ACTION: Notice of Availability of the Draft Greater Sage-grouse Proposed Land Management Plan Amendments and Draft Environmental Impact Statement for the Intermountain and Rocky Mountain Regions.

SUMMARY: The U.S. Department of Agriculture, Forest Service has prepared the Draft Greater Sage-grouse Proposed Land Management Plan Amendments (LMPA) and Draft Environmental Impact Statement (EIS) for the Intermountain and Rocky Mountain Regions. This notice is announcing the opening of the comment period and the Forest Service is soliciting comments on the Draft LMPA and Draft EIS.

DATES: To ensure that comments will be considered, the Forest Service must receive written comments on the Draft LMPA/Draft EIS within 90 days following the date the Environmental Protection Agency publishes a notice of availability of the Draft LMPA/Draft EIS in the **Federal Register**. The Forest Service will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: Please submit comments via one of the following methods:

1. *Public participation portal (preferred): https://cara.ecosystem-management.org/Public/CommentInput?project=52904.*
2. *Mail:* Sage-grouse Amendment Comment, USDA Forest Service Intermountain Region, Federal Building, 324 25th Street, Ogden, UT 84401.
3. *Email: comments-intermtn-regional-office@fs.fed.us.*
4. *Facsimile:* 801–625–5277.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received online via the public reading room at: *https://cara.ecosystem-management.org/Public/ReadingRoom?project=52904.*

FOR FURTHER INFORMATION CONTACT: John Shivik at 801–625–5667 or email *johnashivik@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 Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Greater sage-grouse (*Centrocercus urophasianus*) is a species that is dependent on sagebrush steppe ecosystems. These ecosystems are managed in partnership across the range of the greater sage-grouse by federal, state, and local authorities and private landowners. Efforts to conserve the species and its habitat date back to the 1950s. Over the past two decades, state wildlife agencies, federal agencies, and many others have been collaborating to conserve greater sage-grouse and its habitats.

The National Forest Management Act of 1976 (NFMA) directs the Forest Service to develop, maintain, and, as appropriate, revise land management plans which guide management of National Forest System (NFS) lands (16 U.S.C. 1604(a)). In March 2010, the United States Department of the Interior Fish and Wildlife Service (USFWS) issued a 12 Month Finding for Petitions to List the greater sage-grouse as Threatened or Endangered (75 FR 13910). In that 12-Month Finding, the USFWS concluded that listing the greater sage-grouse as a threatened or endangered species was ''warranted, but precluded by higher priority listing actions.'' The 2010 USFWS listing decision prompted a Forest Service and Bureau of Land Management (BLM) joint planning effort to amend Forest Service land management plans and BLM equivalents to incorporate conservation measures to support the continued existence of the greater sage-grouse. For the Forest Service, this effort culminated in the Forest Service Greater Sage-grouse Records of Decisions (RODs) that were signed on September 16, 2015.

On October 2, 2015, the USFWS found that listing the greater sage-grouse under the Endangered Species Act was not warranted (80 FR 59858). The USFWS based its finding on regulatory certainty from the conservation measures in the Forest Service and BLM greater sage-grouse land management plan amendments and revisions, as well as on other private, state, and federal conservation efforts.

The plan amendments have been challenged in court. One challenge involved the designation of sagebrush focal areas between the Draft and Final EISs. On March 31, 2017, the United States District Court for the District of Nevada held that the Forest Service violated the National Environmental Policy Act (NEPA) by failing to provide the public with enough information to meaningfully participate in the EIS process in the Nevada and Northeastern California Greater Sage-grouse Land Management Plan Amendment. The court ordered the Forest Service to prepare a Supplemental EIS to allow the public the opportunity to comment on the designation of sagebrush focal areas in the amendments. *Western Exploration, LLC* v. *U.S. Dept. of Interior,* 250 F. Supp.3d 718, 750–751.

Since approving the plan amendments in 2015, the Forest Service has gathered information and determined that the conservation benefits of Forest Service plans in Nevada and other states can be improved. That is, through repeated scoping, close collaboration with state and other federal agencies, and internal review, the Forest Service has identified proposed changes in the text of the greater sage-grouse plan amendments which would improve their clarity and efficiency and better align them with the Bureau of Land Management and state plans.

The substantive requirements of the 2012 Planning Rule (36 CFR 219) that are applicable to the amendments are in sections 219.8(a) and (b) (ecological and social and economic sustainability), 219.9 (diversity of plant and animal communities), and 219.10(a) (integrated resource management for ecosystem services and multiple use) have been incorporated into the proposed amendment.

Purpose and Need for Action

The purpose of the proposed action is to incorporate new information and to improve the clarity, efficiency, and implementation of greater sage-grouse plans, including better alignment with BLM and state plans, in order to benefit greater sage-grouse conservation on the landscape scale. The need for further plan amendments is that the Forest Service has gained new information and understanding from new science, as well as having received approximately 55,000 comments from the 2017 Notice of Intent, approximately 8,700 comments from the 2018 Supplemental NOI, and comments from within-agency scoping and monitoring and from coordinating with the Western Governors' Association Sage Grouse Task Force.

Proposed Action and Alternatives

The Forest Service analyzed three alternatives. Under Alternative 1, the No Action Alternative, the Forest Service would not amend current land management plans. This alternative retains sagebrush focal areas and all other aspects of the plans. Alternative 2, the Preferred Alternative, is the proposed action and makes modifications to the No Action Alternative. Specifically, the Preferred Alternative makes modifications to land management plans within the issue areas of: Habitat management area designation, including designating sagebrush focal areas as Priority Habitat Management Areas compensatory mitigation and net conservation gain; minerals plan components and waivers; exceptions and modifications; desired conditions; livestock grazing guidelines; adaptive management; treatment of invasive species; and changes to clarify text and eliminate errors and redundancies. Alternative 3, the State of Utah Alternative, incorporates all aspects of Alternative 2, with the addition of two additional modifications to plans within the state of Utah. Specifically, the Forest Service would remove the General Habitat Management Areas (GHMA) designation from Forest Service lands in Utah and would also remove the Anthro Mountain management area from habitat management area designation on the Ashley National Forest.

The Draft EIS analyzes the reasonably foreseeable effects of these changes. The entire text of the Draft EIS can be found on the Intermountain Region home page: *https://www.fs.usda.gov/detail/r4/home/?cid=stelprd3843381.*

Responsible Officials

The responsible officials who would approve plan amendments are the Regional Foresters for the Intermountain and Rocky Mountain Regions.

Public Comment Opportunity

The public is encouraged to comment on the Draft EIS and proposed plan amendments. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

Dated: September 6, 2018.

Allen Rowley,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2018–21619 Filed 10–4–18; 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 Telephonic Business Meeting.

DATES: Friday, October 12, 2018, at 10:00 a.m. EST.

ADDRESSES: Meeting to take place by telephone.

FOR FURTHER INFORMATION CONTACT: Brian Walch, phone: (202) 376–8371; TTY: (202) 376–8116; email: *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public by telephone only.

Participant access instructions: Listen-only, toll-free: 1–800–682–0995; Conference ID 911–9595. Please dial in 5–10 minutes prior to the start time.

Meeting Agenda

I. Approval of Agenda

II. Business Meeting

A. Presentation by Louisiana Advisory Committee Chair on the Committee's recently released report, *Barriers to Voting in Louisiana*

B. Presentation by New Mexico Advisory Committee Chair on the Committee's recently released report, *Elder Abuse in New Mexico*

C. Presentation by Colorado Advisory Committee Member on the Committee's recently released report, *Colorado Constitution's No Aid to Sectarian Institutions Clause and its Impact on Civil Rights*

D. Management and Operations

- Staff Director's Report

III. Adjourn Meeting

Dated: October 3, 2018.

Brian Walch,

Director, Communications and Public Engagement.

[FR Doc. 2018–21910 Filed 10–3–18; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: U.S. Census Bureau.

Title: 2020 Census New Construction Program.

OMB Control Number: 0607–XXXX.

Form Number(s): NC–F–100.

Type of request: Regular submission.

Number of respondents: varies.

Estimated number of respondents invited to the program: 32,000.

Estimated number of respondents who review the materials: 6,550.

Average Hours per Response: Varies.

Program invitation: 1 hour.

Participant material review: 47 hours.

Burden hours: Varies.

Program invitation: 32,000 hours.

Participant material review: 307,850 hours.

Stage of review	Estimated number of respondents	Estimated time per response (hours)	Total estimated hour burden
Program Invitation	32,000	1	32,000
Participant Material Review	6,550	47	307,850
Total			339,850

Needs and Uses: The 2020 Census New Construction Program is one of the seven voluntary geographic partnership programs that collect geographic boundaries and residential addresses to update the U.S. Census Bureau's Master Address File/Topologically Integrated Geographic Encoding and Referencing database. In order to deliver questionnaires, locate residences, and tabulate statistics by localities, the Census Bureau must have accurate addresses and boundaries. The Census Bureau also uses its geographic database to link demographic data from surveys and the decennial census to locations and areas, such as cities, congressional and legislative districts, and counties.

The census block is the geographic building block for all Census Bureau geographic boundaries. Geographic programs such as the Redistricting Data Program update the boundaries of census blocks. The addresses collected in the 2020 Local Update of Census Addresses Operation (LUCA), the New Construction Program, and other geocoding processes place households in a specific census block.

While the geographic programs differ in requirements, time frame, and participants, the New Construction Program and the other geographic programs all follow the same basic process:

1. The Census Bureau invites eligible participants to the program.

2. If they elect to participate in the program, participants receive program materials, in this case, respondent guides, address templates, spatial data in PDF or shapefile format, and/or free customized mapping software.

3. Participants review the materials and submit their addresses in the Census Bureau's predefined format.

4. The Census Bureau updates its address list with updates from participants.

5. The Census Bureau uses its address list to conduct the 2020 Census and tabulate statistics.

The purpose of the New Construction Program is to account for new housing units, group quarters (GQs), and transitory locations for which construction is in progress during or after March 1, 2018 [1] and completion is expected by Census Day, April 1, 2020. The Census Bureau collects city-style addresses for the newly built housing units, GQs, and transitory locations in blocks where the Census Bureau plans to mail the 2020 Census questionnaires and households are expected to use a self-response mode to complete the census.

The Census Bureau conducts LUCA and the New Construction Program as successive partnership operations to assure the completeness and accuracy of the Census Bureau's address list. These operations allow participating governments the opportunity to provide input to improve the Census Bureau's address list and to ensure accurate and complete enumeration of their communities.

LUCA and the New Construction Program are complementary, however, there is no dependency on either program for participation in the other.

- LUCA participants who agree to receive the address list for their jurisdiction receive Title 13 protected materials. Participants review the address list and submit their validated or revised address list to the Census Bureau between spring and summer 2018.
- The Census Bureau processes and validates the LUCA updates using a combination of independent address sources, such as the United States Postal Service's list of delivery addresses or the 2020 Census Address Canvassing operation. Upon completion of the LUCA address validations by April of 2019, the Census Bureau provides address-level feedback to partners, allowing them to appeal any determination made by the Census Bureau to the Office of Management and Budget (OMB) LUCA Appeals Office.
- In April 2019, the Census Bureau invites tribal, state, and local governments to designate a New Construction liaison to participate in the program. The Census Bureau will publish the list of eligible governments on the New Construction Program website by fall 2018. Eligible governments have addresses in areas of the country where the Census Bureau plans for a self-response enumeration strategy. The addresses in these areas are primarily city-style and mailable formats. The Census Bureau confines the scope of the New Construction Program to the submission of addresses for newly constructed living quarters that began or will begin construction in the year leading up to the census. Between September and October 2019,[2] tribal, state, and local governments identify addresses for housing units, GQs, and transitory locations for which construction is in progress during or after March 1, 2018 and that are expected to be closed to the elements (final roof, windows, and doors) and therefore potentially inhabitable by Census Day, April 1, 2020. No other updates, including streets or boundaries, will be accepted.

Through the New Construction Program, the Census Bureau improves the accuracy and completeness of the address list used to conduct the 2020 Census by utilizing the local knowledge of tribal, state, and local governments. The Census Address List Improvement Act of 1994 (Pub. L. 103–430) strengthened the Census Bureau's partnership capabilities with participating governments by expanding the methods the Census Bureau uses to collect address information from participants.

The New Construction Program does not provide Title 13 protected addresses to participants, however, when participants submit address data for new housing to be included in the 2020 Census, the Census Bureau will protect the submitted data under Title 13, U.S.C. Section 9, which provides for the confidential treatment of census-related information, including individual address and structure coordinates. Participation in the New Construction Program is voluntary.

The New Construction Program includes four phases:

1. New Construction Program Invitation Phase.

[1] In response to a public comment on the 60-Day **Federal Register** Notice (FRN), the Census Bureau will accept new addresses from respondents from March 1, 2018 instead of March 2019.

[2] The Census Bureau updates the New Construction schedule in the 30-Day FRN. In the previously published 60-Day FRN, participants were expected to complete this stage between June and August 2019.

2. New Construction Program Participant Review Materials.

3. New Construction Program Address Updates.

4. Closeout.

New Construction Program Invitation Phase

The Census Bureau will mail the New Construction Program invitation letter and registration form in April 2019 to approximately 32,000 eligible participants that include federally recognized American Indian tribal governments with reservations and/or off-reservation trust lands, states, and local governments. Based on the 2010 Census New Construction Program, the Census Bureau estimates 6,550 out of the 32,000 invited governments will participate. To participate, interested governments must designate a New Construction liaison and respond to the invitation package by completing and returning the registration form to the Census Bureau by July 19, 2019. Participants must also identify the format of the maps or spatial data that they wish to receive from the Census Bureau.

The Census Bureau collects the registration form from the government that wants to participate in the program and/or the reasons for non participation from those who cannot participate. Additionally, the Census Bureau collects the contact information of the official responding to the New Construction invitation and the person designated as the liaison. To prepare and submit their list of addresses, the New Construction Program liaisons can opt to receive:

- The Geographic Update Partnership Software (GUPS) and/or Census Bureau spatial data (downloadable or on CD/DVD).
- Reference PDF maps on CD/DVD.

Participants may also use their own software to create a computer-readable list of addresses in the prescribed format. Participants use the Census Bureau provided maps or spatial data as a reference for assigning census tract and block codes (geocodes) for each submitted address. The estimated time burden for the invitation stage is one hour per participant.

New Construction Program Participant Review Materials

In September 2019, the Census Bureau will deliver review materials to registered governments. New Construction liaisons will receive the materials in the format that they selected on the registration form. Participating governments are required to submit full address data for qualifying structures, including individual unit numbers for multiunit structures (*e.g.,* Apt. 1, Apt. 2, Unit 1, and Unit 2), and geographic information such as the census tract and block numbers, or geographic coordinates.

The typical New Construction Program Participant Review Materials package contains the following:

- Cover Letter.
- Address List Template.
- GUPS Quick Start Guide.
- Digital Quick Start Guide.
- GUPS Digital Respondent Guide.
- Digital Respondent Guide.
- Read-me.txt file for GUPS.
- Read-me.txt file for Digital.
- Partnership Shapefiles.

Participants must submit their New Construction Program address list to the Census Bureau within 45 calendar days of receipt of the New Construction Program review materials. The New Construction Program addresses must be returned in the Census Bureau's predefined format, and each address must be geocoded or assigned to the census tract and block in which it is located as shown on the New Construction Program PDF or digital (shapefile) maps. This stage occurs in September 2019. The average estimated time burden to review, add, and submit the New Construction Program address list to the Census Bureau is 47 hours per participant.

New Construction Program Address Updates

From September through November 2019, the Census Bureau processes all files received from participants. Files that are submitted in the proper format and contain addresses with complete geocoding data are compared with the Census Bureau's census address list, extracted from the Master Address File. The Census Bureau verifies whether the addresses received were already in the Master Address File and mails decennial census forms to any participant-supplied addresses that were not in the census address list. The census enumeration process determines the final housing unit status and population for each unit.

Closeout

The Census Bureau provides a closeout email to governments that registered to participate and provided updates. Participating governments will not receive detailed feedback from the Census Bureau. In addition, the Census Bureau sends a thank you email or letter to governments that provided updates after the deadline. This documentation notifies them of the receipt of their submission but also informs the governments that the Census Bureau cannot use the submission for the New Construction Program. Closeout occurs between December 2019 and January 2020.

Affected Public: Tribal, state, and local governments.

Frequency: Once a decade.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, U.S.C., Section 141(a).

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

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

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–21698 Filed 10–4–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request; Chemical Weapons Convention Provisions of the Export Administration Regulations

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

Agency: Bureau of Industry and Security.

Title: Chemical Weapons Convention Provisions of the Export Administration Regulations.

Form Number(s): N/A.

OMB Control Number: 0694–0117.

Type of Review: Regular submission.

Estimated Total Annual Burden Hours: 42.

Estimated Number of Respondents: 70.

Estimated Time per Response: 36 Minutes.

Needs and Uses: The Chemical Weapons Convention (CWC) is a multilateral arms control treaty that seeks to achieve an international ban on chemical weapons (CW). The CWC prohibits, the use, development, production, acquisition, stockpiling, retention, and direct or indirect transfer of chemical weapons. This collection implements the following export provision of the treaty in the Export Administration Regulations:

Schedule 1 notification and report: Under Part VI of the CWC Verification Annex, the United States is required to notify the Organization for the Prohibition of Chemical Weapons (OPCW), the international organization created to implement the CWC, at least 30 days before any transfer (export/import) of Schedule 1 chemicals to another State Party. The United States is also required to submit annual reports to the OPCW on all transfers of Schedule 1 Chemicals.

Schedule 3 End-Use Certificates: Under Part VIII of the CWC Verification Annex, the United States is required to obtain End-Use Certificates for exports of Schedule 3 chemicals to States that are not Party to the CWC to ensure the exported chemicals are only used for the purposes not prohibited under the Convention.

Affected Public: Business or other for-profit organizations.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

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

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov*.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–21696 Filed 10–4–18; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: U.S. Census Bureau.

Title: Annual Capital Expenditures Survey.

OMB Control Number: 0607–0782.

Form Number(s): ACE–1(S), ACE–1(M), ACE–1(L), ACE–2.

Type of Request: Revision of a currently approved collection.

Number of Respondents: 70,127.

Average Hours per Response: 2 hours and 16 minutes.

Burden Hours: 159,134.

Needs and Uses: The U.S. Census Bureau plans to conduct the 2018 through 2020 Annual Capital Expenditures Survey (ACES). This survey collects data on fixed assets and depreciation, sales and receipts, capitalized computer software, and capital expenditures for new and used structures and equipment. The ACES is the sole source of detailed comprehensive statistics on actual business spending for private non-farm companies, organizations, and associations operating in the United States. Both employer and nonemployer companies are included in the survey.

The Bureau of Economic Analysis is the primary Federal user of ACES data. BEA relies on ACES data to refine and evaluate annual estimates of investment in structures and equipment in the national income and product accounts, compile annual input-output tables, and compute gross domestic product by industry. The Federal Reserve Board uses these data to improve estimates of investment indicators for monetary policy. The Bureau of Labor Statistics uses these data to improve estimates of capital stocks for productivity analysis. The Centers for Medicare and Medicaid Services use these data for developing estimates of investment in private health care structures and equipment as a part of the National Health Expenditure Accounts. Industry analysts use these data for market analysis, economic forecasting, identifying business opportunities, product development, and business planning.

Planned changes from the previous ACES are the elimination of detailed capital expenditures by type of structure and type of equipment. These data are collected in years ending in -2 and -7, concurrently with the Economic Census. They are not in scope of this notice, which covers ACES data collection for 2018 through 2020.

The Census Bureau also plans to add questions on the dollar value of new and used robotics expenditures beginning with the 2018 survey. These questions will gauge prevalence of robotics use by detail North American Industry Classification System (NAICS) industries.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 131 and 182.

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

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

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–21697 Filed 10–4–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–61–2018]

Foreign-Trade Zone 29—Louisville, Kentucky; Application for Subzone, United Parcel Service, Inc., Louisville, Kentucky

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Louisville and Jefferson County Riverport Authority, grantee of FTZ 29, requesting subzone status for the facility of United Parcel Service, Inc (UPS), located in Louisville, Kentucky. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on October 1, 2018.

The proposed subzone (176 acres) is located at 8100 Air Commerce Drive, Louisville. No authorization for production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is November 14, 2018. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 29, 2018.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: October 1, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–21724 Filed 10–4–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Procedures for Submitting Rebuttals and Surrebuttals Requests for Exclusions From and Objections to the Section 232 National Security Adjustments of Imports of Steel and Aluminum

AGENCY: Bureau of Industry and Security. U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before December 4, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, 1401 Constitution Avenue NW, Room 6616, Washington, DC 20230 (or via the internet at *docpra@doc.gov.*)

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS ICB Liaison, (202) 482–8093 or at *mark.crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

On September 11, 2018, Bureau of Industry and Security (BIS) published a second interim final rule, *Revisions to the Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel into the United States and Adjusting Imports of Aluminum into the United States; and the filing of Objections to Submitted Exclusion Requests for Steel and Aluminum.* This second interim final rule that was published by BIS, on behalf of the Secretary, made changes to the two supplements added in the March 19 rule: Supplement No. 1 to Part 705—Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamation 9705 of March 8, 2018 Adjusting Imports of Steel Articles into the United States; and to Supplement No. 2 to Part 705—Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamation 9704 of March 8, 2018 to Adjusting Imports of Aluminum into the United States.

This collection of information gives U.S. Companies the opportunity to submit rebuttals to objections received on posted exclusion requests and also allows U.S. companies the opportunity to submit surrebuttals for objections they submitted that receive rebuttals under the Section 232 exclusion process.

Adding a rebuttal and surrebuttal process is an important step in further improving the exclusion request and objection process for requesting exclusions from the remedies instituted by the President. These voluntary rebuttals and surrebuttals will allow the U.S. Government to better evaluate whether an exclusion request should be granted based on the information provided in an exclusion request and taking into account any objections to a submitted exclusion request, rebuttals, and surrebuttals. Many commenters on the March 19 rule, referenced above, requested the Department make this type of a change to ensure that the process was fair and the Department had all of the relevant information when an objection to an exclusion request received a rebuttal or a surrebuttal was received.

II. Method of Collection

Submitted Electronically.

III. Data

OMB Control Number: 0694–0141.

Form Number(s): 0694–0141.

Type of Review: Regular Submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 62,823.

Estimated Total Annual Burden Hours: 62,823.

Estimated Time per Response: 1 hour.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Section 232 of the Trade Expansion Act of 1962, Presidential Proclamations 9704 and 9705.

This information collection request may be viewed on the U.S. Department of Commerce website and the Department's responses to clause to exclusion requests at reginfo.gov *http://www.reginfo.gov/public/.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–21695 Filed 10–4–18; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–878]

Stainless Steel Flanges From India: Countervailing Duty Order

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

SUMMARY: Based on the affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing a countervailing duty order (CVD) on stainless steel flanges from India.

DATES: Applicable October 5, 2018.

FOR FURTHER INFORMATION CONTACT: Ryan Mullen or Chelsey Simonovich, 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) 482–5260 or (202) 482–1979, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 705(d) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on August 16, 2018, Commerce published its affirmative final determination that countervailable subsidies are being provided to producers and exporters of stainless steel flanges from India.[1]

On September 28, 2018, the ITC notified Commerce of its final affirmative determination, pursuant to section 705(d) of the Act, that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act, by reason of subsidized imports of subject merchandise from India.[2] Further, the ITC determined that critical circumstances do not exist with respect to imports of stainless steel flanges from India.

Scope of the Order

The product covered by this order is stainless steel flanges from India. For a complete description of the scope of this order, *see* the Appendix to this notice.

Countervailing Duty Order

As stated above, on September 28, 2018, in accordance with sections 705(b)(1)A(i) and 705(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that an industry in the United States is materially injured by reason of imports of stainless steel flanges from India.[3] Therefore, in accordance with section 705(c)(2) of the Act, Commerce is issuing this countervailing duty order. Because the ITC determined that imports of stainless steel flanges from India are materially injuring a U.S. industry, unliquidated entries of such merchandise from India, entered or withdrawn from warehouse for consumption, are subject to assessment of countervailing duties.

Therefore, in accordance with section 706(a) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, countervailing duties for all relevant entries of stainless steel flanges from India. Countervailing duties will be assessed on unliquidated entries of stainless steel flanges from India entered, or withdrawn from warehouse for consumption on or after January 23, 2018, the date of publication of the *Preliminary Determination*.[4]

Continuation of Suspension of Liquidation

In accordance with section 706 of the Act, Commerce will instruct CBP to suspend liquidation on all relevant entries of stainless steel flanges from India, as further described below. These instructions suspending liquidation will remain in effect until further notice. Commerce will also instruct CBP to require cash deposits equal to the amounts as indicated below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the subsidy rates listed below.[5] The all-others rate applies to all producers or exporters not specifically listed below, as appropriate.

Company	Subsidy rate (percent)
Bebitz Flanges Works Private Limited ..	256.16
Echjay Forgings Private Limited	4.92
All Others	4.92

Provisional Measures

Section 703(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months. In the underlying investigations, Commerce published the *Preliminary Determination* on January 23, 2018. As such, the four-month period beginning on the date of publication of the *Preliminary Determination* ended on May 22, 2018. Furthermore, section 707(b) of the Act states that definitive duties are to begin on the date of the publication of the ITC's final injury determination.

Therefore, in accordance with section 703(d) of the Act and our practice, we instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of stainless steel flanges from India entered, or withdrawn from warehouse, for consumption, on or after May 22, 2018, the date the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Critical Circumstances

With regard to the ITC's negative critical circumstances determination on imports of stainless steel flanges from India, we will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated countervailing duties with respect to entries of the subject merchandise ordered, or withdrawn from warehouse, for consumption on or after October 25, 2017 (*i.e.,* 90 days prior to the date of the publication of the *Preliminary Determination*), but before January 23, 2018 (*i.e.,* the date of publication of the *Preliminary Determination*).

Notification to Interested Parties

This notice constitutes the countervailing duty order with respect to stainless steel flanges from India pursuant to section 706(a) of the Act. Interested parties can find a list of countervailing duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: October 1, 2018.

Gary Taverman,

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

Appendix

Scope of the Order

The products covered by this order are certain forged stainless steel flanges, whether unfinished, semi-finished, or finished (certain forged stainless steel flanges). Certain forged stainless steel flanges are generally manufactured to, but not limited to, the material specification of ASTM/ASME A/SA182 or comparable domestic or foreign specifications. Certain forged stainless steel

[1] *See Stainless Steel Flanges from India: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances,* 83 FR 40748 (August 16, 2018) (*Final Determination*) and the accompanying Issues and Decision Memorandum.

[2] *See* Letter to Gary Taverman, Acting Assistant Secretary of Commerce for Enforcement and Compliance, from David S. Johanson, Chairman of the U.S. International Trade Commission, regarding Stainless Steel Flanges from India (September 28, 2018) (ITC Letter).

[3] *See* ITC Letter.

[4] *See Countervailing Duty Investigation of Stainless Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative and Alignment of Final Determination with Final Antidumping Duty Determination,* 83 CFR 3118 (January 23, 2018) (*Preliminary Determination*) and the accompanying Preliminary Decision Memorandum. However, as described further below, countervailing duties will not be assessed on merchandise entered, or withdrawn for consumption, during the period of time between the expiration of provisional measures and the publication of the ITC's final injury determination in the **Federal Register**.

[5] *See* section 706(a)(3) of the Act.

flanges are made in various grades such as, but not limited to, 304, 304L, 316, and 316L (or combinations thereof). The term ''stainless steel'' used in this scope refers to an alloy steel containing, by actual weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Unfinished stainless steel flanges possess the approximate shape of finished stainless steel flanges and have not yet been machined to final specification after the initial forging or like operations. These machining processes may include, but are not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing. Semi-finished stainless steel flanges are unfinished stainless steel flanges that have undergone some machining processes. The scope includes six general types of flanges. They are: (1) Weld neck, generally used in butt-weld line connection; (2) threaded, generally used for threaded line connections; (3) slip-on, generally used to slide over pipe; (4) lap joint, generally used with stub-ends/butt-weld line connections; (5) socket weld, generally used to fit pipe into a machine recession; and (6) blind, generally used to seal off a line. The sizes and descriptions of the flanges within the scope include all pressure classes of ASME B16.5 and range from one-half inch to twenty-four inches nominal pipe size. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A351.

The country of origin for certain forged stainless steel flanges, whether unfinished, semi-finished, or finished is the country where the flange was forged. Subject merchandise includes stainless steel flanges as defined above that have been further processed in a third country. The processing includes, but is not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing, and/or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the stainless steel flanges.

Merchandise subject to the order is typically imported under headings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTS). While HTS subheadings and ASTM specifications are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2018–21732 Filed 10–4–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–908]

Sodium Hexametaphosphate From the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order

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

SUMMARY: As a result of this sunset review, the Department of Commerce (Commerce) finds that revocation of the antidumping duty order on sodium hexametaphosphate (SHMP) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping at the level indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable October 5, 2018.

FOR FURTHER INFORMATION CONTACT: Christian Llinas, 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) 482–4877.

SUPPLEMENTARY INFORMATION:

Background

On March 19, 2008, Commerce published the antidumping duty order on SHMP from China.[1] On June 1, 2018, Commerce published the notice of initiation of the second sunset review of the antidumping duty order on SHMP from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On June 8, 2018, Commerce received a notice of intent to participate from ICL Specialty Products, Inc. and Innophos, Inc. (collectively, the Petitioners) as domestic interested parties, within the deadline specified in 19 CFR 351.218(d)(1)(i).[3]

On July 2, 2018, we received a complete substantive response for the review from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] We received no substantive responses from respondent interested parties with respect to the order covered by this sunset review, nor was a hearing requested. Pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce is conducting an expedited (120-day) sunset review of this order.

Scope of the Order

The merchandise subject to the order is SHMP. For a complete description of the scope of this order, *see* the accompanying Issues and Decision Memorandum.[5]

Analysis of Comments Received

All issues raised in this review, including the likelihood of continuation or recurrence of dumping in the event of revocation and the magnitude of the margin likely to prevail if the order was revoked, are addressed in the accompanying Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, we determine that revocation of the antidumping duty order on SHMP from China would likely lead to continuation or recurrence of dumping and that the magnitude of the dumping margins likely to prevail would be the weighted-average dumping margins up to the following weighted-average dumping margin: 188.05.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary

[1] *See Notice of Antidumping Duty Order: Sodium Hexametaphosphate from the People's Republic of China,* 73 FR 14772 (March 19, 2008) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 83 FR 25436 (June 1, 2018).

[3] *See* Petitioners' Letter, ''Sodium Hexametaphosphate from China: Notice of Intent to Participate,'' dated June 8, 2018.

[4] *See* Petitioners' Letter, ''Sodium Hexametaphosphate (SHMP) from China: Substantive Response to Notice of Initiation of Five-Year (Sunset) Review of the Antidumping Order,'' dated July 2, 2018.

[5] *See* Memorandum, ''Second Expedited Sunset Review of the Antidumping Duty Order on Sodium Hexametaphosphate from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: September 28, 2018.

Gary Taverman,

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

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2018–21730 Filed 10–4–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–067]

Forged Steel Fittings From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (Commerce) determines that imports of forged steel fittings from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV).

DATES: Applicable October 5, 2018.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson at (202) 482–4929 or Irene Gorelik at (202) 482–6905, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 2018, Commerce published in the **Federal Register** the *Preliminary Determination* and invited interested parties to comment.[1] A summary of the events that occurred since Commerce published the *Preliminary Determination* may be found in the Issues and Decision Memorandum that is dated concurrently with this determination and hereby adopted by this notice.[2]

The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version are identical in content.

Period of Investigation

The period of investigation is April 1, 2017, through September 30, 2017.

Scope of the Investigation

The products covered by this investigation are forged steel fittings from China. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' at Appendix I.

Scope Comments

During the course of this investigation and the concurrent investigations of forged steel fittings from China (CVD), Italy and Taiwan, Commerce received numerous scope comments from interested parties. Commerce issued a Preliminary Scope Decision Memorandum [3] and a Second Preliminary Scope Decision Memorandum [4] to address these comments. For a summary of the product coverage comments and rebuttals submitted to the records of this investigation and the concurrent investigations of forged steel fittings from China (CVD), Italy and Taiwan for consideration in the final determinations, and our accompanying discussion and analysis of them, *see* the Final Scope Decision Memorandum, issued on July 23, 2018, concurrent with the final determination in the LTFV investigation of forged steel fittings from Taiwan.[5] *See* Appendix I for the final scope of the investigation.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice at Appendix II.

For the final determination Commerce continues to rely upon facts otherwise available, with adverse inferences (AFA), for the China-wide entity, including the single entity comprising Jiangsu Haida Pipe Fittings Group Company Ltd., Haida Pipe Co., Ltd., and Yancheng L&W International Co., Ltd. (collectively, Haida), pursuant to sections 776(a) and (b) of the Act.

Separate Rates

For the final determination, we continue to find that 15 exporters are entitled to a separate rate, as noted below. In the *Preliminary Determination,* we assigned, as the separate rate, the margin calculated for Both-Well (Taizhou) Steel Fittings Co., Ltd. (Both-Well), the sole mandatory respondent for which we preliminarily calculated an estimated weighted-average dumping margin, consistent with our practice.[6] For the final determination, we continue to assign the estimated weighted-average dumping margin calculated for Both-

[1] *See Forged Steel Fittings from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 82 FR 22948 (May 17, 2018) (Preliminary Determination) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Forged Steel Fittings from the People's Republic of China'' (Issues and Decision Memorandum).

[3] *See* Memorandum to the File, ''Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated March 7, 2018 (Preliminary Scope Decision Memorandum).

[4] *See* Memorandum to the File, ''Second Preliminary Scope Decision Memorandum,'' dated May 7, 2018 (Second Preliminary Scope Decision Memorandum).

[5] *See* Memorandum, ''Forged Steel Fittings from China, Italy and Taiwan: Final Scope Determination Decision Memorandum,'' dated July 23, 2018 (Final Scope Decision Memorandum); *see also,* Memorandum to the File, ''Placing Carbon Steel Butt Weld Pipe Fitting Scope Information Ruling on the Record,'' dated September 19, 2018.

[6] *See Preliminary Determination,* 82 FR at 22949–22950, and accompanying Preliminary Decision Memorandum at 15–16.

Well to the exporters that are entitled to a separate rate.

China-Wide Entity

For the final determination, we continue to find that the China-wide entity, which includes certain Chinese exporters and/or producers that did not respond to Commerce's requests for information, failed to provide necessary information, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. We also continue to find that the China-wide entity failed to cooperate. As a result, we continue to determine for the China-wide entity an estimated weighted-average dumping margin on the basis of AFA pursuant to section 776(b) of the Act. In the *Preliminary Determination,* Commerce based the AFA rate for the China-wide entity on the petition margin of 142.72 percent.[7] For this final determination, we continue to rely on AFA in determining the rate for the China-wide entity and, as AFA, we continue to select the petition margin of 142.72 percent as the estimated weighted-average dumping margin for the China-wide entity (including Haida), as corroborated in the *Preliminary Determination.*

Combination Rates

In the *Initiation Notice,*[8] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[9]

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter	Producer	Estimated weighted-average dumping margin (percent)
Both-Well (Taizhou) Steel Fittings Co., Ltd	Both-Well (Taizhou) Steel Fittings Co., Ltd	8.00
Dalian Guangming Pipe Fittings Co., Ltd	Yancheng Jiuwei Pipe Fittings Co., Ltd	8.00
Dalian Guangming Pipe Fittings Co., Ltd	Yancheng Manda Pipe Industry Co., Ltd	8.00
Dalian Guangming Pipe Fittings Co., Ltd	Yancheng Haohui Pipe Fittings Co., Ltd	8.00
Dalian Guangming Pipe Fittings Co., Ltd	Jiangsu Haida Pipe Fittings Group Co., Ltd	8.00
Eaton Hydraulics (Ningbo) Co., Ltd	Eaton Hydraulics (Ningbo) Co., Ltd	8.00
Eaton Hydraulics (Luzhou) Co., Ltd	Eaton Hydraulics (Luzhou) Co., Ltd	8.00
Eaton Hydraulics (Luzhou) Co., Ltd	Luzhou City Chengrun Mechanics Co., Ltd	8.00
Eaton Hydraulics (Luzhou) Co., Ltd	Eaton Hydraulics (Ningbo) Co., Ltd	8.00
Jiangsu Forged Pipe Fittings Co., Ltd	Jiangsu Forged Pipe Fittings Co., Ltd	8.00
Jinan Mech Piping Technology Co., Ltd	Jinan Mech Piping Technology Co., Ltd	8.00
Jining Dingguan Precision Parts Manufacturing Co., Ltd	Jining Dingguan Precision Parts Manufacturing Co., Ltd	8.00
Lianfa Stainless Steel Pipes & Valves (Qingyun) Co., Ltd	Lianfa Stainless Steel Pipes & Valves (Qingyun) Co., Ltd	8.00
Ningbo Long Teng Metal Manufacturing Co., Ltd	Ningbo Long Teng Metal Manufacturing Co., Ltd	8.00
Ningbo Save Technology Co., Ltd	Ningbo Save Technology Co., Ltd	8.00
Q.C. Witness International Co., Ltd	Ningbo HongTe Industrial Co., Ltd	8.00
Q.C. Witness International Co., Ltd	Cixi Baicheng Hardware Tools, Ltd	8.00
Qingdao Bestflow Industrial Co., Ltd	Yancheng Boyue Tube Co., Ltd	8.00
Xin Yi International Trade Co., Limited	Yancheng Jiuwei Pipe Fittings Co., Ltd	8.00
Xin Yi International Trade Co., Limited	Yancheng Manda Pipe Industry Co., Ltd	8.00
Xin Yi International Trade Co., Limited	Yancheng Haohui Pipe Fittings Co., Ltd	8.00
Xin Yi International Trade Co., Limited	Jiangsu Haida Pipe Fittings Group Co., Ltd	8.00
Xin Yi International Trade Co., Limited	Yingkou Guangming Pipeline Industry Co., Ltd	8.00
Xin Yi International Trade Co., Limited	Shanghai Lon Au Stainless Steel Materials Co., Ltd	8.00
Yingkou Guangming Pipeline Industry Co., Ltd	Yingkou Guangming Pipeline Industry Co., Ltd	8.00
Yingkou Guangming Pipeline Industry Co., Ltd	Yancheng Jiuwei Pipe Fittings Co., Ltd	8.00
Yingkou Guangming Pipeline Industry Co., Ltd	Yancheng Manda Pipe Industry Co., Ltd	8.00
Yingkou Guangming Pipeline Industry Co., Ltd	Yancheng Haohui Pipe Fittings Co., Ltd	8.00
Yingkou Guangming Pipeline Industry Co., Ltd	Jiangsu Haida Pipe Fittings Group Co., Ltd	8.00
Yuyao Wanlei Pipe Fitting Manufacturing Co., Ltd	Yuyao Wanlei Pipe Fitting Manufacturing Co., Ltd	8.00
China-Wide Entity [10]		142.72

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, for this final determination, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of forged steel fittings from China, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after May 17, 2018, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.* Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted average amount by which normal value exceeds U.S. price, as

[7] *Id.* at 22950 and accompanying Preliminary Decision Memorandum at 21.

[8] *See Initiation Notice,* 82 FR at 50618.

[9] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[10] The China-wide entity includes: (1) Beijing Better Products International Ltd.; (2) Dalian Newshow Pipeline Industry Co.; (3) G&T Industry Holding Ltd.; (4) Shanxi Baolongda Forging Company Ltd.; (5) Shaanxi Fenry Flanges and Fittings Co., Ltd.; (6) Shenzhen Front Valve Co., Ltd.; (7) Qingdao Eathu Casting and Forging Co., Ltd.; (8) Gaoyou Huaxing Petroleum Pipe Manufacture Co., Ltd.; and (9) the single entity comprising Jiangsu Haida Pipe Fittings Group Company Ltd., its affiliated producer Haida Pipe Co., Ltd., and its affiliated reseller Yancheng L&W International Co., Ltd.

indicated in the chart above as follows: (1) For the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of Chinese producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (3) for all third-county exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Chinese producer/exporter combination (or the China-wide entity) that supplied that third-country exporter. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of forged steel fittings, no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated and all cash deposits posted will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

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

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: October 1, 2018.

Gary Taverman,

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

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings, unions, and outlets. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections.

While these fittings are generally manufactured to specifications ASME B16.11, MSS SP–79, MSS SP–83, MSS SP–97, ASTM A105, ASTM A350 and ASTM A182, the scope is not limited to fittings made to these specifications.

The term forged is an industry term used to describe a class of products included in applicable standards, and does not reference an exclusive manufacturing process. Forged steel fittings are not manufactured from casting. Pursuant to the applicable specifications, subject fittings may also be machined from bar stock or machined from seamless pipe and tube.

All types of fittings are included in the scope regardless of nominal pipe size (which may or may not be expressed in inches of nominal pipe size), pressure rating (usually, but not necessarily expressed in pounds of pressure/PSI, *e.g.,* 2,000 or 2M; 3,000 or 3M; 6,000 or 6M; 9,000 or 9M), wall thickness, and whether or not heat treated.

Excluded from this scope are all fittings entirely made of stainless steel. Also excluded are flanges, butt weld fittings, butt weld outlets, nipples, and all fittings that have a maximum pressure rating of 300 pounds of pressure/PSI or less.

Also excluded are fittings certified or made to the following standards, so long as the fittings are not also manufactured to the specifications of ASME B16.11, MSS SP–79, MSS SP–83, MSS SP–97, ASTM A105, ASTM A350 and ASTM A182:

- American Petroleum Institute (API) 5CT, API 5L, or API 11B
- Society of Automotive Engineering (SAE) J476, SAE J514, SAE J516, SAE J517, SAE J518, SAE J1026, SAE J1231, SAE J1453, SAE J1926, J2044 or SAE AS 35411
- Underwriter's Laboratories (UL) certified electrical conduit fittings
- ASTM A153, A536, A576, or A865
- Casing Conductor Connectors 16–42 inches in diameter made to proprietary specifications
- Military Specification (MIL) MIL–C–4109F and MIL–F–3541
- International Organization for Standardization (ISO) ISO6150–B

To be excluded from the scope, products must have the appropriate standard or pressure markings and/or be accompanied by documentation showing product compliance to the applicable standard or pressure, *e.g.,* ''API 5CT'' mark and/or a mill certification report.

Subject carbon and alloy forged steel fittings are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. They also may be entered under HTSUS 7307.92.3010, 7307.92.3030, 7307.92.9000, and 7326.19.0010. The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2018–21729 Filed 10–4–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–068]

Forged Steel Fittings From the People's Republic of China: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of forged steel fittings from the People's Republic of China (China).

DATES: Applicable October 5, 2018.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Janae Martin, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–0238, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 14, 2018, Commerce published in the **Federal Register** the *Preliminary Determination*.[1] The selected mandatory respondents in this investigation are Beijing Bell Plumbing Mfg., Ltd. (Beijing Bell) and Both-Well (Taizhou) Steel Fittings, Co., Ltd. (Both-Well). In the *Preliminary Determination*, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce aligned the final CVD determination with the final antidumping duty (AD) determination. The revised deadline for the final determination of this investigation is now October 1, 2018. On May 25, 2018, Commerce issued its Post-Preliminary Analysis.[2]

A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum issued concurrently with this notice.[3] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Period of Investigation

The period of investigation (POI) is January 1, 2016, through December 31, 2016.

Scope of the Investigation

The products covered by this investigation are forged steel fittings from China. For a full description of the scope of this investigation, see the ''Scope of the Investigation'' in Appendix I.

Scope Comments

During the course of this investigation and the concurrent antidumping investigations of forged steel fittings from China, Italy, and Taiwan, Commerce received numerous scope comments from interested parties. Commerce issued a Preliminary Scope Decision Memorandum [4] and a Second Preliminary Scope Decision Memorandum [5] to address these comments. For a summary of the product coverage comments and rebuttals submitted to the records of this investigation and the concurrent antidumping investigations of forged steel fittings from China, Italy, and Taiwan for consideration in the final determinations, and our accompanying discussion and analysis of them, see the Final Scope Decision Memorandum, issued on July 23, 2018, concurrent with the final determination in the antidumping duty investigation of forged steel fittings from Taiwan.[6] See Appendix I for the final scope of the investigation.

Verification

As provided in section 782(i) of the Act, in May 2018, we conducted verification of the questionnaire response submitted by Both-Well, the information submitted by the Government of China (GOC) with respect to one program (Provision of Special Bar Quality Bar for Less Than Adequate Remuneration), and the no-shipment claim submitted by Beijing Bell.[7] We used standard verification procedures, including an examination of relevant accounting and financial records, and original source documents.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce determines 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.[8] For a full description of the methodology

[1] *See Forged Steel Fittings from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 83 FR 11170 (March 14, 2018) (*Preliminary Determination*).

[2] *See* Memorandum to Gary Taverman, ''Post-Preliminary Analysis of Countervailing Duty Investigation: Forged Steel Fittings from the People's Republic of China,'' dated May 25, 2018 (Post-Preliminary Analysis).

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Forged Steel Fittings from the People's Republic of China,'' dated concurrently with this determination and hereby adopted by this notice (Issues and Decision Memorandum).

[4] *See* Memorandum to the File, ''Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated March 7, 2018 (Preliminary Scope Decision Memorandum).

[5] *See* Memorandum to the File, ''Second Preliminary Scope Decision Memorandum,'' dated May 7, 2018 (Second Preliminary Scope Decision Memorandum).

[6] *See* Memorandum, ''Forged Steel Fittings from China, Italy and Taiwan: Final Scope Determination Decision Memorandum,'' dated July 23, 2018 (Final Scope Decision Memorandum); see also, Memorandum to the File, ''Placing Carbon Steel Butt Weld Pipe Fitting Scope Information Ruling on the Record,'' dated September 19, 2018.

[7] *See* Commerce Memoranda, ''Verification of the Questionnaire Responses of the Government of the People's Republic of China: Countervailing Duty Investigation of Forged Steel Fittings from the People's Republic of China,'' dated June 25, 2018 (GOC Verification Report); ''Verification of Beijing Bell Plumbing Mfg., Ltd.'s Claim of No Sales of Subject Merchandise to the U.S. Market During the Period of Investigation: Countervailing Duty Investigation of Forged Steel Fittings from the People's Republic of China,'' dated June 28, 2018 (Beijing Bell Verification Report); and ''Verification of the Questionnaire Responses of Both-Well (Taizhou) Steel Fittings, Co., Ltd.: Countervailing Duty Investigation of Forged Steel Fittings from the People's Republic of China,'' dated August 7, 2018 (Both-Well Verification Report).

[8] *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.

underlying our final determination, see the Issues and Decision Memorandum.

In making this final determination, Commerce relied, in part, on facts available pursuant to section 776(a) of the Act. Additionally, as discussed in the Issues and Decision Memorandum, because the GOC did not act to the best of its ability in responding to our requests for information, we drew adverse inferences, where appropriate, in selecting from among the facts otherwise available, pursuant to section 776(b) of the Act.[9] For further information, see the section ''Use of Facts Otherwise Available and Adverse Inferences'' in the accompanying Issues and Decision Memorandum.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, minor corrections presented at verification, and our verification findings, we made certain changes to Both-Well's subsidy rate calculations. For a discussion of these changes, see the Issues and Decision Memorandum.

Final Determination

In accordance with section 705(c)(l)(B)(i) of the Act, we calculated a subsidy rate for Both-Well, a producer/exporter of subject merchandise selected for individual examination in this investigation. Based on our verification findings, we determine that the other mandatory respondent in this investigation, Beijing Bell, did not export subject merchandise to the United States during the period of this investigation.[10] Therefore, we did not calculate a subsidy rate for Beijing Bell.

Section 705(c)(5)(A) of the Act provides that in the final determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce calculated an individual estimated countervailable subsidy rate for Both-Well that is not zero, *de minimis*, or based entirely on facts otherwise available. Because Both-Well is the only individually examined exporter/producer in this investigation and its calculated rate is not zero, *de minimis*, or based entirely under section 776 of the Act, the estimated weighted-average rate calculated for Both-Well is the rate assigned to all-other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

Commerce determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Both-Well (Taizhou) Steel Fittings, Co., Ltd	13.41
All-Others	13.41

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after July 11, 2018, but to continue the suspension of liquidation of all entries from March 14, 2018, through July 10, 2018.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: October 1, 2018.

Gary Taverman,

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

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings, unions, and outlets. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections.

While these fittings are generally manufactured to specifications ASME B16.11, MSS SP–79, MSS SP–83, MSS SP–97, ASTM A105, ASTM A350, and ASTM A182, the scope is not limited to fittings made to these specifications.

The term forged is an industry term used to describe a class of products included in

[9] *See* Issues and Decision Memorandum at ''Use of Facts Otherwise Available and Adverse Inferences'' section.

[10] See Beijing Bell Verification Report at 4–7.

applicable standards, and does not reference an exclusive manufacturing process. Forged steel fittings are not manufactured from casting. Pursuant to the applicable specifications, subject fittings may also be machined from bar stock or machined from seamless pipe and tube.

All types of fittings are included in the scope regardless of nominal pipe size (which may or may not be expressed in inches of nominal pipe size), pressure rating (usually, but not necessarily expressed in pounds of pressure/PSI, *e.g.*, 2,000 or 2M; 3,000 or 3M; 6,000 or 6M; 9,000 or 9M), wall thickness, and whether or not heat treated.

Excluded from this scope are all fittings entirely made of stainless steel. Also excluded are flanges, butt weld fittings, butt weld outlets, nipples, and all fittings that have a maximum pressure rating of 300 pounds of pressure/PSI or less.

Also excluded are fittings certified or made to the following standards, so long as the fittings are not also manufactured to the specifications of ASME B16.11, MSS SP–79, MSS SP–83, MSS SP–97, ASTM A105, ASTM A350, and ASTM A182:

- American Petroleum Institute (API) API 5CT, API 5L, or API 11B
- Society of Automotive Engineering (SAE) SAE J476, SAE J514, SAE J516, SAE J517, SAE J518, SAE J1026, SAE J1231, SAE J1453, SAE J1926, J2044 or SAE AS 35411
- Underwriter's Laboratories (UL) certified electrical conduit fittings
- ASTM A153, A536, A576, or A865
- Casing Conductor Connectors 16–42 inches in diameter made to proprietary specifications
- Military Specification (MIL) MIL–C–4109F and MIL–F–3541
- International Organization for Standardization (ISO) ISO6150–B

To be excluded from the scope, products must have the appropriate standard or pressure markings and/or accompanied by documentation showing product compliance to the applicable standard or pressure, *e.g.* , ''API 5CT'' mark and/or a mill certification report.

Subject carbon and alloy forged steel fittings are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. They also may be entered under HTSUS 7307.92.3010, 7307.92.3030, 7307.92.9000, and 7326.19.0010. The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2018–21734 Filed 10–4–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–449–804, A–455–803, A–560–811, A–570–860, A–822–804, A–823–809, A–841–804]

Steel Concrete Reinforcing Bars From Belarus, the People's Republic of China, Indonesia, Latvia, Moldova, Poland, and Ukraine: Final Results of Expedited Third Sunset Reviews of the Antidumping Duty Orders

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

SUMMARY: As a result of these sunset reviews, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on steel concrete reinforcing bars (rebar) from Belarus, the People's Republic of China (China), Indonesia, Latvia, Moldova, Poland, and Ukraine would likely lead to a continuation or recurrence of dumping at the dumping margins identified in the ''Final Results of Review'' section of this notice.

DATES: Applicable October 5, 2018.

FOR FURTHER INFORMATION CONTACT: Keith Haynes, 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) 482–5139.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2018, Commerce published the notice of initiation of the third sunset reviews of the antidumping duty *Orders* [1] on rebar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine, pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act).[2] On June 12, 2018, Commerce received notices of intent to participate from the Rebar Trade Action Coalition (a domestic interested party) within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] RTAC claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of rebar.[4]

On June 12, 2018, Commerce received complete substantive responses from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[5] We did not receive any responses from respondent interested parties in these proceedings. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited (120-day) sunset reviews of the *Orders.*

Scope of the Orders

There are existing antidumping duty orders on rebar from Belarus, China,

[1] *See Antidumping Duty Orders: Steel Concrete Reinforcing Bars from Belarus, Indonesia, Latvia, Moldova, People's Republic of China, Poland, Republic of Korea and Ukraine,* 66 FR 46777 (September 7, 2001) (collectively, *Orders*). On August 9, 2007, Commerce suspended the antidumping duty investigation and signed a suspension agreement on rebar from Korea. *See Steel Concrete Reinforcing Bars from South Korea: Revocation of Antidumping Duty Order,* 72 FR 44830 (August 9, 2007).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 83 FR 25436 (June 1, 2018).

[3] *See* letters from RTAC, ''Steel Concrete Reinforcing Bars from the People's Republic of China: Notice of Intent to Participate,'' dated June 12, 2018 (China NOITP); ''Steel Concrete Reinforcing Bars from Ukraine: Notice of Intent to Participate,'' dated June 12, 2018 (Ukraine NOITP); ''Steel Concrete Reinforcing Bars from Belarus: Notice of Intent to Participate,'' dated June 12, 2018 (Belarus NOITP); ''Steel Concrete Reinforcing Bars from Indonesia: Notice of Intent to Participate,'' dated June 12, 2018 (Indonesia NOITP); ''Steel Concrete Reinforcing Bars from Latvia: Notice of Intent to Participate,'' dated June 12, 2018 (Latvia NOITP); ''Steel Concrete Reinforcing Bars from Moldova: Notice of Intent to Participate,'' dated June 12, 2018 (Moldova NOITP); ''Steel Concrete Reinforcing Bars from Poland: Notice of Intent to Participate,'' dated June 12, 2018 (Poland NOITP).

[4] *See* China NOITP at 1–2; Ukraine NOITP at 1–2; Belarus NOITP at 1–2; Indonesia NOITP at 1–2; Latvia NOITP at 1–2; Moldova NOITP at 1–2; Poland NOITP at 1–2.

[5] *See* letters from RTAC, ''Steel Concrete Reinforcing Bars from the People's Republic of China: Substantive Response to Notice of Initiation,'' dated July 2, 2018 (China Substantive Response); ''Steel Concrete Reinforcing Bars from Belarus: Substantive Response to Notice of Initiation,'' dated July 2, 2018 (Belarus Substantive Response); ''Steel Concrete Reinforcing Bars from Indonesia: Substantive Response to Notice of Initiation,'' dated July 2, 2018 (Indonesia Substantive Response); ''Steel Concrete Reinforcing Bars from Latvia: Substantive Response to Notice of Initiation,'' dated July 2, 2018 (Latvia Substantive Response); ''Steel Concrete Reinforcing Bars from Moldova: Substantive Response to Notice of Initiation,'' dated July 2, 2018 (Moldova Substantive Response); ''Steel Concrete Reinforcing Bars from Poland: Substantive Response to Notice of Initiation,'' dated July 2, 2018 (Poland Substantive Response); ''Steel Concrete Reinforcing Bars from Ukraine: Substantive Response to Notice of Initiation,'' dated July 2, 2018 (Ukraine Substantive Response).

Indonesia, Latvia, Moldova, Poland, and Ukraine.[6]

The products covered by the *Orders* are all steel concrete reinforcing bars sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7214.20.00, 7228.30.8050, 7222.11.0050, 7222.30.0000, 7228.60.6000, 7228.20.1000, or any other tariff item number. Specifically excluded are plain rounds (*i.e.,* non-deformed or smooth bars) and rebar that has been further processed through bending or coating.

HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the orders is dispositive.

Analysis of Comments Received

All issues raised in these sunset reviews, including the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the *Orders* were revoked, are addressed in the Issues and Decision Memorandum, dated concurrently with and hereby adopted by this notice.[7] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Reviews

Pursuant to section 751(c)(1) and 752(c)(1) and (3) of the Act, we determine that revocation of the *Orders* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins up to 114.53 percent for Belarus, 133.00 percent for China, 71.01 percent for Indonesia, 16.99 percent for Latvia, 232.86 percent for Moldova, 52.07 percent for Poland, and 41.69 percent for Ukraine.

Notification Regarding Administrative Protective Order

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

We are issuing and publishing these results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CR 351.218.

Dated: October 1, 2018.

Gary Taverman,

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

[FR Doc. 2018–21731 Filed 10–4–18; 8:45 am]

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[6] *See Steel Concrete Reinforcing Bars from Belarus, Indonesia, Latvia, Moldova, Poland, the People's Republic of China, and Ukraine: Continuation of Antidumping Duty Orders,* 78 FR 43858 (July 22, 2012) (*Second Sunset Continuation Order*).

[7] *See* Commerce's memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders on Steel concrete reinforcing bars from the People's Republic of Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine,'' dated concurrently with this notice (Issues and Decision Memorandum).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–839]

Forged Steel Fittings From Italy: Final Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (Commerce) determines that imports of forged steel fittings from Italy are being, or are likely to be, sold in the United States at less than fair value (LTFV).

DATES: Applicable October 5, 2018.

FOR FURTHER INFORMATION CONTACT: Michael Bowen at (202) 482–0768 or Brian Smith at (202) 482–1766, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 2018, Commerce published in the **Federal Register** the *Preliminary Determination* and invited interested parties to comment.[1] As no interested party submitted comments, we have made no changes to the estimated weighted-average dumping margins determined in the *Preliminary Determination.*

Period of Investigation

The period of investigation (POI) is October 1, 2016, through September 30, 2017.

Scope of the Investigation

The products covered by this investigation are forged steel fittings from Italy. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' at the Appendix to this notice.

Scope Comments

During the course of this investigation and the concurrent investigations of forged steel fittings from the People's Republic of China (China) and Taiwan, Commerce received numerous scope comments from interested parties. Commerce issued a Preliminary Scope Decision Memorandum [2] and a Second Preliminary Scope Decision Memorandum [3] to address these comments. For a summary of the product coverage comments and rebuttals submitted to the records of this investigation and the concurrent investigations of forged steel fittings from China and Taiwan for consideration in the final determinations, and our accompanying discussion and analysis of them, see the Final Scope Decision Memorandum, issued July 23, 2018, concurrent with the final determination in the antidumping duty investigation of forged steel fittings from Taiwan.[4]

Verification

As stated in the Preliminary Decision Memorandum, Officine Nicola Galperti

[1] *See Forged Steel Fittings from Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 83 FR 22954 (May 17, 2018) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated March 7, 2018 (Preliminary Scope Decision Memorandum).

[3] *See* Memorandum, ''Second Preliminary Scope Decision Memorandum,'' dated May 17, 2018 (Second Preliminary Scope Decision Memorandum).

[4] *See* Memorandum, ''Forged Steel Fittings from China, Italy and Taiwan: Final Scope Determination Decision Memorandum,'' dated July 23, 2018 (Final Scope Decision Memorandum); *see also,* Memorandum to the File, ''Placing Carbon Steel Butt Weld Pipe Fitting Scope Information Ruling on the Record,'' dated September 19, 2018.

e Figlio S.p.A. (Galperti) and Pegasus S.R.L. (Pegasus) each claimed that it did not produce or export to the United States forged steel fittings from Italy during the POI.[5] Pursuant to section 782(i) of the Tariff Act of 1930, as amended (the Act), on July 19–23, 2018, we conducted verification of these companies' claims using standard verification procedures, including an examination of relevant accounting records and original source documents. As a result of the verification, we confirmed that neither Galperti nor Pegasus produced or sold subject merchandise during the POI.[6] As explained further below, mandatory respondents, M.E.G.A. S.p.A. (MEGA) and I.M.L. Industria Meccanica Ligure S.p.A. (IML), withdrew from participation in the investigation; therefore, we did not verify the information on the record with respect to either company.[7]

Use of Adverse Facts Available

In the *Preliminary Determination,* we based the estimated weighted-average dumping margins for both MEGA and IML on facts available with an adverse inference (AFA), pursuant to sections 776(a)(1), 776(a)(2)(A)–(C), and 776(b) of the Act, because those respondents failed to cooperate to the best of their ability in responding to our requests for information.[8] Specifically, MEGA failed to respond fully to our requests for information regarding its reported cost reconciliation,[9] and IML submitted a notice of non-participation after failing to submit sections B, C, D, and supplemental section A questionnaire responses.[10] As stated in the *Preliminary Determination,* we provided MEGA an opportunity to remedy its deficient cost reporting, and upon receiving a complete supplemental questionnaire response, we notified MEGA that we intended to verify MEGA's information.[11] However, MEGA subsequently filed a letter declining participation in the intended on-site verification.[12]

No parties filed comments on our *Preliminary Determination* with respect to MEGA and IML, and there is no new information on the record that would cause us to reverse our preliminary AFA determination. With respect to MEGA, in the *Preliminary Determination,* we relied on sections 776(a)(1) and 776(a)(2)(A)–(B) of the Act because MEGA had, at that point, failed to provide an adequate cost reconciliation in response to our requests for such information. After the *Preliminary Determination,* as explained above, MEGA provided adequate responses to our requests for information for its cost reconciliation, but then refused to participate in verification.[13] In light of MEGA's refusal to participate in verification, we now determine that selection from among the facts otherwise available is warranted under section 776(a)(2)(C) of the Act, because MEGA significantly impeded the proceeding by refusing to participate in verification, and section 776(a)(2)(D) of the Act, because MEGA provided information that could not be verified.

Our finding with respect to IML remains the same as in the *Preliminary Determination.* No changes have been made to the record since the *Preliminary Determination* with regards to IML.

Accordingly, we continue to find that the use of an adverse inference in selecting from among the facts otherwise available pursuant to sections 776(a) and (b) of the Act is warranted with respect to MEGA and IML, because MEGA and IML have failed to cooperate by not acting to the best of their ability to comply with our requests for information by withdrawing from participation in the investigation. In selecting an appropriate AFA rate, we continue to assign to MEGA's and IML's entries of subject merchandise the highest dumping margin alleged in the Petition, 80.20 percent,[14] which has been corroborated to the extent practicable within the meaning of section 776(c) of the Act.[15]

All-Others Rate

As discussed in the *Preliminary Determination,* we assigned the simple average of the dumping margins alleged in the Petition, 49.43 percent,[16] as the ''All-Others'' rate, in accordance with section 735(c)(5)(B) of the Act. We made no changes to the selection of this rate for this final determination.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)
M.E.G.A. S.p.A	80.20
I.M.L. Industria Meccanica Ligure S.p.A	80.20
All-Others	49.43

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, for this final determination, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of forged steel fittings from Italy, as described in the Appendix to this notice, which are entered, or withdrawn from warehouse, for consumption on or after May 17, 2018, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.*

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin as follows: (1) The cash deposit rate for the respondents listed above will be equal to the respondent-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Disclosure

The estimated weighted-average dumping margins determined in this investigation are based on AFA. As these estimated weighted-average

[5] *See* Preliminary Decision Memorandum at 5.

[6] *See* Memorandum, ''Verification of Officine Nicola Galperti e Figlio S.p.A.,'' and Memorandum, ''Verification of Pegasus S.R.L.,'' both dated August 27, 2018.

[7] *See* Letter from MEGA, ''Forged Steel Fittings from Italy: Notice of M.E.G.A. S.p.A. Declining Participation in On-Site Verification,'' dated July 2, 2018 (MEGA's Notice of Non-Participation); and Letter from IML, ''I.M.L. S.p.A. Italy will not participate,'' dated April 18, 2018 (IML's Notice of Non-Participation).

[8] *See* Preliminary Decision Memorandum at 5.

[9] *Id.* at 7–8.

[10] *Id.* at 8–9. *See also* IML's Notice of Non-Participation.

[11] *See Preliminary Determination* at 83 FR 22955.

[12] *See* MEGA's Notice of Non-Participation.

[13] *Id.*

[14] *See* Petitions for the Imposition of Antidumping and Countervailing Duties: Forged Steel Fittings from the People's Republic of China, Italy, and Taiwan, Volume IV, dated October 5, 2017 (Petition); *see also* Letter from the petitioners, ''Response to Second Supplemental Question,'' dated October 17, 2017 (Petition Amendment) at Exhibit IV–18; and Memorandum, ''Antidumping Duty Investigation Initiation Checklist: Forged Steel Fittings from Italy; A–475–839,'' dated October 25, 2017 (Initiation Checklist) at 9.

[15] *See* Preliminary Decision Memorandum at 10–11.

[16] *See* Petition and Petition Amendment; *see also* Preliminary Decision Memorandum at 11–12.

dumping margins are based on the rates calculated in the Petition Amendment, and because we made no changes to these rates since the *Preliminary Determination,* no disclosure of calculations is necessary for this final determination.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of forged steel fittings, no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated and all cash deposits posted will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

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

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: October 1, 2018.

Gary Taverman,

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

Appendix

Scope of the Investigation

The merchandise covered by this investigation is carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings, unions, and outlets. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections.

While these fittings are generally manufactured to specifications ASME B16.11, MSS SP–79, MSS SP–83, MSS SP–97, ASTM A105, ASTM A350, and ASTM A182, the scope is not limited to fittings made to these specifications.

The term forged is an industry term used to describe a class of products included in applicable standards, and does not reference an exclusive manufacturing process. Forged steel fittings are not manufactured from casting. Pursuant to the applicable specifications, subject fittings may also be machined from bar stock or machined from seamless pipe and tube.

All types of fittings are included in the scope regardless of nominal pipe size (which may or may not be expressed in inches of nominal pipe size), pressure rating (usually, but not necessarily expressed in pounds of pressure/PSI, *e.g.,* 2,000 or 2M; 3,000 or 3M; 6,000 or 6M; 9,000 or 9M), wall thickness, and whether or not heat treated.

Excluded from this scope are all fittings entirely made of stainless steel. Also excluded are flanges, butt weld fittings, butt weld outlets, nipples, and all fittings that have a maximum pressure rating of 300 pounds of pressure/PSI or less.

Also excluded are fittings certified or made to the following standards, so long as the fittings are not also manufactured to the specifications of ASME B16.11, MSS SP–79, MSS SP–83, MSS SP–97, ASTM A105, ASTM A350, and ASTM A182:

- American Petroleum Institute (API) API 5CT, API 5L, or API 11B
- Society of Automotive Engineering (SAE) SAE J476, SAE J514, SAE J516, SAE J517, SAE J518, SAE J1026, SAE J1231, SAE J1453, SAE J1926, J2044 or SAE AS 35411
- Underwriter's Laboratories (UL) certified electrical conduit fittings
- ASTM A153, A536, A576, or A865
- Casing Conductor Connectors 16–42 inches in diameter made to proprietary specifications
- Military Specification (MIL) MIL–C–4109F and MIL–F–3541
- International Organization for Standardization (ISO) ISO6150–B

To be excluded from the scope, products must have the appropriate standard or pressure markings and/or accompanied by documentation showing product compliance to the applicable standard or pressure, *e.g.,* ''API 5CT'' mark and/or a mill certification report.

Subject carbon and alloy forged steel fittings are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. They also may be entered under HTSUS 7307.92.3010, 7307.92.3030, 7307.92.9000, and 7326.19.0010. The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

[FR Doc. 2018–21728 Filed 10–4–18; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products previously furnished by such agencies.

DATES: Comments must be received on or before: November 4, 2018.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from nonprofit agency employing persons who are blind or have other severe disabilities. The following products are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product(s)

NSN(s)—Product Name(s): 8455–00–NIB–0139—Name Tape, Embroidered, USAF, Tigerstripe 8455–00–NIB–0140—Service Tape, Embroidered, USAF, Tigerstripe 8455–00–NIB–0141—Name Tags, Plastic, Engraved, USAF, Blue
Mandatory for: 100% of the requirement of the U.S. Air Force
Mandatory Source of Supply: Lions Industries for the Blind, Inc., Kinston, NC
Contracting Activity: DEPT OF THE AIR FORCE, FA3016 502 CONS CL JBSA
Distribution: C-List

Deletions

The following products are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
8410–00–NIB–0002—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 2 Long
8410–00–NIB–0003—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 4 Long
8410–00–NIB–0004—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 18 X-Short
8410–00–NIB–0005—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 20 X-Short
8410–00–NIB–0006—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 20 Short
8410–00–NIB–0007—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 20 Long
8410–01–536–2974—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 2 Short
8410–01–536–2977—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 2 Regular
8410–01–536–2980—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 4 X-Short
8410–01–536–2982—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 4 Short
8410–01–536–2994—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 4 Regular
8410–01–536–3000—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 6 X-Short
8410–01–536–3760—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 6 Short
8410–01–536–3763—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 6 Regular
8410–01–536–3769—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 8 X-Short
8410–01–536–3772—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 8 Short
8410–01–536–3776—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 8 Regular
8410–01–536–3779—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 6 Long
8410–01–536–3782—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 8 Long
8410–01–536–3784—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 10 X-Short
8410–01–536–3787—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 10 Short
8410–01–536–3789—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 10 Regular
8410–01–536–3792—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 10 Long
8410–01–536–3793—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 12 X-Short
8410–01–536–3795—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 12 Short
8410–01–536–3797—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 12 Regular
8410–01–536–3799—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 12 Long
8410–01–536–3800—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 14 X-Short
8410–01–536–3803—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 14 Short
8410–01–536–3804—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 14 Regular
8410–01–536–3805—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 14 Long
8410–01–536–3807—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 16 X-Short
8410–01–536–3808—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 16 Short
8410–01–536–3812—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 16 Regular
8410–01–536–3814—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 16 Long
8410–01–536–3816—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 18 Short
8410–01–536–3819—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 18 Regular
8410–01–536–3822—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 18 Long
8410–01–536–3825—Coat, Airman's Battle Uniform, USAF, Woman's, Camouflage, 20 Regular
8415–00–NIB–0489—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 X-Long
8415–00–NIB–0490—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 X-Short
8415–00–NIB–0491—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 46 X-Short
8415–00–NIB–0492—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 48 X-Short
8415–00–NIB–0493—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 48 X-Long
8415–00–NIB–0494—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 50 X-Long
8415–01–535–4170—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 X-Short
8415–01–536–4134—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 Short
8415–01–536–4170—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 X-Short
8415–01–536–4178—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 Regular
8415–01–536–4180—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 Long
8415–01–536–4182—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 34 X-Short
8415–01–536–4184—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 34 Short
8415–01–536–4188—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 34 Regular
8415–01–536–4189—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 34 Long
8415–01–536–4192—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 34 X-Long
8415–01–536–4193—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 36 X-Short
8415–01–536–4197—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 36 Short
8415–01–536–4224—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 36 Regular
8415–01–536–4227—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 36 Long
8415–01–536–4237—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 36 X-Long
8415–01–536–4239—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 38 X-Short
8415–01–536–4241—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 38 Short
8415–01–536–4367—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 38 Regular
8415–01–536–4369—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 38 Long
8415–01–536–4571—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 38 X-Long
8415–01–536–4572—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 40 X-Short
8415–01–536–4573—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 40 Short
8415–01–536–4574—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 40 Regular

8415–01–536–4576—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 40 Long
8415–01–536–4577—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 40 X-Long
8415–01–536–4578—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 42 X-Short
8415–01–536–4581—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 42 Short
8415–01–536–4583—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 42 Regular
8415–01–536–4584—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 42 Long
8415–01–536–4585—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 42 X-Long
8415–01–536–4586—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 Short
8415–01–536–4588—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 50 X-Short
8415–01–536–4590—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 Regular
8415–01–536–4591—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 Long
8415–01–536–4592—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 X-Long
8415–01–536–4593—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 46 Short
8415–01–536–4596—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 46 Regular
8415–01–536–4600—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 46 Long
8415–01–536–4606—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 46 X-Long
8415–01–536–4639—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 48 Short
8415–01–536–4640—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 48 Regular
8415–01–536–4651—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 48 Long
8415–01–536–4674—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 50 Short
8415–01–536–4682—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 50 Regular
8415–01–536–4712—Coat, Airman's Battle Uniform, USAF, Man's, Camouflage, 50 Long
8410–00–NIB–0008—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 2 X-Short
8410–00–NIB–0009—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 2 Long
8410–00–NIB–0010—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 18 X-Short
8410–00–NIB–0011—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 20 X-Short
8410–00–NIB–0012—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 20 Short
8410–00–NIB–0015—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 4 Long
8410–00–NIB–0016—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 22 X-Short
8410–00–NIB–0017—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 22 Short
8410–01–536–2711—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 2 Regular
8410–01–536–2714—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 4 X-Short
8410–01–536–2715—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 4 Regular
8410–01–536–2718—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 6 X-Short
8410–01–536–2719—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 6 Short
8410–01–536–2720—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 6 Regular
8410–01–536–2721—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 6 Long
8410–01–536–2723—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 8 X-Short
8410–01–536–2725—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 8 Short
8410–01–536–2734—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 8 Regular
8410–01–536–2736—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 8 Long
8410–01–536–2739—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 10 X-Short
8410–01–536–2740—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 10 Short
8410–01–536–2742—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 10 Regular
8410–01–536–2744—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 10 Long
8410–01–536–2746—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 12 X-Short
8410–01–536–2748—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 12 Short
8410–01–536–2749—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 12 Regular
8410–01–536–2752—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 12 Long
8410–01–536–2754—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 14 X-Short
8410–01–536–2756—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 14 Short
8410–01–536–2760—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 14 Regular
8410–01–536–2761—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 14 Long
8410–01–536–2765—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 16 X-Short
8410–01–536–2766—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 16 Short
8410–01–536–2770—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 16 Regular
8410–01–536–2771—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 16 Long
8410–01–536–2773—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 18 Short
8410–01–536–2774—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 18 Regular
8410–01–536–2778—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 18 Long
8410–01–536–2780—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 20 Regular
8410–01–536–2783—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 20 Long
8410–01–536–2785—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 22 Regular
8410–01–536–2801—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 4 Short
8410–01–NIB–0014—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 22 Long
8415–00–NIB–0495—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 42 X-Short
8415–00–NIB–0496—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 42 X-Long
8415–00–NIB–0497—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 X-Short
8415–00–NIB–0498—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 Long
8415–00–NIB–0499—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 46 X-Short
8415–00–NIB–0500—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 46 Short
8415–00–NIB–0501—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 46 X-Long
8415–00–NIB–0502—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 X-Long
8415–01–536–3759—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 28 Short
8415–01–536–3774—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 28 Regular

8415–01–536–3777—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 28 Long
8415–01–536–3791—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 28 X-Long
8415–01–536–3794—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 30 Short
8415–01–536–3809—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 30 X-Short
8415–01–536–3817—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 30 Regular
8415–01–536–3821—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 30 Long
8415–01–536–3823—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 30 X-Long
8415–01–536–3826—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 X-Short
8415–01–536–3830—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 Short
8415–01–536–3833—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 Regular
8415–01–536–3836—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 Long
8415–01–536–3844—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 32 X-Long
8415–01–536–3846—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 34 X-Short
8415–01–536–3849—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 34 Short
8415–01–536–3855—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 34 Regular
8415–01–536–3869—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 34 Long
8415–01–536–3874—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 34 X-Long
8415–01–536–3880—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 36 X-Short
8415–01–536–3890—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 40 X-Short
8415–01–536–3893—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 36 Short
8415–01–536–3903—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 36 Regular
8415–01–536–3905—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 36 Long
8415–01–536–3912—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 36 X-Long
8415–01–536–3916—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 38 X-Short
8415–01–536–3920—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 38 Short
8415–01–536–3927—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 38 Regular
8415–01–536–3935—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 38 Long
8415–01–536–4021—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 38 X-Long
8415–01–536–4067—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 40 Short
8415–01–536–4071—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 40 Regular
8415–01–536–4073—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 40 Long
8415–01–536–4075—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 40 X-Long
8415–01–536–4077—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 42 Short
8415–01–536–4081—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 42 Regular
8415–01–536–4088—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 42 Long
8415–01–536–4102—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 Regular
8415–01–536–4103—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 Short
8415–01–536–4109—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 44 Long
8415–01–536–4111—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 46 Regular
8415–01–536–4121—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 46 Long

Mandatory Sources of Supply: Blind Industries & Services of Maryland, Baltimore, MD
Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
LC Industries, Inc., Durham, NC
Goodwill Industries of South Florida, Inc., Miami, FL

8410–01–536–2709—Trousers, Airman's Battle Uniform, USAF, Woman's, Camouflage, 2 Short
8415–01–536–3758—Trousers, Airman's Battle Uniform, USAF, Man's, Camouflage, 28 X-Short

Mandatory Sources of Supply: ReadyOne Industries, Inc., El Paso, TX
Blind Industries & Services of Maryland, Baltimore, MD
Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
LC Industries, Inc., Durham, NC
Goodwill Industries of South Florida, Inc., Miami, FL

Contracting Activity: Defense Logistics Agency Troop Support

NSN(s)—Product Name(s): 7045–01–269–8115—Tape, Electronic Data Processing
7045–01–321–0642—Tape, Electronic Data Processing

Mandatory Source of Supply: North Central Sight Services, Inc., Williamsport, PA

Contracting Activity: Defense Logistics Agency Troop Support

NSN(s)—Product Name(s):
7110–01–657–7729—Whiteboard, Customizable Surface, Magnetic Backing, Aluminum Frame, 47.5″ x 35″
7110–01–657–7733—Whiteboard, Customizable Surface, Magnetic Backing, Aluminum Frame, 37.5″ x 23″
7110–01–657–7738—Whiteboard, Customizable Surface, Magnetic Backing, Aluminum Frame, 12″ x 20.5″

Mandatory Source of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA

Contracting Activity: General Services Administration, Philadelphia, PA

NSN(s)—Product Name(s): 6515–00–NIB–0227—Aloud Audio Labels

Mandatory Source of Supply: Central Association for the Blind & Visually Impaired, Utica, NY

Contracting Activity: Department of Veterans Affairs, Strategic Acquisition Center

NSN(s)—Product Name(s): 8465–00–001–6471—(Nylon cloth)

Mandatory Sources of Supply: Alabama Industries for the Blind, Talladega, AL
Georgia Industries for the Blind, Bainbridge, GA
Envision, Inc., Wichita, KS
RLCB, Inc., Raleigh, NC, PA
Virginia Industries for the Blind, Charlottesville, VA

Contracting Activity: Defense Logistics Agency Troop Support

NSN(s)—Product Name(s): 8445–01–242–1009—Necktab, Womens Shirt

Mandatory Source of Supply: BSW, Inc., Butte, MT

Contracting Activity: Defense Logistics Agency Troop Support

Michael R. Jurkowski,

Business Management Specialist, Business Operations.

[FR Doc. 2018–21736 Filed 10–4–18; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes products and services from the Procurement List previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* November 4, 2018.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 8/31/2018 (83 FR 170), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN(s)—Product Name(s): 7510–01–484–0012—Paper Holder & Micro Note Holder
Mandatory Source of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
Contracting Activity: GSA/FAS Admin Svcs Acquisition Br (2, New York, NY

NSN(s)—Product Name(s): 8010–00–935–6609—Enamel, Lacquer, Acrylic, Gloss White
8010–00–935–7064—Enamel, Lacquer, Acrylic, Gloss Red
Mandatory Source of Supply: The Lighthouse for the Blind, St. Louis, MO
Contracting Activity: Defense Logistics Agency Troop Support

NSN(s)—Product Name(s): MR 10738—Holder, Pot Lid and Utensil, Includes Shipper 20738
MR 10739—Herb Stripper, Includes Shipper 20739
MR 10737—Snack Container, Licensed, Includes Shipper 20735
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Defense Commissary Agency

NSN(s)—Product Name(s): 7510–01–417–1220—Toner, Cartridges, New
Mandatory Source of Supply: Alabama Industries for the Blind, Talladega, AL
Contracting Activity: GSA/FAS Admin Svcs Acquisition Br (2, New York, NY

Services

Service Type: Linen Management Service
Mandatory for: Fleet and Industrial Supply Center, Norfolk, VA
Mandatory Source of Supply: Chesapeake Service Systems, Inc., Chesapeake, VA
Contracting Activity: Dept of the Navy, U.S. Fleet Forces Command

Service Type: Food Service Attendant Service
Mandatory for: U.S. Navy Cargo Handling and Port Group, Williamsburg, VA
Mandatory Source of Supply: VersAbility Resources, Inc., Hampton, VA
Contracting Activity: Dept of the Navy, U.S. Fleet Forces Command

Service Type: Administrative Service
Mandatory for: Quantico Marine Corps Base—Systems Command, 2033 Barnett Ave., Quantico, VA
Mandatory Source of Supply: Didlake, Inc., Manassas, VA
Contracting Activity: Dept of the Navy, U.S. Fleet Forces Command

Service Type: Mail and Messenger Service
Mandatory for: Naval Engineering Field Activity Chesapeake: Atlantic Division, Washington Navy Yard
Naval Facilities Engineering Command (NAVFACENGCOM), 851 Sicard Street NE, Washington, DC
Mandatory Source of Supply: ServiceSource, Inc., Oakton, VA
Contracting Activity: Dept of the Navy, U.S. Fleet Forces Command

Service Type: Custodial Service
Mandatory for: U.S. Army Corps of Engineers, Lake Michigan Area Office, 307 South Harbor Street, Grand Haven, MI
Mandatory Source of Supply: Kandu Industries, Inc., Holland, MI
Contracting Activity: Dept of the Army, W072 ENDIST Detroit

Service Type: Janitorial/Custodial Service
Mandatory for: Portsmouth Naval Shipyard: Buildings 153 & 170, Kittery, ME
Mandatory Source of Supply: Northern New England Employment Services, Portland, ME
Contracting Activity: Dept of the Navy, Navy Crane Center

Service Type: Janitorial/Custodial Service
Mandatory for: National Personnel Records Center: 111 Winnebago Street, St. Louis, MO
Mandatory Source of Supply: Challenge Unlimited, Inc., Alton, IL
Contracting Activity: General Services Administration, FPDS Agency Coordinator

Service Type: Grounds Maintenance Service
Mandatory for: Vancouver Army Barracks, Vancouver, WA
Mandatory Source of Supply: Relay Resources, Portland, OR
Contracting Activity: Dept of the Army, W6QM MICC CTR–FT DIX (RC)

Michael R. Jurkowski,

Business Management Specialist, Business Operations.

[FR Doc. 2018–21735 Filed 10–4–18; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket No. AFD 1485PCT]

Notice of Availability of Government-Owned Inventions; Foreign Patent Rights Available

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of availability of foreign patent rights associated with International Patent Application No. PCT/US17/023215, published as WO 2017/0023215, entitled FAST BREAK NEEDLE FOR RAPID GUIDEWIRE-ASSISTED ACCESS.

ADDRESSES: Submit requests for information to the ORTA, 60th MDG, 101 Bodin Circle, Travis AFB, CA 94535; Facsimile: (228) 376–0128; or Mr. John Tupin, (707) 423–7206. Include Docket No. AFD 1485PCT in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: ORTA, 60th MDG, 101 Bodin Circle, Travis AFB, CA 94535; Facsimile: (228) 376–0128; Mr. John Tupin, (707) 423–7206; or Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Rm. 260, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733; Email: *afmclo.jaz.tech@us.af.mil.*

SUPPLEMENTARY INFORMATION: The claimed vascular access disassembly needle assembly enables rapid insertion of a guidewire into the needle and subsequent rapid removal of the access needle off the guidewire by facile disassembly of the needle. The disassembling needle assembly includes a needle portion wherein the needle breaks apart by splitting along at least one seam that extends from the proximal to the distal end to allow removal of the guide wire. Various mechanical features are described that can facilitate the separation of the needle body along at least one seam.

Once one or more seams are separated, the needle body may be removed from the guide wire without the need to withdraw the needle along the length of the guide wire, which permits preloading of expanders and other medical devices onto the guidewire.

Authority: 35 U.S.C. 209; 37 CFR 404.

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2018–21603 Filed 10–4–18; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket No. AFD 1563PCT]

Notice of Availability of Government-Owned Inventions; Foreign Patent Rights Available

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of availability of foreign patent rights associated with International Patent Application No. PCT/US17/036023, published as WO 2017/0214069, entitled FLOW RATE CONTROL DEVICE FOR VARIABLE INTRA–AORTIC OCCLUSION.

ADDRESSES: Submit requests for information to the ORTA, 60th MDG, 101 Bodin Circle, Travis AFB, CA 94535; Facsimile: (228) 376–0128; or Mr. John Tupin, (707) 423–7206. Include Docket No. AFD 1563PCT in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: ORTA, 60th MDG, 101 Bodin Circle, Travis AFB, CA 94535; Facsimile: (228) 376–0128; Mr. John Tupin, (707) 423–7206; or Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Rm. 260, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733; Email: *afmclo.jaz.tech@us.af.mil.*

SUPPLEMENTARY INFORMATION: The claimed endovascular variable aortic control catheter is configured to augment upstream blood pressure and regulate downstream blood flow for patients in shock. The device includes a catheter-based system having a proximal hand piece for controlled deployment of the device through a delivery sheath. A collapsible, wire framework supports an expandable and collapsible occlusion barrier. The wire framework and occlusion barrier expand to fit within the lumen of the aorta. Various movable elements are used to adjust an adjustable passageway to regulate controlled anterograde blood flow.

Authority: 35 U.S.C. 209; 37 CFR 404.

Henry Williams,

Civ, DAF, Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2018–21606 Filed 10–4–18; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket No. AFD 1507PCT]

Notice of Availability of Government-Owned Inventions; Foreign Patent Rights Available

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of availability

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of availability of foreign patent rights associated with International Patent Application No. PCT/US17/037509, published as WO 2017/0222895, entitled BENDABLE, CREASABLE, AND PRINTABLE BATTERIES WITH ENHANCED SAFETY AND HIGH TEMPERATURE STABILITY—METHODS OF FABRICATION, AND METHODS OF USING THE SAME.

ADDRESSES: Submit requests for information to the ORTA, Air Force Research Laboratory, Materials & Manufacturing Directorate (AFRL/RX), 2977 Hobson Way, Wright-Patterson AFB, OH 45433; Facsimile: (937) 656–4831; or Ms. Sunita Chavan, (937) 904–4635. Include Docket No. AFD 1507PCT in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: ORTA, Air Force Research Laboratory, Materials & Manufacturing Directorate (AFRL/RX), 2977 Hobson Way, Wright-Patterson AFB, OH 45433; Facsimile: (937) 656–4831; Ms. Sunita Chavan (937) 904–4635; or Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Rm. 260, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733; Email: *afmclo.jaz.tech@us.af.mil.*

SUPPLEMENTARY INFORMATION: The claimed bendable, creasable, and printable battery technology includes novel formulations for composite electrolytes, and current collectors that are suitable for use in high temperature environments.

Authority: 35 U.S.C. 209; 37 CFR 404.

Henry Williams,

Civ, DAF, Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2018–21604 Filed 10–4–18; 8:45 am]

BILLING CODE 5001–10–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, 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, Friday, October 19, 2018 from 9:00 a.m. to 5:00 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), *dwight.h.sullivan.civ@mail.mil* (Email). Mailing address is DAC–IPAD, 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: 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 tenth

public meeting held by the DAC–IPAD. For its first session, the Committee will receive testimony from a retired Service member who was accused of sexual assault and from a Marine Corps defense highly qualified expert (HQE) on the effect of sexual assault investigations on accused Service members. Next, the Committee will receive testimony from three civilian sexual assault investigators regarding their perspectives on making probable cause determinations and opening and closing sexual assault investigations. The Committee will receive a presentation from the chair of the DAC–IPAD Case Review Working Group on the working group's initial findings and recommendations stemming from its review of fiscal year 2017 sexual assault investigative case files. The Committee will then receive a briefing from DAC–IPAD staff regarding three recommendations made by its predecessor sexual assault advisory committee, the Judicial Proceedings Panel (JPP) that the Department of Defense General Counsel has requested the DAC–IPAD examine. Next, the Committee will conduct final deliberations for its assessment of the military's expedited transfer policy. For its final sessions, the Committee will receive a briefing from its Data Working Group staff on the status of its sexual assault case adjudication data collection project for fiscal years 2012 through 2017, and a briefing on section 547 of the National Defense Authorization Act for Fiscal Year 2019, which requires the Secretary of Defense, through the DAC–IPAD, to conduct a study every two years reporting on the number of instances in which a sexual assault victim was accused or received disciplinary action for collateral misconduct related to allegations of sexual assault committed against that victim.

Agenda

9:00 a.m.–9:10 a.m. Public Meeting Begins—Welcome and Introduction;
9:10 a.m.–10:30 a.m. Effects of Sexual Assault Investigations on Accused Service Members;
10:30 a.m.–10:40 a.m. Break;
10:40 a.m.–12:00 p.m. Perspectives of Civilian Sexual Assault Investigators;
12:00 p.m.–1:00 p.m. Lunch;
1:10 p.m.–1:50 p.m. Case Review Working Group Presentation and Committee Deliberations on Initial Findings and Recommendations Related to Sexual Assault Investigative Case File Reviews;
1:50 p.m.–2:30 p.m. Briefing and Committee Deliberations on Judicial Proceedings Panel Recommendations Related to Articles 32, 33, and 34 of the Uniform Code of Military Justice Referred to the DAC–IPAD for Examination;
2:30 p.m.–3:50 p.m. Committee Deliberations on Expedited Transfer—Final Assessment;
3:50 p.m.–4:00 p.m. Break;
4:00 p.m.–4:15 p.m. Data Working Group Update;
4:15 p.m.–4:45 p.m. Briefing and Committee Deliberations on Fiscal Year 2019 NDAA Required Collateral Misconduct Study;
4:45 p.m.–5:00 p.m. Public Comment;
5:00 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 4:45 p.m. to 5:00 p.m. on October 19, 2018, in front of the Committee members.

Dated: October 1, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–21655 Filed 10–4–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of the Draft Environmental Impact Statement for the Lake Ralph Hall Regional Water Supply Reservoir Project, Fannin County, TX

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (USACE) Fort Worth District has prepared a Draft Environmental Impact Statement (EIS) to analyze the direct, indirect and cumulative effects of the construction of the Lake Ralph Hall Regional Water Supply Reservoir Project in Fannin County, TX, proposed by the Upper Trinity Regional Water District (UTRWD). This action requires authorization from USACE under Section 404 of the Clean Water Act for construction and operation of the proposed project. The proposed project is a regional water supply project intended to provide approximately 34,050 acre-feet (AF) per year of new water for 20 water providers, special districts, and municipalities in Denton County and small portions of Dallas, Collin, Grayson, Wise and Cooke counties to the extent that Denton County Customers' service areas extend outside the County. Construction of the reservoir and support facilities would result in permanent direct impacts to waters of the U.S. of approximately 8 acres of wetlands and 384 acres of other waters including streams, impoundments, and ponds. The proposed project pipeline will cross 59

streams with 11,893 lineal feet of temporary impact as well as 0.4 acres of stock tanks.

DATES: Written comments on the Draft EIS will be accepted until November 21, 2018. Oral and/or written comments may also be presented at the Public Hearing.

ADDRESSES: A Public Hearing will be held Thursday, October 25, 2018 starting at 5:30 p.m. at the H.L. Milton Sports Complex, 601 W Mill Street, Ladonia, TX 75449.

FOR FURTHER INFORMATION CONTACT: Chandler J. Peter, EIS Project Manager, at 817–886–1731 or *chandler.j.peter@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Draft EIS was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Corps' regulations for NEPA implementation (33 Code of Federal Regulations [CFR] parts 230 and 325, Appendices B and C). The Corps, Fort Worth, Regulatory Branch is the lead federal agency responsible for the Draft EIS and information contained in the EIS serves as the basis for a decision regarding issuance of a Section 404 permit. It also provides information for federal, state and local agencies having jurisdictional responsibility for affected resources.

The purpose of the Draft EIS is to provide decision-makers and the public with information pertaining to the Proposed Action and alternatives, and to disclose environmental impacts and identify mitigation measures to reduce impacts. UTRWD proposes to construct Lake Ralph Hall (including principal and emergency spillways, dam, and reservoir) with a conservation pool storage capacity of approximately 160,235 AF. Construction of a new raw water pipeline from the proposed Lake Ralph Hall to the Tom Harpool Water Treatment Plant is also proposed, as well as a new balancing reservoir and pump station.

The purpose for the project is to provide additional firm annual yield to the 20 water providers and communities to address anticipated water demands associated with projected growth.

In addition to the Proposed Action, the Draft EIS analyzes the No Action Alternative. Other alternatives were evaluated but not carried forward for detailed consideration, including water supplied from five new (undeveloped) reservoirs; securing supplies from other existing sources, Oklahoma, additional Dallas Water Utilities Supply, the Gulf of Mexico, Cypress Creek Basin, groundwater imports and precipitation enhancement. In addition, alternative dam alignments and conservation pool sizes were considered.

The U.S. Environmental Protection Agency Region VI, U.S. Fish and Wildlife Service, U.S. Forest Service, Texas Commission on Environmental Quality, Texas Parks and Wildlife Department and the Texas Historical Commission have participated as cooperating agencies in the formulation of the Draft EIS.

Copies of the Draft EIS will also be available for review at:

1. Ladonia City Hall, 100 Center Plaza, Ladonia, TX 75449.
2. Wolfe City Public Library, 102 TX–11, Wolfe City, TX 75496.
3. Commerce Public Library, 1210 Park Street, Commerce, TX 75428.
4. Honey Grove Library, 500 N 6th Street, Honey Grove, TX 75446.
5. Bonham Public Library, 305 E 5th Street, Bonham, TX 75418.
6. Greenville Public Library, 1 Lou Finney Lane, Greenville, TX 75401
7. Upper Trinity Regional Water District, 900 North Kealy Street, Lewisville, TX 75067.
8. U.S. Army Corps of Engineers, Fort Worth Regulatory Office, 819 Taylor Street, Fort Worth, TX 76102.

Send written comments regarding the Proposed Action and Draft EIS to Chandler J. Peter, EIS Project Manager, U.S. Army Corps of Engineers, Fort Worth District—Regulatory Division, 819 Taylor Street, Room 3A37, P.O. Box 17300, Fort Worth, Texas 76102 or via email: *chandler.j.peter@usace.army.mil.* Requests to be placed on or removed from a mailing list for the Final EIS should also be sent to this address.

Electronic copies of the Draft EIS may be obtained from the Fort Worth Regulatory Division or its website at: *https://www.swf.usace.army.mil/Missions/Regulatory/Permitting/Proposed-Lake-Ralph-Hall/.*

Stephen L. Brooks,

Chief, Regulatory Division, Fort Worth District.

[FR Doc. 2018–21538 Filed 10–4–18; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Availability of the Bonneville Purchasing Instructions (BPI) and Bonneville Financial Assistance Instructions (BFAI)

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of document availability.

SUMMARY: Copies of the Bonneville Purchasing Instructions (BPI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of its purchases of goods and services, including construction, are available in printed form or at the following internet address: *http://www.bpa.gov/corporate/business/bpi.*

Copies of the Bonneville Financial Assistance Instructions (BFAI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements), are available in printed form or available at the following internet address: *http://www.bpa.gov/corporate/business/bfai.*

ADDRESSES: Unbound copies of the BPI or BFAI may be obtained by sending a request to the Head of the Contracting Activity, Routing CGP–7, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Jenkins, Head of the Contracting Activity; direct telephone (503) 230–5498; or email *nmjenkins@bpa.gov.*

SUPPLEMENTARY INFORMATION: BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from rate payer revenues rather than annual appropriations. BPA's purchasing operations are conducted under 16 U.S.C. 832 *et seq.* and related statutes. Pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities, and reflects BPA's private sector approach to purchasing the goods and services that it requires. BPA's financial assistance operations are conducted under 16 U.S.C. 832 *et seq.* and 16 U.S.C. 839 *et seq.* The BFAI express BPA's financial assistance policy. The BFAI also comprise BPA's rules governing implementation of the principles set forth in 2 CFR part 200.

BPA's solicitations and contracts include notice of applicability and availability of the BPI and the BFAI, as appropriate, for offerors to obtain information on particular purchases or financial assistance transactions.

Signed in Portland, Oregon, on September 6, 2018

Nicholas M. Jenkins,

Manager, Purchasing/Property Governance.

[FR Doc. 2018–21725 Filed 10–4–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[EERE–2018–16577]

Understanding Catalyst Production and Development Needs at National Laboratories

AGENCY: Bioenergy Technologies Office, Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information; reopening of public comment period.

SUMMARY: This document reopens the public comment period for submitting comments, data and information on the RFI entitled ''Understanding Catalyst Production and Development Needs at National Laboratories'' published on August 2, 2018. The public comment period closed on September 14, 2018.

DATES: U.S. Department of Energy (DOE) is reopening the comment period for ''Understanding Catalyst Production and Development Needs at National Laboratories'' published on August 2, 2018. The public comment period closed on September 14, 2018 and is reopened for 15 days until October 22, 2018.

ADDRESSES: Interested parties are to submit comments electronically to *CustomCatalystRFI@ee.doe.gov.* Responses must be provided as attachments to an email. Include ''Understanding Catalyst Production and Development RFI'' as the subject of the email. It is recommended that attachments with file sizes exceeding 25MB be compressed (*i.e.,* zipped) to ensure message delivery. Responses must be provided as a Microsoft Word (.docx) attachment to the email, and 12 point font, 1 inch margins. Only electronic responses will be accepted. The complete RFI document is located at *https://eere-exchange.energy.gov/.*

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

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Jim Spaeth, (720) 356–1784, or *CustomCatalystRFI@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: On August 2, 2018 (83 FR 37806), the DOE posted on its website a RFI to solicit feedback from industry and the public (including but not limited to research organizations, manufacturing organizations, catalyst manufacturers, and catalyst research consortia), academia, research laboratories, government agencies, and other biofuels and bioproducts stakeholders on ''catalyst productions capability for biochemical and thermochemical processes.'' Specifically, DOE seeks information to help identify and understand additional areas of research, capabilities, and yet-to be-addressed challenges pertinent to production scale-up challenges (typically in multi-kilogram quantities of novel catalysts used in technology development and engineering solutions for the efficient conversion of lignocellulosic, waste, and algal feedstocks to produce biofuels and bioproducts). The RFI provided for the written submission of comments by September 14, 2018. By this notice, DOE is reopening the public comment period to all additional time for the public to provide data responsive to DOE's detailed inquiries regarding the RFI.

DOE has determined that a reopening of the public comment period is appropriate to allow interested parties additional time to submit comments for DOE's consideration. Thus, DOE is reopening the comment period by 15 days, until October 22, 2018. DOE will consider any comments received by midnight of October 22, 2018 to be timely submitted.

Signed in Washington, DC, on October 1, 2018.

Jonathan Male,

Director, Bioenergy Technologies Office.

[FR Doc. 2018–21726 Filed 10–4–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

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

Docket Numbers: EG18–130–000.

Applicants: Mankato Energy Center II, LLC.

Description: Mankato Energy Center II, LLC Notice of Self-Certification of Exempt Wholesale Generator status.

Filed Date: 9/28/18.

Accession Number: 20180928–5012.

Comments Due: 5 p.m. ET 10/19/18.

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

Docket Numbers: ER10–2630–002; ER16–1914–002.

Applicants: NGP Blue Mountain I LLC, Patua Acquisition Company, LLC.

Description: Notice of Non-Material Change in Status NGP Blue Mountain I LLC, et al.

Filed Date: 9/27/18.

Accession Number: 20180927–5160.

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

Docket Numbers: ER18–459–003.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Compliance Filing Pursuant to August 31, 2018 Letter Order re: OVEC Integration to be effective 12/1/2018.

Filed Date: 9/27/18.

Accession Number: 20180927–5128.

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

Docket Numbers: ER18–2025–001.

Applicants: Duke Energy Carolinas, LLC.

Description: Compliance filing: DEC-Central Power EPC PPSA Compliance Filing to be effective 9/1/2018.

Filed Date: 9/28/18.

Accession Number: 20180928–5045.

Comments Due: 5 p.m. ET 10/19/18.

Docket Numbers: ER18–2496–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to Rate Schedules to add new DOE Reliability Services Agreement to be effective 12/1/2018.

Filed Date: 9/27/18.

Accession Number: 20180927–5138.

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

Docket Numbers: ER18–2497–000.

Applicants: Lawrenceburg Power, LLC.

Description: § 205(d) Rate Filing: Lawrenceburg Power, LLC—Reactive Service Update to be effective 12/1/2018.

Filed Date: 9/27/18.

Accession Number: 20180927–5140.

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

Docket Numbers: ER18–2498–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2018–09–27 2018 Interconnection Process Enhancements Amendment to be effective 11/27/2018.

Filed Date: 9/28/18.

Accession Number: 20180928–5002.

Comments Due: 5 p.m. ET 10/19/18.

Docket Numbers: ER18–2499–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2880R2 Rattlesnake Creek Wind Project GIA to be effective 9/7/2018.

Filed Date: 9/28/18.

Accession Number: 20180928–5004.

Comments Due: 5 p.m. ET 10/19/18.

Docket Numbers: ER18–2500–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2236R10 Golden Spread Electric Cooperative, Inc. NITSA NOA to be effective 9/1/2018.

Filed Date: 9/28/18.
Accession Number: 20180928–5035.
Comments Due: 5 p.m. ET 10/19/18.
Docket Numbers: ER18–2501–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: PowerSouth NITSA Amendments (Crumptonia, Pintlala, Enterprise & Oliver DPs) to be effective 11/27/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5053.
Comments Due: 5 p.m. ET 10/19/18.
Docket Numbers: ER18–2502–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: GIA and Distrib Serv Agmt Ridgetop Energy, LLC and Pacific Crest Power, LLC to be effective 10/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5077.
Comments Due: 5 p.m. ET 10/19/18.
Docket Numbers: ER18–2503–000.
Applicants: Avista Corporation.
Description: § 205(d) Rate Filing: Avista Corp FERC Rate Schedule T1145 to be effective 10/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5090.
Comments Due: 5 p.m. ET 10/19/18.
Docket Numbers: ER18–2504–000.
Applicants: Willow Springs Solar, LLC.
Description: Baseline eTariff Filing: Filing of Desert Flower Shared Facilities Agreement to be effective 10/14/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5110.
Comments Due: 5 p.m. ET 10/19/18.

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: September 28, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21741 Filed 10–4–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2492–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: FTS Master Tenant 2, LLC

This is a supplemental notice in the above-referenced proceeding of FTS Master Tenant 2, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

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

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 18, 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: September 28, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21739 Filed 10–4–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2516–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: Willow Springs Solar, LLC

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

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

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 22, 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: October 1, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21740 Filed 10–4–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2518–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: Black Hills Electric Generation, LLC

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

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

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 22, 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: October 1, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21743 Filed 10–4–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

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

Docket Numbers: EG18–131–000.

Applicants: Willow Springs Solar, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Willow Springs Solar, LLC.

Filed Date: 9/28/18.

Accession Number: 20180928–5135.

Comments Due: 5 p.m. ET 10/19/18.

Docket Numbers: EG18–132–000.

Applicants: Cypress Creek Fund 12 Tenant, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Cypress Creek Fund 12 Tenant, LLC.

Filed Date: 9/28/18.

Accession Number: 20180928–5237.

Comments Due: 5 p.m. ET 10/19/18.

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

Docket Numbers: ER18–370–001.

Applicants: Southern California Edison Company.

Description: Compliance filing: SCE Compliance Filing Amended Appendix XI to TO Tariff, ER18–370 to be effective 9/1/2018.

Filed Date: 9/28/18.

Accession Number: 20180928–5084.

Comments Due: 5 p.m. ET 10/19/18.

Docket Numbers: ER18–2448–001.

Applicants: Robindale Retail Power Services, LLC.

Description: Tariff Amendment: Addendum to Market-Based Rate Notice of Change in Status to be effective 9/29/2018.

Filed Date: 9/28/18.

Accession Number: 20180928–5183.

Comments Due: 5 p.m. ET 10/19/18.

Docket Numbers: ER18–2495–001.

Applicants: PacifiCorp.

Description: Tariff Amendment: Amendment to SA 907 Orion Wind E&P to be effective 9/19/2018.

Filed Date: 9/28/18.

Accession Number: 20180928–5087.

Comments Due: 5 p.m. ET 10/19/18.

Docket Numbers: ER18–2505–000.

Applicants: Willow Springs Solar, LLC.

Description: § 205(d) Rate Filing: Filing of Rattlesnake Shared Facilities Agreement to be effective 10/14/2018.

Filed Date: 9/28/18.

Accession Number: 20180928–5114.

Comments Due: 5 p.m. ET 10/19/18.

Docket Numbers: ER18–2506–000.

Applicants: ISO New England Inc.

Description: § 205(d) Rate Filing: ISO–NE Filing to Update Eff. Date of Previously Accepted Revisions to Sec III.14 to be effective 12/1/2018.

Filed Date: 9/28/18.

Accession Number: 20180928–5162.

Comments Due: 5 p.m. ET 10/19/18.

Docket Numbers: ER18–2507–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: OATT Amendment Filing (Exhibit K–9—remove OVEC from SERTP) to be effective 12/1/2018.

Filed Date: 9/28/18.

Accession Number: 20180928–5165.

Comments Due: 5 p.m. ET 10/19/18.

Docket Numbers: ER18–2508–000.

Applicants: Louisville Gas and Electric Company.

Description: § 205(d) Rate Filing: Att K Appendix 11 Revision to be effective 12/1/2018.

Filed Date: 9/28/18.

Accession Number: 20180928–5169.

Comments Due: 5 p.m. ET 10/19/18.

Docket Numbers: ER18–2509–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: Joint OATT Amendment: OVEC's Withdrawal from SERTP to be effective 12/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5170.
Comments Due: 5 p.m. ET 10/19/18.
Docket Numbers: ER18–2510–000.
Applicants: The Potomac Edison Company, Mid-Atlantic Interstate Transmission, LLC.
Description: Incentive Rate Application for PJM RTEP Project 9A of The Potomac Edison Company, et al.
Filed Date: 9/28/18.
Accession Number: 20180928–5187.
Comments Due: 5 p.m. ET 10/19/18.
Docket Numbers: ER18–2511–000.
Applicants: NorthWestern Corporation.
Description: Baseline eTariff Filing: New Baseline—NorthWestern Corporation Market-Based Rate Tariff to be effective 10/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5191.
Comments Due: 5 p.m. ET 10/19/18.
Docket Numbers: ER18–2512–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: WI Unscheduled Flow Mitigation Plan Rev 3 to be effective 8/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5198.
Comments Due: 5 p.m. ET 10/19/18.
Docket Numbers: ER18–2513–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2018–09–28_Compliance Filing to Address Self-Fund EL15–68; EL15–36; ER16–696 to be effective 7/10/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5214.
Comments Due: 5 p.m. ET 10/19/18.
Docket Numbers: ER18–2514–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2018–09–28_Attachment FF Revisions to TMEP to be effective 11/28/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5229.
Comments Due: 5 p.m. ET 10/19/18.
Docket Numbers: ER18–2515–000.
Applicants: NorthWestern Corporation.
Description: Tariff Cancellation: Cancellation of MBR Tariff under Tariff ID 28 to be effective 10/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5232.
Comments Due: 5 p.m. ET 10/19/18.
Docket Numbers: ER18–2516–000.
Applicants: Willow Springs Solar, LLC.
Description: § 205(d) Rate Filing: Application for Market-Based Rate Authority to be effective 10/14/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5233.
Comments Due: 5 p.m. ET 10/19/18.
Docket Numbers: ER18–2517–000.
Applicants: Sunbury Generation LP.
Description: § 205(d) Rate Filing: Addendum to Market-Based Rate Notice of Change in Status to be effective 9/29/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5236.
Comments Due: 5 p.m. ET 10/19/18.

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: September 28, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21744 Filed 10–4–18; 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 exempt wholesale generator filings:

Docket Numbers: EG18–133–000.
Applicants: Fox Creek Farm Solar, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Fox Creek Farm Solar, LLC.
Filed Date: 9/28/18.
Accession Number: 20180928–5248.
Comments Due: 5 p.m. ET 10/19/18.

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

Docket Numbers: ER13–764–017; ER14–1927–005; ER12–2498–017; ER12–2499–017; ER12–1566–011; ER11–3987–012; ER17–382–002; ER17–383–002; ER17–384–002; ER12–199–014; ER18–855–001; ER18–1416–001.
Applicants: CED White River Solar, LLC, CED White River Solar 2, LLC, Alpaugh 50, LLC, Alpaugh North, LLC, Copper Mountain Solar 2, LLC, Mesquite Solar 1, LLC, CED Ducor Solar 1, LLC, CED Ducor Solar 2, LLC, CED Ducor Solar 3, LLC, Coram California Development, L.P., Panoche Valley Solar, LLC, CED Wistaria Solar, LLC.
Description: Notice of Non-Material Change in Status of the Consolidated Edison, Inc. subsidiaries.
Filed Date: 9/28/18.
Accession Number: 20180928–5265.
Comments Due: 5 p.m. ET 10/19/18.
Docket Numbers: ER16–454–001; ER13–1422–007; ER18–2325–000.
Applicants: Sunbury Generation LP, Seward Generation, LLC, Ebensburg Power Company.
Description: Supplement to August 28, 2018 Market-Based Rate Notice of Change in Status of Sunbury Generation LP, et al.
Filed Date: 9/28/18.
Accession Number: 20180928–5263.
Comments Due: 5 p.m. ET 10/19/18.
Docket Numbers: ER18–2518–000.
Applicants: Black Hills Electric Generation, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Tariff to be effective 11/28/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5250.
Comments Due: 5 p.m. ET 10/19/18.
Docket Numbers: ER18–2519–000.
Applicants: NorthWestern Corporation.
Description: Baseline eTariff Filing: New Baseline—Reserve Energy Service to be effective 10/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5252.
Comments Due: 5 p.m. ET 10/19/18.
Docket Numbers: ER18–2520–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2018–09–28 Aliso Canyon Gas-Electric Coordination Phase 4 Amendment to be effective 11/30/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5261.
Comments Due: 5 p.m. ET 10/19/18.
Docket Numbers: ER19–1–000.
Applicants: NorthWestern Corporation.
Description: Tariff Cancellation: Cancellation of Reserve Energy Service under Tariff ID 28 to be effective 10/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5001.
Comments Due: 5 p.m. ET 10/22/18.
Docket Numbers: ER19–2–000.

Applicants: New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: October 2018 Membership Filing to be effective 9/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5003.
Comments Due: 5 p.m. ET 10/22/18.
Docket Numbers: ER19–3–000.
Applicants: NorthWestern Corporation.
Description: Tariff Cancellation: Cancellation of Inactive Tariff Records under Tariff ID 28 to be effective 10/2/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5105.
Comments Due: 5 p.m. ET 10/22/18.
Docket Numbers: ER19–4–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3095R1 Missouri River Energy Services NITSA and NOA to be effective 9/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5106.
Comments Due: 5 p.m. ET 10/22/18.
Docket Numbers: ER19–5–000.
Applicants: Commonwealth Edison Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ComEd submits revisions to OATT, Att. H–13A re: FAS 109 Recovery to be effective 10/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5115.
Comments Due: 5 p.m. ET 10/22/18.
Docket Numbers: ER19–6–000.
Applicants: Delmarva Power & Light Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Delmarva submits revisions OATT, Att. H–3D re: FAS 109 Recovery to be effective 10/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5156.
Comments Due: 5 p.m. ET 10/22/18.
Docket Numbers: ER19–7–000.
Applicants: PacifiCorp.
Description: Tariff Cancellation: Termination of Obsidian Renewables E&P Agmt to be effective 12/16/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5159.
Comments Due: 5 p.m. ET 10/22/18.
Docket Numbers: ER19–8–000.
Applicants: Sweetwater Solar, LLC.
Description: Baseline eTariff Filing: Application for MBR, Waivers, Blanket Authority, Confidential & Expedited Action to be effective 12/31/9998.
Filed Date: 10/1/18.
Accession Number: 20181001–5201.
Comments Due: 5 p.m. ET 10/22/18.
Docket Numbers: ER19–9–000.
Applicants: Mankato Energy Center II, LLC.
Description: Baseline eTariff Filing: Application for MBR Authority and Initial Baseline Tariff Filing to be effective 12/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5203.
Comments Due: 5 p.m. ET 10/22/18.
Docket Numbers: ER19–10–000.
Applicants: Potomac Electric Power Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Potomac Electric submits revisions to OATT, Att. H–9A re: FAS 109 Recovery to be effective 10/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5209.
Comments Due: 5 p.m. ET 10/22/18.
Docket Numbers: ER19–11–000.
Applicants: Peetz Logan Interconnect, LLC.
Description: Baseline eTariff Filing: Peetz Logan Interconnect, LLC Application for MBR Authority to be effective 11/30/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5232.
Comments Due: 5 p.m. ET 10/22/18.
Docket Numbers: ER19–12–000.
Applicants: NorthWestern Corporation.
Description: Baseline eTariff Filing: New Baseline—South Dakota OATT to be effective 10/2/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5237.
Comments Due: 5 p.m. ET 10/22/18.
Docket Numbers: ER19–13–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Transmission Owner Rate Case TO20 Formula to be effective 12/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5238.
Comments Due: 5 p.m. ET 10/22/18.
Docket Numbers: ER19–14–000.
Applicants: Baltimore Gas and Electric Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: BGE submits revisions to OATT, Att. H–2A re: FAS 109 Recovery to be effective 10/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5259.
Comments Due: 5 p.m. ET 10/22/18.

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: October 1, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21742 Filed 10–4–18; 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 Numbers: RP15–990–002.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: Compliance filing Settlement—2018—Compliance Filing to be effective 11/1/2018.
Filed Date: 9/27/18.
Accession Number: 20180927–5073.
Comments Due: 5 p.m. ET 10/9/18.
Docket Numbers: RP18–1226–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Penalty Revenue Crediting Report of Natural Gas Pipeline Company of America LLC.
Filed Date: 9/27/18.
Accession Number: 20180927–5050.
Comments Due: 5 p.m. ET 10/9/18.
Docket Numbers: RP18–1227–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Pioneer Oct-Dec 2018) to be effective 10/1/2018.
Filed Date: 9/27/18.
Accession Number: 20180927–5053.
Comments Due: 5 p.m. ET 10/9/18.
Docket Numbers: RP18–1228–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (APS Oct 2018) to be effective 10/1/2018.
Filed Date: 9/27/18.
Accession Number: 20180927–5054.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1229–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Volume No. 2—Neg Rate Agmt—BKV Operating, LLC SP338105 to be effective 11/1/2018.
Filed Date: 9/27/18.
Accession Number: 20180927–5059.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1230–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Keyspan release to Emera 797565 to be effective 10/1/2018.
Filed Date: 9/27/18.
Accession Number: 20180927–5084.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1231–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Energy Plus 797550, 797551, 797574 to be effective 10/1/2018.
Filed Date: 9/27/18.
Accession Number: 20180927–5085.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1232–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: § 4(d) Rate Filing: MNUS FRQ 2018 Filing to be effective 11/1/2018.
Filed Date: 9/27/18.
Accession Number: 20180927–5094.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1233–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: 10–1–2018 Formula-Based Negotiated Rates to be effective 10/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5003.
Comments Due: 5 p.m. ET 10/10/18.

Docket Numbers: RP18–1234–000.
Applicants: Young Gas Storage Company, Ltd.
Description: Annual Operational Purchases and Sales Report of Young Gas Storage Company, Ltd.
Filed Date: 9/27/18.
Accession Number: 20180927–5145.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1235–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: Annual Operational Purchases and Sales Report of Wyoming Interstate Company, L.L.C.
Filed Date: 9/27/18.
Accession Number: 20180927–5146.
Comments Due: 5 p.m. ET 10/9/18.

Docket Numbers: RP18–1236–000.
Applicants: Panhandle Eastern Pipe Line Company, LP.
Description: § 4(d) Rate Filing: Fuel Filing on 9–28–18 to be effective 11/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5005.
Comments Due: 5 p.m. ET 10/10/18.

Docket Numbers: RP18–1237–000.
Applicants: Trunkline Gas Company, LLC.
Description: § 4(d) Rate Filing: Fuel Filing on 9–28–18 to be effective 11/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5006.
Comments Due: 5 p.m. ET 10/10/18.

Docket Numbers: RP18–1238–000.
Applicants: Southwest Gas Storage Company.
Description: § 4(d) Rate Filing: Fuel Filing on 9–28–18 to be effective 11/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5007.
Comments Due: 5 p.m. ET 10/10/18.

Docket Numbers: RP18–1239–000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Fuel Filing on 9–28–18 to be effective 11/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5008.
Comments Due: 5 p.m. ET 10/10/18.

Docket Numbers: RP18–1240–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Oct 2018 to be effective 10/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5036.
Comments Due: 5 p.m. ET 10/10/18.

Docket Numbers: RP18–1241–000.
Applicants: EdgeMarc Energy Holdings, LLC,EM Energy Ohio, LLC,EM Energy Pennsylvania, LLC.
Description: Joint Petition for Limited Waiver, et al. of EdgeMarc Energy Holdings, LLC, et al.
Filed Date: 9/27/18.
Accession Number: 20180927–5176.
Comments Due: 5 p.m. ET 10/4/18.

Docket Numbers: RP18–1242–000.
Applicants: Kern River Gas Transmission Company.
Description: § 4(d) Rate Filing: 2018 October Negotiated Rate Amendments to be effective 10/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5048.
Comments Due: 5 p.m. ET 10/10/18.

Docket Numbers: RP18–1243–000.
Applicants: Destin Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements to be effective 11/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5050.
Comments Due: 5 p.m. ET 10/10/18.

Docket Numbers: RP18–1244–000.
Applicants: Destin Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Final Accounting of Auxiliary Installation to be effective 10/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5051.
Comments Due: 5 p.m. ET 10/10/18.

Docket Numbers: RP18–1245–000.
Applicants: ANR Pipeline Company.
Description: § 4(d) Rate Filing: ANR George Franklin Neg Rate Agmt to be effective 10/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5057.
Comments Due: 5 p.m. ET 10/10/18.

Docket Numbers: RP18–1246–000.
Applicants: Dominion Energy Transmission, Inc.
Description: § 4(d) Rate Filing: DETI—2018 Annual EPCA to be effective 11/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5058.
Comments Due: 5 p.m. ET 10/10/18.

Docket Numbers: RP18–1247–000.
Applicants: ANR Pipeline Company.
Description: § 4(d) Rate Filing: WISE Neg Rate/NC Agmts 1 of 3 to be effective 11/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5061.
Comments Due: 5 p.m. ET 10/10/18.

Docket Numbers: RP18–1248–000.
Applicants: Dominion Energy Transmission, Inc.
Description: § 4(d) Rate Filing: DETI—2018 Annual TCRA to be effective 11/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5075.
Comments Due: 5 p.m. ET 10/10/18.

Docket Numbers: RP18–1249–000.
Applicants: Viking Gas Transmission Company.
Description: § 4(d) Rate Filing: Semi-Annual Fuel and Losses Retention Adjustment—Winter 2018 Rate to be effective 11/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5089.
Comments Due: 5 p.m. ET 10/10/18.

Docket Numbers: RP18–1250–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Atlanta Gas 8438 to various shippers eff 10–1–18) to be effective 10/1/2018.
Filed Date: 9/28/18.
Accession Number: 20180928–5111.
Comments Due: 5 p.m. ET 10/10/18.

Docket Numbers: RP18–1251–000.

Applicants: Texas Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (EM Energy OH 35451 to BP 37473) to be effective 10/1/2018.

Filed Date: 9/28/18.

Accession Number: 20180928–5112.

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

Docket Numbers: RP18–1252–000.

Applicants: Texas Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (RE Gas 34955 to JERA 37469) to be effective 10/1/2018.

Filed Date: 9/28/18.

Accession Number: 20180928–5113.

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

Docket Numbers: RP18–1253–000.

Applicants: Dominion Energy Carolina Gas Transmission.

Description: § 4(d) Rate Filing: DECG—2018 FRQ and TDA Report to be effective 11/1/2018.

Filed Date: 9/28/18.

Accession Number: 20180928–5137.

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

Docket Numbers: RP18–1254–000.

Applicants: Columbia Gulf Transmission, LLC.

Description: § 4(d) Rate Filing: Marubeni Amendment—Cameron Access to be effective 9/29/2018.

Filed Date: 9/28/18.

Accession Number: 20180928–5166.

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

Docket Numbers: RP18–1255–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: Neg Rate 2018–09–28 E2W (6) to be effective 10/1/2018.

Filed Date: 9/28/18.

Accession Number: 20180928–5168.

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

Docket Numbers: RP18–1256–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: No Fuel Segment Update Filing to be effective 11/1/2018.

Filed Date: 9/28/18.

Accession Number: 20180928–5186.

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

Docket Numbers: RP18–1257–000.

Applicants: National Fuel Gas Supply Corporation.

Description: § 4(d) Rate Filing: GT&C Section 42 Tracker Filing 2018 to be effective 11/1/2018.

Filed Date: 9/28/18.

Accession Number: 20180928–5192.

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

Docket Numbers: RP18–1258–000.

Applicants: Kinder Morgan Louisiana Pipeline LLC.

Description: § 4(d) Rate Filing: Tariff Filing to be effective 10/29/2018.

Filed Date: 9/28/18.

Accession Number: 20180928–5227.

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

Docket Numbers: RP18–1259–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20180928 Negotiated Rate Filing to be effective 10/1/2018.

Filed Date: 9/28/18.

Accession Number: 20180928–5241.

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

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

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

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

Dated: October 1, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21745 Filed 10–4–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2018–0241; FRL–9985–18–OW]

Proposed Information Collection Request; Comment Request; Information Collection Request for Contaminant Occurrence Data in Support of EPA's Fourth Six-Year Review of National Primary Drinking Water Regulations; EPA ICR No. 2574.01, OMB Control No. 2040–NEW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Information Collection Request for Contaminant Occurrence Data in Support of the EPA's Fourth Six-Year Review of National Primary Drinking Water Regulations'' (EPA ICR No. 2574.01, OMB Control No. 2040–NEW), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA; 44 U.S.C. 3501 *et seq.*). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed, voluntary information collection as described in the **SUPPLEMENTARY INFORMATION** section. This is a request for approval of a new collection.

DATES: Comments must be submitted on or before December 4, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2018–0421, online using *www.regulations.gov* (our preferred method), by email to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

The 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: Kesha Forrest, (202) 564–3632, or Nicole Tucker, (202) 564–1946, Office of Ground Water and Drinking Water, Standards and Risk Management Division (4607M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; email address: *forrest.kesha@epa.gov* or *tucker.nicole@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents that 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 the 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: The Safe Drinking Water Act (SDWA), as amended in 1996, requires that the EPA review existing National Primary Drinking Water Regulations (NPDWRs) no less often than every six years. This routine evaluation is referred to as the ''Six-Year Review of National Primary Drinking Water Regulations'' or simply, the ''Six-Year Review.'' Throughout the Six-Year Review process, the EPA reviews and assesses new data to determine risks to human health posed by regulated drinking water contaminants and identifies NPDWRs which may be appropriate for revision.

The EPA completed and published review results for the first Six-Year Review cycle (1996–2002) on July 18, 2003 (68 FR 42908). The occurrence assessments for the first Six-Year Review were based on compliance monitoring from a cross-section of 16 states, collected from 1993 to 1997, which were voluntarily provided by the states.

The EPA completed and published review results for the second Six-Year Review cycle (2003–2009) on March 29, 2010 (75 FR 15500). The occurrence assessments conducted for the second Six-Year Review are based on data collected between 1998 and 2005, voluntarily submitted by states and other drinking water primary enforcement (primacy) agencies (*i.e.,* the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an eligible Indian tribe).

The EPA completed and published review results for the third Six-Year Review cycle (2010–2016) on January 11, 2017 (82 FR 3518). The occurrence assessments conducted for the third Six-Year Review are based on contaminant occurrence and treatment techniques data collected between 2006 and 2011, voluntarily submitted by states and other drinking water primacy agencies.

The EPA created this new ICR to continue to engage states and other drinking water primacy agencies in data collection efforts. For this ICR, the EPA is soliciting states and other primacy agencies to (voluntarily) provide historical compliance monitoring (contaminant occurrence) data for community water systems (CWSs) and non-transient non-community water systems (NTNCWSs) to the Agency in support of the fourth Six-Year Review. The EPA is requesting contaminant occurrence and treatment techniques data collected from 2012 to 2018 for all regulated chemical, radiological, and microbial contaminants, including data collected for the Revised Total Coliform Rule, newly promulgated since the third Six-Year Review information collection.

The compliance monitoring records for this information collection (including all results for analytical detections and non-detections) provide the data needed to conduct statistical estimates of national occurrence for regulated contaminants and evaluate treatment technique information associated with the control of pathogens, disinfectants, and disinfection byproducts. The national occurrence estimates and information on treatment techniques will support the SDWA section 1412(b)(9) mandate that requires the EPA to review the existing NPDWRs and determine whether revisions are appropriate. In addition, SDWA section 1445(g) requires the EPA to maintain a national drinking water contaminant occurrence database (*i.e.,* the National Contaminant Occurrence Database (NCOD)), using occurrence data for both regulated and unregulated contaminants in public water systems (PWSs). This data collection will provide new occurrence data on regulated contaminants to maintain the NCOD.

It is in the interest of the EPA to minimize the burden on states (and other drinking water primacy agencies) by allowing submission of data in virtually any electronic format, and to provide states that use the Safe Drinking Water Information System State Versions (SDWIS/State) with extraction scripts if requested.

Form Numbers: None.

Respondents/affected entities: States and other drinking water primacy agencies.

Respondent's obligation to respond: The EPA is issuing this ICR as a one-time request for states and other drinking water primacy agencies to voluntarily submit historical, compliance monitoring data for the fourth Six-Year Review, to meet the SDWA statutory requirements. In addition, this data collection will provide new occurrence data on regulated contaminants to maintain the NCOD required by the SDWA.

Estimated number of respondents: 56 (total).

Frequency of response: One time only.

Total estimated burden: 765 hours (per year). Burden is defined at 5 CFR 1320.03(b).

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 13.7 hours per state (or other water drinking water primacy agency).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements, which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Total estimated cost: $43,000 (per year), includes $0 annualized capital or operation and maintenance costs.

Dated: September 28, 2018.

Peter Grevatt,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2018–21751 Filed 10–4–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9041–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–5632 or *https://www.epa.gov/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 09/24/2018 Through 09/28/2018

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. 20180227, Draft, USACE, TX, Lake Ralph Hall Regional Water Supply Reservoir Project, Comment Period Ends: 11/21/2018, Contact: Chandler J. Peter 817 886 1731

EIS No. 20180228, Draft, USFS, UT, Greater Sage-grouse Proposed Land Management Plan Amendments (LMPA) and Draft Environmental Impact Statement (DEIS) for the Intermountain and Rocky Mountain Regions, Comment Period Ends: 01/03/2019, Contact: John Shivik 801–625–5667

EIS No. 20180229, Draft, FERC, TX, Port Arthur Liquefaction Project, Texas Connector Project, and Louisiana Connector Project, Comment Period Ends: 11/19/2018, Contact: Office of External Affairs 866–208–3372

EIS No. 20180230, Final Supplement, DOE, CA, Supplemental to the Energia Sierra Juarez U.S. Transmission Line Project, Review Period Ends: 11/05/2018, Contact: Julie Ann Smith, Ph.D. 202–586–7668

EIS No. 20180231, Draft, NMFS, WA, Changes to Groundfish Essential Fish Habitat Conservation Areas and Boundaries of the Trawl Rockfish Conservation Area, Comment Period Ends: 11/19/2018, Contact: Gretchen Hanshew 206–526–6147

EIS No. 20180232, Draft, BLM, WA, San Juan Islands National Monument Draft Resource Management Plan and Environmental Impact Statement, Comment Period Ends: 01/03/2019, Contact: Lauren Pidot 503–808–6297

Dated: October 1, 2018.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2018–21685 Filed 10–4–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[No. EPA–HQ–OW–2015–0613; FRL–9985–05–OW]

Proposed Information Collection Request; Comment Request; Implementation of Title I of the Marine Protection, Research, and Sanctuaries Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Implementation of Title I of the Marine Protection, Research, and Sanctuaries Act,'' (EPA ICR No. is 0824.07, OMB Control No. 2040–0008) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. 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 December 4, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2015–0613. (our preferred method), by email to: *OW-Docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. 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: Charles Kovatch, Oceans, Wetlands, and Communities Division, mail code 4504T, Office of Wetlands, Oceans, and, Watersheds, mail code 4501T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0399; fax number: 202–566–1147; email address: *kovatch.charles@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 Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), 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. 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, 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: With limited exceptions, ocean dumping—the transportation of any material for the purpose of dumping in ocean waters—is prohibited except in compliance with a permit issued under the Marine Protection, Research, and Sanctuaries Act (MPRSA). EPA is responsible for issuing ocean dumping permits for all materials except dredged material. The U.S. Army Corps of Engineers (USACE) is responsible for issuing ocean dumping permits for dredged material using EPA's environmental criteria, though for federal projects, the USACE may apply the environmental criteria directly in lieu of the permit process. Ocean dumping permits for dredged material are subject to EPA review and concurrence. EPA is also responsible for designating and managing ocean sites for the disposal of wastes and other materials, and establishing Site Management and Monitoring Plans for ocean disposal sites. EPA collects or sponsors the collection of information for the purposes of permit issuance, reporting of emergency dumping to safety of life at sea, compliance with permit requirements, including general permits for burial at sea, for transportation and disposal of vessels, and for ocean disposal of marine mammal carcasses.

EPA collects this information to ensure that ocean dumping is appropriately regulated and will not harm human health and the marine environment, based on applying the Ocean Dumping Criteria. The Ocean Dumping Criteria consider, among other things: The environmental impact of the dumping; the need for the dumping; the

effect of the dumping on esthetic, recreational, or economic values; land-based alternatives to ocean dumping; and the adverse effects of the dumping on other uses of the ocean. The Ocean Dumping Criteria are codified in 40 CFR parts 227–228. To meet U.S. reporting obligation under the London Convention, an international treaty on ocean dumping, EPA also reports some of this information in the annual United States Ocean Dumping Report.

EPA uses ocean dumping information to make decisions regarding whether issue, deny, as well as to impose conditions on ocean dumping permits issued by EPA in order to ensure consistency with the Ocean Dumping Criteria. EPA uses monitoring and reporting data from permittees to assess compliance with ocean dumping permits, including associated monitoring activities.

Form numbers: None.

Respondents/affected entities: Respondents/affected entities may include any private person or entity, or state, local, or foreign governments.

Respondent's obligation to respond: Required to obtain or retain a benefit, specifically permit authorization and/or compliance with permits required under MPRSA sections 102 and 104, 33 U.S.C. 1402 & 1404, and implementing regulations at 40 CFR parts 220–229.

Estimated number of respondents: 2,768 respondents per year.

Frequency of response: The frequency of response varies for application and reporting requirements for different permits. Other than the general permit for transportation and disposal of vessels, response is required once for each permit application, whether a single notification to EPA or a permit application. Depending on the type of MPRSA permit, a permit application would be required prior to expiration if the permittee seeks re-issuance: General permit (once every seven years), special permit (once every three years), and research permit (once every 18 months).

Total estimated burden: The public reporting and recordkeeping burdens for this collection of information are estimated to be 3,497 hours per year. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: Annual costs are estimated to be $380,376, which includes $184,503 for labor and $195,874 for capital or operation & maintenance costs.

Changes in estimates: There is no significant increase in the burden. There is an increase of 1 hour in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to a change in the program requirements and reflects updated reporting burden estimates. Specifically, since the issuance of the current ICR, EPA issued an additional general permit under the MPRSA for the transport and disposal of marine mammal carcasses in ocean waters under specified conditions. The estimates in the supporting information reflect the increase associated with the general permit, which was published in the **Federal Register** on December 6, 2016 [81 FR 87928].

Dated: September 27, 2018.

John Goodin,

Acting Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. 2018–21750 Filed 10–4–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2018–0594; FRL–9985–17–OW]

Request for Nominations of Drinking Water Contaminants for the Fifth Contaminant Candidate List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is requesting nominations of chemical and microbial contaminants that are not currently regulated, for possible inclusion on the fifth drinking water Contaminant Candidate List. The EPA requests that nominations include information showing the nominated contaminant is known or anticipated to occur in public water systems and indicating the nominated contaminant may require regulation due to the potential for adverse effects on the health of persons.

DATES: Nominations must be received on or before December 4, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2018–0594, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. You may also submit comments by mail or hand delivery to: Water Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.* More information about comment submissions and CBI specific to the nomination process is included in Section III of this notice.

FOR FURTHER INFORMATION CONTACT: For questions about this notice and/or inquiries regarding the EPA's fifth drinking water Contaminant Candidate List (CCL 5) nominations, please contact Kesha Forrest, Standards and Risk Management Division, Office of Ground Water and Drinking Water, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–3632; email address: *forrest.kesha@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This notice does not impose any requirements on anyone; it only requests nominations for the drinking water Contaminant Candidate List (CCL) and provides information on how the public can submit nominations to the EPA.

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

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2018–0594. Publicly available docket materials are accessible either electronically through *http://www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center (see the **ADDRESSES** section of this notice).

II. Background

A. What is the CCL?

The CCL is a list of contaminants that are currently not subject to any proposed or promulgated national primary drinking water regulations, that are known or anticipated to occur in public water systems, and which may require regulation under the Safe

Drinking Water Act (SDWA). The EPA uses this list of unregulated contaminants to prioritize research and data collection efforts to help the Agency determine whether to regulate a specific contaminant. The SDWA requires that the EPA publish the CCL every five years (SWDA § 1412(b)(1)). The EPA is also required to consult with the scientific community, including the Science Advisory Board, and provide notice and opportunity for public comment prior to publication of the final CCL.

The SDWA also requires the EPA to determine whether to regulate at least five contaminants from the CCL every five years (SWDA § 1412(b)(1)). To regulate a contaminant, the SDWA specifies the EPA must determine that:

1. The contaminant may have an adverse effect on the health of persons;

2. The contaminant is known to occur, or there is a substantial likelihood that the contaminant will occur, in public water systems with a frequency and at levels of public health concern; and

3. In the sole judgment of the Administrator, regulation of such contaminant presents meaningful opportunity for health risk reduction for persons served by public water systems.

B. What contaminants were listed on the previous Contaminant Candidate List?

The fourth CCL (CCL 4) was published on November 17, 2016 (81 FR 81099). CCL 4 included 97 chemicals or chemical groups and 12 microbial contaminants. The list includes, among others, chemicals used in commerce, pesticides, biological toxins, disinfection byproducts, pharmaceuticals, and waterborne pathogens. The list of contaminants included on CCL 4, and other information regarding the CCL, can be found on the internet at *https://www.epa.gov/ccl* and in the **Federal Register** notice for the final CCL 4 (81 FR 81099, November 17, 2016).

C. Why is the EPA soliciting contaminant nominations?

The EPA is conducting an evaluation of potential contaminants for inclusion on the draft CCL 5. The EPA is requesting public nominations for contaminants that are not currently regulated, to ensure that contaminants that may not be typically identified as part of the EPA's CCL process are considered. The National Academy of Sciences (NAS, 2001) and National Drinking Water Advisory Council (NDWAC, 2004) recommended to the EPA that the CCL be a data-driven, step-wise approach to classifying contaminants. These experts also recognized the importance of providing an additional pathway for the public to identify new and emerging contaminants for the EPA to further evaluate. A public nomination process allows the EPA to consider new and emerging contaminants that might not otherwise be considered because new information may exist that the EPA is unaware of and/or the information may not have been widely reported or recorded.

III. The EPA CCL Nomination Process

This contaminant nomination process is the first opportunity for the public to make nominations for contaminants to be considered for the CCL 5. The EPA will also accept nominations during the notice and comment period following the EPA's publication of the draft CCL 5 in the **Federal Register**.

A. How can stakeholders, agencies, industry, and the public nominate contaminants for the CCL 5?

Interested parties can nominate chemicals, microbes, or other materials for consideration on the CCL 5 by sending information electronically through *http://www.regulations.gov,* by mail, or by hand delivery (see the **ADDRESSES** section of this notice). Do not submit confidential business information (CBI) to the EPA through *http://www.regulations.gov* or email. Submit comments that contain CBI only by mail or hand delivery, and clearly mark the part of or all the information that you claim to be CBI. In addition to one complete version of the comment that includes information claimed as CBI, a non-CBI 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 the *Code of Federal Regulations* at 40 CFR part 2.

When submitting a nomination, it is preferred that the nominators include a name, affiliation, phone number, mailing address, and email address; however, this information is not required and nominations can be submitted anonymously. The nominator should also address the following questions for each contaminant nominated to the CCL:

1. What is the contaminant's name, CAS number, and/or common synonym (if applicable)? Please do not nominate a contaminant that is already subject to a national primary drinking water regulation.

2. What are the data that you believe support the conclusion that the contaminant is known or anticipated to occur in public water systems? For example, provide information that shows measured occurrence of the contaminant in drinking water or measured occurrence in sources of drinking water or provide information that shows the contaminant is released in the environment or is manufactured in large quantities and has a potential for contaminating sources of drinking water. Please provide the source of this information with complete citations for published information (*i.e.,* author(s), title, journal, and date) or contact information for the primary investigator.

3. What are the data that you believe support the conclusion that the contaminant may require regulation? For example, provide information that shows the contaminant may have an adverse health effect on the general population or that the contaminant is potentially harmful to subgroups that comprise a meaningful portion of the population (such as children, pregnant women, the elderly, individuals with a history of serious illness, or others). Please provide the source of this information with complete citations for published information (*i.e.,* author(s), title, journal, and date) or contact information for the primary investigator.

B. How do I submit nominations in hard copy?

You may submit nominations by mail or hand delivery. To allow full consideration of your nomination, please ensure that your nominations are received or postmarked by midnight December 4, 2018. The address for submittal of nominations by mail or hand delivery is listed in the **ADDRESSES** section of this document.

C. What will happen to my nominations after I submit them?

The EPA will evaluate the information available for the nominated contaminants to determine the appropriateness of inclusion on the CCL 5. The EPA does not intend to respond to the nominations directly or individually. The EPA will summarize the nominations received when the draft CCL 5 list is published in the **Federal Register**.

IV. References

Copies of these documents are found at *http://www.regulations.gov,* Docket ID No. EPA–HQ–OW–2018–0594.

NAS 2001. National Academy of Sciences, National Research Council. 2001. Classifying Drinking Water Contaminants for Regulatory Consideration. National Academy Press. Washington, DC. Available at *http://books.nap.edu/books/0309074088/html/*

index.html.

NDWAC 2004. National Drinking Water Advisory Council. National Drinking Water Advisory Council Report on the CCL Classification Process to the U.S. Environmental Protection Agency, May 18, 2004. Available at *https://www.epa.gov/ccl/national-drinking-water-advisory-council-report-ccl-classification-process.*

Dated: September 27, 2018.

David P. Ross,

Assistant Administrator, Office of Water.

[FR Doc. 2018–21748 Filed 10–4–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9985–16–Region 4]

Public Water System Supervision Program Revision for the State of North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intended approval.

SUMMARY: Notice is hereby given that the State of North Carolina is revising its approved Public Water System Supervision Program. North Carolina has adopted drinking water regulations for the Revised Total Coliform Rule. EPA has determined that North Carolina's regulations are no less stringent than the federal rule and the revision otherwise meets applicable Safe Drinking Water Act requirements. Therefore, EPA intends to approve this revision to the State of North Carolina's Public Water System Supervision Program.

DATES: Any interested person may request a public hearing. A request for a public hearing must be submitted by November 5, 2018, to the Regional Administrator at the EPA Region 4 street address shown below. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by November 5, 2018, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on November 5, 2018. Any request for a public hearing shall include the following information: the name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday (excluding legal holidays) at the following offices: Public Water Supply Section, North Carolina Department of Environmental Quality, 512 North Salisbury Street, Archdale Building, Raleigh, North Carolina 27604; and the Drinking Water Section, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Dale Froneberger, EPA Region 4, Drinking Water Section, by mail at the Atlanta street address given above, by telephone at (404) 562–9446, or by email at *froneberger.dale@epa.gov.*

SUPPLEMENTARY INFORMATION: The State of North Carolina has submitted a request that EPA approve a revision to the State's Safe Drinking Water Act Public Water System Supervision Program to include the authority to implement and enforce the Revised Total Coliform Rule. For the request to be approved, EPA must find the state regulations codified at Title 15A NCAC Subchapter 18C to be no less stringent than the federal rule codified at 40 CFR part 141. EPA reviewed North Carolina's application using the federal statutory provisions (Section 1413 of the Safe Drinking Water Act), federal regulations (at 40 CFR parts 141 and 142), state regulations, state policies and procedures for implementing the rule, regulatory crosswalk, and EPA regulatory guidance to determine whether the request for revision is approvable. EPA determined that the North Carolina regulations are no less stringent than the corresponding federal rule and the revision otherwise meets applicable Safe Drinking Water Act requirements. Therefore, EPA intends to approve this revision. If EPA does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on his own motion, this approval shall become final and effective on November 5, 2018.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142.

Dated: September 25, 2018.

Onis ''Trey'' Glenn, III,

Regional Administrator, Region 4.

[FR Doc. 2018–21752 Filed 10–4–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2017–0586; FRL–9983–38]

A Working Approach for Identifying Potential Candidate Chemicals for Prioritization; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces the availability of a document: *A Working Approach for Identifying Potential Candidate Chemicals for Prioritization.* The document lays out EPA's near-term approach for identifying potential chemicals for prioritization, the initial step in evaluating the safety of existing chemicals under the Toxic Substances Control Act (TSCA). The document also includes a longer-term risk-based approach for considering the larger TSCA active chemical universe. EPA is opening a public docket to accept comments on this approach, which will inform a public meeting to be held in early 2019. This docket will remain open until November 15, 2018. In a related but separate action, EPA is opening 74 public dockets, one for each of the 73 remaining chemicals on the 2014 Update to the TSCA Work Plan for Chemical Assessments that have not received manufacturer requests for EPA evaluation and an additional general docket for chemicals not on the Work Plan. These dockets will be open until December 1, 2019.

FOR FURTHER INFORMATION CONTACT:

For technical information on A Working Approach for Identifying Potential Candidate Chemicals for Prioritization document contact: Susanna Blair, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4371; email address: *susanna.blair@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@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 chemical manufacturers, processors and users, consumer product companies, non-profit organizations in the environmental and public health sectors, state and local government agencies, and members of the public interested in the environmental and human health assessment and regulation of chemical substances. 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 action is the Agency taking?

EPA is taking three actions: Announcing the availability of a document, announcing the opening of a docket to accept comments on the longer-term strategy described in the document, and announcing the opening of chemical-specific public dockets and a general docket to collect information on potential candidate chemicals for prioritization for risk evaluation under TSCA.

This Notice announces the availability of a document: *A Working Approach for Identifying Potential Candidate Chemicals for Prioritization.* The document lays out EPA's near-term approach for identifying potential chemicals for prioritization, the initial step in evaluating the safety of existing chemicals under TSCA. The document also includes a longer-term approach for considering the larger TSCA active chemical universe. The document is available at EPA's website at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/prioritizing-existing-chemicals-risk-evaluation.*

EPA is opening a public docket to accept comments on this longer-term approach, which will inform a public meeting to be held in early 2019. This docket, identified by docket ID EPA–HQ–OPPT–2018–0659, will remain open until November 15, 2018.

In a separate but related action, EPA is opening 74 public dockets, one for each of the 73 remaining chemicals on the 2014 Update to the TSCA Work Plan for Chemical Assessments that have not received manufacturer requests for EPA evaluation and an additional general docket for chemicals not on the Work Plan. These dockets will be open until December 1, 2019. More details about these dockets is in Unit II.B.

C. What is the Agency's authority for this action?

As amended in June 2016, TSCA requires that EPA prioritize and evaluate existing chemical substances and manage identified risks (15 U.S.C. 2605). This Notice is issued pursuant to the authority in TSCA section 6(b), 15 U.S.C. 2605(b).

II. Background

The Frank R. Lautenberg Chemical Safety for the 21st Century Act, amending the TSCA of 1976, was signed into law on June 22, 2016. The amendments required that EPA establish procedures for prioritizing and evaluating risks from existing chemical substances. EPA announced its final procedures on June 22, 2017 (see *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/federal-register-notice-procedures-prioritization*), and the final procedural rule addressing the prioritization process published in the **Federal Register** on July 20, 2017 (82 FR 33753) (FRL–9964–24).

A. A Working Approach for Identifying Potential Candidate Chemicals for Prioritization

The document described in this Notice lays out EPA's near-term approach for identifying potential chemicals for prioritization, the initial step in evaluating the safety of existing chemicals under TSCA. Building on the Agency's commitment to work with the public to select the next chemicals for risk evaluation, this approach reflects public input received at a December 2017 meeting (82 FR 51415) (FRL–9970–34) and through the public docket for that meeting (EPA–HQ–OPPT–2017–0587). By December 2019, EPA must designate at least 20 chemical substances as High-Priority for risk evaluation, and 20 chemical substances as Low-Priority for which risk evaluation is not currently warranted.

The information set forth in the document, *A Working Approach for Identifying Potential Candidate Chemicals for Prioritization,* describes the general approaches EPA may consider for identifying existing chemicals as potential candidates for prioritization. The goal of these approaches is to identify potential candidates from which EPA will select candidates for prioritization, consistent with its regulations at 40 CFR 702.5.

The document describes the near-term approach that EPA anticipates using to inform the identification of potential candidates for the initial 20 High-Priority and 20 Low-Priority chemical substances that must be identified pursuant to TSCA section 6(b)(2)(B). The document also presents a longer-term approach that EPA is considering. EPA encourages public comments on these approaches and has opened dockets to receive public comments.

The document presents internal guidance for EPA, and neither constitutes rulemaking by EPA nor can be relied on to create a substantive or procedural right enforceable by any party in litigation with the United States. It provides recommendations and does not impose any legally binding requirements. Similarly, statements about what EPA expects or intends to do reflect general principles to guide EPA's activities and not judgments or determinations as to what EPA will do in any particular case.

B. Dockets To Collect Information on Potential Candidate Chemicals for Prioritization for Risk Evaluation

As explained in the *Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act* Final rule published in the **Federal Register** on July 20, 2017 (82 FR 33753) (FRL–9964–24), EPA intends to foster a dialogue with stakeholders by publishing a notice explaining why it chose to initiate the prioritization process on particular chemical substances and to seek relevant information from the public. In support of that intention, EPA is opening 74 public dockets, one for each of the 73 remaining chemicals on the 2014 Update to the TSCA Work Plan for Chemical Assessments that have not received manufacturer requests for EPA evaluation and an additional general docket for the public to suggest chemicals EPA should prioritize for risk evaluation.

By providing the public with a venue for submitting use, hazard, and exposure information on these chemicals, EPA is facilitating the sharing of information by stakeholders and the general public that could update the information EPA currently has on the chemicals on the 2014 Update to the TSCA Work Plan for Chemical Assessments. EPA will use this data to inform TSCA prioritization and risk evaluation for these chemicals.

EPA is also opening dockets for input on chemicals not on the 2014 Update to the TSCA Work Plan for Chemical Assessments. EPA expects that the dockets will increase transparency of the process.

The list of chemical dockets is in this section. Additional information, such as the docket numbers for each chemical, the chemical's Chemical Abstract

Services Registry Number, and the EPA points of contact can be found at *http://www.epa.govADDURLXXX.* EPA is opening these dockets to receive information from the public. Information should be submitted by December 1, 2019. When you submit your information, please identify the docket identification (ID) number associated with the relevant chemical. Additional instructions on providing information or visiting the docket, along with more information about dockets generally, is available in each docket and at *http://www.epa.gov/dockets.* When preparing and submitting your information, see the tips at *http://www2.epa.gov/dockets/commenting-epa-dockets#tips.*

The chemicals as listed on the 2014 Update to the TSCA Work Plan for Chemical Assessments and the respective docket numbers are:

- Acetaldehyde (EPA–HQ–OPPT–2018–0497).
- Acrylonitrile (EPA–HQ–OPPT–2018–0449).
- tert-Amyl methyl ether (EPA–HQ–OPPT–2018–0463).
- Antimony and Antimony Compounds (EPA–HQ–OPPT–2018–0470).
- Arsenic and Arsenic Compounds (EPA–HQ–OPPT–2018–0472).
- Barium Carbonate (EPA–HQ–OPPT–2018–0473).
- Benzenamine (EPA–HQ–OPPT–2018–0474).
- Benzene (EPA–HQ–OPPT–2018–0475).
- Bisphenol A (BPA) (EPA–HQ–OPPT–2018–0500).
- 1,3-Butadiene (EPA–HQ–OPPT–2018–0451).
- Butanamide, 2,2′-[(3,3′-dichloro[1,1′- biphenyl]- 4,4′-diyl)bis(azo)]bis[N- (4-chloro-2,5 dimethoxyphenyl)-3-oxo- (Pigment Yellow 83) (EPA–HQ–OPPT–2018–0477).
- Butanamide, 2-[(4- methoxy-2-nitrophenyl) azo]-N-(2-methoxyphenyl)-3-oxo- (Pigment Yellow 65) (EPA–HQ–OPPT–2018–0478).
- Butyl benzyl phthalate (BBP) 1,2-Benzene- dicarboxylic acid, 1- butyl 2(phenylmethyl) ester (EPA–HQ–OPPT–2018–0501).
- 4-sec-Butyl-2,6-di-tert- butylphenol (EPA–HQ–OPPT–2018–0495).
- Cadmium and Cadmium Compounds (EPA–HQ–OPPT–2018–0479).
- Chromium and Chromium Compounds (EPA–HQ–OPPT–2018–0480).
- Cobalt and Cobalt Compounds (EPA–HQ–OPPT–2018–0481).
- Creosotes (EPA–HQ–OPPT–2018–0502).
- Cyanide Compounds (Limited to dissociable compounds) (EPA–HQ–OPPT–2018–0482).
- Dibutyl phthalate (DBP) (1,2-Benzene- dicarboxylic acid, 1,2- dibutyl ester) (EPA–HQ–OPPT–2018–0503).
- *o*-Dichlorobenzene (EPA–HQ–OPPT–2018–0444).
- *p*-Dichlorobenzene (EPA–HQ–OPPT–2018–0446).
- 3,3′-Dichlorobenzidine (EPA–HQ–OPPT–2018–0494).
- 3,3′-Dichlorobenzidine dihydrochloride (EPA–HQ–OPPT–2018–0493).
- 1,1-Dichloroethane (EPA–HQ–OPPT–2018–0426).
- 1,2-Dichloroethane (EPA–HQ–OPPT–2018–0427).
- trans-1,2- Dichloroethylene (EPA–HQ–OPPT–2018–0465).
- 1,2-Dichloropropane (EPA–HQ–OPPT–2018–0428).
- Dicyclohexyl phthalate (EPA–HQ–OPPT–2018–0504).
- Di-ethylhexyl phthalate (DEHP) (1,2-Benzene- dicarboxylic acid, 1,2-bis(2-ethylhexyl) ester (EPA–HQ–OPPT–2018–0433).
- Di-isobutyl phthalate (DIBP) (1,2-Benzene- dicarboxylic acid, 1,2- bis-(2methylpropyl) ester) (EPA–HQ–OPPT–2018–0434).
- Di-isodecyl phthalate (DIDP) (1,2-Benzene- dicarboxylic acid, 1,2-diisodecyl ester) (EPA–HQ–OPPT–2018–0435).
- Di-isononyl phthalate (DINP) (1,2-Benzene- dicarboxylic acid, 1,2-diisononyl ester) (EPA–HQ–OPPT–2018–0436).
- 1,2-Dimethoxyethane (Monoglyme) (EPA–HQ–OPPT–2018–0429).
- 2-Dimethylaminoethanol (EPA–HQ–OPPT–2018–0489).
- Di-n-octyl phthalate (DnOP) (1,2-Benzene- dicarboxylic acid, 1,2- dioctyl ester) (EPA–HQ–OPPT–2018–0437).
- Ethanone, 1- (1,2,3,4,5,6,7,8-octahydro-2,3,5,5- tetramethyl-2-naphthalenyl)- (EPA–HQ–OPPT–2018–0483).
- Ethanone, 1- (1,2,3,4,5,6,7,8-octahydro-2,3,8,8- tetramethyl-2-naphthalenyl)- (EPA–HQ–OPPT–2018–0484).
- Ethanone, 1- (1,2,3,4,6,7,8,8a-octahydro- 2,3,8,8- tetramethyl-2-naphthalenyl)- (EPA–HQ–OPPT–2018–0485).
- Ethanone, 1- (1,2,3,5,6,7,8,8a-octahydro- 2,3,8,8- tetramethyl-2-naphthalenyl)- (EPA–HQ–OPPT–2018–0486).
- Ethylbenzene (EPA–HQ–OPPT–2018–0487).
- Ethylene dibromide (EPA–HQ–OPPT–2018–0488).
- bis(2-Ethylhexyl) adipate (EPA–HQ–OPPT–2018–0499).
- 2-Ethylhexyl 2,3,4,5-tetrabromobenzoate (TBB) (EPA–HQ–OPPT–2018–0491).
- bis(2-Ethylhexyl)-3,4,5,6-tetrabromophthalate (TBPH) (EPA–HQ–OPPT–2018–0498).
- Formaldehyde (EPA–HQ–OPPT–2018–0438).
- 2,5-Furandione (EPA–HQ–OPPT–2018–0471).
- 1-Hexadecanol (EPA–HQ–OPPT–2018–0469).
- 1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta [g]-2-benzopyran (HHCB) (EPA–HQ–OPPT–2018–0430).
- 2-Hydroxy-4-(octyloxy) benzophenone (EPA–HQ–OPPT–2018–0492).
- Lead and Lead Compounds (EPA–HQ–OPPT–2018–0452).
- Long-chain chlorinated paraffins (C18–20) (EPA–HQ–OPPT–2018–0439).
- Medium-chain chlorinated paraffins (C14–17) (EPA–HQ–OPPT–2018–0440).
- 4,4′-Methylene bis(2- chloroaniline) (EPA–HQ–OPPT–2018–0464).
- 4,4′-(1-Methylethylidene)bis[2, 6-dibromophenol] (TBBPA) (EPA–HQ–OPPT–2018–0462).
- Molybdenum and Molybdenum Compounds (EPA–HQ–OPPT–2018–0453).
- Naphthalene (EPA–HQ–OPPT–2018–0454).
- 2- Naphthalenecarboxylic acid, 4-[(4-chloro-5- methyl-2-sulfophenyl) azo]-3-hydroxy-, calcium salt (1:1) (Pigment Red 52) (EPA–HQ–OPPT–2018–0460).
- Nickel and Nickel Compounds (EPA–HQ–OPPT–2018–0455).
- N-Nitroso- diphenylamine (EPA–HQ–OPPT–2018–0456).
- Nonylphenol and Nonylphenol Ethoxylates (NP/NPEs) (EPA–HQ–OPPT–2018–0442).
- Octamethylcyclotetra- siloxane (D4) (EPA–HQ–OPPT–2018–0443).
- 4-tert-Octylphenol (4-(1,1,3,3-Tetramethylbutyl)- phenol) (EPA–HQ–OPPT–2018–0496).
- p,p′- Oxybis(benzenesulfonyl hydrazide) (EPA–HQ–OPPT–2018–0457).
- Phosphoric acid, triphenyl ester (TPP) (EPA–HQ–OPPT–2018–0458).
- Phthalic anhydride (EPA–HQ–OPPT–2018–0459).
- Styrene (EPA–HQ–OPPT–2018–0461).
- Tribromomethane (Bromoform) (EPA–HQ–OPPT–2018–0466).
- 1,1,2-Trichloroethane (EPA–HQ–OPPT–2018–0421).
- Triglycidyl isocyanurate (EPA–HQ–OPPT–2018–0467).
- Tris(2-chloroethyl) phosphate (TCEP) (EPA–HQ–OPPT–2018–0476).

• Vinyl chloride (EPA–HQ–OPPT–2018–0448).
• *m*-Xylene (EPA–HQ–OPPT–2018–0441).
• *o*-Xylene (EPA–HQ–OPPT–2018–0445).
• *p*-Xylene (EPA–HQ–OPPT–2018–0447).

In addition, EPA is interested in the public's input on chemicals not on the 2014 Update to the TSCA Work Plan for Chemical Assessments for consideration as potential candidates for prioritization under TSCA. EPA welcomes the submittal of information to the docket that would support the consideration of the chemicals suggested, such as information on use, hazard, and exposure. EPA is opening docket number EPA–HQ–OPPT–2018–0592 for this purpose.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: September 27, 2018.

Jeffery T. Morris,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 2018–21747 Filed 10–4–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA02

Request for Information on FDIC Communication and Transparency

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and Request for Information.

SUMMARY: The FDIC is seeking comments and information from interested parties on the FDIC's communication methods and related initiatives to promote efficiency and increase transparency.

DATES: Comments must be received by December 4, 2018.

ADDRESSES: You may submit comments, identified by RIN 3064–ZA02, by any of the following methods:

• *Agency website: http://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the Agency website.
• *Email: Comments@fdic.gov.* Include the RIN 3064–ZA02 in the subject line of the message.
• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/*—including any personal information provided—for public inspection. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Tanya Otsuka, Counsel, (202) 898–6816, *taotsuka@FDIC.gov.*

SUPPLEMENTARY INFORMATION: The FDIC is responsible for maintaining stability and public confidence in the nation's financial system by insuring deposits, examining and supervising financial institutions for safety and soundness and consumer protection, making large and complex financial institutions resolvable, and managing receiverships. In order to accomplish this mission, the FDIC must be able to communicate efficiently and effectively with financial institutions. As described further below, the FDIC is soliciting comment on how to streamline and improve communication with insured depository institutions.

Overview of Request for Information

The Federal Deposit Insurance Corporation (''FDIC'' or ''Agency'') is issuing this request for information to seek public input on how to make the FDIC's communication with insured depository institutions (IDIs) more effective, streamlined, and clear. While the FDIC's communication with financial institutions is essential to fulfill its statutory mandate, the FDIC recognizes that the amount of information the Agency provides to banks can create challenges for institutions. For example, staying current on relevant communications may be particularly difficult for community banks.

Accordingly, the FDIC is soliciting comment on how to maximize efficiency and minimize burden associated with obtaining information on FDIC laws, regulations, policies, and other materials relevant to IDIs.

Current Forms of Communication

The FDIC uses many forms of communication to inform IDIs about regulations, policies and guidance, industry data and educational materials, and other news and updates. Some forms of communication may be used to disseminate more than one type of information, and some materials may be distributed through multiple channels. These forms of communication include, but are not limited to:

Regulations, Policies, Procedures, and Guidance

- *Federal Register*: The FDIC publishes in the **Federal Register** proposed and final rules, requests for information, and other notices, including statements of policy and certain guidance or interpretations.[1]
- *Unified Agenda:* Twice each year through the Unified Agenda process, the FDIC makes available an agenda of regulations to inform the public of its regulatory actions and to enhance public participation in the rulemaking process.[2] The agenda contains information about FDIC's current and projected rulemakings, existing regulations under review, and completed rulemakings.
- *Financial Institution Letters (FILs):* The FDIC uses FILs to distribute information to all or a subset of FDIC-insured institutions, which letters are also posted on the FDIC website in chronological order. FILs may announce new regulations and policies, new FDIC publications, and a variety of other matters of principal interest to those responsible for operating a bank or savings association.
- *Statements of Policy:* The FDIC may use statements of policy to advise the public prospectively of the manner in which the FDIC proposes to exercise its authorities or view certain matters under applicable law.
- Examination Manuals
- Frequently Asked Questions (FAQs) or Questions and Answers (Q&As)
- Memoranda
- Supervisory Guidance Documents, Statements, and Advisories
- FDIC Open Board Meetings

News and Updates

- Press Releases
- FDIC Consumer News
- Annual Reports
- Newsletters (*e.g.,* Regional Newsletters, Money Smart News)
- Consumer Alerts
- Regulatory Calendar

[1] The FDIC posts documents published in the **Federal Register** chronologically on the FDIC website. *See https://www.fdic.gov/regulations/laws/federal/.*

[2] Publication of the agenda is in accordance with the Regulatory Flexibility Act. *See* 5 U.S.C. 601 *et seq.*

Industry Data, Educational Materials, and Outreach

- Quarterly Banking Profile
- Studies (*e.g.,* FDIC Community Banking Study)
- White Papers
- Surveys (*e.g.,* National Survey of Unbanked and Underbanked Households)
- FDIC Videos, Webcasts, Webinars
- Roundtables
- Industry Conferences
- Advisory Committee Meetings
- Community Outreach Program/ Listening Tours
- Industry Conference Calls
- Supervisory Insights
- FDIC Brochures
- Community Bank Resource Kit

General Communication

- *FDIC.gov* website [3]
- Social Media (*e.g.,* Twitter, Facebook, LinkedIn, YouTube)
- Email subscriptions
- RSS Feeds

Direct Communication

- Hotlines (*e.g.,* 1–877–ASK–FDIC)
- Assistance forms (*e.g.,* Business Assistance Form, Deposit Insurance Form, Interagency Appraisal Complaint Form, Potential Franchise Bidder Contact Form)
- Email Boxes (*e.g., webmaster@fdic.gov, assessments@fdic.gov, supervision@fdic.gov, FDICInquiriesandComp@fdic.gov*)
- FDIC*connect:* The FDIC communicates directly with banks through FDIC*connect,* the secure internet channel for FDIC-insured institutions to conduct business and exchange information with the FDIC.
- Reports of Examination
- Letters
- Emails
- Telephone calls
- In-Person Meetings
- Compliance Reviews
- Assessment Quarterly Certified Statement Invoice packet

Suggested Topics for Commenters

To reduce burden for institutions and others seeking information, both in terms of expending fewer resources to find relevant information and decreasing the amount of information that needs to be reviewed, the FDIC is seeking input on how best to streamline and improve communication with the industry. The FDIC encourages comments from all interested members of the public, including but not limited to insured depository institutions, other financial institutions or companies, individual depositors and consumers, consumer groups, and other members of the financial services industry. Please be as specific as possible to allow the FDIC to evaluate comments more effectively.

In addition to general feedback on the FDIC's communication, transparency, and related initiatives described above, the FDIC also requests input on the following more specific topics and questions related to the FDIC's communication and transparency:

Efficiency

1. How effective are the FDIC's current forms of communication, including those listed above? Which methods are the most effective? Which are the least effective? Are there other methods of communication the FDIC should consider?

2. Is it clear to IDIs which communication is supervisory in nature and which is purely informational?

3. Is the FDIC communicating through too many different forms and channels? Is the FDIC communicating too much information? Should some forms and channels of communication be eliminated?

4. How can the FDIC better streamline and organize its communication with IDIs in order to distribute important information more efficiently?

5. How appropriate is the timing and frequency of communication?

Ease of Access

1. Is FDIC information readily available and easy to find? If not, how can the FDIC make it easier to receive and find information?

2. How can the FDIC improve the *FDIC.gov* website? Does the website search function provide helpful and relevant results? What aspects of the *FDIC.gov* website are most helpful?

3. Are there other forms of technology the FDIC should use to communicate with IDIs?

4. What is the most effective way for the FDIC to organize or flag communications that are relevant to community banks?

5. The FDIC provides an opportunity for institutions and their consumer compliance personnel to opt in to receive email alerts when the FDIC's Compliance Examination Manual (CEM) is updated or revised. Are there additional ways that the FDIC should consider communicating about CEM updates and revisions? Are there other areas or contexts where email alerts from the FDIC would be helpful?

6. The FDIC engages in a variety of initiatives with institutions interested in acquiring failed institutions and assets, including outreach events that provide information on how the FDIC markets assets and how interested parties can bid on assets offered for sale, as well as asset purchaser workshops marketed extensively to minority- and women-owned investors and companies interested in learning about the process for failed bank asset sales. Are there additional ways that the FDIC should consider communicating with institutions interested in acquiring failed institutions and assets?

Content

1. Which types of communication are best suited for informing IDIs about new policy initiatives, new laws and regulations, new guidance, new background or educational materials, news and other updates?

2. The FDIC is looking at ways to improve the process for disseminating information through FILs. The FDIC staff has reviewed all outstanding FILs issued between 1995 and 2017 to determine which ones should be archived, which should be preserved, and whether any could be combined with others to streamline the information provided to the industry. The removal of certain outdated FILs will reduce the amount of information supervised institutions need to review and make it easier to update and streamline documents that communicate supervisory expectations to the industry going forward. Should FILs be organized chronologically, by topic, by applicable regulation, or by institution size? Are FILs preferable to other forms of communication? Should the FDIC distinguish FILs that communicate regulations and policy from FILs that may be merely informational?

Dated at Washington, DC, on October 1, 2018.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–21704 Filed 10–4–18; 8:45 am]

BILLING CODE 6714–01–P

[3] *https://www.fdic.gov.*

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of Receiverships

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for each of the following insured depository institutions, was charged with the duty of winding up the affairs of the former institutions and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

NOTICE OF TERMINATION OF RECEIVERSHIPS

Fund	Receivership name	City	State	Termination date
10165	Peoples First Community Bank	Panama City	FL	10/1/2018
10401	Blue Ridge Savings Bank, Inc	Asheville	NC	10/1/2018
10459	First United Bank	Crete	IL	10/1/2018

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination dates listed above, the Receiverships have been terminated, the Receiver has been discharged, and the Receiverships have ceased to exist as legal entities.

Dated at Washington, DC, on October 1, 2018.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–21675 Filed 10–4–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate Receivership

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver) as Receiver for the institution listed below intends to terminate its receivership for said institution.

NOTICE OF INTENT TO TERMINATE RECEIVERSHIP

Fund	Receivership name	City	State	Date of appointment of receiver
10451	Georgia Trust Bank	Buford	GA	07/20/2012

The liquidation of the assets for the receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing, identify the receivership to which the comment pertains, and sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated at Washington, DC, on October 1, 2018.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–21676 Filed 10–4–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 5, 2018.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23219. Comments can also be sent electronically to or *Comments.applications@rich.frb.org.*

1. *Bay-Vanguard, MHC and BV Financial, Inc., both of Sparrows Point, Maryland;* to acquire voting shares of Kopernik Bank, Baltimore, Maryland.

Board of Governors of the Federal Reserve System, October 2, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–21712 Filed 10–4–18; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or

assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 29, 2018.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *HSBC Holdings plc, London, England; HSBC Overseas Holdings (UK) Limited, London, England; HSBC North America Holdings Inc., New York, New York; and HSBC USA, Inc., New York, New York;* to engage de novo through a newly formed entity, The Consortium, LLC, in data processing activities, pursuant to section 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, October 1, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–21658 Filed 10–4–18; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 1, 2018.

A. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *JBNV Holding Corp., Sparks, Nevada;* to become a bank holding company by acquiring 100 percent of the voting shares of Kirkwood Bancorporation of Nevada, Inc., and thereby indirectly acquire Kirkwood Bank of Nevada, both of Las Vegas, Nevada.

Board of Governors of the Federal Reserve System, October 1, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–21643 Filed 10–4–18; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 172 3016]

A & O Enterprises Inc and Aaron K. Roberts; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 22, 2018.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: ''A & O Enterprises Inc'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/aoenterprisesivbarsconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''A & O Enterprises Inc; File No. 1723016'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Thomas Carter (214–979–9372) or James Golder (214–979–9376), Southwest Region, Federal Trade Commission, 1999 Bryan Street, Suite 2150, Dallas, TX 75201.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 20, 2018), on the World Wide Web, at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 22, 2018. Write ''A & O Enterprises Inc; File No. 1723016'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at *https://www.ftc.gov/policy/public-comments.*

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/*

aoenterprisesivbarsconsent by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that website.

If you prefer to file your comment on paper, write ''A & O Enterprises Inc; File No. 1723016'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC website at *https://www.ftc.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 22, 2018. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from A & O Enterprises Inc, a corporation, doing business as iV Bars Incorporated and iV Bars, and Aaron K. Roberts, also known as Aaron Keith (''respondents''). The proposed consent order (''order'') has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement, and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter involves respondents' advertising, promotion and sale of intravenous drip cocktails (''iV Cocktails''), including the Myers Cocktail, which contain a mixture of water, vitamins, minerals and amino acids. According to the FTC complaint, respondents made false or unsubstantiated representations that their iV Cocktails are effective treatments for cancer, angina, cardiovascular disease, congestive heart failure, myocardial infarction, multiple sclerosis, diabetes, fibromyalgia and neurodegenerative disorders, and that their cocktails produce fast, lasting results, are safe for all ages and cause no side effects. The FTC also alleges that respondents falsely represented that their iV Cocktails are clinically or scientifically proven to effectively treat the enumerated diseases and produce fast, lasting results. The complaint alleges that respondents' actions constitute unfair or deceptive acts or practices and the making of false advertisements, in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

The order is designed to prevent respondents from engaging in similar acts or practices in the future. It includes injunctive relief to address these alleged violations and to prohibit similar and related conduct.

- The order defines ''covered product'' to mean any intravenous therapy, including all of respondents' iV Cocktails, and any intramuscular injection.
- Part I of the order prohibits express or implied claims that any covered product: (1) Is an effective treatment for cancer, angina, cardiovascular disease, congestive heart failure, myocardial infarction, multiple sclerosis, diabetes, fibromyalgia, or neurodegenerative disorders; (2) produces fast, lasting results; or (3) cures, mitigates, or treats any disease, unless the claim is supported by competent and reliable scientific evidence that is sufficient in quality and quantity, based on standards generally accepted by experts in the relevant area. It further requires that such substantiation include a randomized, double-blind, and placebo-controlled human clinical trial.
- Part II of the order prohibits express or implied health benefit, efficacy, safety, or side effects claims for any covered product, unless the representation is non-misleading, and, at the time the representation is made, proposed respondents possess and rely upon competent and reliable scientific evidence that is sufficient in quality and quantity to support the claim, based on standards generally accepted by experts in the area. It further provides that such substantiation must include a randomized, double-blind, and placebo-controlled human clinical trial, when experts generally require such human clinical testing to substantiate the representation.
- Part III of the order prohibits respondents, in connection with the advertising, promotion, offering for sale, or sale of any covered product, from misrepresenting, expressly or by implication, that they assembled physicians, biochemists, or physiologists to create, test or approve the products, or that they maintain a research facility, including an iV Bars Research Lab.
- Part IV of the order prohibits respondents, in connection with the

advertising, promotion, offering for sale, or sale of any product or service, from making any misrepresentation about the existence, contents, validity, results, conclusions, or interpretations of any test, study, or other research, or that any product or service is scientifically or clinically proven to produce any benefit.

• Part V of the order requires that respondents, with regard to any human clinical test or study upon which they rely to substantiate any claim covered by the order, must preserve all underlying data and documents generally accepted by experts in the field as relevant to an assessment of the test.

• Part VI of the order provides that nothing in the order prohibits respondents from making a representation for any drug that is approved in labeling for such drug under any tentative final or final monograph promulgated by the Food and Drug Administration, or under any new drug application approved by the FDA.

Parts VII through XI are reporting and compliance provisions. Part VII mandates that respondents acknowledge receipt of the order and, for 10 years, distribute the order to certain employees and agents and secure acknowledgments from recipients of the order. Part VIII requires that respondents submit compliance reports to the FTC one year after the order's issuance and submit additional reports when certain events occur. Part IX requires that, for 10 years, respondents create certain records and retain them for at least 5 years. Part X provides for the FTC's continued compliance monitoring of respondents' activity during the order's effective dates. Part XI is a provision ''sunsetting'' the order after 20 years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or order, or to modify in any way the order's terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2018–21749 Filed 10–4–18; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Public Health Preparedness and Response, (BSC, OPHPR)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Board of Scientific Counselors, Office of Public Health Preparedness and Response, (BSC, OPHPR). This meeting is open to the public, limited only by the space available. The meeting room accommodates up to 80 people. Public participants should pre-register for the meeting as described below. Members of the public that wish to attend this meeting in person should pre-register by submitting the following information by email, facsimile, or phone (see contact person for more information) no later than 12:00 noon (EDT) on Wednesday, October 22, 2018:

- Full Name
- Organizational Affiliation
- Complete Mailing Address
- Citizenship
- Phone Number or Email Address

The public is also welcome to listen to the meeting via Adobe Connect. Pre-registration is required by clicking the links below.

WEB ID: October 29, 2018 (1500 Seats) *https://adobeconnect.cdc.gov/e7gc21b4wp1/event/registration.html.*

WEB ID: October 30, 2018 (1500 Seats) *https://adobeconnect.cdc.gov/e5j7o9ulmi8/event/registration.html.*

Dial in number: 888–603–9747; Participant code: 3564724 (100 Seats).

DATES: The meeting will be held on October 29, 2018, 10:00 a.m.–to 5:00 p.m., EDT and October 30, 2018, 8:30 a.m.–3:30 p.m., EDT.

ADDRESSES: Centers for Disease Control and Prevention (CDC), Global Communications Center, Building 19, Auditorium B3, 1600 Clifton Road NE, Atlanta, Georgia 30329–4027.

FOR FURTHER INFORMATION CONTACT: Dometa Ouisley, Office of Science and Public Health Practice, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop D–44, Atlanta, Georgia 30329–4027, Telephone: (404) 639–7450; Fax: (404) 471–8772; Email: *OPHPR.BSC.Questions@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: This Board is charged with providing advice and guidance to the Secretary, Department of Health and Human Services (HHS), the Assistant Secretary for Health (ASH), the Director, Centers for Disease Control and Prevention (CDC), and the Director, Office of Public Health Preparedness and Response (OPHPR), concerning strategies and goals for the programs and research within OPHPR, monitoring the overall strategic direction and focus of the OPHPR Divisions and Offices, and administration and oversight of peer review for OPHPR scientific programs. For additional information about the Board, please visit: *http://www.cdc.gov/phpr/science/counselors.htm.*

Matters to be Considered: The agenda for day one of the meeting will include discussions that will cover briefings and BSC deliberation on the following topics: Interval updates from the OPHPR Director and OPHPR Divisions and Offices; Presentation on Private Sector and PH Emergency Preparedness & Response Collaboration; and updates from the Biological Agent Containment working group.

Day two of the meeting will cover briefings and BSC deliberation on the following topics: Preparedness updates from Liaison representatives; CDC's Public Health Data Strategy and Data Preparedness initiatives; and updates on Pandemic Flu Activities and Planning Updates. Agenda items are subject to change as priorities dictate.

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

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2018–21702 Filed 10–4–18; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the

Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 83 FR 6179–6185, dated March 14, 2018) is amended to reflect the details of the reorganization of the Centers for Disease Control and Prevention. This reorganization is being undertaken to enhance CDC's role in leading business strategies, strategic and risk management, and fiscal integrity activities, as well as increase the visibility of agency wide management and customer services.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the functional statement for the *Office of the Director (CAJ1), Office of the Chief Operating Officer (CAJ),* and insert the following:

Office of the Director (CAJ1). (1) Manages and directs the activities and functions of the Office of the Chief Operating Officer; (2) provides guidance and support in the conduct of agency-wide business services and management activities performed for or by CIOs; (3) participates in the development of CDC's priority areas, goals, and objectives; (4) advises and assists the CDC Director and other key officials on all aspects of business services activities and functions; (5) oversees operation of the Working Capital Fund; and (6) oversees governance of the Agency's labor management activities.

After the functional statement for the *Freedom of Information Act Office (CAJ12),* insert the following:

Strategic Business Initiatives Unit (CAJ13). (1) Evaluates and conducts agency-wide enterprise risk monitoring and management; (2) develops and executes the annual Federal Managers' Financial Integrity Act program review; (3) conducts special reviews and appraises the adequacy and effectiveness of agency-wide practices and operations; (4) coordinates responses to Office of the Inspector General hotline and other agency special reviews; (5) administers the Federal Advisory Committee Act program; (6) develops, coordinates, and formalizes CDC operational policies; (7) oversees the agency's records management program; and (8) manages CDC's delegations of authority and organizational structure and functions.

Delete in their entirety the title and functional statement for the *Budget Operations Services Branch (CAJEVJ), Office of Financial Resources (CAJE),* and insert the following:

Budget Control and Compliance Services Branch (CAJEVJ). (1) Conducts agency-level budget functions, financial data analysis, and reporting; (2) assists the Office of Budget Services in providing budgetary information for business decision-making support surrounding public health; (3) conducts ongoing reviews of budget systems used to support the agency's financial management activities; (4) provides ongoing budget control support for all CDC/ATSDR funds; (5) reports compliance of laws, regulations, and decisions to the Director, Office of Budget Services; (6) provides information to the Director, Office of Budget Services related to funds control management for the agency's budget; (7) assists in the review of Congressional bill language to identify and properly account for earmarks and other directed programs; (8) assists in fulfilling HHS and OMB reporting requirements; (9) calculates agency-level funding authority during continuing resolution periods, as required; and (10) provides guidance and advice to the CDC CFO and the Director, Office of Budget Services, on issues related to use of CDC appropriations and other matters concerning budgetary policy, law and regulations.

Delete in their entirety the title and functional statement for the *Infectious Disease Budget Execution Services Branch (CAJEVK),* and insert the following:

Budget Planning and Analytics Services Branch (CAJEVK). (1) Assists in developing plans to execute agency-level budget; (2) ensures changes and plans are in compliance with decisions and agency direction; (3) assists CIOs in establishing an agency-level planning budget to forecast annual funding and prepare spend plans for the upcoming fiscal year; (4) conducts ongoing reviews of budget systems used to support the agency's financial planning activities; (5) provides budgetary support for salary related costs including labor distribution system; (6) coordinates cross-cutting and ad hoc analysis of agency resources and funds; (7) provides support for international budget execution and analysis; (8) manages standard reoccurring reporting on special initiatives HHS; and (9) provides surge support for emergencies, outbreaks, and special initiatives.

Delete in their entirety the title and functional statement for the *Public Health Scientific Services Budget Execution Services Branch (CAJEVL),* and insert the following:

Training, Development, and Specialized Funding Budget Execution Services Branch (CAJEVL). (1) Develops, coordinates, and tracks budget execution related training for CDC personnel including the development of various budget certification programs; (2) develops and maintains agency budget execution standard operating procedures, guidance, and job-aids; (3) provides guidance and training support for special funding types such as Interagency Agreements (IAAs), gifts, CRADAs, user fees, etc.; (4) establishes and maintains systems to facilitate the processing of special funding types; (5) assists in developing reports for various funding types and coordinates with Program Resource Management and Budget Execution Support teams; and (6) supports process improvement and workforce development initiatives including performance management designed to support optimal budget execution.

Delete in their entirety the title and functional statement for the *Office of the Director, OSTLTS, and Occupational Safety and Health Budget Execution Services Branch (CAJEVM),* and insert the following:

Budget Execution Services Branch 1 (CAJEVM). (1) Provides the legal and regulatory expertise and support to execute CDC's budget within the framework of HHS, OMB, and Congressional regulations, and policies of CDC OD; (2) manages the expectations agreed upon in the Budget Execution Services Service Level Agreement; (3) promotes structured, ongoing partnerships with CIOs; (4) supports programs with funds management including funds certification; (5) provides the leadership and guidance for spend plan creation and administration, in compliance with all federal guidelines and policies, such as the Anti-Deficiency Act; (6) provides the overall analysis of spend plans to advise programs on future spending decisions; (7) assists program officials in developing sub-allocation of CIO, and/or Division ceilings; (8) communicates and shares knowledge with programs and CDC's budget analyst community; and (9) performs cost-benefit analysis to review financial requests and makes recommendations for future-year budget.

Delete in their entirety the title and functional statement for the *Non-Communicable Disease, Injury, and Environmental Health Budget Execution Services Branch (CAJEVN),* and insert the following:

Budget Execution Services Branch 2 (CAJEVN). (1) Provides the legal and regulatory expertise and support to execute CDC's budget within the framework of HHS, OMB, and Congressional regulations, and policies of CDC OD; (2) manages the expectations agreed upon in the Budget Execution Services Service Level

Agreement; (3) promotes structured, ongoing partnerships with CIOs; (4) supports programs in with funds management including funds certification; (5) provides the leadership and guidance for spend plan creation and administration, in compliance with all federal guidelines and policies, such as the Anti-Deficiency Act; (6) provides the overall analysis of spend plans to advise programs on future spending decisions; (7) assists program officials in developing sub-allocation of CIO, and/or Division ceilings; (8) communicates and shares knowledge with programs and CDC's budget analyst community; and (9) performs cost-benefit analysis to review financial requests and makes recommendations for future-year budget.

Delete in their entirety the title and functional statement for the *Global Health Budget Execution Services Branch (CAJEVP),* and insert the following:

Budget Execution Services Branch 3 (CAJEVP). (1) Provides the legal and regulatory expertise and support to execute CDC's budget within the framework of HHS, OMB, and Congressional regulations, and policies of CDC OD; (2) manages the expectations agreed upon in the Budget Execution Services Service Level Agreement; (3) promotes structured, ongoing partnerships with CIOs; (4) supports programs with funds management including funds certification; (5) provides the leadership and guidance for spend plan creation and administration, in compliance with all federal guidelines and policies, such as the Anti-Deficiency Act; (6) provides the overall analysis of spend plans to advise programs on future spending decisions; (7) assists program officials in developing sub-allocation of CIO, and/or Division ceilings; (8) communicates and shares knowledge with programs and CDC's budget analyst community; and (9) performs cost-benefit analysis to review financial requests and makes recommendations for future-year budget.

Delete in their entirety the title and functional statement for the *Preparedness, Response, and Office of the Chief Operating Officer Budget Execution Services Branch (CAJEVQ),* and insert the following:

Budget Execution Services Branch 4 (CAJEVQ). (1) Provides the legal and regulatory expertise and support to execute CDC's budget within the framework of HHS, OMB, and Congressional regulations, and policies of CDC OD; (2) manages the expectations agreed upon in the Budget Execution Services Service Level Agreement; (3) promotes structured, ongoing partnerships with CIOs; (4) supports programs with funds management including funds certification; (5) provides the leadership and guidance for spend plan creation and administration, in compliance with all federal guidelines and policies, such as the Anti-Deficiency Act; (6) provides the overall analysis of spend plans to advise programs on future spending decisions; (7) assists program officials in developing sub-allocation of CIO, and/or Division ceilings; (8) communicates and shares knowledge with programs and CDC's budget analyst community; and (9) performs cost-benefit analysis to review financial requests and makes recommendations for future-year budget.

After the functional statement for the *Office of the Director (CAJ1), Office of the Chief Information Officer (CAJR),* and insert the following:

Technology Modernization and Solutions Office (CAJR15). The mission of the Technology and Modernization Office (TMSO) is to bring out innovation, agility, and resilience of OCIO's information technology throughout the portfolio lifecycle. To carry out its mission, TMSO: (1) Leads, plans, and manages CDC's information technology (IT) budget development and review processes; (2) advances the field of public health information technology for the Agency through applied research and innovation; (3) coordinates the development and implementation of OCIO enterprise portfolio and investment strategy; (4) establishes, implements and communicates a comprehensive and integrated framework for CDC enterprise architecture; (5) identifies needs and resources for new initiatives and assigns responsibilities for their development; (6) provides centralized information technology portfolio services; and (7) coordinates the development of a research agenda for information technology and public health collaboration.

Enterprise Information Technology Portfolio Office (CAJR152). (1) Plans and directs the capital planning investment Control processes including investment selection, control and evaluation, business case analyses, lifecycle reviews, portfolio development, performance measures, and investment prioritization procedures; (2) develops and monitors earned value management analyses of project cost, schedule and deliverable commitments; (3) provides guidance to program and project managers on the use of the tools for preparing investment documentation that meet CDC, HHS, and OMB requirements; (4) develops CDC IT strategic and tactical plans; (5) provides guidance to program and project managers on technology business management; (6) leads development of the enterprise architecture and transition strategies; (7) collaborates with CDC staff to develop business process models for CDC public health functions; (8) develops and maintains a shared services catalog to promote reuse of existing resources; (9) supports CDC information resource governance structures including common processes, tools, techniques; (10) identifies needs and develops strategies and approaches to acquire and manage enterprise statistical software licenses; and (11) develops internal cost allocation methods and coordinates allocation of costs for annual license renewal payments.

Informatics Innovation Unit (CAJR153). (1) Collaborates with CDC programs and the broader public health community to develop innovative technologies and techniques to positively impact public health practice; (2) transitions new technology-based solutions, standards, and techniques to programs for deployment and implementation; (3) provides consultation, evaluation, guidance, and support in the use of new informatics solutions; (4) rapidly define problems, create prototypes, conduct pilot projects, and examine and test hypotheses to support information technology solutions; (5) participates and represents the agency on technology innovation committees, workgroups, organizations, and councils, within CDC and with other federal agencies; (6) provides education to fellows, colleagues, and partners on emerging information technology tools, techniques, and methodologies; and (7) provides regular updates to leadership as to the status of all projects in the technology innovation laboratory.

Office of Business Operations (CAJR16). (1) Manages OCIO centralized internal accounting services, and budget services; (2) provides guidance, oversight, and coordination in the internal areas of organizational and human capital management, continual process improvement, policy, performance, communication, budget formulation, enterprise risk management, administrative management and internal acquisition services; (3) provides expertise in interpreting applicable laws, regulations, policies, and offers guidance, direction, and coordination in resolving issues; (4) advises and assists the CDC Chief Information Officer, OCIO office directors, and senior staff

on all matters regarding internal business service operations; (5) maintains internal controls; (6) coordinates and manages operationally focused project teams; (7) provides leadership and strategic support in the determination of long-term operational needs; (8) provides collaboration and centralized consolidation of Office reporting requirements; (9) provides strategic planning and coordination of OCIO transformation projects and initiatives; and (10) manages and implements special projects sponsored by OCIO leadership.

Policy, Performance and Communications Activity (CAJR162). (1) Provides leadership, oversight, and guidance for OCIO Enterprise Risk Management; (2) identifies systemic operational risks and issues and communicates them to OCIO leadership for consideration, mitigation and issue resolution; (3) provides leadership, coordination, and collaboration on OCIO issues management and triaging, and ensures the process of ongoing issues identification, management and resolution; (4) establishes OCIO business performance metrics and coordinates reviews to ascertain status on meeting the metrics; (5) conducts business analytics and reporting on performance data collected from other OCIO offices and sections; (6) provides reporting for annual planning meetings, annual reports, data calls, end-of-year coordination, and ad-hoc requests; (7) leads OCIO performance management, including the development of strategic plans, performance metrics, dashboards, and Quarterly Program Review materials; (8) manages and coordinates the development of organizational and CDC-wide information technology policies to support CDC's public health science and programs; (9) manages and responds to Congressional inquiries and media requests as it relates to support of CDC's information technology policies; (10) serves as the point of contact for the policy analysis, technical review and final clearance of executive correspondence and policy documents that require approval from the Chief Information Officer, OCIO Leadership Team, or officials; (11) provides coordination and oversight for internal and external OCIO communications; (12) provides communications support for executive presentations, messages, and meetings; (13) ensures accurate and consistent information dissemination, including Freedom Of Information Act requests and Executive Secretariat controlled correspondence; (14) ensures consistent application of CDC correspondence standards and styles; and (15) provides leadership, technical assistance, and consultation in establishing best practices in internal and external business communication and implements external communication strategies to promote and protect OCIO and the agency's brand (*e.g.* employee communications, intranet, internet and other communication platforms).

Management Services Activity (CAJR163). (1) Provides budgetary information for business decision-making support surrounding information technology investments in support of the agency's mission and goals; (2) provides OCIO spend plan validation, remediation, and analysis; (3) prepares annual OCIO budget formulation and budget justifications; (4) ensures budget plans and changes are in compliance with decisions and agency direction; (5) plans, develops, manages, and conducts oversight of CDC's information services contracts; (6) coordinates and facilitates OCIO contracts use including requirements development, specifications, performance needs, quality assurance and service delivery, and contract administration; (7) provides guidance and assistance to programs on the various aspects of the contracts to meet their requirements; (8) coordinates and manages annual contract forecasting activities; (9) participates with senior management in program planning, policy determinations, evaluations, and decisions concerning escalation points for acquisitions and financial management; (10) conducts policy analysis, tracking, review and clearance as it relates to acquisitions and financial management to support CDC's public health science and programs; (11) provides workforce and human capital management oversight and direction for all OCIO components including employee relations; (12) gathers and analyzes information concerning OCIO workforce challenges and/or opportunities for leadership awareness, strategic planning, and operational improvement; (13) collects and analyzes data from employee viewpoint surveys and other sources to inform OCIO leadership and future initiatives; and (14) provides and oversees the delivery of OCIO-wide administrative management and support services in the areas of fiscal management, personnel, travel, records management, internal controls, and other administrative services.

Enterprise Data Office (CARG). (1) Develops, promotes, implements, and evaluates data science approaches for improved research of large and complex data sets; (2) maintains and leverages data acquired from multiple sources; (3) develops and implements solutions, often with partners and collaborators, to strengthen information systems and reporting; (4) develops and implements computer-based decision support tools and mobile applications that help to inform better decision-making; and (5) collaborates with other CDC programs to develop and promote informatics solutions for improving data management, practice, and preparedness; and (6) promotes a multidisciplinary approach (which includes statistics, analytics, data management, informatics, and evaluation sciences) to assure that the CDC programs, information systems, and data serve public health program objectives.

Delete in their entirety the titles and functional statements for the *Enterprise Information Technology Portfolio Office (CAJR12), Acquisition Program Management Office (CAJR14),* and the *Management Analysis and Services Office (CAJRC).*

Delete in its entirety the title and functional statement for *Informatics Innovation Unit (CPNC12), Office of the Director (CPN1), Center for Surveillance, Epidemiology, and Laboratory Services (CPN).*

This reorganization was approved by the Director, CDC.

Robert Redfield,

Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–21670 Filed 10–4–18; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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 privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—PAR 15–352, Occupational Safety and Health Training Projects.

Date: December 05, 2018.

Time: 1:00 p.m.–5:00 p.m. EST.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Michael Goldcamp, Ph.D., Scientific Review Officer, Office of Extramural Programs, CDC, 1095 Willowdale Road, Morgantown, West Virginia, 26505, (304) 285–5951; *mgoldcamp@cdc.gov.*

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

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2018–21700 Filed 10–4–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Healthcare Infection Control Practices Advisory Committee (HICPAC). This meeting is open to the public, is limited only by room seating available, (120). The public is also welcome to listen to the meeting via teleconference at 800–857–9838, passcode: 5325685; 100 teleconference lines are available.

DATES: The meeting will be held on November 15, 2018, 9:00 a.m. to 5:00 p.m., EST, and November 16, 2018, 9:00 a.m. to 12:00 p.m., EST.

ADDRESSES: Centers for Disease Control and Prevention, Global Communications Center, Building 19, Auditorium B, 1600 Clifton Road NE, Atlanta, Georgia 30329–4027 and teleconference at 800–857–9838, passcode: 5325685.

FOR FURTHER INFORMATION CONTACT: Erin Stone, M.A., HICPAC, Division of Healthcare Quality Promotion, NCEZID, CDC, 1600 Clifton Road NE, Mailstop A–07, Atlanta, Georgia 30329, Telephone (404) 639–4045. Email: *hicpac@cdc.gov.*

SUPPLEMENTARY INFORMATION: Time will be available for public comment. The public is welcome to submit written comments in advance of the meeting. Comments should be submitted in writing by email to the contact person listed below. The deadline for receipt of written public comment is November 1, 2018. All requests must contain the name, address, and organizational affiliation of the speaker, as well as the topic being addressed. Written comments should not exceed one single-spaced typed page in length and delivered in 3 minutes or less. Members of the public who wish to provide public comments should plan to attend the public comment session at the start time listed. Please note that the public comment period may end before the time indicated, following the last call for comments. Written comments received in advance of the meeting will be included in the official record of the meeting. Registration is required to attend in person or on the phone. Interested parties must be processed in accordance with established federal policies and procedures and may register at *www.cdc.gov/hicpac.*

Purpose: The Committee is charged with providing advice and guidance to the Director, Division of Healthcare Quality Promotion (DHQP), the Director, National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), the Director, CDC, and the Secretary, Health and Human Services, regarding (1) the practice of healthcare infection prevention and control; (2) strategies for surveillance, prevention, and control of infections, antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of CDC guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters to be Considered: The agenda will include updates on CDC's activities for prevention of healthcare-associated infections. It will also include updates from the following HICPAC workgroups: The Healthcare Personnel Guideline Workgroup; the National Healthcare Safety Network (NHSN) Workgroup; the Neonatal Intensive Care Unit (NICU) Guideline Workgroup; and the Products and Practices Workgroup. Agenda items are subject to change as priorities dictate.

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

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2018–21701 Filed 10–4–18; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—CK19–001, Identification, Surveillance, and Control of Vector-Borne and Zoonotic Infectious Diseases in Uganda.

Date: January 3, 2019.

Time: 12:00 p.m.–1:30 p.m., (EST).

Place: Teleconference, Centers for Disease Control and Prevention, Room 1080, 8 Corporate Square Blvd., Atlanta, GA 30329.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road NE, Mailstop E60, Atlanta, Georgia 30333, (404) 718–8833, *gca5@cdc.gov.*

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2018–21688 Filed 10–4–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Delegation of Authority

Notice is hereby given that I have delegated to the Director, National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), without authority to redelegate, the authority vested in the Director, CDC, under Section 2695, Title XXVI of the Public Health Service Act (42 U.S.C. 300ff–131), and the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Pub. L. 111–87), as amended.

This delegation became effective on August 27, 2018. I hereby affirm and ratify any actions taken that involve the exercise of the authorities delegated herein prior to the effective date of this delegation.

Dated: October 1, 2018.

Robert R. Redfield,

Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–21672 Filed 10–4–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1704–N]

Medicare Program; Town Hall Meeting on the FY 2020 Applications for New Medical Services and Technologies Add-On Payments

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a Town Hall meeting in accordance with section 1886(d)(5)(K)(viii) of the Social Security Act (the Act) to discuss fiscal year (FY) 2020 applications for add-on payments for new medical services and technologies under the hospital inpatient prospective payment system (IPPS). Interested parties are invited to this meeting to present their comments, recommendations, and data regarding whether the FY 2020 new medical services and technologies applications meet the substantial clinical improvement criterion.

DATES:

Meeting Date: The Town Hall Meeting announced in this notice will be held on Tuesday, December 4, 2018. The Town Hall Meeting will begin at 9:00 a.m. Eastern Standard Time (e.s.t.) and check-in will begin at 8:30 a.m. e.s.t.

Deadline for Registration for Participants (not Presenting) at the Town Hall Meeting: The deadline to register to attend the Town Hall Meeting is 5:00 p.m., e.s.t. on Monday, November 26, 2018.

Deadline for Requesting Special Accommodations: The deadline to submit requests for special accommodations is 5:00 p.m., e.s.t. on Monday, November 19, 2018.

Deadline for Registration of Presenters at the Town Hall Meeting: The deadline to register to present at the Town Hall Meeting is 5:00 p.m., e.s.t. on Monday, November 19, 2018.

Deadline for Submission of Agenda Item(s) or Written Comments for the Town Hall Meeting: Written comments and agenda items for discussion at the Town Hall Meeting, including agenda items by presenters, must be received by 5:00 p.m. e.s.t. on Monday, November 19, 2018.

Deadline for Submission of Written Comments after the Town Hall Meeting for consideration in the FY 2020 IPPS proposed rule: Individuals may submit written comments after the Town Hall Meeting, as specified in the **ADDRESSES** section of this notice, on whether the service or technology represents a substantial clinical improvement. These comments must be received by 5:00 p.m. e.s.t. on Friday, December 14, 2018, for consideration in the FY 2020 IPPS proposed rule.

ADDRESSES: *Meeting Location:* The Town Hall Meeting will be held in the main Auditorium in the central building of the Centers for Medicare & Medicaid Services located at 7500 Security Boulevard, Baltimore, MD 21244–1850.

In addition, we are providing two alternatives to attending the meeting in person—(1) there will be an open toll-free phone line to call into the Town Hall Meeting; or (2) participants may view and participate in the Town Hall Meeting via live stream technology or webinar. These options are discussed in section II.B. of this notice.

Registration and Special Accommodations: Individuals wishing to participate in the meeting must register by following the on-line registration instructions located in section III. of this notice or by contacting staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individuals who need special accommodations should contact staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Submission of Agenda Item(s) or Written Comments for the Town Hall Meeting: Each presenter must submit an agenda item(s) regarding whether a FY 2020 application meets the substantial clinical improvement criterion. Agenda items, written comments, questions or other statements must not exceed three single-spaced typed pages and may be sent via email to *newtech@cms.hhs.gov*.

FOR FURTHER INFORMATION CONTACT: Michelle Joshua, (410) 786–6050, *michelle.joshua@cms.hhs.gov;* or Michael Treitel, (410) 786–4552, *michael.treitel@cms.hhs.gov*.

Alternatively, you may forward your requests via email to *newtech@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Add-On Payments for New Medical Services and Technologies Under the IPPS

Sections 1886(d)(5)(K) and (L) of the Social Security Act (the Act) require the Secretary to establish a process of identifying and ensuring adequate payments to acute care hospitals for new medical services and technologies under Medicare. Effective for discharges beginning on or after October 1, 2001, section 1886(d)(5)(K)(i) of the Act requires the Secretary to establish (after notice and opportunity for public comment) a mechanism to recognize the costs of new services and technologies under the hospital inpatient prospective payment system (IPPS). In addition, section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered ''new'' if it meets criteria established by the Secretary (after notice and opportunity for public comment). (See the fiscal year (FY) 2002 IPPS proposed rule (66 FR 22693, May 4, 2001) and final rule (66 FR 46912, September 7, 2001) for a more detailed discussion.)

In the September 7, 2001 final rule (66 FR 46914), we noted that we evaluated a request for special payment for a new medical service or technology against the following criteria in order to determine if the new technology meets the substantial clinical improvement requirement:

- The device offers a treatment option for a patient population unresponsive

to, or ineligible for, currently available treatments.

• The device offers the ability to diagnose a medical condition in a patient population where that medical condition is currently undetectable or offers the ability to diagnose a medical condition earlier in a patient population than allowed by currently available methods. There must also be evidence that use of the device to make a diagnosis affects the management of the patient.

• Use of the device significantly improves clinical outcomes for a patient population as compared to currently available treatments. Some examples of outcomes that are frequently evaluated in studies of medical devices are the following:

++ Reduced mortality rate with use of the device.

++ Reduced rate of device-related complications.

++ Decreased rate of subsequent diagnostic or therapeutic interventions (for example, due to reduced rate of recurrence of the disease process).

++ Decreased number of future hospitalizations or physician visits.

++ More rapid beneficial resolution of the disease process treatment because of the use of the device.

++ Decreased pain, bleeding or other quantifiable symptoms.

++ Reduced recovery time.

In addition, we indicated that the requester is required to submit evidence that the technology meets one or more of these criteria.

Section 1886(d)(5)(K)(viii) of the Act requires that as part of the process for evaluating new medical services and technology applications, the Secretary shall do the following:

• Provide for public input regarding whether a new service or technology represents an advance in medical technology that substantially improves the diagnosis or treatment of Medicare beneficiaries before publication of a proposed rule.

• Make public and periodically update a list of all the services and technologies for which an application is pending.

• Accept comments, recommendations, and data from the public regarding whether the service or technology represents a substantial improvement.

• Provide for a meeting at which organizations representing hospitals, physicians, manufacturers and any other interested party may present comments, recommendations, and data to the clinical staff of CMS as to whether the service or technology represents a substantial improvement before publication of a proposed rule.

The opinions and presentations provided during this meeting will assist us as we evaluate the new medical services and technology applications for FY 2020. In addition, they will help us to evaluate our policy on the IPPS new technology add-on payment process before the publication of the FY 2020 IPPS proposed rule.

II. Town Hall Meeting Format and Conference Call/Live Streaming Information

A. Format of the Town Hall Meeting

As noted in section I. of this notice, we are required to provide for a meeting at which organizations representing hospitals, physicians, manufacturers and any other interested party may present comments, recommendations, and data to the clinical staff of CMS concerning whether the service or technology represents a substantial clinical improvement. This meeting will allow for a discussion of the substantial clinical improvement criteria for each of the FY 2020 new medical services and technology add-on payment applications. Information regarding the applications can be found on our website at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html*.

The majority of the meeting will be reserved for presentations of comments, recommendations, and data from registered presenters. The time for each presenter's comments will be approximately 10 to 15 minutes and will be based on the number of registered presenters. Individuals who would like to present must register and submit their agenda item(s) via email to *newtech@cms.hhs.gov* by the date specified in the **DATES** section of this notice.

In addition, written comments will also be accepted and presented at the meeting if they are received via email to *newtech@cms.hhs.gov* by the date specified in the **DATES** section of this notice. Written comments may also be submitted after the meeting for our consideration. If the comments are to be considered before the publication of the FY 2020 IPPS proposed rule, the comments must be received via email to *newtech@cms.hhs.gov* by the date specified in the **DATES** section of this notice.

B. Conference Call, Live Streaming, and Webinar Information

For participants who cannot attend the Town Hall Meeting in person, an open toll-free phone line will be made available. Continue to check our website at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html* for updated dial-in number and instructions.

Also, there will be an option to view and participate in the Town Hall Meeting via live streaming technology or webinar. Information on the option to participate via live streaming technology or webinar will be provided through an upcoming listserv notice and posted on the New Technology website at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html.* Continue to check the website for updates.

C. Disclaimer

We cannot guarantee reliability for live streaming technology or a webinar.

III. Registration Instructions

The Division of Acute Care in CMS is coordinating the meeting registration for the Town Hall Meeting on substantial clinical improvement. While there is no registration fee, individuals planning to attend the Town Hall Meeting in person must register to attend.

Registration may be completed on-line at the following web address: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html*. Select the link at the bottom of the page ''Register to Attend the New Technology Town Hall Meeting''. After completing the registration, online registrants should print the confirmation page(s) and bring it with them to the meeting.

If you are unable to register on-line, you may register by sending an email to *newtech@cms.hhs.gov*. Please include your name, address, telephone number, email address and fax number. If seating capacity has been reached, you will be notified that the meeting has reached capacity.

IV. Security, Building, and Parking Guidelines

Because this meeting will be located on Federal property, for security reasons, any persons wishing to attend the meeting must register by the date specified in the **DATES** section of this notice. Please allow sufficient time to go through the security checkpoints. If you are attending the Town Hall Meeting in person, we suggest that you arrive at 7500 Security Boulevard no later than 8:30 a.m. e.s.t. so that you will be able to arrive promptly for the meeting.

Security measures include the following:

• Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.

Note: The REAL ID Act established minimum security standards for license issuance and production and prohibits Federal agencies from accepting for certain purposes driver's licenses and identification cards from states not meeting the Act's minimum standards. We encourage the public to visit the DHS website at *https://www.dhs.gov/real-id* prior to the new technology town hall meeting for updated information.

• All Foreign National visitor requests must be submitted 12 business days prior to the scheduled visitor to allow for processing./non U.S. citizen.

• Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.

• Inspection, via metal detector or other applicable means of all persons entering the building. We note that all items brought to CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting in person. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting.

All visitors must be escorted in all areas other than the lower level lobby and cafeteria area and first floor auditorium and conference areas in the Central Building. Seating capacity is limited to the first 250 registrants.

Updated Security Information for In-Person Attendees

Effective June 1, 2018, Federal Protective Services (FPS) has implemented new security screening procedures at all CMS Baltimore locations to align with national screening standards. Please allow extra time to clear security prior to the beginning of the meeting. Employees, contractors and visitors must place all items in bins for screening, including:

• Any items in your pockets.

• Belts, hats, jackets & coats (not suit jackets or sport coats).

• Purses, laptop computers & cell phones.

• Larger items (*e.g.* computer bags) can be placed directly onto the conveyer.

In the event the metal detector beeps when you walk through:

• A security guard will run a hand-held metal detector over you. If the metal detector doesn't alarm, you're cleared to enter.

• If the hand-held metal detector alarms, the guard will pat down the area of the body where the metal detector alarmed.

• If footwear alarms, it will need to be removed and placed in a bin for x-ray screening.

If you believe that you have a disability that will cause you to require reasonable accommodation to comply with the new process, please contact *reasonableaccommodationprogram@cms.hhs.gov* as soon as possible.

Authority: Section 1886(d)(5)(K)(viii) of the Social Security Act.

Dated: October 1, 2018.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2018–21753 Filed 10–4–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10680]

Agency Information Collection Activities: Proposed Collection; 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 (the 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 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates 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 must be received by December 4, 2018.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ___, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

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 website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

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: William Parham at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10680 Electronic Visit Verification Compliance Survey

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. 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 requires federal agencies to publish a 60-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.

Information Collection

1. *Title of Information Collection:* Electronic Visit Verification Compliance Survey; *Type of Information Collection Request:* New collection (request for a new OMB control number); *Use:* This collection entails an electronic web-based survey that will allow states to self-report their progress in implementing electronic visit verification (EVV) for personal care services (PCS) and home health care services (HHCS), as required by section 1903(l) of the Social Security Act. CMS will use the survey data to assess states' compliance with section 1903(l) of the Act and levy Federal Medical Assistance Percentage (FMAP) reductions where necessary as required by 1903(l) of the Act. Data collection will begin in November 2019 and will end when all states have fully implemented EVV systems according to the requirements specified at section 1903(l) of the Act.

The survey will be disseminated to all 51 state Medicaid agencies (including the District of Columbia) and the Medicaid agencies of five US territories. States will be required to complete the survey in order to demonstrate that they are complaint with Section 1903(l) of the Act by reporting on their EVV implementation status for PCS provided under sections 1905(a)(24), 1915(c), 1915(i), 1915(j), 1915(k), and Section 1115 of the Act; and HHCS provided under 1905(a)(7) of the Act or under a demonstration project or waiver (*e.g.,* 1915(c) or 1115 of the Act).

The survey will be a live form, meaning states will have the ability to update their 1903(l) compliance status on a continuous basis. As FMAP reductions are assigned quarterly per 1903(l) of the Act, states who are not in compliance will be asked to review their survey information on a quarterly basis to ensure it is up-to-date and to update their survey responses as needed until they come into compliance. *Form Number:* CMS–10680 (OMB control number: 0938–New); *Frequency:* On occasion; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Number of Responses:* 336; *Total Annual Hours:* 1,344. (For questions regarding this collection contact Ryan Shannahan at 410–786–0295.)

Dated: October 2, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–21754 Filed 10–4–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–3464]

Policy Regarding Quantitative Labeling of Dietary Supplements Containing Live Microbials; Draft Guidance for Industry; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; correction.

SUMMARY: The Food and Drug Administration (FDA or we) is correcting a document that appeared in the **Federal Register** of September 7, 2018 (83 FR 45454). The document announced the draft guidance for industry entitled ''Policy Regarding Quantitative Labeling of Dietary Supplements Containing Live Microbials.'' The notice inadvertently contained the wrong docket number. This document corrects that error.

DATES: This notice is applicable October 5, 2018.

FOR FURTHER INFORMATION CONTACT: Steven Tave, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2878.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Friday, September 7, 2018, appearing on page 45454 in FR. Doc. 2018–19367, the following corrections are made:

On page 45454, in the docket heading in column 1, the docket number appearing in square brackets is corrected to be FDA–2018–D–3464.

On page 45454, in the ''Instructions,'' in column 2, the Docket No. is corrected to be FDA–2018–D–3464.

Dated: October 1, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–21677 Filed 10–4–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–1837]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Electronic User Fee Payment Request Forms

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 5, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0805. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Electronic User Fee Payment Request Forms—Form FDA 3913 and Form FDA 3914

OMB Control Number 0910–0805—Extension

Form FDA 3913, User Fee Payment Refund Request, is designed to provide the minimum necessary information for

FDA to review and process a user fee payment refund. The information collected includes the organization, contact, and payment information. The information is used to determine the reason for the refund, the refund amount, and who to contact if there are any questions regarding the refund request. A submission of the User Fee Payment Refund Request form does not guarantee that a refund will be issued. FDA estimates an average of 0.40 hours per response, including the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. The estimated hours are based on past FDA experience with user fee payment refund requests.

In fiscal year 2017, approximately 1,657 user fee refunds were processed for cover sheets and invoices including 12 for Animal Drug User Fee Act, 2 for Animal Generic Drug User Fee Act, 13 for Biosimilar Drug User Fee Act, 68 for Export Certificate Program, 14 for Freedom of Information Act requests, 227 for Generic Drug User Fee Amendments, 1,021 for Medical Device User Fee Amendments, 227 for mammography inspection fees, 67 for Prescription Drug User Fee Act, and 6 for tobacco product fees.

Form FDA 3914, User Fee Payment Transfer Request, is designed to provide the minimum information necessary for FDA to review and process a user fee payment transfer request. The information collected includes payment and organization information. The information is used to determine the reason for the transfer, how the transfer should be performed, and who to contact if there are any questions regarding the transfer request. A submission of the User Fee Payment Transfer Request form does not guarantee that a transfer will be performed. FDA estimates an average of 0.25 hours per response, including the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. FDA estimated hours are based on past FDA experience with user fee payment transfer requests.

In fiscal year 2017, approximately 871 user fee payment transfers were processed for cover sheets and invoices including 8 for Animal Drug User Fee Act, 1 for Animal Generic Drug User Fee Act, 1 for Biosimilar Drug User Fee Act, 163 for Generic Drug User Fee Amendments, 692 for Medical Device User Fee Amendments, and 6 for Prescription Drug User Fee Act.

Respondents for the electronic request forms include domestic and foreign firms (including pharmaceutical, medical device, etc.). Specifically, refund request forms target respondents who submitted a duplicate payment or overpayment for a user fee cover sheet or invoice. Respondents may also include firms that withdrew an application or submission. Transfer request forms target respondents who submitted payment for a user fee cover sheet or invoice and need that payment to be reapplied to another cover sheet or invoice (transfer of funds).

The electronic user fee payment request forms will streamline the refund and transfer processes, facilitate processing, and improve the tracking of requests. The burden for this collection of information is the same for all customers (small and large organizations). The information being requested or required has been held to the absolute minimum required for the intended use of the data. Customers will be able to request a user fee payment refund and transfer online at *https://www.fda.gov/forindustry/userfees/default.htm.* This electronic submission is intended to reduce the burden for customers to submit user fee payment refund and transfer requests.

In the **Federal Register** of May 15, 2018 (83 FR 22493), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA Form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
User Fee Payment Refund Request—Form FDA 3913	1,657	1	1,657	0.40 (24 minutes)	663
User Fee Payment Transfer Request—Form FDA 3914	871	1	871	0.25 (15 minutes)	218
Total					881

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We have adjusted our burden estimate, which has resulted in a decrease to the currently approved burden. New information technology applications have more accurately calculated the number of registrants of drug facilities/food facilities/medical device facilities/medicated feed facilities, and we have therefore revised the number of respondents to the information collection.

Dated: October 1, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–21682 Filed 10–4–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Applications in Lung Disease.

Date: October 30–31, 2018.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: George M. Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Child Psychopathology and Developmental Disabilities.

Date: October 31, 2018.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 455–1761, *kellya2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cell Biology, Developmental Biology, and Bioengineering.

Date: November 1–2, 2018.

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

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Raj K. Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, Bethesda, MD 20892, 301–435–1047, *kkrishna@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neural Basis of Psychopathology, Addictions and Sleep Disorders.

Date: November 1, 2018.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn, Washington, DC Downtown, 1199 Vermont Ave., Washington, DC 20005.

Contact Person: Samuel C. Edwards, Ph.D., Chief, BDCN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.

Date: November 1–2, 2018.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Washington, DC Downtown, 1199 Vermont Avenue NW, Washington, DC 20005.

Contact Person: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, *cinquej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Accelerating the Pace of Drug Abuse Research Using Existing Data.

Date: November 2, 2018.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kate Fothergill, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3142, Bethesda, MD 20892, 301–435–2309, *fothergillke@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Accelerating the Pace of Drug Abuse Research Using Existing Data.

Date: November 2, 2018.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Delia Olufokunbi Sam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 17–199 and PAR 17–200: Development of Pediatric Formulations and Drug Delivery Systems.

Date: November 2, 2018.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sharon S. Low, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 5104, Bethesda, MD 20892, 301–237–1487, *lowss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immunology AREA Review.

Date: November 2, 2018.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Liying Guo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016F, Bethesda, MD 20892, 301–435–0908, *lguo@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–18–133: Strategies to Increase Delivery of Guideline-Based Care to Populations with Health Disparities.

Date: November 2, 2018.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jessica Bellinger, Ph.D., Scientific Review Administrator, Center for Scientific of Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, Bethesda, Md 20892, 301–827–4446, *bellingerjd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Skeletal Muscle Physiology.

Date: November 2, 2018.

Time: 12:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 28, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–21645 Filed 10–4–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiovascular Differentiation and Development Study Section.

Date: October 24, 2018.

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

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20892, 301–435–0904, *sara.ahlgren@nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review

Group; Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: October 25–26, 2018.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Georgetown, 1221 22nd Street NW, Washington, DC 22037.

Contact Person: Maribeth Champoux, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7759, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Glia in Neurodysfunction.

Date: October 25, 2018.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Human-Animal Interactions.

Date: October 26, 2018.

Time: 12:00 p.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Georgetown, 1221 22nd Street NW, Washington, DC 22037.

Contact Person: Maribeth Champoux, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 28, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–21648 Filed 10–4–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; P01 Program Project Grant.

Date: October 23, 2018.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Peter J. Kozel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7009, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–4721, *Kozelp@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Fatty Liver and HIV Ancillary Studies.

Date: November 2, 2018.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Undergraduate Summer Research Applications (R25).

Date: November 6, 2018.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jason D. Hoffert, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7343, 6707 Democracy Boulevard, Bethesda, MD 20817, 301–496–9010, *hoffertj@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Fatty Liver Ancillary Studies.

Date: November 7, 2018.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 1, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–21647 Filed 10–4–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel; Clinical Neuroimmunology and Brain Tumors.

Date: October 11, 2018.

Time: 10:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Samuel C. Edwards, Ph.D., Chief, Brain Disorders and Clinical Neuroscience, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 28, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–21646 Filed 10–4–18; 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 Under Emergency Review by the Office of Management and Budget

The Substance Abuse and Mental Health Services Administration (SAMHSA) has submitted the following request (see below) for emergency OMB review under the Paperwork Reduction Act (44 U.S.C. Chapter 35). OMB approval has been requested by October 25, 2018. A copy of the information collection plans may be obtained by calling the SAMHSA Reports Clearance Officer on (240) 276–1243.

Title: 2019 National Survey on Drug Use and Health.

OMB Number: 0930–0110.

Frequency: Annual.

Affected Public: Individuals or Households.

The National Survey on Drug Use and Health (NSDUH) is a survey of the U.S. civilian, non-institutionalized population aged 12 years old or older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, the Office of National Drug Control Policy (ONDCP), federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

While NSDUH must be updated periodically to reflect changing substance use and mental health issues and to continue producing current data, for the 2019 NSDUH only the following minor changes are planned: (1) Adding a brief series of questions on medication-assistance treatment (MAT) for opioids and alcohol; (2) two questions about the use of kratom (a tropical tree, native to Southeast Asia, with leaves that have psychotropic effects and is generally regarded as an opioid given its known properties); and (3) included other minor wording changes to improve the flow of the interview, increase respondent comprehension or to be consistent with text in other questions.

The series of MAT questions seeks to identify medications prescribed by health professionals to help reduce or stop the use of opioids or alcohol. Including these questions in NSDUH will allow SAMHSA to provide the first known national-level estimates on the use of MAT for opioid use disorder or alcohol use disorder. The two questions on kratom will provide the first national, systematic epidemiological or survey data on its use in this country and establish a baseline for the use of kratom—an easily accessible, unregulated, opioid-like drug. Not currently illegal in the United States, kratom is easy to order on the internet, typically ingested as a leaf, pill or capsule and contains chemical compounds which interact with opioid receptors in the brain. Some users of kratom products reported becoming addicted to the drug.

As with all NSDUH/NHSDA (Prior to 2002, the NSDUH was referred to as the National Household Survey on Drug Abuse) surveys conducted since 1999, the sample size of the survey for 2019 will be sufficient to permit prevalence estimates for each of the fifty states and the District of Columbia. The total annual burden estimate is shown below in Table 1.

TABLE 1—ANNUALIZED ESTIMATED BURDEN FOR 2019 NSDUH

Instrument	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
Household Screening	137,231	1	137,231	0.083	11,390
Interview	67,507	1	67,507	1.000	67,507
Screening Verification	4,116	1	4,116	0.067	276
Interview Verification	10,126	1	10,126	0.067	678
Total	137,231	.....	218,980	.....	79,851

Emergency approval is being requested because SAMHSA has determined that the kratom questions will provide the first national, systematic epidemiological or survey data on its use in this country and establish a baseline for the use of kratom—an easily accessible, unregulated, opioid-like drug. Some users of kratom products reported becoming addicted to the drug. Because of these additional questions, this **Federal Register** notice is a revision from the one that was published on May 31, 2018.

Written comments and recommendations concerning the proposed information collection should be sent by October 24, 2018 Elyse Greenwald, SAMHSA's Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2018–21716 Filed 10–4–18; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3403–EM; Docket ID FEMA–2018–0001]

Virginia; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the Commonwealth of Virginia (FEMA–3403–EM), dated September 11, 2018, and related determinations.

DATES: This amendment was issued September 27, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 21, 2018.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–21708 Filed 10–4–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4393–DR; Docket ID FEMA–2018–0001]

North Carolina; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4393–DR), dated September 14, 2018, and related determinations.

DATES: This amendment was issued September 27, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 14, 2018.

Greene County for Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–21709 Filed 10–4–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5994–N–03]

Operations Notice for the Expansion of the Moving to Work Demonstration Program

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The Public Housing/Section 8 Moving to Work (MTW) demonstration program was first established under Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 to provide statutory and regulatory flexibility to participating public housing agencies (PHAs) under three statutory objectives. Those three statutory objectives are: To reduce cost and achieve greater cost effectiveness in Federal expenditures; to give incentives to families with children whose heads of household are either working, seeking work, or are participating in job training, educational or other programs that assist in obtaining employment and becoming economically self-sufficient; and to increase housing choices for low-income families. This Operations Notice for the Expansion of the MTW Demonstration Program (Operations Notice) establishes requirements for the implementation and continued operation of the MTW demonstration program pursuant to the 2016 MTW Expansion Statute.

DATES: *Comment Due Date:* November 19, 2018.

Submission of Comments

Electronic Submission of Comments. HUD strongly encourages interested persons to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Submission of Comments by Mail. Alternatively, interested persons may submit comments regarding this Notice to the Regulations Division, Office of General Counsel, Department of

Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the Notice.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 1–800–877–8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Marianne Nazzaro, Director, Moving to Work Demonstration Program, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 4130, Washington, DC 20410; email address *mtw-info@hud.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 239 of the Fiscal Year 2016 Appropriations Act, Public Law 114–113 (2016 MTW Expansion Statute), signed by the President in December 2015, authorizes HUD to expand the MTW demonstration program from the current size of 39 agencies to an additional 100 agencies over a period of 7 years. This Notice was originally published on January 23, 2017, in the **Federal Register**, entitled ''Operations Notice for the Expansion of the Moving to Work Demonstration Program Solicitation of Comment.'' On May 4, 2017, the Notice was republished with three technical revisions and an extension of the comment period. HUD took all comments received into consideration.

Changes to this Notice have been made to incorporate feedback from the two previous publications and to reflect policy decisions. The primary changes are as follows:

- The term of participation has been set at 12 years from the year of designation in response to public comments for the term to be at least 10 years from the year of designation.
- In response to public comments, the Department removed the General Waivers and Conditional Waivers categories and replaced them with a singular MTW Waivers category, which MTW agencies may implement without further approval from HUD.
  - In restructuring the MTW Waivers, the Notice now includes safe harbors, which are defined as the additional requirements, beyond those specified in the activity description, that the agency must follow in implementing activities without further HUD approval.
  - MTW Waivers now include specific guidance on impact analyses, hardship policies, and applicability of waivers to elderly/disabled families.
  - An additional MTW Waiver was added: ''Increase Elderly Age,'' which allows agencies to amend the definition of an elderly person to be an individual who is at least sixty-five.
  - The Homeownership Waiver was removed. Upon reviewing this waiver, the Department determined that the activities provided to agencies under the waiver were already available under the Section 32 Homeownership Program.
- The 90 percent voucher utilization requirement was removed. The MTW Housing Assistance Payment (HAP) Renewal Formula has been revised to use as a base, all prior-year MTW-eligible Housing Choice Voucher (HCV) funding expenses paid from HAP, including HAP expenses plus non-HAP expenses.
- For a prospective agency to be eligible for selection to the MTW demonstration, it must be a high performer in either the Public Housing Assessment System (PHAS) or the Section Eight Management Assessment Program (SEMAP).
- Regionalization was removed from the MTW Operations Notice and will be implemented through a separate forthcoming notice.
- Agencies will formalize their MTW status with an amendment to their Annual Contributions Contract.
- The monitoring of the requirement that an MTW agency designated pursuant to the 2016 MTW Expansion Statute continues to assist substantially the same number of families has been simplified. Compliance will be determined using a baseline ratio of total public housing and HCV HAP funding to families served.

MTW Demonstration Program

The MTW demonstration program was first established under Section 204 of Title II of section 101(e) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104–134, 110 Stat. 1321–281; 42 U.S.C. 1437f note (1996 MTW Statute) [1] to provide statutory and regulatory flexibility [2] to participating PHAs under three statutory objectives. Those three statutory objectives are to:

- Reduce cost and achieve greater cost effectiveness in Federal expenditures;
- give incentives to families with children where the head of household is working, seeking work, or is preparing for work by participating in job training, educational programs, or programs that assist people to obtain employment and become economically self-sufficient; and
- increase housing choices for eligible low-income families.

To achieve these objectives, PHAs selected for participation in the MTW demonstration are given exemptions from many existing public housing and HCV rules and offered more flexibility with how they use their Federal funds. MTW agencies use this opportunity presented by the MTW demonstration to better address local housing needs. HUD learns from the experience of MTW agencies to develop new housing policy recommendations that can positively impact assisted housing delivery for PHAs nationwide.

In addition to statutory and regulatory relief,[3] MTW agencies have the flexibility to apply fungibility among three core funding programs' funding streams—public housing Operating Funds, public housing Capital Funds, and HCV assistance (to include both HAP and Administrative Fees)—hereinafter referred to as ''MTW Funding.'' [4] These flexibilities do not

[1] PHAs currently operating an MTW demonstration program include PHAs with an active MTW agreement as of December 15, 2015. PHAs currently operating an MTW program do not include PHAs that previously participated in the MTW demonstration and later left the demonstration.

[2] The MTW demonstration program may only provide certain flexibilities under the 1937 Act. For more information on the history of the MTW demonstration program, please go to: *www.hud.gov/mtw*.

[3] For more information about the MTW demonstration program and the specific activities of existing MTW agencies, please refer to the MTW website at *www.hud.gov/mtw*.

[4] Funds awarded under Sections 8(o), 9(d), and 9(e) of the 1937 Act are eligible for expanded uses pursuant to MTW fungibility, with the exception of funds provided for specific non-MTW HCV sub-programs. Other funds a PHA may receive (*i.e.,* grant funds under another obligating document) are

negate the need for both the PHA and HUD to be able to account for the funding from its original source to the date of its ultimate eligible use [5] by the PHA, to comply with Federal grant and financial management requirements, and to use funds effectively and efficiently for their eligible purposes. As the Department continues to implement program-specific financial management policies in its core housing programs, MTW agencies will be subject to the same requirements and procedures as non-MTW agencies. Therefore, the requirements and procedures described in this Notice may change as new financial management policies are implemented over time.

Throughout participation in the MTW demonstration program, MTW agencies must continue to meet five statutory requirements established under the 1996 MTW Statute. The five statutory requirements are:

- At least 75 percent of the families assisted by participating demonstration public housing authorities shall be very low-income families, as defined in section 3(b)(2) of the United States Housing Act of 1937;
- establishing a reasonable rent policy, which shall be designed to encourage employment and self-sufficiency by participating families, consistent with the purpose of this demonstration, such as by excluding some or all of a family's earned income for purposes of determining rent;
- continuing to assist substantially the same total number of eligible low-income families as would have been served had the amounts not been combined;
- maintaining a comparable mix of families (by family size) as would have been provided had the amounts not been used under the demonstration; and
- assuring that housing assisted under the demonstration program meets housing quality standards established or approved by the Secretary.

Currently, there are 39 agencies [6] participating in the MTW demonstration program. The administrative structure for these 39 agencies is outlined in the Standard MTW Agreement, a contract between each existing MTW agency and HUD. The 2016 MTW Expansion Statute extended the term of the Standard MTW Agreement through each of the existing MTW agencies' 2028 fiscal year.

2016 Expansion of the MTW Demonstration Program

As the 2016 MTW Expansion Statute directs, HUD is authorized to expand the MTW demonstration program from the current level of 39 agencies to an additional 100 agencies over a period of 7 years, ending in 2023. In expanding the MTW demonstration, HUD intends to build on the successes and lessons learned from the demonstration thus far. The vision for the MTW expansion is to learn from MTW interventions to improve the delivery of Federally assisted housing and promote self-sufficiency for low-income families across the Nation. Through the expansion, HUD will extend flexibility to a broader range of PHAs both in terms of size and geographic diversity and will balance the flexibility inherent in MTW with the need for measurement, evaluation, and prudent oversight.

HUD will select the additional 100 PHAs in cohorts, with applications for each cohort to be sought via PIH Notice. For each cohort of agencies selected, the 2016 MTW Expansion Statute requires HUD to direct all the agencies within the cohort to implement one specific policy change, which HUD will evaluate rigorously. MTW agencies may implement policy changes in addition to the policy change directed by HUD as long as those policy changes do not conflict or interfere with the cohort study. As required by the 2016 MTW Expansion Statute, the HUD-appointed MTW Research Advisory Committee, described further below, advised HUD on the policy changes to be tested through the new cohorts of MTW agencies and the methods of research and evaluation.

The 2016 MTW Expansion Statute also includes a provision allowing the Secretary to designate an MTW agency as a regional MTW agency—at the request of said agency—should the Secretary determine that unified administration of assistance ''under sections 8 and 9 of the United States Housing Act of 1937 (42 U.S.C. 1437f and g)'' by that agency across multiple jurisdictions will lead to (a) efficiencies and to (b) greater housing choice for low-income persons in the region. HUD will issue separate guidance regarding how an MTW agency may be designated as a regional MTW agency.

Eligibility and Selection for the Expansion of the MTW Demonstration

The 2016 MTW Expansion Statute provides that the 100 MTW agencies selected must be high performers in either HUD's Public Housing Assessment System (PHAS) or its Section Eight Management Assessment Program (SEMAP) at the time of application to the demonstration, and represent geographic diversity across the country. Further, the 2016 MTW Expansion Statute states that of these 100 PHAs:

- No less than 50 PHAs shall administer 1,000 or fewer aggregate housing voucher and public housing units;
- no less than 47 PHAs shall administer 1,001–6,000 aggregate housing voucher and public housing units;
- no more than 3 PHAs shall administer 6,001–27,000 aggregate housing voucher and public housing units;
- no PHA shall be granted MTW designation if it administers more than 27,000 aggregate housing voucher and public housing units; and
- five of the PHAs selected shall be agencies with a Rental Assistance Demonstration (RAD) portfolio award.

HUD will issue separate PIH Notices, by cohort, soliciting applications from eligible PHAs for participation in the MTW demonstration. These Notices, when issued, will outline the specific application submission requirements, evaluation criteria, and process HUD will use when selecting PHAs for MTW designation.

The PHA sizes eligible for participation in the MTW demonstration are statutory and were defined by Congress; therefore, HUD is unable to waive or modify those size restrictions.

likewise not covered by MTW flexibilities and must be tracked and reported under the applicable rules and requirements.

[5] The date of the ''ultimate eligible use'' means the date of disbursement by the PHA for an eligible purpose, which would remove the funding from the PHA's account and the PHA's control.

[6] The 39 agencies are: Alaska Housing Finance Corporation; Atlanta Housing Authority; Housing Authority of the City of Baltimore; Boulder Housing Partners; Cambridge Housing Authority; Housing Authority of Champaign County; Charlotte Housing Authority; Chicago Housing Authority; Housing Authority of Columbus, Georgia; District of Columbia Housing Authority; Delaware State Housing Authority; Fairfax County Redevelopment and Housing Authority; Holyoke Housing Authority; Keene Housing; King County Housing Authority; Lawrence-Douglas County Housing Authority; Lexington-Fayette Urban County Housing Authority; Lincoln Housing Authority; Louisville Metropolitan Housing Authority; Massachusetts Department of Housing and Community Development; Minneapolis Public Housing Authority; Housing Authority of the City of New Haven; Oakland Housing Authority; Orlando Housing Authority; Philadelphia Housing Authority; Housing Authority of the City of Pittsburgh; Portage Metropolitan Housing Authority; Home Forward (Portland, OR); Housing Authority of the City of Reno; San Antonio Housing Authority; Housing Authority of the County of San Bernardino; San Diego Housing Commission; Housing Authority of the County of San Mateo; Housing Authority of the County of Santa Clara/City of San Jose; Seattle Housing Authority; Tacoma Housing Authority; Housing Authority of Tulare County; and Vancouver Housing Authority.

MTW Research Advisory Committee

The 2016 MTW Expansion Statute required HUD to form and consult with a Federal MTW Research Advisory Committee (the Committee), established in May 2016. The Committee is governed by the Federal Advisory Committee Act (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees. The purpose of the Committee is to provide independent advice with respect to the policies to be studied through the MTW expansion and the related methods of research and evaluation. The Committee is charged with advising HUD on the following:

- Policy proposals and evaluation methods for the MTW demonstration to inform the one specific policy change required for each cohort of agencies;
- rigorous research methodologies to measure the impact of policy changes studied;
- policy changes adopted by MTW agencies that have proven successful and can be applied more broadly to all PHAs; and
- statutory and/or regulatory changes (specific waivers and associated activities, and program and policy flexibility) necessary to implement policy changes for all PHAs.

The Committee has no role in reviewing or selecting the 100 PHAs to participate in the expansion of the MTW demonstration.

The Committee members were appointed to a two-year term in June 2016 by the HUD Secretary and chosen to ensure balance, diversity, and a broad representation of ideas.[7] In May 2018, HUD extended the Committee and the members' appointments for another two-year term. As required by the 2016 MTW Expansion Statute, the Committee includes program and research experts from HUD; a representation of MTW agencies, including current and former residents; and independent subject matter experts in housing policy research.

Based on the advice of the Committee, HUD will study, by cohort of MTW agencies, the following four policies (which are in no particular order except for the first two cohorts):

- *Impact of MTW Flexibility on Small and Medium PHAs:* In this first cohort, HUD will evaluate the overall effects of MTW flexibility on a PHA and the residents it serves. The Committee recommended that PHAs with under 1,000 aggregate public housing and voucher units be included in this cohort. To date, only one of the existing MTW agencies has less than 1,000 aggregate units, while the majority of PHAs nationwide fit into this size category.
- *Rent Reform:* In this second cohort, HUD will evaluate different rent reform models. Rent reform models may be income based and may include tiered rents and/or stepped-up rents.
- *Work Requirements:* In this cohort, HUD will evaluate work requirements for residents/participants who are non-elderly, non-disabled, and at least 18 years old.
- *Landlord Incentives:* In this cohort, HUD will evaluate how to improve landlord participation in the HCV program through incentives such as participation payments, vacancy payments, alternate inspection schedules and other methods.

Operations Notice for the Expansion of the MTW Demonstration

Through the MTW expansion, HUD seeks to design and test new approaches to providing and administering housing assistance and then to apply the lessons-learned nationwide, all within a framework of simplifying program administration. This is laid out in HUD's guiding principles for the expansion, which are: (1) Simplify; (2) learn; and (3) apply. The Operations Notice is an embodiment of this vision. The Operations Notice describes a framework for the MTW demonstration that streamlines and simplifies HUD's implementation of MTW status and the associated flexibilities of participating MTW agencies while providing for the rigorous evaluation of specific policy changes. This framework would apply to all PHAs designated as an MTW agency pursuant to the 2016 MTW Expansion Statute and to any previously-designated MTW agencies that agree to operate under the framework of the Operations Notice. These PHAs are referred to in the Operations Notice as ''MTW agencies.'' Participation in the MTW Expansion will be formalized by an amendment to the PHA's Consolidated Annual Contributions Contract, which is called the MTW CACC Amendment.[8]

The Operations Notice is organized into 11 sections as follows:

1. Purpose and Applicability
2. Waivers
   a. MTW Waivers
   b. Agency-Specific Waiver Requests
   c. Cohort-Specific Waivers
3. Term of Participation
4. MTW Funding Flexibilities and Financial Reporting
   a. MTW Funding Flexibility
   b. Calculation of Funding
   c. Financial Reporting and Auditing
5. Evaluation
   a. Program-Wide Evaluation
   b. Cohort-Specific Evaluation
   c. Ad-Hoc Evaluation
6. Program Administration and Oversight
   a. Planning and Reporting
   b. Performance Assessment
   c. Monitoring and Oversight
7. Rental Assistance Demonstration Program
8. Applying MTW Flexibilities to Special Purpose Vouchers
   a. HUD-Veterans Affairs Supportive Housing
   b. Family Unification Program
   c. Non-Elderly Persons With Disabilities Vouchers
   d. Enhanced Vouchers and Tenant Protection Vouchers
9. Applicability of Other Federal, State, and Local Requirements
10. MTW Agencies Admitted Prior to 2016 MTW Expansion Statute
11. Sanctions, Terminations, and Default

II. Operations Notice

1. Purpose and Applicability

The Operations Notice establishes requirements for the implementation and continued operation of the expansion of the MTW demonstration program pursuant to the 2016 MTW Expansion Statute. The Operations Notice also applies to all PHAs designated as MTW pursuant to the 2016 MTW Expansion Statute and to any previously-designated MTW agency that elects to operate under the terms of this Notice.

Through the MTW CACC Amendment, an MTW agency agrees to abide by the program structure, flexibilities, and terms and conditions detailed in the Operations Notice for the term of the agency's participation in MTW demonstration. Any significant updates to the Operations Notice by HUD will be preceded by a public comment period. HUD may supplement the Operations Notice with PIH Notices providing more detailed guidance, including with respect to implementing future appropriations act provisions and revisions to financial policies and procedures. Additionally, HUD will develop informational materials to address various program elements, which HUD will post on the MTW website.

[7] For more information on the establishment, purpose, members, and meeting content of the MTW Research Advisory Committee, please go to: *https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/mtw/expansion/rac.*

[8] The MTW Consolidated ACC Amendment amends the ACCs and the CACCs for the Public Housing and Section 8 Voucher programs.

Unless otherwise provided in the Operations Notice, an agency's MTW program applies to all of the agency's public housing units (including agency-owned properties and units comprising a part of mixed-income, mixed finance communities, tenant-based HCV assistance, project-based HCV assistance under Section 8(o), and Homeownership units developed using Section 8(y) HCV assistance. This Operations Notice *does not* apply to HCV assistance that is required: (i) To make payments to other PHAs under HCV portability billing procedures; (ii) To meet particular purposes for which HUD has expressly committed the assistance to the agency; [9] or (iii) to meet existing contractual obligations of the agency to a third party (such as Housing Assistance Payment (HAP) contracts with owners under the agency's HCV program), unless a third party agrees to Project-Based Voucher (PBV) activities implemented under the MTW program with the agency.

PHAs are reminded that the MTW demonstration program does not permit waivers related to statutes outside of the 1937 Act or regulations promulgated under authority outside of the 1937 Act, including any waivers to fair housing, nondiscrimination, labor standards, or environmental requirements. Other subject matter prohibited from waivers or restricted with respect to waivers is discussed elsewhere in this Notice.

2. Waivers

Pursuant to the 1996 MTW Statute and 2016 MTW Expansion Statute, the Appendix of this Notice provides waivers of certain provisions of the 1937 Act as well as the implementing requirements and regulations. These waivers and associated activities afford MTW agencies the opportunity to use their MTW authority to pursue locally-driven policies, procedures, and programs in order to further the goals of the demonstration. In implementing MTW activities, agencies will ensure assisted families are made aware of the impacts the activity(s) may have to their tenancy. The following are the three categories of waivers that MTW agencies may pursue: (a) MTW Waivers; (b) Agency-Specific Waiver Requests; and (c) Cohort-Specific Waivers. MTW agencies may conduct any permissible activity in the MTW Waivers category within the provided safe harbors, as detailed in the Appendix, without additional approval from HUD. Agencies may make an Agency-Specific Waiver Request to implement additional activities not contained in the MTW Waivers, request to waive a statutory or regulatory requirement not waived in the MTW Waivers, and/or request to expand the safe harbors of an MTW Waivers activity. Agencies may also be provided with Cohort-Specific Waivers if they are necessary to allow for the implementation of the required cohort study.

a. MTW Waivers

The Appendix contains the available waivers and associated activities that MTW agencies may implement after they have been included in the MTW Supplement (described in Section 6 of this Notice) of an approved PHA Plan. The Appendix includes the waiver name, waiver description, statutes and regulations waived, permissible activities, and safe harbors. The waiver description defines the authorization provided to the MTW agency, subject to the terms of this Notice. The list of statutes and regulations waived details the citations of the 1937 Act requirements that may be waived by an MTW agency in order to implement an activity. The list of waivers and list of activities are organized by program type. The safe harbors section contains the additional requirements (beyond those specified in the activity description) that the agency must satisfy in implementing activities without further HUD approval. If an MTW agency wishes to implement additional activities not contained in the MTW Waivers, request to waive a statutory or regulatory requirement, and/or request the ability to go beyond an MTW activity's safe harbor(s), the MTW agency must submit an Agency-Specific Waiver Request for approval from HUD as explained further in Section 2.b of this Notice.

MTW agencies may implement any activity contained in the Appendix as long as it is included in the MTW Supplement of an approved PHA Plan and implemented within the associated safe harbor(s). The MTW agency will update the MTW Supplement annually, as described in Section 6 of this Notice, to reflect the new activities it plans to implement in the coming fiscal year and ongoing activities it has implemented in the prior year, which includes estimated costs/savings for planned activities that have a cost implication. While MTW activities are listed by specific waiver name, MTW agencies may use the MTW Supplement to combine activities together to create more comprehensive initiatives at the local level.

The MTW Waivers only waive certain provisions of the 1937 Act and its implementing regulations. The five statutory requirements established under the 1996 MTW Statute cannot be waived. Other applicable Federal, state, and local requirements shall continue to apply even in the event of a conflict between such a requirement and a waiver or activity granted by this Notice. Accordingly, HUD and the MTW agencies may not waive or otherwise deviate from compliance with Fair Housing and Civil Rights laws and regulations. Additionally, in implementing activities, MTW agencies remain subject to all other terms, conditions, and obligations under this Notice, and all other Federal requirements applicable to the public housing program, the HCV program, Federal funds, and PHAs. To the extent any MTW activity conflicts with any of the five statutory requirements or other applicable requirements, HUD reserves the right to require the MTW agency to discontinue the activity or to revise the activity to comply with this Notice, and the other applicable Federal requirements. HUD also reserves the right to require an MTW agency to discontinue any activity derived from a waiver should it have significant negative impacts on families or the agency's operation of its assisted housing programs using Section 8 and 9 funds, as determined by HUD.

b. Agency-Specific Waiver Requests

Pursuant to the exceptions in Section 9 of this Notice, HUD understands that MTW agencies may wish to request Agency-Specific Waivers to implement activities, waive statutory or regulatory requirements that are not in the Appendix, and/or expand the safe harbor(s) of an activity included in the MTW Waivers. There are two categories of Agency-Specific Waiver Requests: (1) A request to waive a statutory or regulatory requirement, or to implement an activity, not provided for in the Appendix; and (2) a request to expand an activity that is in the Appendix outside of the listed safe harbor (or multiple safe harbors). The MTW agency must obtain explicit written approval from HUD for each Agency-Specific Waiver Request prior to implementation. Agency-Specific Waiver Requests are optional and made at the discretion of the MTW agency.

To submit an Agency-Specific Waiver Request(s), an MTW agency will first share the specifics and details of the proposed waiver in the MTW Supplement to the Annual PHA Plan, indicating which of the two categories of Agency-Specific Waiver Requests is

[9] Mainstream Vouchers, Moderate Rehabilitation Renewals, HUD-Veterans Affairs Supportive Housing (HUD–VASH) Vouchers, Non-Elderly Disabled (NED) Vouchers, and Family Unification Program (FUP) Vouchers are not part of the MTW demonstration program.

being sought. The MTW Supplement form, when finalized, will provide a comprehensive explanation of the elements required to submit an Agency-Specific Waiver Request.

The approval of the Annual PHA Plan and MTW Supplement during this stage does not constitute an approval of the Agency-Specific Waiver Request. Rather, the public comment and review period affords the MTW agency's Resident Advisory Board (RAB), community, and residents the opportunity to provide input on the proposed waiver prior to its submission to HUD.

Once the MTW agency obtains approval of its Annual PHA Plan and MTW Supplement containing the Agency-Specific Waiver Request information, the agency will then submit a letter to its local HUD field office requesting final approval of the Agency-Specific Waiver Request(s). This letter is sent and reviewed outside of the Annual PHA Plan and MTW Supplement process. It must include: A good cause justification that relates to one or more of the three MTW statutory objectives; the statute, regulation, and/or MTW Waiver safe harbor which the MTW agency seeks to waive and its justification for doing so; a copy of the approval letter for the Annual PHA Plan and MTW Supplement containing the proposed waiver; a description of the initiative; the implementation timeline; and any other information requested by HUD. Depending on the nature of the request, HUD may ask for an associated hardship policy, impact analysis, and/or other information necessary to understand the waiver and its possible effects. Agency-Specific Waiver Requests may not conflict with the agency's cohort-specific evaluation.

If the Agency-Specific Waiver is approved by HUD and the changes between the Agency-Specific Waiver Request and the Waiver that HUD ultimately approves do not constitute a ''significant amendment'' to the Annual PHA Plan, as defined by the agency, then the Agency-Specific Waiver may be implemented once the MTW Agency receives HUD's explicit written approval. The MTW Agency will need to submit a narrative description of the Agency Specific Waiver in its subsequent MTW Supplement.

If the Agency-Specific Waiver is approved by HUD with changes between the Agency-Specific Waiver Request and the Waiver that HUD ultimately approves that constitute a ''significant amendment'' to the Annual PHA Plan, as defined by the agency, then the MTW agency must re-submit the Agency-Specific Waiver Request through the Annual PHA Plan and MTW Supplement public comment process a second time. Once the Annual PHA Plan and MTW Supplement are approved this second time, the MTW agency may implement its Agency-Specific Waiver.

To the extent a policy in an Agency-Specific Waiver Request conflicts with any of the five statutory requirements, the cohort-specific evaluation, or other applicable requirements, HUD shall require the MTW agency to discontinue the policy or to revise the policy to comply with this Notice and the other applicable federal requirements. HUD also reserves the right to require an MTW agency to discontinue any policy derived from a waiver should it have significant negative impacts on families or the agency's operation of its assisted housing programs using Section 8 and 9 funds, as determined by HUD.

c. Cohort-Specific Waivers

Pursuant to the 2016 MTW Expansion Statute, at the time of designation as an MTW agency, each agency will be selected into an evaluative cohort that seeks to test a specific policy change, as specified in that cohort's Selection Notice. Cohort-Specific Waivers include statutory and/or regulatory waivers and associated activities that are unique to a specific cohort to allow them to complete their required cohort study. Depending upon the cohort's study, there is a possibility that HUD restricts certain activities within the MTW Waivers or provides additional waivers that are not included in the Appendix. It is also possible that the specific policy changes to be tested through a given cohort would not need any Cohort-Specific Waivers. Any MTW activities that would impact or conflict with the cohort-specific policy change will be identified in the respective Selection Notice so that the MTW agency is aware of this potential restriction on its use of waivers before it enters the MTW demonstration program. Cohort-Specific Waivers and the associated MTW activities may only be used to the extent allowed under the applicable evaluative framework provided by HUD in the applicable Selection Notice.

In determining the Cohort-Specific Waivers that will be included in the Selection Notices, HUD will remove and/or add waivers and associated activities based on whether a waiver and its associated activity would impact or conflict with the specific policy(s) to be studied in the MTW agency's cohort group. The addition or removal of any waivers and associated activities would only apply within the confines of the cohort study. For instance, if the study focuses on rent models as it relates to the voucher program, then an agency's public housing program would not be affected by the addition or removal of any such waivers and associated activities. If the MTW Waiver(s) and associated activity(s) are not provided to a cohort, or some portion of the agency's portfolio within the cohort, to allow the cohort to test a specific policy change, the agencies within that cohort study will not be able to conduct that activity(s) until the evaluation of the specific policy change has concluded.

3. Term of Participation

The term of each agency's MTW designation will be 12 years (PHA Fiscal Years) starting from the time of its designation as an MTW agency. All waivers and associated activities provided through the Operations Notice expire at the end of the agency's term of participation. However, Cohort-Specific Waivers provided to enable a cohort-specific policy change may be extended beyond the agency's term of participation with HUD's specific approval if HUD determines that additional time is needed to evaluate the policy change, subject to continued statutory authority for the MTW demonstration.

Once an MTW agency has implemented an activity pursuant to the authority of the Operations Notice, the agency may continue to implement that activity throughout the term of its participation in the demonstration, subject to the other terms and conditions of this Notice. The MTW agency must end all activities requiring MTW-specific waivers upon expiration of MTW participation, as HUD cannot guarantee that it will be able to extend any waivers and associated activities beyond that point. For this reason, when entering into contracts with third-parties that draw upon MTW flexibility, the agency should disclose that such flexibility is only available during the term of the agency's participation in the MTW demonstration as permitted in this Notice. An exception is third-party contracts that relate to the cohort-specific policy change and associated waiver(s). If HUD determines that additional time beyond the end of the agency's MTW term is needed to evaluate a cohort-specific policy change, HUD may approve an extension of any cohort-specific waiver(s).

4. MTW Funding Flexibility and Financial Reporting

During the term of the demonstration, subject to appropriations, HUD will provide an MTW agency with public housing Operating Fund Program grants,

public housing Capital Fund Program (CFP) grants, and/or HCV HAP and Administrative Fee assistance as detailed in this Notice. CFP grants may include Formula grants; Demolition or Disposition Transitional Funding (DDTF), which are included in regular Formula grants; and/or funds from older Replacement Housing Factor (RHF) grants (a program later superseded by DDTF). The funding amount for MTW agencies may be increased by additional allocations of vouchers that the agency is awarded over the term of its participation in the MTW demonstration. MTW Funding provided to an MTW agency, including public housing Operating Fund Program grants, public housing CFP grants, and HCV HAP and Administrative Fee assistance, is subject to any future laws and appropriations. If a future law or appropriations bill conflicts with this Operations Notice, the law or appropriations bill shall be implemented, and no breach of contract claim, or any claim for monetary damages, may result from the conflict or implementation of the conflicting law or regulation.

a. MTW Funding Flexibility

MTW agencies will have the flexibility to apply fungibility among public housing Operating Fund, public housing Capital Fund, and HCV HAP and Administrative Fee assistance. These flexibilities expand the eligible uses of each covered funding stream, but do not negate the need for both the PHA and HUD to be able to account for the funding from its original source to the date of its ultimate eligible use [10] by the PHA, comply with Federal grant and financial management requirements, and use funds effectively and efficiently for their eligible purposes. As the Department continues to implement program-specific financial management policies in its core housing programs, MTW agencies will be subject to the same requirements and procedures as non-MTW agencies. Therefore, the requirements and procedures described in this Notice may change as new financial management policies are implemented over time. HUD will update existing guidance and issue new reporting requirements, as appropriate, to allow HUD to meet its monitoring and oversight responsibilities while ensuring MTW agencies fully utilize and benefit from the flexibilities established by Congress for these funds pursuant to the MTW demonstration and the 2016 MTW expansion. HUD will also update existing guidance and issue new reporting requirements, as appropriate, to ensure compliance with 2 CFR part 200, including with respect to Federal financial management.

An agency participating in the MTW demonstration program may flexibly use public housing Operating and Capital Funds provided under Sections 9(d) and 9(e) of the 1937 Act and HCV HAP and Administrative Fee program funds provided under Section 8 of the 1937 Act, referred to collectively as MTW Funding. Certain provisions of Sections 8 and 9 of the 1937 Act and 24 CFR 982 are waived as necessary to implement this flexibility. Once the agency receives its MTW designation through the execution of the MTW CACC Amendment, this flexibility in the use of MTW Funding does not require prior HUD approval.

The agency may use MTW Funding covered by MTW flexibility for any eligible activity under Sections 9(d)(1), 9(e)(1) and Section 8(o) of the 1937 Act and for the local, non-traditional activities specified in this Notice, including in the Appendix. Any reserves the MTW agency has accumulated prior to signing an MTW CACC Amendment (including public housing Operating and Capital Reserves and HCV HAP and Administrative Fee Reserves) must be used for their originally appropriated purposes and may not be used flexibly for any eligible MTW activity described in the Appendix. All MTW PHA expenditures, including for local, non-traditional activities, must be consistent with the PHA's charter, approved 5-Year and Annual PHA Plans, and the approved MTW Supplement to the Annual PHA Plan.

i. Calculation of Funding

(a) Public Housing Operating Grants

(1) The calculation of an MTW agency's Operating Fund subsidy grant eligibility will continue in accordance with operating subsidy formula law, regulations, and appropriations act requirements. As these programmatic and financial requirements are updated, MTW agencies will be affected by and shall comply with these changes.

(2) The agency may use these funds for any eligible activity permissible under Section 9(e)(1) of the 1937 Act or, if the agency proposes to use the funding under its MTW flexibility, it may also use these funds for any eligible activity permissible under Section 8(o), Section 9(d)(1), and for the local, non-traditional activities specified in this Notice, including in the Appendix.

(3) For Operating Fund grant funding, the MTW agency has accumulated prior to signing an MTW CACC Amendment, the agency may not use such funds for eligible MTW purposes other than the originally appropriated purpose of the funds (*i.e.,* these funds may not be used as flexible MTW Funding).

(b) Public Housing Capital Fund Formula and Grants

(1) The agency's public housing Capital Fund formula characteristics and grant amounts, including DDTF and Replacement Housing Factor (RHF), will continue to be calculated in accordance with public housing law, regulations, and appropriations act requirements.

(2) MTW agencies must continue to follow the immediate need requirements applicable to all Capital funds and may not accelerate their drawdown of Capital funds for the purpose of funding reserves or for any other purpose. All Capital funds, including funds in BLI 1410 (Administrative Costs) and Budget Line Item (BLI) 1492 (MTW), must be drawn down only when funds are due and payable.

(3) The agency may use these funds for any eligible activity permissible under Section 9(d)(1) of the 1937 Act or, if the agency proposes to use the funding under its MTW flexibility, it may also use these funds for any eligible activity permissible under Section 8(o), Section 9(e)(1), and for the local, non-traditional activities specified in this Notice, including in the Appendix. Capital Fund Program (CFP) funds used for activities under section 9(d)(1) are subject to all requirements relevant to non-MTW agency CFP funding, including eligible activities and cost limits.

(4) For Capital Funds the MTW agency has accumulated prior to signing an MTW CACC Amendment, the agency may not use such funds for eligible MTW purposes other than the originally appropriated purpose of the funds (*i.e.,* these funds may not be used as flexible MTW Funding).

(5) In requisitioning Capital Fund grant funds, the MTW agency will request funds using traditional Capital Fund Budget Line Items (BLIs) for funds to be used for activities under section 9(d) and using the available MTW Budget Line (BLI 1492) items for activities under section 9(e), section 8(o), or local, non-traditional activities. MTW agencies shall not use the Transfer to Operations Budget Line (BLI 1406) since funds for all non-section 9 activities shall be included in the MTW Budget Line (BLI 1492). The agency will

[10] The date of the ''ultimate eligible use'' means the date of disbursement by the PHA for an eligible purpose, which would remove the funding from the PHA's account and the PHA's control.

provide to HUD information on all capital activities funded by the MTW Funding as necessary to ensure compliance with requirements outside the scope of MTW, including environmental review requirements and Energy and Performance Information Center (EPIC) reporting requirements.

(6) The agency remains subject to the requirements of Section 9(j) of the 1937 Act with respect to Capital Fund grants. Section 9(d) funds remain subject to the obligation and expenditure deadlines and requirements provided in Section 9(j) despite the fact that they may be in the MTW Single Fund. Capital Funds awarded to MTW agencies must be obligated within 2 years and expended within 4 years of award. Funds not obligated or expended within those timeframes will be subject to recapture. As with all agencies, an MTW agency may requisition CFP funds from HUD only when such funds are due and payable, unless HUD approves another payment schedule.

(c) Housing Choice Voucher Funding

(1) *Funding for the Initial MTW Year.* For the calendar year (CY) after the MTW agency joins the MTW demonstration (the ''Initial MTW Year''), the MTW agency's HCV HAP renewal funding will be calculated in accordance with the same HAP renewal funding formula used for non-MTW HCV agencies in the applicable FY appropriations act. The HAP renewal formula is customarily based on the previous CY's HAP expenses reported in the Voucher Management System (VMS), adjusted by any applicable inflation factor and national proration.

Example:

• If an MTW Agency signs its MTW CACC Amendment in July 2018, CY 2019 will be the Initial Year in the MTW demonstration. The MTW Agency's CY 2019 HAP renewal funding will be calculated based on the Agency's CY 2018 HAP expenses, adjusted by inflation and proration (assuming this is the formula in the 2019 Appropriations Act).

(2) *Funding for Subsequent MTW Years.* As is the case for non-MTW PHAs under current appropriations law, the HAP renewal funding eligibility for subsequent MTW years will be calculated based on the MTW agency's actual expenses for the previous calendar year (known as the re-benchmark year). Unique to MTW agencies, however, the MTW agency's actual expenses are: (i) The previous CY's HAP expenses reported in Voucher Management System (VMS,) and (ii) the previous CY's eligible non-HAP MTW expenses reported in VMS. For both HAP and non-HAP MTW expenses, the reported expenses must have been paid from an eligible source of funds as described in section 4(c) below in order to be included in the HAP renewal funding formula. In addition, MTW HAP renewal funding is subject to an MTW Renewal Eligibility Cap derived from the number of units authorized under the agency's ACC, as described in paragraph (d) on the following page. The lower of the total combined HAP/non-HAP expenses or the MTW Renewal Eligibility Cap will then be adjusted by an applicable inflation factor and any national proration that applies to the HCV renewal appropriation to determine the MTW agency's actual CY HAP renewal funding.

Example:

• In CY 2019, an MTW Agency expended $3,600,000 on HAP and $400,000 on eligible non-HAP MTW expenses. The agency's HCV HAP renewal funding for CY 2020 will be $4 million (assuming the HAP Renewal Eligibility Cap is greater than $4 million), adjusted by an inflation factor and any applicable national proration.

(3) *HAP Renewal Sources of Funds.* The only HAP and non-HAP MTW expenses that will be included in the MTW HAP renewal formula are those paid for with the same sources of funds that would be included in the non-MTW HAP renewal formula for a non-MTW agency (see PIH Notice 2013–28 and any future successor notices). Accordingly, HAP expenses and non-HAP MTW expenses must be paid from the following sources of funds to be included in the HAP renewal formula calculation:

• Housing Choice Voucher (HCV) budget authority,

• HUD-held HAP reserves (undisbursed budget authority),

• PHA-held HAP reserves (*i.e.,* Restricted Net Position (RNP)),

• Any funds from the HAP Set-aside (if available after PHA application and approval), and

• Administrative Fee reserves (*i.e.,* Unrestricted Net Position (UNP)). HAP expenses or non-HAP MTW expenses that were covered by any other funding source (for example, public housing Operating Funds and Capital Funds, and current year HCV Administrative Fee funds) will not be included in the MTW PHA's HCV renewal funding calculation.

(4) *HAP Renewal Eligibility Cap.* The MTW PHA's renewal eligibility for all MTW Years will be limited by the HAP Renewal Eligibility Cap. The calculation multiplies (1) the MTW PHA's total number of MTW-eligible ACC authorized units [11] in the re-benchmark year (the CY immediately preceding the CY for which the PHA's renewal eligibility is being calculated) [12] by (2) the PHA's pre-MTW monthly per-unit cost (PUC) inflated to the re-benchmark year.

• For (1), the number of MTW-eligible ACC authorized units is measured in unit months available (UMAs).[13]

• For (2), the inflated pre-MTW PUC is projected using, as a base, the monthly PUC for the CY in which the agency signed its MTW CACC Amendment. HUD applies an inflation factor to this base PUC to estimate what the PHA's HCV PUC would be, had the PHA not joined the MTW program, as of the re-benchmark year.

After the calculation of the HAP Renewal Eligibility Cap, it is compared with the MTW PHA's actual total combined HAP/non-HAP expenses. The lower of these two amounts—(1) the HAP Renewal Eligibility Cap or (2) the MTW PHA's actual total combined HAP/non-HAP expenses—is then adjusted by the inflation factor and any national proration factor to determine the MTW PHA's CY renewal funding.

Example:

• If an MTW Agency signs its MTW CACC Amendment in July 2018, CY 2019 will be the Initial Year in the MTW demonstration. In the Initial CY (CY 2019) the MTW Agency's renewal formula is the same formula that is used for non-MTW PHAs. In calculating the MTW Agency's HCV renewal funding for CY 2020, the following information applies:

○ The MTW PHA's average monthly PUC for CY 2018 was $700.

○ The CY 2019 inflation rate is 2 percent.

○ The number of MTW-eligible ACC authorized units during CY 2019 is 800

[11] ''MTW-eligible ACC authorized units'' means the PHA's number of ACC authorized units, regardless of whether the units are leased, after *excluding* the number of authorized units that would not be subject to the MTW renewal formula. In other words, special purpose vouchers that are renewed separately and are not part of the MTW HAP renewal formula are not included in the formula used to calculate the HAP Renewal Eligibility Cap. See Section 8 of this Notice for further information on these special purpose vouchers that are renewed separately outside the MTW renewal formula.

[12] As noted above, the re-benchmark year is also the source year for the actual expense data used in the MTW PHA's HAP renewal formula.

[13] Authorized units in the HCV program context are measured in terms of unit months available. For example, if an authorized unit is under CACC as of January 1, the authorized unit equals 12 unit months available for that CY. On the other hand, if the authorized unit was added to the CACC under a new funding increment effective July 1, the authorized unit is equal to 6 unit months available for that CY.

units. (In this example all units were under ACC as of January 1, 2019, so the number of unit months available (UMAs) is simply 800 units multiplied by 12 months, or 9,600 UMAs.)

• The HAP Renewal Eligibility Cap for CY 2020 is calculated by first determining the estimated PUC for CY 2019, which is $714 (the monthly PUC for CY 2018 inflated for CY 2019, or $700 × 1.02). The estimated PUC for CY 2019 is then multiplied by the MTW PHA's CY 2019 MTW-eligible ACC authorized UMAs [14] ($714 × 9,600 UMAs) to determine the HAP Renewal Eligibility Cap, which is $6,854,400.

• The HAP Renewal Eligibility Cap ($6,854,400) is then compared to the MTW Agency's total combined HAP/non-HAP expenses for the re-benchmark year that originated from the eligible funding sources described earlier in this Notice. If the total combined HAP/non-HAP expenses do not exceed $6,854,400, the MTW Agency's CY 2020 renewal funding will be the total combined HAP/non-HAP expenses adjusted by an inflation factor and any national proration. If the total combined HAP/non-HAP expenses exceed $6,854,400, the MTW Agency's CY 2020 renewal funding will be $6,854,400, adjusted by an inflation factor and any national proration.

(5) *Financial Management Requirements Apply.* The same financial management requirements that apply to non-MTW agencies also apply to MTW agencies. Accordingly, all undisbursed HAP funds, including HAP-originated reserve funds, will be retained as HUD-held reserves per Office of Management and Budget cash management requirements and can be requested by the MTW agency when immediate need exceeds the scheduled HAP monthly disbursements, but only after consideration of available MTW agency-held Restricted Net Position (RNP).

(6) *Administrative Fees.* The Administrative Fee rates used to calculate fee eligibility for MTW agencies shall be established according to the same methodology used to establish Administrative Fee rates for all agencies, including non-MTW agencies. As is the case for all agencies under current appropriations law, administrative fees will be calculated on the basis of units leased as of the first day of each month; this data will be extracted from Voucher Management System (VMS) at the close of each reporting cycle. Administrative fees for MTW agencies are also subject to the national proration factor and any other appropriations act requirements.

(7) *Adjustments for the First-Time Renewal of Certain Vouchers.* If the MTW agency receives incremental HCV vouchers and funding (including tenant protection vouchers) other than special purpose vouchers, renewal funding for those vouchers will be included in the MTW HCV renewal funding eligibility calculation for the following year. (See Section 8 of this Notice for further discussion of tenant protection and other special purpose vouchers.) The renewal amount for the following year is based on HAP costs reported for these increments in VMS in the prior year, which will be adjusted by the inflation factor. Should the initial increment(s) be funded for less than 12 months due to lack of appropriations, HUD will adjust for the missing months upon renewal, by selecting the higher of the funded PUC for the initial increment, or the MTW per unit cost (PUC) times the number of units,[15] then adjusted by the inflation factor. The aggregate renewal eligibility is always subject to the national proration factor.

(8) *Applicable Inflation Factor and Proration.* The same applicable inflation factor that applies to non-MTW agencies will be applied each CY to determine the MTW agency's HAP funding renewal eligibility. Likewise, the MTW agency's HAP funding renewal eligibility is subject to the same national proration as non-MTW agencies' renewal eligibility.

(9) *Prior Year Reserves.* For HCV HAP and Administrative Fee funding provided in years prior to the designation of the agency as an MTW agency, the agency may not use any accumulated HCV reserves for eligible MTW purposes other than the originally appropriated purpose of the funds (*i.e.,* these funds may not be used as flexible MTW Funding).

(10) *Rental Assistance Demonstration (RAD).* Any vouchers received as part of a RAD Component I conversion shall be added to the ACC for the remainder of the CY in which they are awarded. HUD will issue a new increment of voucher funding in support of those vouchers for the first full CY following a RAD Component I conversion. In subsequent years, voucher funding for RAD-converted units will be renewed under the MTW HCV renewal funding calculation, plus inflation factor and the applicable proration factor. Tenant protection vouchers provided for RAD Component II conversions are renewed in accordance with section 4.v, Adjustment for the first-time renewal of certain vouchers, above. Administrative fees for RAD vouchers will be calculated based on the same methodology used to establish administrative fees for non-MTW agencies. Fees for RAD vouchers will be prorated at the same level that applies to all non-MTW agencies.

(11) *Voucher Programs Not Included in MTW Program.* Vouchers and funding provided for the following special purpose vouchers, or any new special purpose vouchers provided in future appropriations acts, whether for new allocations or renewal of existing increments, shall not be included in the HCV MTW renewal calculation: Mainstream, HUD-Veterans Affairs Supportive Housing (HUD–VASH), Non-Elderly Disabled (NED), and Family Unification Program (FUP). These vouchers will be renewed under the regular voucher renewal requirements as provided under the appropriations acts. Special purpose vouchers are discussed in more detail in Section 8 of this Notice. In addition, funding provided for the Section 8 Moderate Rehabilitation Program is not part of the MTW program and may not be used for MTW activities.

b. Financial Reporting and Auditing

MTW agencies must submit year-end unaudited financial information to the Department no later than 2 months after their fiscal year end using the Financial Data Schedule (FDS) contained in the Real Estate Assessment Center's (REAC) Financial Assessment Subsystem (FASS–PH), or its successor system. Current financial reporting requirements for MTW agencies are posted on the REAC website at *https://www.hud.gov/sites/documents/DOC_11833.PDF.* These requirements may be updated in the future.

MTW agencies are also required to electronically submit their audited financial information, if applicable, to the Department no later than 9 months after their fiscal year end. MTW agencies must include public housing project level financial information in the FDS and must follow the Asset Management guidelines established in Public and Indian Housing (PIH) Notice 2007–9 Supplement to Financial Management Handbook Office of Public and Indian Housing (PIH) Revised April 2007, and any subsequent updates to this Handbook or PIH Notice. MTW agencies will conform to the cost

[14] As noted earlier, these are the MTW PHA's CY 2019 UMAs that are subject to the MTW renewal formula. UMAs attributable to special purpose vouchers such as HUD–VASH and FUP that are renewed separately are not included in this count.

[15] The MTW PUC is equal to MTW HAP expenses divided by the number of MTW units leased. (Non-HAP MTW expenses are not included in the MTW PUC calculation.) HUD may further adjust the MTW PUC calculation for PHAs administering RAD project-based vouchers to exclude RAD Rehab payments so the MTW PUC only reflects expenses attributable to actual housing assistance payments.

requirements of 2 CFR part 200 and any HUD implementation thereof.

MTW agencies must procure an Independent Public Accountant (IPA) to perform an annual audit pursuant to Federal requirements at 2 CFR part 200 and 24 CFR 990.190, or successor, as well as any audit compliance supplements developed specifically for use with the MTW demonstration.

Completed IPA audits must be submitted to HUD in accordance with current HUD regulations. HUD will review IPA audits of MTW agencies to determine appropriate action relative to any findings, prepare recommendations for audit finding resolution, and follow up with MTW agencies to assure finding closure. If there are audit findings related to the MTW program itself, HUD will monitor the resolution of all audit findings.

5. Evaluation

As a condition of participating in the MTW demonstration, MTW agencies agree to cooperate fully with HUD and its contractors in the monitoring and evaluation of the MTW demonstration. MTW agencies shall keep records and submit reports and other information as required by HUD. This includes any data collection required for the use of waivers and associated activities, for the uses of MTW funds within and across funding streams, and any evaluation efforts that HUD undertakes for the cohort-specific policy changes.

MTW is a demonstration that provides PHAs flexibilities to innovate and try different approaches to housing assistance in order to achieve at least one of the three statutory objectives laid out in the 1996 MTW Statute. At its core, the demonstration is an opportunity for PHAs, participants, HUD, stakeholders, and the general public to learn from different approaches to providing Federal housing assistance to low-income families. This includes learning from approaches that are effective and produce desired outcomes, and from approaches that are less effective than anticipated and where results may have unintended consequences.

Because MTW agencies can use different flexibilities calling on multiple activities within the MTW Waivers to serve local populations in various parts of the country, interpreting PHA-reported performance data on the effects of an individual MTW activity can be challenging. Consequently, and while adhering to the guiding principles for the expansion—to simplify, learn, and apply—HUD will create and develop an evaluation system that will document and consider the MTW demonstration through the lens of the three statutory objectives relating to cost effectiveness, self-sufficiency, and housing choice.

HUD envisions three types of evaluation: Program-wide evaluation, cohort-specific evaluation, and ad hoc evaluation.

a. Program-Wide Evaluation

Program-wide evaluation would seek to assess whether or not, and to what extent, MTW agencies use Federal dollars more efficiently, help residents find employment and become self-sufficient, and/or increase housing choices for low-income families. HUD intends to develop a method for program-wide evaluation that is based, to the extent possible, on information already being collected through existing HUD administrative data systems. HUD may determine and require that additional reporting is necessary to effectively evaluate MTW.

b. Cohort-Specific Evaluation

The 2016 MTW Expansion Statute requires HUD to direct all the agencies in a cohort to implement one specific policy change and to conduct a rigorous evaluation of the one specific policy change. The MTW Research Advisory Committee has considered input from the public and advised HUD on the policy changes to be tested through the new cohorts of MTW agencies and on the methods of research and evaluation.

The cohort-specific policy change and evaluation methods will be described in the applicable Selection Notice so that the MTW agency is aware, in advance of application to the MTW demonstration program, of the policy it will be required to implement and the evaluation requirements. The specific evaluation methods and requirements for participating MTW agencies will vary based on the policy changes to be tested. For example, some cohorts of MTW agencies may be required to participate in randomized control trials, while others may be required to participate in detailed process studies or ethnographic research. HUD's Office of Policy Development and Research (PD&R) will take the lead on evaluating cohort-specific policy changes, and funds have been appropriated by Congress for this evaluation. In all cases, the purpose of the evaluation will be to measure the outcomes associated with the specific policy change(s) in order to offer policy recommendations for implementing the policy change(s) across all PHAs.

HUD will determine the length and timeframe for the evaluation, which will be informed by feedback provided by the MTW Research Advisory Committee. In some cases, the evaluation timeframe may extend beyond the agency's term of MTW participation. The MTW agency is required to participate in the evaluation for the full timeframe designated by HUD. HUD may extend waivers and associated activities beyond the agency's term of participation to the extent that those waivers and associated activities are needed to support the evaluation of the specific policy change and HUD determines whether additional time is needed to evaluate the policy change.

c. Ad-Hoc Evaluation

HUD reserves the right to request, and the MTW agency agrees to provide, any additional information required by law or required for the sound administration or evaluation of the MTW agency.

6. Program Administration and Oversight

In general, MTW agencies will be subject to the same planning and reporting protocols as non-MTW agencies, including the PHA Plan (5-Year Plan and Annual PHA Plan) and Capital Fund planning. MTW agencies must also report data into HUD data systems, as required.

New protocols and instruments will be developed for assessing an MTW agency's performance and will be incorporated into PHAS and SEMAP, or successor assessment systems, or an alternative assessment system developed by HUD, explained further in Section 6.b. of this Operations Notice. In addition, HUD will employ standard program compliance and monitoring approaches including assessment of relative risk and on-site monitoring conducted by HUD or by entities contracted by HUD.

a. Planning and Reporting

i. The Annual PHA Plan

MTW agencies must adhere to Annual PHA Plan regulations at 24 CFR part 903, any implementing HUD Notices and guidance, as well as any succeeding regulations. The Annual PHA Plan consists of the 5-Year Plan that a PHA must submit to HUD once every five PHA fiscal years and the Annual PHA Plan that the PHA must submit to HUD for each PHA fiscal year. Any HUD assistance that the agency is authorized to use under the MTW demonstration must be used in accordance with the Annual PHA Plan, as applicable.

Annual and 5-Year Plans must be submitted in a format prescribed by HUD. Currently, submission format requirements are outlined in Notice PIH 2015–18 (HA), issued October 23, 2015,

which is effective until amended, superseded, or rescinded.

ii. MTW Supplement to the Annual PHA Plan (Under Development)

As an MTW agency, all Annual PHA Plan information must be provided in the context of the agency's participation in the MTW demonstration. This includes taking into account the MTW Waiver(s) and associated activity(s) afforded to the MTW agency. To this end, the MTW agency will submit an MTW Supplement to the Annual PHA Plan, in a format to be developed by HUD. Prior to submitting to HUD, the MTW Supplement must go through a public process along with the Annual PHA Plan. This will allow the agency to inform the community of any programmatic changes and give the public an opportunity to comment. Details about this requirement are elaborated later in this section. New MTW agencies will not be required to submit the Annual MTW Plan or Annual MTW Report (*i.e.,* Form 50900), which are required for existing MTW agencies.

The MTW Supplement form has not been finalized at the time of publishing of this Operations Notice. The MTW Supplement will be made available for public review and comment, per Paperwork Reduction Act requirements, prior to finalizing the form. At this time, HUD plans to require MTW agencies to use the MTW Supplement to the Annual PHA Plan to:

- Describe how the MTW agency seeks to address the three MTW statutory objectives during the coming fiscal year, in a narrative format;
- Indicate the MTW activities that the agency plans to implement in the Annual PHA Plan year that utilize the activities contained in the MTW Waivers (Appendix), and ongoing activities the agency has implemented in the prior year, using a check-box or other simple format;
- Indicate the estimated costs/savings per year for planned activities that have a cost implication;
- Indicate the reason(s) why any previously approved MTW activities were not implemented in the previous year;
- Indicate any changes in the MTW activities and associated waivers, including safe harbors, that have changed from the previous Annual PHA Plan year;
- Describe any Agency-Specific Waiver Requests that the MTW agency seeks to implement in PHA fiscal year, if applicable;
- Indicate the MTW activities that the agency will undertake in the Annual PHA Plan year that require Cohort-Specific Waivers (as applicable and identified in each cohort's Selection Notice), and the Cohort-Specific Waivers to be used, using a check-box or other simple, non-narrative format;
- Certify to HUD that all MTW activities being implemented by the agency fall within the safe harbors outlined in the Appendix;
- Submit data or information required for the ongoing use of any activities within the MTW Waivers; and
- Submit data required for HUD's verification of the MTW agency's compliance with the five statutory requirements established under the 1996 MTW Statute.

Non-MTW PHAs that are qualified under 24 CFR 903.3(c) and that are not designated as troubled under PHAS and that do not have a failing score under SEMAP are exempt from the requirement to submit the Annual PHA Plan. Per this Operations Notice, while MTW agencies that are qualified under 24 CFR 903.3(c) are not required to submit the Annual PHA Plan, they are required to submit the MTW Supplement to the Annual PHA Plan on an annual basis.

During the agency's initial year of participation in the MTW demonstration, an agency may implement MTW activities once they have been included in an approved MTW Supplement, either during the next regularly scheduled submission of the Annual PHA Plan and MTW Supplement or through an amendment to the Annual PHA Plan, which would include the MTW Supplement. Agency-Specific Waiver Requests and activities may only be implemented after explicit written approval from HUD.

MTW agencies must submit to HUD the Annual PHA Plan, including any required attachments, and the MTW Supplement no later than seventy-five (75) days prior to the start of the agency's fiscal year. Before submission to HUD, the agency must have at least a 45-day public review period of its plan, after publishing a notice informing the public of its availability and conducting reasonable outreach to encourage participation in the plan process, followed by a public hearing. MTW agencies must consider, in consultation with the RABs, all of the comments received at the public hearing. The recommendations received by the public and RABs must be submitted by the agency as a required attachment to the Plan. MTW agencies must also include a narrative describing their analysis of the recommendations and the decisions made on these recommendations. Agencies must also obtain the proper signed certifications and board certification.

HUD will notify the MTW agency in writing if HUD objects to any provisions or information in the Annual PHA Plan or the MTW Supplement. When the MTW agency submits its Plan seventy-five (75) days in advance of its fiscal year, HUD will respond to the MTW agency within 75 days.

Reviews of the Annual PHA Plan and the MTW Supplement will be conducted by the local field office, in consultation with the MTW Office.

iii. Admissions and Continued Occupancy Policy (ACOP) and Administrative Plan

The MTW agency must update its ACOP and Administrative Plan to be consistent with the MTW activities and related waivers that it implements. The agency may not implement an MTW activity or waiver until the relevant sections of the ACOP and/or Administrative Plan are updated. MTW agencies must provide HUD with electronic versions of the ACOP and Administrative Plan upon request. If the MTW agency implements an activity using the local, non-traditional uses of funds waiver, the MTW agency must create and update an implementing document specifically for such activity.

iv. Capital Planning and Reporting

MTW agencies must adhere to CFP regulations at 24 CFR part 905, any implementing HUD Notices and guidance, as well as any successor regulations. As noted previously, MTW agencies are funded in accordance with CFP regulations and formula funds are calculated and distributed in the same manner as non-MTW agencies.

MTW agencies have the authority and flexibility to utilize their CFP funds for expanded uses as part of their MTW funding flexibility. HUD will award Capital Fund grants to MTW agencies in keeping with the standard process for all PHAs. The Field Office will distribute funds in Line of Credit Control System (LOCCS) to the MTW agencies in accordance with the standard process. As with all PHAs, an MTW agency may draw down Capital Funds from HUD only when such funds are due and payable, unless HUD approves another payment schedule. To the extent that the MTW agency plans to use CFP funding for other MTW-eligible (non-CFP) activities, the CFP funding would be recorded on BLI 1492 (Moving to Work) on Form HUD–50075.1. CFP funds entered on BLI 1492 would not need to be broken out and itemized in the part II supporting pages of the HUD–50075.1. However,

regardless of the BLI utilized, funds may not be drawn down until the PHA has an immediate need for the funds. An MTW agency may not accelerate drawdowns of funds in order to fund reserves or to otherwise increase locally held amounts, as discussed in 4(a)(i)(b)(2) of this Notice.

An MTW agency is not required to use all or any portion of its CFP grant for non-CFP activities. To the extent that the MTW agency wishes to dedicate all or a portion of its CFP grant to specific capital improvements, the agency shall record CFP funding on the appropriate BLI(s) on Form HUD–50075.1 (other than BLI 1492) as in the standard program.

v. Inventory Management System/PIH Information Center Reporting

Data from HUD's Inventory Management System (IMS) and Public and Indian Housing (PIH) Information Center (PIC), or successor systems, is critical to all aspects of program administration, including HUD monitoring and tracking of MTW agency progress in meeting the MTW statutory objectives. IMS/PIC data is used to establish funding eligibility levels for both Operating Subsidy Fund and Capital Fund grants. Further, HUD relies on IMS/PIC data to provide a thorough and comprehensive view of PHA program performance and compliance.

MTW agencies are required to submit the following information to HUD via IMS/PIC (or its successor system):

- Family data to IMS/PIC using Form HUD–50058 MTW (or successor forms) or Form HUD–50058 and in compliance with HUD's 50058 MTW or standard 50058 submission requirements for MTW agencies. MTW agencies must report information on all families receiving some form of tenant-based or project-based housing assistance, either directly or indirectly, as well as all public housing families, to be current to at least a 95 percent level.
- Current building and unit information in the development module of IMS/PIC (or successor system).
- Basic data about the PHA (address, phone number, email address, etc.).

HUD will monitor MTW agency reporting to IMS/PIC (or successor system) to ensure compliance and provide technical assistance to MTW agencies as needed.

vi. Voucher Management System Reporting

MTW agencies are required to report voucher utilization in the Voucher Management System (VMS), or its successor system. There are several areas in which VMS reporting is different for MTW agencies. These areas are highlighted in the VMS User's Manual (*http://portal.hud.gov/hudportal/documents/huddoc?id=instructions.pdf*), which details the VMS reporting requirements.

HUD will monitor each MTW agency's VMS reporting to ensure compliance and provide technical assistance to MTW agencies as needed.

vii. General Reporting Requirement

In addition to the reporting requirements outlined in this Operations Notice, MTW agencies are required to comply with any and all HUD reporting requirements not specifically waived by HUD for participation in the MTW demonstration program, including the requirement (discussed in Section 5) to comply with HUD's evaluation of the specific-policy changes being implemented by cohort.

b. Performance Assessment

Assessing the performance of PHAs (both MTW and non-MTW) helps with the delivery of services in the public housing and voucher programs and enhances trust among PHAs, public housing participants, HUD, and the general public. To facilitate this effort, HUD will provide management tools for effectively and fairly assessing the performance of a PHA in essential housing operations and program administration.

Currently, HUD uses PHAS and SEMAP to assess risk and identify underperforming PHAs in the traditional public housing and voucher programs. However, since some of the MTW flexibilities make it difficult to accurately assess the performance of MTW agencies under the existing systems, HUD will develop an alternative, MTW-specific assessment system, which may be incorporated into PHAS and SEMAP (or successor assessment system(s)). MTW agencies may not opt out of the MTW-specific successor system(s). Until the successor system is implemented, HUD will monitor MTW agency performance through PHAS sub-scores.

i. Public Housing Assessment System

MTW agencies are scored in PHAS, however, agencies can elect not to receive the overall score (MTW agencies continue to receive PHAS sub-scores even if they elect not to receive the overall score). If an MTW agency elects to receive its overall PHAS score, the agency must continue to be scored for the duration of the demonstration, or until the agency is assessed under the alternative, MTW-specific assessment system(s), whichever comes first. Once developed, all MTW agencies, including MTW agencies that elect not to receive an overall PHAS score, must be assessed under the MTW-specific assessment system(s).

Per the 1996 MTW statute, when providing public housing, the MTW agency must ensure that the housing is safe, decent, sanitary, and in good repair, according to the physical inspection protocols established and approved by HUD. Thus, MTW agencies continue to be subject to HUD physical inspections. To the extent that HUD physical inspections reveal deficiencies, the MTW agency must continue to address these deficiencies in accordance with existing physical inspection requirements. If an MTW agency does not maintain public housing adequately, as evidenced by the physical inspection performed by HUD and is determined to be troubled in this area, HUD will determine appropriate remedial actions. The actions to be taken by HUD and the agency will include actions statutorily required and such other actions as may be determined appropriate by HUD. These actions may include developing and executing a Memorandum of Agreement (MOA) with the MTW agency, suspension or termination of the MTW CACC Amendment in accordance with the provisions therein, or such other actions legally available to the Department.

MTW agencies must continue to submit year-end financial information into the Financial Data System (FDS)or successor system, as discussed earlier.

ii. Section 8 Management Assessment Program

MTW agencies are not scored in SEMAP but they can elect to be scored if they choose to opt in. If an MTW agency elects to receive its overall SEMAP score, the agency must continue to be scored for the duration of the demonstration, or until the agency is assessed under the MTW-specific assessment system, whichever comes first. Once developed, all MTW agencies, including MTW agencies that opt out of SEMAP, must be assessed under the MTW-specific assessment system(s).

c. Monitoring and Oversight

MTW agencies remain subject to the full range of HUD monitoring and oversight efforts including, but not limited to, annual risk assessments, on-site monitoring reviews, monitoring reviews relating to VMS reporting and rent reasonableness, review of the accuracy of data reported into HUD data systems, and use of HUD data systems

to assess agency program performance, among other activities.

i. MTW Statutory Requirements

Throughout participation in the MTW demonstration program, all MTW agencies must continue to meet five statutory requirements established under the 1996 MTW Statute. Implementation, monitoring and enforcement of the five statutory requirements will be discussed in greater detail in the final version of this Operations Notice, and specific enforcement processes will be included in the MTW CACC Amendment (see also, section 11 of this Notice). HUD will monitor and determine MTW agencies' compliance with these five requirements as follows:

(a) MTW agencies must ensure that at least 75 percent of the families assisted are very low-income families, in each fiscal year, as defined in section 3(b)(2) of the 1937 Act.

(i) HUD Verification Approach: Initial household certification data recorded in PIC will be used for both the public housing and HCV programs for compliance monitoring purposes. The initial certification is comprised only of new admissions in the agency's given fiscal year. Initial household certification data for families housed through local, non-traditional activities (in accordance with the Appendix) will be provided in a manner specified by the Department. An agency's portfolio will then be weighted with respect to the number of households being served by each housing program type (*i.e.,* PH, HCV, Local, Non-Traditional).

(b) MTW agencies must establish a reasonable rent policy which shall be designed to encourage employment and self-sufficiency by participating families, consistent with the purpose of this demonstration, such as by excluding some or all of a family's earned income for purposes of determining rent.

(i) HUD Verification Approach: HUD defines rent reform as any change in the regulations on how rent is calculated for a household. Upon designation into the MTW demonstration, agencies are to submit their planned policy to implement a reasonable rent policy in the MTW Supplement. All activities falling under the Tenant Rent Policies category, detailed in the Appendix, meet the definition of a reasonable rent policy. An MTW agency must implement one or multiple reasonable rent policies during the term of its MTW designation (MTW agencies in the rent reform cohort may have prescribed deadlines to implement their reasonable rent policies).

(c) MTW agencies must continue to assist substantially the same total number of eligible low-income families as would have been served had the amounts not been combined.

(i) HUD Verification Approach: HUD continues to consider the best approach to monitor the MTW statutory requirement that MTW agencies serve substantially the same number of families absent the demonstration. The main themes and principles for this effort include a Substantially the Same (STS) methodology that: Ensures substantially the same number of families are housed; allows for local flexibility; is responsive to changing budgetary climates; is feasible for HUD to administer; is easy for MTW agencies to predict compliance; is straight forward to understand; is calculated each year; and has publicly available results. First, the STS methodology would establish a baseline ratio of dollars the agency expends and families housed. Before an agency enters the MTW demonstration, the public housing funding and the HCV HAP funding spent by the agency in the prior CY would be divided by the current number of families housed in each program. This calculation would yield how many families the agency houses per $100,000 of funding in both the public housing and HCV programs. Each year during an agency's participation in the MTW demonstration, the baseline number of total families housed per $100,000 of funding in both the public housing and HCV programs would be applied to the agency's actual funding for that calendar year. So, for example, the agency would know that if it is appropriated ''x number of dollars,'' it would be required to house ''y number of families.'' Depending on the specific circumstances of the agency, a dip below the baseline year number would be allowed. HUD is exploring methods to ensure that the ratio of families housed per $100,000 in the baseline year continues to be an accurate measure of ''substantially the same'' service levels in future years of the MTW designation. There would also be opportunities for PHAs to request adjustments of the baseline ratio to account for changes in costs due to special circumstances.

The following is an example of the STS baseline ratio calculation:

Baseline Year (Calendar Year Before Agency Enters MTW)

- Agency expends $800,000 in HCV HAP funds and houses 100 HCV families. Agency then houses 12.5 HCV families per $100,000 of HCV funds.
- Agency expends $500,000 in public housing funds and houses 75 public housing families. Agency then houses 15 public housing families per $100,000 public housing funds.

First Year in MTW Demonstration

- MTW agency receives $900,000 in HCV HAP funds and $300,000 in public housing funds.
- MTW agency must house 112.5 families for the HCV share and 45 families for the public housing share. Therefore, in this example, the MTW agency is required to house 157 total families flexibly with its MTW funds (this may be in the public housing program, the HCV program, a local, non-traditional rental subsidy program, or a local, non-traditional development program [16]).

(d) MTW agencies must maintain a comparable mix of families (by family size) as would have been provided had the amounts not been used under the demonstration.

(i) HUD Verification Approach: In order to establish a comparable mix baseline, the Department will pull data, by family size, for occupied public housing units and leased vouchers at the time of entry into the demonstration. The Department will rely upon agency-reported data into HUD systems (*i.e.,* PIC, VMS). This information will be used to establish baseline percentages, by family size, to which the agency is measured by for the remainder of participation. Following entry into the demonstration, agencies will provide comparable mix data and, if applicable, associated justifications in the MTW Supplement. The Department deems an acceptable level of variation to be no more than 5 percent from the baseline. Justifications or explanations for fluctuations greater than 5 percent are required and subject to the Department's review.

(e) MTW agencies must ensure that housing assisted under the demonstration meets housing quality standards established or approved by the Secretary.

[16] MTW agencies may use their MTW Funding to develop affordable housing units that are outside of the traditional public housing and HCV programs. Such local, non-traditional development allows for the creation of important affordable housing resources, which must be balanced with the existing and immediate needs of families waiting for housing assistance. It is therefore necessary to relate the amount of the MTW agency's total available MTW Funding investment to the number of affordable units developed. To that end, HUD will divide the MTW agency's total available MTW Funding in the local, non-traditional development by the HUD-published Total Development Cost (TDC). The resulting number of units would then count as families housed for the length of time the units remained affordable.

(i) HUD Verification Approach: In order to demonstrate that the MTW agency meets housing quality standards, HUD will verify compliance for each housing program type as follows:

- HCV—Program regulations at 24 CFR part 982 set forth basic housing quality standards (HQS) for housing assisted under the HCV program. These housing quality standards, or its successor regulations, are the standards used to determine if the agency is fulfilling its responsibilities to ensure owners are maintaining the units in accordance with HQS in the evaluation of an agency. Agencies with an HCV program must certify in the MTW Supplement that they have fulfilled their responsibilities to comply with and ensure enforcement of HQS under this requirement.
- Public Housing—HUD will verify this requirement through its review of PHAS Physical Assessment Subsystem (PASS) scores, or successor assessment system. Scores falling below 24 out of 40 will be identified as non-compliant with the statutory requirement.
- Local, Non-Traditional—In the MTW Supplement, MTW Agencies must certify that local, non-traditional units meet housing quality standards as required in PIH Notice 2011–45, or successor notice.

ii. Income Integrity and Enterprise Income Verification System (EIV) Reviews

MTW agencies are required to comply with the final rule regarding EIV issued December 29, 2009, and utilize EIV for all income verifications. EIV has been modified for MTW agencies so that family information submitted in PIC will not expire for 40 months, in order to accommodate agencies choosing to extend recertification periods for up to three years.

MTW agencies are subject to HUD review to ensure compliance with EIV requirements as well as monitor the accuracy and integrity of the MTW agencies' income and rent determination policies, procedures, and outcomes.

iii. MTW Site Visit

HUD will periodically conduct site visits to provide guidance, discuss the MTW agency's MTW activities, and offer any needed technical assistance regarding its program. The purpose of a site visit will be to confirm reported agency MTW activities, to review the status and effectiveness of the agency's MTW strategies, provide technical assistance, and to identify and resolve outstanding MTW related issues.

The MTW agency shall give HUD access, at reasonable times and places, to all requested sources of information, including access to files, access to units, and an opportunity to interview agency staff and assisted participants.

Where travel funding or staff resources are not available to facilitate in-person site visits, HUD may exercise the option to conduct remote site visits via telephone, videoconference, or webinar.

To the extent possible, HUD will coordinate the MTW site visit with other site visits to be conducted by HUD.

iv. Housing Choice Voucher Utilization

HUD will monitor HCV utilization at MTW agencies and will ensure that HCV funds are utilized in accordance with Section 4(a)(i)(c) and Section 6(c)(i)(c) of this Notice. Where leasing levels are inconsistent with the requirements of this Notice, HUD may take appropriate actions to work with the MTW agency to increase leasing and utilization.

v. Public Housing Occupancy

HUD will monitor public housing occupancy rates for MTW agencies. In instances where the MTW agency's public housing occupancy rate falls below 96 percent, HUD may require, at its discretion, that the MTW agency enter into an Occupancy Action Plan to address the occupancy issues. The Occupancy Action Plan will include the cause of the occupancy issue, the intended solution, and reasonable timeframes to address the cause of the occupancy issue.

vi. Additional Monitoring and Oversight

HUD may, based on the MTW agency's risks and at HUD's discretion, conduct management, programmatic, financial, or other reviews of the MTW agency. The MTW agency shall respond to any findings with appropriate corrective action(s).

In addition, HUD will make use of all HUD data systems and available information to conduct ongoing remote monitoring and oversight actions for MTW agencies, consistent with the results of the PIH risk assessment.

7. Rental Assistance Demonstration Program

MTW agencies converting public housing program units to Section 8 assistance under the Rental Assistance Demonstration (RAD) program are able to retain MTW regulatory and statutory flexibilities in the management of those units, subject to RAD requirements, if the conversion is to Project Based Voucher (PBV) assistance. MTW agencies converting projects under RAD to PBV may continue to undertake flexibilities except to the extent limited by RAD, as described in the RAD Notice, PIH 2012–32, REV–3, or its successor Notice.[17]

8. Applying MTW Flexibilities to Special Purpose Vouchers

Special Purpose Vouchers (SPVs) are specifically provided for by Congress in line item appropriations, which distinguish them from regular vouchers. Except for enhanced vouchers and tenant-protection vouchers (described below), SPVs are not part of the MTW demonstration and are not part of the MTW agency's total available flexible MTW Funding. The funding is renewed outside of the MTW HAP renewal formula and the funding (both the initial increment and renewal funding) for the SPVs may only be used for eligible SPV purposes. There are no additional MTW flexibilities around using MTW funds to cover SPV shortfalls. MTW PHAs may use non-HAP sources to cover shortfalls, following the procedures outlined in Notice PIH 2013–28. PHAs already have the ability to use HAP reserve funds to address SPV instances of shortfalls, where the SPVs are under the same appropriations allocation for renewal as their Section 8 vouchers.[18]

a. HUD-Veterans Affairs Supportive Housing

HUD-Veterans Affairs Supportive Housing (HUD–VASH) vouchers have separate operating requirements and must be administered in accordance with the requirements listed at *www.hud.gov/program_offices/public_indian_housing/programs/hcv/vash.* The operating requirements waive and alter many of the standard HCV statutes and regulations at 24 CFR part 982. Unless stated in the HUD–VASH operating requirements, however, the regulatory requirements at 24 CFR part 982 and all other HUD directives for the HCV program are applicable to HUD–VASH vouchers. Agencies may submit a request to HUD to operate HUD–VASH vouchers in accordance with MTW administrative flexibilities.

b. Family Unification Program

The Family Unification Program (FUP) NOFA language allows vouchers to be administered in accordance with MTW operations, unless MTW provisions are inconsistent with the

[17] Notices and laws related to RAD can be found at *http://portal.hud.gov/hudportal/HUD?src=/RAD/library/notices.*

[18] *https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_10495.pdf.*

appropriations act or requirements of the FUP NOFA. In the event of a conflict between the Operations Notice and the appropriations act or FUP NOFA language, the act and NOFA govern.

c. Non-Elderly Persons With Disabilities Vouchers

The Non-Elderly Persons with Disabilities (NED) NOFA language allows vouchers to be administered in accordance with MTW operations unless MTW provisions are inconsistent with the appropriations act or requirements of the NED NOFA. In the event of a conflict between the Operations Notice and the appropriations act or FUP NOFA language, the act and NOFA govern.

d. Enhanced Vouchers and Tenant Protection Vouchers

Enhanced and tenant protection voucher funds become fungible once the initial funding increment is renewed. The agency must continue to provide rental assistance to enhanced voucher families and tenant protection voucher families after the initial funding increment is renewed.

The statutory enhanced voucher requirements under Section 8(t) of the 1937 Act (*e.g.,* the HAP calculation) apply to an enhanced voucher family until the family either moves from the project or leaves the HCV tenant-based program for any reason. MTW agencies must follow the procedures described in Notice PIH 2013–27, or its successor Notice, for a recipient of an enhanced voucher to voluntarily agree to relinquish their tenant-based assistance in exchange for PBV assistance. When an enhanced voucher family moves from the project, either after initially receiving the voucher or anytime thereafter, the Section 8(t) enhanced voucher requirements no longer apply. The voucher is then administered in accordance with the regular HCV program requirements, as modified by the agency's individual MTW waivers and MTW policies for its tenant-based HCV program.

Regular tenant protection vouchers (*i.e.,* tenant protection vouchers that are not enhanced vouchers) are always administered in accordance with the normally applicable HCV program requirements, as modified by the agency's individual MTW waivers and MTW policies for its tenant-based HCV program, regardless of whether the family stays or moves from the project.

9. Applicability of Other Federal, State, and Local Requirements

Notwithstanding the MTW Waivers and associated activities provided in this Operations Notice, the following provisions of the 1937 Act continue to apply to MTW agencies and the assistance received pursuant to the 1937 Act:

i. The terms ''low-income families'' and ''very low-income families'' shall continue to be defined by reference to Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2));

ii. Section 12 of the 1937 Act (42 U.S.C. 1437j), as amended, shall apply to housing assisted under the demonstration, other than housing assisted solely due to occupancy by families receiving tenant-based assistance;

iii. Section 18 of the 1937 Act (42 U.S.C. 1437p, as amended by Section 1002(d) of Pub. L. 104–19, Section 201(b)(1) of Pub. L. 104–134, and Section 201(b) of Pub. L. 104–202), governing demolition and disposition, shall continue to apply to public housing notwithstanding any use of the housing under MTW; and

iv. Section 8(r)(1) of the 1937 Act on HCV portability shall continue to apply unless provided as a cohort-specific waiver and associated activity(s) in an evaluative cohort as necessary to implement comprehensive rent reform and occupancy policies. Such a cohort-specific waiver and associated activity(s) would contain, at a minimum, exceptions for requests to port due to employment, education, health and safety, and reasonable accommodation.

Notwithstanding any requirement contained in this Notice or any MTW Waiver and associated activity granted herein, other Federal, state and local requirements applicable to public housing or HCV assistance will continue to apply. The MTW CACC Amendment will place in HUD the authority to determine if any future law or future regulation conflicts with any MTW-related agreement or Notice. If a future law conflicts, the law shall be implemented, and no breach of contract claim, or any claim for monetary damages, may result from the conflict or implementation of the conflicting law or regulation.

If any non-1937 Act requirement applicable to PHAs, public housing, or HCV assistance contains a provision that conflicts or is inconsistent with any MTW Waiver and associated activity granted by HUD, the agency remains subject to the terms of that non-1937 Act requirement. Such requirements include, but are not limited to:

• Requirements for Federal Funds: Notwithstanding the flexibilities described in this Notice, the public housing and voucher funding provided to MTW agencies remain Federal funds and are subject to any and all other Federal requirements outside of the 1937 Act (*e.g.,* including, but not limited to, competitive HUD NOFAs under which the MTW agency has received an award, state and local laws, Federal statutes other than the 1937 Act (including appropriations acts), and OMB Circulars and requirements), as modified from time to time. The MTW agency's expenditures must comply with 2 CFR part 200 and other applicable Federal requirements, which provide basic guidelines for the use of Federal funds, including the requirements of this Notice.

• National Environmental Policy Act (NEPA): MTW agencies must comply with NEPA, 24 CFR part 50 or part 58, as applicable, and other related Federal laws and authorities identified in 24 CFR. Part 50 or part 58, as applicable. Information and guidance on the environmental review process and requirements is provided in PIH Notice 2016–22, or successor notice.

• Fair Housing and Equal Opportunity: As with the administration of all HUD programs and all HUD-assisted activities, fair housing, and civil rights issues apply to the administration of MTW demonstration programs. This includes actions and policies that may have a discriminatory effect on the basis of race, color, sex, national origin, religion, disability, or familial status (see 24 CFR part 1 and part 100 subpart G) or that may impede, obstruct, prevent, or undermine efforts to affirmatively further fair housing. Annual PHA Plans must include a civil rights certification required by Section 5A of the 1937 Act and implemented by regulation at 24 CFR 903.7(o) and 903.15, as well as a statement of the PHA's strategies and actions to achieve fair housing goals outlined in an approved Assessment of Fair Housing (AFH) consistent with 24 CFR 5.154. If the PHA does not have a HUD-accepted AFH, it must still provide a civil rights certification and statement of the PHA's fair housing strategies, which would be informed by the corresponding jurisdiction's AFH and the PHA's assessment of its own operations.

All PHAs, including MTW agencies, are obligated to comply with non-discrimination and equal opportunity laws and implementing regulation, including those in 24 CFR 5.105. Specific laws and regulations must be viewed in their entirety for full compliance, as this Operations Notice does not incorporate a complete discussion of all legal authorities. For example, PHAs, including MTW agencies, are required to comply with

the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Architectural Barriers Act of 1968, Executive Order 11063: Equal Opportunity in Housing, Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency, HUD's Equal Access Rule (24 CFR 5.105(a)(2), Age Discrimination Act of 1975, and Title IX of the Education Amendments Act of 1972, as well as HUD and government-wide regulations implementing these authorities. PHAs should review PIH Notice 2011–31 for more details.

• Court Orders and Voluntary Compliance Agreements: MTW agencies must comply with the terms of any applicable court orders or Voluntary Compliance Agreements that are in existence or may come into existence during the term of the MTW CACC Amendment. The PHA must cooperate fully with any investigation by the HUD Office of Inspector General or any other investigative and law enforcement agencies of the U.S. Government.

10. MTW Agencies Admitted Prior to 2016 MTW Expansion Statute

The 39 MTW agencies that entered the MTW demonstration prior to the 2016 MTW Expansion Statute adhere to an administrative structure outlined in the Standard MTW Agreement, a contract between each current agency and HUD. The 2016 MTW Expansion Statute extended the term of the Standard MTW Agreement for these existing MTW agencies through each agency's 2028 fiscal year.

Some agencies that entered the MTW demonstration prior to the 2016 MTW Expansion Statute may wish to opt out of their Standard MTW Agreement and administer their MTW program pursuant to the MTW Expansion and the requirements in this MTW Operations Notice. HUD will support an existing MTW agency's request to join the MTW Expansion provided that the agency:

• Makes the change at the end of its fiscal year, so that it does not have part of a fiscal year under the Standard Agreement and part under the Operations Notice;

• follows the same public comment and Board resolution process as would be required for amending the Standard MTW Agreement;

• executes its MTW CACC Amendment to authorize participation in the MTW demonstration consistent with the Operations Notice; and

• agrees to all the terms and conditions that apply to MTW agencies admitted pursuant to the 2016 MTW Expansion Statute, including all of the provisions of this Operations Notice and the accompanying MTW CACC Amendment.

Should an existing MTW agency elect to administer its MTW program pursuant to the framework described in this Operations Notice, it will not be required to implement the cohort-specific policy change associated with any of the MTW cohorts and it will not be required to participate in the evaluation of that specific policy change. All other requirements in this Operations Notice will apply.

11. Sanctions, Terminations, and Default

If the MTW agency violates any of the requirements outlined in this Notice, HUD is authorized to take any corrective or remedial action permitted by law. Sanctions, terminations, and default are covered in the agency's MTW CACC Amendment.

III. Environmental Impact

1. Purpose and Applicability

A Finding of No Significant Impact (FONSI) with respect to the environment was made for a previous version of this Notice in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is applicable to the current version of the Notice because there were no significant changes to the provisions of the Notice. The FONSI will be available for public inspection on *www.regulations.gov.*

Dated: August 24 2018.

Robert E. Mulderig,

Acting Deputy Assistant Secretary for Public Housing Investments.

[FR Doc. 2018–21723 Filed 10–4–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR932000.L16100000. DP0000.LXSSH0930000.18X.HAG 18–0143]

Notice of Availability of the Draft Resource Management Plan/ Environmental Impact Statement for the San Juan Islands National Monument, Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) and Draft Environmental Impact Statement (EIS) for the San Juan Islands National Monument, and, by this notice, is announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP and Draft EIS within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability of the Draft RMP and Draft EIS in the **Federal Register**. The BLM will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the San Juan Islands National Monument Draft RMP and Draft EIS by any of the following methods:

• *Website: https://go.usa.gov/xRphc.*

• *Email: blm_or_sanjuanislandsnm@blm.gov.*

• *Fax:* 509–536–1275.

• *Mail:* San Juan Islands National Monument Comments, Lopez Island BLM Office, PO Box 3, Lopez, WA 98261.

Copies of the San Juan Islands National Monument Draft RMP and Draft EIS are available at the BLM Lopez Island Office (37 Washburn Place, Lopez Island, WA 98261), the BLM Spokane District Office (1103 N Fancher Rd, Spokane Valley, WA 99212), and the BLM Oregon/Washington State Office (1220 SW 3rd Avenue, Portland, OR 97204). The document is also available on the following website: *https://go.usa.gov/xRphc.*

FOR FURTHER INFORMATION CONTACT: Lauren Pidot, Planner, 503–808–6297; Lopez Island BLM Office, PO Box 3, Lopez, WA 98261; *lpidot@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. FRS is available 24 hours a day, 7 days a week, to leave a message or a question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM has prepared the San Juan Islands National Monument Draft RMP/EIS to evaluate potential management strategies for the San Juan Islands

National Monument. Presidential Proclamation 8947 designated the monument on March 25, 2013. The lands included in the monument are not now, and have never been, covered by an RMP. The BLM currently administers these lands using a custodial management approach focused on meeting legal mandates.

The decision area for this planning process comprises the approximately 1,021 acres of public land that compose the monument. The decision area does not include private lands or local, State, or non-BLM-administered Federal public lands, with the exception of approximately 179 acres of land currently withdrawn to the U.S. Coast Guard. The U.S. Coast Guard is in the process of relinquishing these acres. The BLM anticipates that acres relinquished by the U.S. Coast Guard will come under BLM administration prior to the publication of the record of decision for this planning process. In the event that the relinquishment process is not complete prior to the publication of the record of decision, the approved RMP will only go into effect for those 179 acres once they are under BLM administration.

The monument includes headlands, islands, and rocks scattered across the San Juan Islands. As a whole, the San Juan Islands encompass private lands and an array of Federal, State, and local public lands. Non-BLM public lands include the San Juan Island National Historical Park, the San Juan Islands National Wildlife Refuge (a portion of which is designated as the San Juan Wilderness), and a variety of State and county parks.

The BLM prepared the Draft RMP/EIS with input from 13 cooperating agencies, 12 consulting tribes, the Monument Advisory Committee, and the public. The formal public scoping process began on March 2, 2015, when the **Federal Register** published the Notice of Intent to prepare the RMP/EIS (80 FR 11220). During the scoping period, the BLM held five open house meetings attended by more than 90 members of the public. The BLM used scoping comments to help identify planning issues that led to the formulation of alternatives and framed the scope of analysis in the Draft RMP/EIS. In the winter and spring of 2016, the BLM solicited additional public comments on recreation management in the monument. During this time, the BLM held four workshops at which members of the public used large-scale maps of monument locations to provide information on recreational uses the public would like to see facilitated, limited, or prohibited. The BLM used these comments to develop recreation management area frameworks and alternatives for an implementation-level travel and transportation plan.

Presidential Proclamation 8947 required that the BLM ''establish an advisory committee under the Federal Advisory Committee Act (5 U.S.C. App.) to provide information and advice regarding the development [of an RMP].'' The Monument Advisory Committee is composed of twelve members representing a variety of interests. The Secretary of the Interior appoints committee members for two-year terms. The BLM met with the San Juan Islands National Monument Advisory Committee 11 times during the development of the Draft RMP/EIS.

Major issues considered in the Draft RMP/EIS include the protection and restoration of the ecological and cultural resources identified in Presidential Proclamation 8947, as well as the management of recreation, transportation, visual resources, and wilderness characteristics. The document describes the direct, indirect, and cumulative environmental impacts of a range of alternatives to address these issues.

The Draft RMP/EIS evaluates four action alternatives (Alternatives A, B, C, and D) along with one sub-alternative and the No Action Alternative. The BLM identified Alternative B as the preferred alternative. The BLM is required by regulation (43 CFR 1610) to identify a preferred alternative in the Draft RMP/EIS. It is simply the BLM's starting point for gaining public feedback to use in developing the Proposed RMP. The preferred alternative does not represent the final agency direction. In developing a Proposed RMP/Final EIS, the BLM will consider making modifications to the preferred alternative in response to public comments; advice from consulting tribes, cooperating agencies, and the Monument Advisory Committee; and BLM priorities. The Proposed RMP may be a modification of the design of Alternative B, a modification of the design of a different alternative analyzed in the Draft RMP/EIS, a new alternative developed from within the spectrum of alternatives analyzed in the Draft RMP/EIS, or an alternative analyzed in the Draft RMP/EIS as written.

Under the No Action Alternative, the BLM would continue to manage the monument using a custodial approach with no RMP. There would continue to be no plan-level objectives, direction, or allocations, except for the limited decisions made in the 1990 decision record creating the Iceberg Point and Point Colville Areas of Critical Environmental Concern (described below). Custodial management of the monument would continue to focus on meeting legal and policy mandates and preventing unnecessary and undue degradation. The BLM would make decisions about taking management actions on a case-by-case basis after completing the appropriate level of National Environmental Policy Act analysis and ensuring that actions are consistent with Proclamation 8947 and the FLPMA.

Alternative A would undertake a generally passive approach to vegetation management and would prohibit recreation while facilitating scientific, educational, cultural, and spiritual uses of the monument. Under both alternatives B and C, the BLM would pursue ambitious vegetation restoration objectives. Under Alternative B, recreational opportunities would include hiking, hunting, designated site and dispersed camping, and opportunities for pursuing solitude and quiet, which would be provided by expanding the existing trail network, requiring permits to access 167 acres of the monument, and providing dispersed camping by permit. Under Alternative C, recreational opportunities would include hiking, equestrian use, and designated site camping; portions of the monument would be closed to the discharge of firearms except for half of the firearm-based hunting season. Sub-Alternative C is identical to Alternative C, except the BLM would not allow the use of chemical treatments and would close the monument to the discharge of firearms. Under Alternative D, the BLM would maintain the current extent and condition of plant communities; recreational opportunities would include hunting and increased camping and hiking, biking, and equestrian use on an expanded trail network. The BLM is undertaking concurrent implementation-level travel and transportation planning.

There has been no recent history of uses such as grazing, logging, or mining within the monument. The proclamation designating the monument withdrew it from entry, location, selection, sale, leasing, or other disposition under public land and mining laws other than by exchange that furthers the protective purposes of the proclamation. Except for emergencies, Federal law enforcement use, or authorized administrative purposes, the proclamation also restricts motorized vehicle use to designated roads and mechanized vehicle use (*e.g.,* bicycle use) to designated roads and trails.

Pursuant to 43 CFR 1610.7–2(b), this notice announces a concurrent public comment period on the areas of critical environmental concern (ACEC). The 1990 Iceberg Point and Point Colville Areas of Critical Environmental Concern Decision Record designated the BLM-administered lands at Iceberg Point and Point Colville as ACECs. These ACECs were later extended to Watmough Bay and Chadwick Hill after the BLM's acquisition of these areas and now apply to approximately 500 acres of land included in the monument. The 1990 decision record and the 1988 draft planning analysis for these ACECs generally discuss protecting the areas' ''natural values'' but do not identify specific relevant and important values. These decisions prohibit fires, trail construction, overnight camping, fuel woodcutting and commercial timber sales, certain types of rights-of-way, and livestock grazing. They also require members of the public to obtain permits for any collection of vegetation and for organized groups of 10 or more.

The BLM technical specialists on the planning team considered whether the monument encompasses values that meet the relevance and importance criteria described in the BLM's ACEC Manual. They determined that the whole of the monument contains historic and cultural, fish and wildlife, and scenic values that meet the relevance and importance criteria for an ACEC. The planning team also determined that the alternatives considered in the Draft RMP, which meet the purpose and need of protecting the objects for which the monument was designated, would protect these relevant and important values. Since the values do not require special management to protect them from the potential effects of actions permitted by the alternatives, the action alternatives do not include ACECs.

The public is encouraged to comment on any and all portions of the document. The BLM asks that those submitting comments make them as specific as possible with reference to chapters, page numbers, and line numbers in the Draft RMP/EIS. Following the public comment period, the BLM will prepare the Proposed RMP and Final EIS. The BLM will respond to substantive comments by making appropriate revisions to the document or by explaining why a comment did not warrant a change. Comments that contain only opinions or preferences will not receive a formal response; however, they will be considered and included as part of the BLM's decision-making process.

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 BLM Lopez Island Office (37 Washburn Place, Lopez Island, WA 98261) during regular business hours (8 a.m. to 4 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.

Jamie E. Connell,

State Director, Oregon/Washington, Bureau of Land Management.

[FR Doc. 2018–21629 Filed 10–4–18; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00000.L54400000.RB0000. LVCLF1705370 N–94491; 11–08807; MO#4500125057; TAS: 17X]

Notice of Realty Action: Direct Sale of Public Land to the City of Henderson, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) is proposing a non-competitive (direct) sale of 10 acres of public land to the City of Henderson, Nevada, pursuant to the Southern Nevada Public Land Management Act of 1998 (SNPLMA), as amended, and applicable provisions of the Federal Land Policy and Management Act of 1976 (FLPMA) and BLM land sale regulations. This parcel was nominated by the local government for future development of homes and businesses for the expansion of growing communities in the City of Henderson.

DATES: Interested parties may submit written comments regarding this direct sale until November 19, 2018.

ADDRESSES: Mail written comments to the BLM Las Vegas Field Office, Assistant Field Manager, 4701 North Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Joe Fields, Realty Specialist, BLM Las Vegas Field Office at telephone: 702–515–5194, email: *jfields@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This property is located near a strategic location in the City of Henderson and the local government has an interest in ensuring the property is ultimately developed. The appraised fair market value for the sale parcel is $4,120,000. The parcel is located in the City of Henderson on the corner of St. Rose Parkway and Bowes Avenue and is legally described as: Mount Diablo Meridian, Nevada T. 23 S., R. 61 E., sec. 9, NE¼NW¼NW¼. The area described contains 10.00 acres.

This sale is in conformance with the BLM Las Vegas Resource Management Plan decisions LD–1 and LD–2, approved on October 5, 1998. The Las Vegas Valley Disposal Boundary Environmental Impact Statement and Record of Decision issued on December 23, 2004, analyzed the sale parcel. A parcel-specific Determination of National Environmental Policy Act Adequacy (DNA) document numbered DOI–BLM–NV–S010–2017–0034–DNA was prepared in conjunction with this Notice of Realty Action. This sale is consistent with Section 203 of FLPMA, and meets the following disposal criteria: ''such tract because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency.'' The subject parcel of land is located in a heavily developed residential and commercial area. These lands are not needed for Federal purposes and the United States has no present interest in the property.

The land also meets the criteria for direct sale under FLPMA, Section 203(a)(3) and 43 CFR 2711.3–3(a), which states ''Direct sales (without competition) may be utilized, when in the opinion of the authorized officer, a competitive sale is not appropriate and the public interest would best be served by a direct sale.'' The parcel will be offered through direct sale procedures

pursuant to 43 CFR 2711.3–3. No other land uses are expected for these lands.

The SNPLMA allows for the disposal of public lands within a specific boundary around Las Vegas, Nevada. The funds generated by this proposed non-competitive (direct sale) will be used throughout Nevada for projects such as the development of parks, trails, and natural areas, capital improvements on Federal lands, acquisition of environmentally sensitive land, and landscape restoration projects. Additionally, 5 percent of the revenue goes to the State of Nevada General Education Fund and 10 percent to the Southern Nevada Water Authority.

According to 43 CFR 2711.2, qualified conveyees must be: (1) A citizen of the United States 18 years of age or older; (2) A corporation subject to the laws of any state or of the United States; (3) A State instrumentality, or political subdivision authorized to hold property; or (4) An entity legally capable of conveying and holding lands or interests therein under the laws of the State of Nevada. Evidence of United States citizenship is a birth certificate, passport, or naturalization papers. Failure to submit the above documents to the BLM within 30 days from receipt of the purchase price letter will result in cancellation of the sale and forfeiture of the deposit. Citizenship documents and Articles of Incorporation (as applicable) must be provided to the BLM-Las Vegas Field Office for each sale.

According to SNPLMA as amended, Public Law 105–263 section 4(c), lands identified within the Las Vegas Valley Disposal Boundary are withdrawn from location and entry under the mining laws and from operation under the mineral leasing and geothermal leasing laws until such time as the Secretary terminates the withdrawal or the lands are patented.

Publication of this Notice in the **Federal Register** segregates the subject lands from all forms of appropriation under the public land laws. Any subsequent applications will not be accepted, will not be considered as filed, and will be returned to the applicant if the notice segregates from the use applied for in the application. The segregative effect of this Notice terminates upon issuance of a patent or other document of conveyance to such lands; publication in the **Federal Register** of a termination of the segregation; or after the 180 days from the sale offer date of this publication, whichever occurs first.

Terms and Conditions: All minerals for the sale parcel will be reserved to the United States. The patent, when issued, will contain a mineral reservation to the United States for all minerals.

The public land would not be offered for sale to the City of Henderson until at least December 4, 2018, at the appraised fair market value of $4,120,000. A copy of the approved appraisal report is available at the address above. The patent, when issued to the City of Henderson, will be subject to the following terms, and conditions:

1. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior are reserved to the United States, together with all necessary access and exit rights;

2. A right-of-way is reserved for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

3. A right-of-way for Federal Aid Highway purposes reserved to Federal Aid Highway Administration, for road purposes to Nevada Department of Transportation (Nev-031066), its successors or assigns pursuant to the Act of November 9, 1921 (042 Stat. 0216);

4. The parcel is subject to all valid existing rights;

5. The parcel is subject to reservations for road, public utilities, and flood control purposes, both existing and proposed, in accordance with SNPLMA and the local governing entities' transportation plans; and

6. An appropriate indemnification clause protecting the United States from claims arising out of the lessee's/patentee's use, occupancy, or occupations on the leased/patented lands.

Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended, notice is hereby given that the land has been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor have any hazardous substances been disposed of or released on the subject property. To the extent required by law, all parcels are subject to the requirements of Section 120(h) of CERCLA.

It is the City of Henderson's responsibility to be aware of all applicable Federal, State, and local government laws, regulations, and policies that may affect the subject lands, including any required dedication of lands for public uses. It is also the City of Henderson's responsibility to be aware of existing or prospective uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It is the responsibility of the City of Henderson to be aware through due diligence of those laws, regulations, and policies, and to seek any required local approvals for future uses. The City of Henderson should make itself aware of any Federal or State law or regulation that may affect the future use of the property. Any land lacking access from a public road or highway will be conveyed as such, and future acquisition for access will be the responsibility of the City of Henderson.

The City of Henderson will have until 4:30 p.m., Pacific Time (PT), 30 days from the date of receiving the sale offer to accept the offer and submit a deposit of 20 percent of the purchase price. The City of Henderson must remit the remainder of the purchase price within 180 days from the date of receiving the sale offer to the Las Vegas Field Office. Payment must be received in the form of a certified check, postal money order, bank draft, or cashier's check payable to the U.S. Department of the Interior—BLM. Failure to meet conditions established for this sale will void the sale and any funds received will be forfeited. The BLM will not accept personal or company checks.

Arrangements for electronic fund transfer to the BLM for the payment of the balance due must be made a minimum of 2 weeks prior to the payment date.

In accordance with 43 CFR 2711.3–1(f), within 30 days the BLM may accept or reject any offer to purchase, or interest therein from sale if the BLM authorized officer determines consummation of the sale would be inconsistent with any law, or for other reasons as may be provided by applicable law or regulations. No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase and the full price is paid.

The parcel may be subject to land use applications received prior to publication of this Notice if processing the application would have no adverse effect on the marketability of title, or the fair market value of the parcel. Information concerning the sale, encumbrances of record, appraisals, reservations, procedures, and conditions, CERCLA, and other environmental documents that may appear in the BLM public files for the sale parcel, is available for review

during business hours, 8:00 a.m. to 4:30 p.m. PT, Monday through Friday, at the BLM-Las Vegas Field Office, except during Federal holidays.

The parcel of land will not be offered for sale prior to December 4, 2018. Only written comments submitted by postal service or overnight mail will be considered as properly filed. Electronic mail, facsimile, or telephone comments will not be considered.

Submit comments on this sale Notice to the address in the **ADDRESSES** section. Before including your address, phone number, email address, or other personally identifiable information in your comment, be advised 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 from public review your personally identifiable information, we cannot guarantee that we will be able to do so.

Any adverse comments regarding the sale will be reviewed by the BLM Nevada State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in response to such comments. In the absence of any comments, this realty action will become the final determination of the Department of the Interior.

(*Authority:* 43 CFR 2711)

Gayle Marrs-Smith,

Field Manager, Las Vegas Field Office.

[FR Doc. 2018–21737 Filed 10–4–18; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–26562; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before September 15, 2018, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by October 22, 2018.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before September 15, 2018. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State Historic Preservation Officers:

FLORIDA

Hillsborough County

U.S.S. NARCISSUS (tugboat) Shipwreck, 2.75 mi. NW of Egmont Key, Crystal River vicinity, SG100003048

NORTH DAKOTA

Cavalier County

RSL–3, 12329 ND 5, Concrete vicinity, SG100003053

OREGON

Multnomah County

Goldsmith, Bernard and Emma, House, 1507 NW 24th Ave., Portland, SG100003054

Yamhill County

Cameo Theatre, 304 E 1st St., Newberg, SG100003055

SOUTH CAROLINA

Charleston County

Emanuel African Methodist Episcopal Church, 110 Calhoun St., Charleston, SG100003056

Richland County

Olympia Mill Village Historic District, Portions of Lincoln, Gadsden, Wayne, Heyward, Silver, S Parker, Alabama, Carolina, Delaware, Florida, Georgia, Kentucky, Maryland & Ohio Sts., Columbia vicinity, SG100003058

Washington. Booker T., High School Auditorium, (Segregation in Columbia, South Carolina MPS), 1400 Wheat St., Columbia, MP100003059

WISCONSIN

Jefferson County

Knapp—Calkins Farmstead, W1420 WI 59, Palmyra, SG100003061

In the interest of preservation, a SHORTENED comment period has been requested for the following resource:

VERMONT

Rutland County

Hubbardton Battlefield (Boundary Increase, Decrease) Address Restricted, Hubbardton vicinity, BC100003062, Comment period: 3 days

A request for removal has been made for the following resource:

UTAH

Box Elder County

Southern Pacific Railroad: Ogden-Lucin Cut-Off Trestle, 30 mi. W of Ogden at N arm of Great Salt Lake, Ogden vicinity, OT72001257

Nomination submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

NEW MEXICO

San Miguel County

Pecos National Historical Park Archaeological and Historic District, Address Restricted, Pecos vicinity, SG100003052

Authority: Section 60.13 of 36 CFR part 60.

Dated: September 20, 2018.

Julie H. Ernstein,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program and Deputy Keeper of the National Register of Historic Places.

[FR Doc. 2018–21713 Filed 10–4–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0026447; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Albuquerque Museum, Albuquerque, NM; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Albuquerque Museum has corrected a Notice of Inventory Completion published in the **Federal Register** on August 8, 2018. This notice corrects a paragraph that contains an error.

ADDRESSES: Deb Slaney, History Curator, Albuquerque Museum, 2000 Mountain Road NW, Albuquerque, NM 87104 telephone (505) 243–7255, email *dslaney@cabq.gov.*

SUPPLEMENTARY INFORMATION: 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. The National Park Service is not responsible for the determinations in this notice.

This notice corrects a Notice of Inventory Completion published in the **Federal Register** (83 FR 14490–14492, April 4, 2018). A paragraph summarizing the determinations made by the Albuquerque Museum cited an incorrect reference in the original notice.

Correction

In the **Federal Register** (83 FR 39122, August 8, 2018), column 3, paragraph 2, sentence 1 is corrected by substituting the following sentence:

At a date prior to 1974, human remains representing, at minimum, one individual were removed from an unknown location in the vicinity of Jemez Pueblo, Sandoval County, NM.

Dated: September 6, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–21756 Filed 10–4–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0026454;PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Office of the State Archeologist Bioarcheology Program, University of Iowa, Iowa City, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Office of the State Archeologist Bioarcheology Program has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Office of the State Archeologist Bioarcheology Program. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Office of the State Archeologist Bioarcheology Program at the address in this notice by November 5, 2018.

ADDRESSES: Dr. Lara Noldner, Office of the State Archeologist Bioarcheology Program, University of Iowa, 700 South Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Office of the State Archeologist Bioarcheology Program, Iowa City, IA. The human remains were removed from an unknown location in Colorado.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Office of the State Archeologist Bioarcheology Program professional staff in consultation with representatives of the Hopi Tribe of Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico, hereafter referred to as ''The Consulted Tribes.''

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed from an unknown location, likely in Colorado. A human cranium was found in the Biology Department of Clarke College in Dubuque, Iowa. No information was available about the origin of the cranium other than a paper label, on which the following was written: PUEBLO—INDIAN (CLIFF DWELLER)—Colorado. The human remains were transferred to the Office of the State Archeologist Bioarcheology Program in 2014. A middle-aged adult, possibly female, is represented by the cranium (OSA BP 2989). Craniofacial morphology and severe dental attrition support the identification of the remains as Native American. No known individuals were identified. No associated funerary objects are present.

At the time of the excavation and removal of these human remains, the land from which the human remains were removed was not the tribal land of any Indian Tribe or Native Hawaiian organization. In June 2018, the Office of the State Archeologist Bioarcheology Program consulted with all Indian Tribes who are recognized as aboriginal to the area from which these Native American human remains were removed. None of these Tribes agreed to accept control of the human remains. In June 2018, the Office of the State Archeologist Bioarcheology Program agreed to transfer control of the human remains to the Pueblo of Acoma, New Mexico.

Determinations Made by the Office of the State Archeologist Bioarcheology Program

Officials of the Office of the State Archeologist Bioarcheology Program have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on dental attrition, provenience information, and craniofacial morphology.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- Pursuant to 43 CFR 10.11(c)(2)(i), the disposition of the human remains

may be to The Pueblo of Acoma, New Mexico.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Lara Noldner, Office of the State Archeologist Bioarcheology Program, University of Iowa, 700 South Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu,* by November 5, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The Office of the State Archeologist Bioarcheology Program is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: September 7, 2018

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–21757 Filed 10–4–18; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–747 (Fourth Review)]

Fresh Tomatoes From Mexico; Notice of Commission To Schedule and Determination To Conduct a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to the Tariff Act of 1930 to determine whether revocation of the suspension agreement of the antidumping duty order on fresh tomatoes from Mexico would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission also hereby gives notice of the scheduling of a full review pursuant to the Tariff Act of 1930. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

DATES: October 1, 2018.

FOR FURTHER INFORMATION CONTACT: Amelia Shister ((202) 205–2047), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On May 7, 2018, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that both the domestic and respondent interested party group responses to its notice of institution (83 FR 4676, February 1, 2018) were adequate. The Commission also found that other circumstances warranted conducting a full review. Accordingly, a full review is being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's website.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on January 18, 2019, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on Thursday, February 7, 2019, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 31, 2019. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on February 6, 2019, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is January 29, 2019. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is February 19, 2019.

In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before February 19, 2019. On March 15, 2019, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 19, 2019, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's website at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

The Commission has determined that these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 1, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–21692 Filed 10–4–18; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1068]

Certain Microfluidic Devices; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a Final Initial Determination on Section 337 Violation and a Recommended Determination on Remedy and Bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, should the Commission find a violation. This notice is soliciting public interest comments from the public only. Parties are to file public interest submissions pursuant to Commission rules.

FOR FURTHER INFORMATION CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3427. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's Electronic Docket Information System (''EDIS'') (*https://edis.usitc.gov*). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 (''Section 337'') provides that if the Commission finds a violation it shall exclude the articles concerned from the United States unless the public interest factors listed in 19 U.S.C. 1337(d)(1) prevent such action. A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting comments on public interest issues raised by the recommended relief should the Commission find a violation, specifically: (1) A limited exclusion order (''LEO'') against certain microfluidic devices, which are imported, sold for importation, and/or sold after importation by respondent 10X Genomics, Inc. of Pleasanton, CA (''10X''); and (2) a cease and desist order (''CDO'') against 10X.

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4). In addition, members of the public are hereby invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on September 28, 2018. Comments should address whether issuance of the LEO and CDO in this investigation, should the Commission find a violation, 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 recommended orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) Identify like or directly competitive articles that complainants, their licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainants, complainants' licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the LEO and CDO would impact consumers in the United States.

Written submissions from the public must be filed no later than by close of business on Friday, October 26, 2018.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No.

337–TA–1068'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf.*). Persons with questions regarding filing should contact the Secretary (202–205–2000). Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 1, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–21637 Filed 10–4–18; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committee on the Federal Rules of Appellate Procedure

AGENCY: Advisory Committee on the Federal Rules of Appellate Procedure, Judicial Conference of the United States.

ACTION: Notice of cancellation of public hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Appellate Procedure has been canceled: Appellate Rules Hearing on October 26, 2018, in Washington DC.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Rules Committee Secretary, Rules Committee Staff, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

SUPPLEMENTARY INFORMATION: Announcements for this hearing were previously published in 83 FR 39463 and 83 FR44305.

Dated: October 2, 2018.

Rebecca A. Womeldorf,

Rules Committee Secretary.

[FR Doc. 2018–21715 Filed 10–4–18; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

New Information Collection Requirements; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA). The program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Federal Contract Compliance Programs (OFCCP) is soliciting comments concerning its proposal to obtain approval from the Office of Management and Budget (OMB) to implement the Excellence in Disability Inclusion award. OFCCP will be sharing the information with the Office of Disability Employment Policy for the purpose of partnering with them in support of the award. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice or by accessing it at *www.regulations.gov.*

DATES: Written comments must be submitted to the office listed in the addresses section below on or before December 4, 2018.

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

Electronic comments: The federal eRulemaking portal at *www.regulations.gov.* Follow the instructions found on that website for submitting comments.

Mail, Hand Delivery, Courier: Addressed to Harvey D. Fort, Acting Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. For faster submission, we encourage commenters to transmit their comment electronically via the *www.regulations.gov* website. Comments that are mailed to the address provided above must be postmarked before the close of the comment period. All submissions must include OFCCP's name for identification. Comments, including any personal information provided, become a matter of public record and will be posted on *www.regulations.gov.* They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Harvey D. Fort, Acting Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, Room C–3325, 200 Constitution Avenue NW, Washington, DC 20210. Telephone: (202) 693–0103 (voice) or (202) 693–1337 (TTY) (these are not toll-free numbers). Copies of this notice may be obtained in alternative formats (large print, braille, audio recording) upon request by calling the numbers listed above.

SUPPLEMENTARY INFORMATION:

I. Background: OFCCP administers and enforces the three nondiscrimination and equal employment opportunity laws listed below.

- Executive Order 11246, as amended (E.O. 11246)
- Section 503 of the Rehabilitation Act of 1973, as amended (Section 503)
- Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA)

These authorities prohibit employment discrimination by covered federal contractors and subcontractors and require that they provide equal employment opportunities regardless of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. Additionally, federal contractors and subcontractors are prohibited from discriminating against applicants and employees for asking about, discussing, or sharing information about their pay or the pay of their co-workers. E.O. 11246 applies to federal contractors and subcontractors and to federally assisted construction contractors holding a Government contract in excess of $10,000, or Government contracts which have, or can reasonably be expected to have, an aggregate total value exceeding $10,000 in a 12-month period. E.O. 11246 also applies to government bills of lading, depositories of federal funds in any amount, and to financial institutions that are issuing and paying agents for U.S. Savings Bonds. Section 503 prohibits employment discrimination against applicants and employees because of physical or mental disability and requires affirmative action to ensure that persons are treated without regard to disability. Section 503 applies to federal contractors and subcontractors with contracts in excess of $15,000. VEVRAA prohibits employment discrimination against protected veterans and requires affirmative action to ensure that persons are treated without regard to their status as a protected veteran. VEVRAA applies to federal contractors and subcontractors with contracts of $150,000 or more. This collection will implement the Excellence in Disability Inclusion award that will recognize federal contractor and subcontractor establishments that ensure equal employment opportunity, foster employment opportunities for individuals with disabilities, and have achieved a level of excellence in their compliance with Section 503.

II. Review Focus: OFCCP is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the compliance and enforcement functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions: OFCCP seeks approval of this new information collection in order to carry out and enhance its responsibilities to enforce the anti-discrimination and affirmative action provisions of the three legal authorities it administers.

Type of Review: New Request.

Agency: Office of Federal Contract Compliance Programs.

Title: Contractor Recognition Program—Excellence in Disability Inclusion Award.

OMB Number: 1250–[NEW].

Agency Number:

Affected Public: Business or other for-profit entities.

Total Respondents: 100.

Total Annual Responses: 100 biennially.

Average Time per Response: 27 hours.

Estimated Total Burden Hours: 2,700.

Frequency: Biennially.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection request and become a matter of public record.

Harvey D. Fort,

Acting Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs.

[FR Doc. 2018–21727 Filed 10–4–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

[Docket Number DOL–2018–0006]

Child Labor, Forced Labor, and Forced or Indentured Child Labor in the Production of Goods in Foreign Countries and Efforts by Certain Foreign Countries To Eliminate the Worst Forms of Child Labor

AGENCY: The Bureau of International Labor Affairs, United States Department of Labor.

ACTION: Notice: Request for information and invitation to comment.

SUMMARY: This notice is a request for information and/or comment on three reports issued by the Bureau of International Labor Affairs (ILAB) regarding child labor and forced labor in certain foreign countries. Relevant information submitted by the public will be used by the Department of Labor (DOL) in preparing its ongoing reporting as required under Congressional mandates and a Presidential directive. The 2017 Findings on the Worst Forms of Child Labor report (TDA report), published on September 20, 2018, discusses efforts of 132 countries and territories to eliminate the worst forms of child labor over the course of 2017 and assesses whether countries made significant, moderate, minimal, or no advancement during that year. It also suggests actions foreign countries can take to eliminate the worst forms of child labor through legislation, enforcement, coordination, policies, and social programs. The 2018 edition of the List of Goods Produced by Child Labor or Forced Labor (TVPRA List), also published on September 20, 2018, makes available to the public a list of goods from countries that ILAB has reason to believe are produced by child labor or forced labor in violation of international standards. Finally, the List of Products Produced by Forced or Indentured Child Labor (E.O. 13126 List), provides a list of products, identified by country of origin, that DOL, in consultation and cooperation with the Departments of State (DOS) and Homeland Security (DHS), has a reasonable basis to believe might have been mined, produced, or manufactured with forced or indentured child labor. Relevant information submitted by the public will be used by DOL in preparing the next edition of the TDA report, to be published in 2019; the next edition of the TVPRA List, to be published in 2020; and for possible updates to the E.O. 13126 List as needed.

DATES: Submitters of information are requested to provide their submission to DOL's Office of Child Labor, Forced Labor, and Human Trafficking (OCFT) at the email or physical address below by 5 p.m. on January 11, 2019.

ADDRESSES: Information submitted to the Department of Labor should be submitted directly to OCFT, Bureau of International Labor Affairs, U.S. Department of Labor. Comments, identified as ''Docket No. DOL–2018–0006,'' may be submitted by any of the following methods:

1. *Federal eRulemaking Portal:* You may submit electronic comments to: *http://www.regulations.gov.* The portal includes instructions for submitting

comments. Parties submitting responses electronically are encouraged not to submit paper copies.

2. *Facsimile (fax):* OCFT, at 202–693–4830.

3. *Mail, Express Delivery, Hand Delivery, and Messenger Service (1 copy):* Rachel Rigby and Chanda Uluca, U.S. Department of Labor, OCFT, Bureau of International Labor Affairs, 200 Constitution Avenue NW, Room S–5315, Washington, DC 20210.

4. *Email:* Email submissions should be addressed to both Rachel Rigby (*rigby.rachel@dol.gov*) and Chanda Uluca (*Uluca.Chanda@dol.gov*).

FOR FURTHER INFORMATION CONTACT: Rachel Rigby and Chanda Uluca. Please see contact information above.

SUPPLEMENTARY INFORMATION:

I. The Trade and Development Act of 2000 (TDA), Public Law 106–200 (2000), established eligibility criterion for receipt of trade benefits under the Generalized System of Preferences (GSP). The TDA amended the GSP reporting requirements of Section 504 of the Trade Act of 1974, 19 U.S.C. 2464, to require that the President's annual report on the status of internationally recognized worker rights include ''findings by the Secretary of Labor with respect to the beneficiary country's implementation of its international commitments to eliminate the worst forms of child labor.''

The TDA Conference Report clarifies this mandate, indicating that the President consider the following when considering whether a country is complying with its obligations to eliminate the worst forms of child labor: ''(1) Whether the country has adequate laws and regulations proscribing the worst forms of child labor; (2) whether the country has adequate laws and regulations for the implementation and enforcement of such measures; (3) whether the country has established formal institutional mechanisms to investigate and address complaints relating to allegations of the worst forms of child labor; (4) whether social programs exist in the country to prevent the engagement of children in the worst forms of child labor, and to assist with the removal of children engaged in the worst forms of child labor; (5) whether the country has a comprehensive policy for the elimination of the worst forms of child labor; and (6) whether the country is making *continual progress* toward eliminating the worst forms of child labor.''

DOL fulfills this reporting mandate through annual publication of the U.S. Department of Labor's Findings on the Worst Forms of Child Labor with respect to countries eligible for GSP. To access the 2017 TDA report and Frequently Asked Questions, please visit *https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings/.*

II. Section 105(b) of the Trafficking Victims Protection Reauthorization Act of 2005 (''TVPRA of 2005''), Public Law 109–164 (2006), 22 U.S.C. 7112(b), directed the Secretary of Labor, acting through ILAB, to ''develop and make available to the public a list of goods from countries that ILAB has reason to believe are produced by forced labor or child labor in violation of international standards'' (TVPRA List).

Pursuant to this mandate, on December 27, 2007, DOL published in the **Federal Register** a set of procedural guidelines that ILAB follows in developing the TVPRA List (72 FR 73374). The guidelines set forth the criteria by which information is evaluated; established procedures for public submission of information to be considered by ILAB; and identified the process ILAB follows in maintaining and updating the TVPRA List after its initial publication.

ILAB published its first TVPRA List on September 30, 2009, and issued updates in 2010, 2011, 2012, 2013, 2014, 2016, and 2018. (In 2014, ILAB began publishing the TVPRA List every other year, pursuant to changes in the law. See 22 U.S.C. 7112(b).) ILAB can also publish more frequent updates, at its discretion. For a copy of previous editions of the TVPRA List, Frequently Asked Questions, and other materials relating to the TVPRA List, see ILAB's TVPRA web page at *http://www.dol.gov/ilab/reports/child-labor/list-of-goods/.*

III. Executive Order No. 13126 (E.O. 13126) declared that it was ''the policy of the United States Government . . . that the executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by forced or indentured child labor.'' The E.O. 13126 List is intended to ensure that U.S. federal agencies do not procure goods made by forced or indentured child labor. Under procurement regulations, federal contractors who supply products on the E.O. 13126 List must certify that they have made a good faith effort to determine whether forced or indentured child labor was used to produce the items supplied. Pursuant to E.O. 13126, and following public notice and comment, the Department of Labor published in the January 18, 2001, **Federal Register**, a final list of products (''E.O. 13126 List''), identified by country of origin, that the Department, in consultation and cooperation with the Departments of State (DOS) and Treasury [relevant responsibilities are now within the Department of Homeland Security (DHS)], had a reasonable basis to believe might have been mined, produced or manufactured with forced or indentured child labor (66 FR 5353). In addition to the E.O. 13126 List, the Department also published on January 18, 2001, ''Procedural Guidelines for Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor,'' which provide for maintaining, reviewing, and, as appropriate, revising the E.O. 13126 List (66 FR 5351).

Pursuant to Sections D through G of the Procedural Guidelines, the E.O. 13126 List may be updated through consideration of submissions by individuals or through OCFT's own initiative.

DOL has officially revised the E.O. 13126 List four times, most recently on December 1, 2014, each time after public notice and comment as well as consultation with DOS and DHS.

The current E.O. 13126 List, Procedural Guidelines, and related information can be accessed on the internet at *http://www.dol.gov/ilab/reports/child-labor/list-of-products/index-country.htm.*

Information Requested and Invitation to Comment: Interested parties are invited to comment and provide information regarding these reports. DOL requests comments on or information relevant to updating the findings and suggested government actions for countries reviewed in the TDA report, assessing each country's individual advancement toward eliminating the worst forms of child labor during the current reporting period compared to previous years, and maintaining and updating the TVPRA and E.O. Lists. For more information on the types of issues covered in the TDA report, please see Appendix III of the report. Materials submitted should be confined to the specific topics of the TDA report, the TVPRA List, and the E.O. 13126 List. DOL will generally consider sources with dates up to five years old (*i.e.,* data not older than January 1, 2014). DOL appreciates the extent to which submissions clearly indicate the time period to which they apply. In the interest of transparency in our reporting, classified information will not be accepted. Where applicable, information submitted should indicate its source or sources, and copies of the source material should be provided. If primary sources are utilized, such as research studies, interviews, direct

observations, or other sources of quantitative or qualitative data, details on the research or data-gathering methodology should be provided. Please see the TDA report, TVPRA List, and the E.O. 13126 List for a complete explanation of relevant terms, definitions, and reporting guidelines employed by DOL. Per our standard procedures, submissions will be published on the ILAB web page at *https://www.dol.gov/ilab/submissions/*.

This notice is a general solicitation of comments from the public.

Authority: 22 U.S.C. 7112(b)(2)(C) and 19 U.S.C. 2464.

Martha E. Newton,

Deputy Undersecretary for International Affairs.

[FR Doc. 2018–21559 Filed 10–4–18; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 17 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern Time and ending times are approximate.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Sherry Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov,* or call 202/682–5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of July 5, 2016, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meetings are:

Musical Theater (review of applications): This meeting will be closed.

Date and time: October 30, 2018; 1:00 p.m. to 3:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: October 30, 2018; 4:00 p.m. to 6:00 p.m.

Opera (review of applications): This meeting will be closed.

Date and time: November 7, 2018; 12:00 p.m. to 2:00 p.m.

Opera (review of applications): This meeting will be closed.

Date and time: November 7, 2018; 3:00 p.m. to 5:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: November 8, 2018; 1:30 p.m. to 3:30 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 9, 2018; 1:00 p.m. to 3:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 9, 2018; 4:00 p.m. to 6:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 13, 2018; 12:00 p.m. to 2:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 13, 2018; 3:00 p.m. to 5:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 14, 2018; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 14, 2018; 3:00 p.m. to 5:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: November 15, 2018; 1:30 p.m. to 3:30 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 15, 2018; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 15, 2018; 3:00 p.m. to 5:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 16, 2018; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 19, 2018; 2:00 p.m. to 4:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 20, 2018; 1:00 p.m. to 3:00 p.m.

Dated: October 1, 2018.

Sherry Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2018–21644 Filed 10–4–18; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Workshop on the Convergence of High Performance Computing, Big Data, and Machine Learning

AGENCY: Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation.

ACTION: Notice of Workshop.

SUMMARY: This workshop will focus on the R&D challenges of integrating high performance computing (HPC), big data (BD), and machine learning (ML) computing platforms to support the needs of an evolving scientific and technological landscape.

DATES: October 29–30, 2018.

FOR FURTHER INFORMATION CONTACT: Email *hpc-bd-convergence@nitrd.gov* or call Wendy Wigen at (202) 459–9683 or Ji Hyun Lee at (202) 459–9679. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Overview: This notice is issued by the Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO). Agencies of the High End Computing (HEC) and Big Data (BD) Interagency Working Groups are jointly conducting a workshop focused on the convergence of HPC, BD, and ML. Experts from government, private industry, and academia will help discuss the current use cases and the technology, tools and practices that are effective, and identify gaps and issues that will require additional research to resolve. The workshop will take place on October 29 from 8:15 a.m. to 5:00 p.m. ET and October 30 from 8:30 a.m. to 12:00 p.m. ET at the Natcher Conference Center, National Institutes of Health, Bethesda, MD. Participation is by invitation only, but observers are welcome on a first come first served basis. Space is limited, but this event

will be webcast. The agenda and information about how to join the webcast will be available the week of the event at: *https://www.nitrd.gov/nitrdgroups/index.php?title=HPC-BD-Convergence.*

Workshop Goals: HEC and BD members will use information gathered from this workshop to inform their agency-specific research agendas.

Workshop Objectives: Identify and discuss: use cases and applications from a variety of domains; current activities to address the convergence challenge and the research and technologies that are still needed; strategies for combining the HPC, BD, and ML software and hardware ecosystems; strategies for combining the ''people culture'' of HPC, BD, and ML; and different modes of operation.

Submitted by the National Science Foundation in support of the Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO) on October 2, 2018.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–21720 Filed 10–4–18; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84326; File No. SR–BX–2018–046]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the Pricing Schedule Rules

October 1, 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 September 17, 2018, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (a) relocate its current Rule 7000 Series (''Equities Pricing'') and the rules at Chapter XV (''Options Pricing''; together, ''Equities and Options Pricing'') to the Exchange's rulebook's (''Rulebook'') shell structure; [3] (b) make conforming cross-reference changes throughout the Rulebook; and (c) amend the Equity 4's title in the shell structure.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (a) relocate the Equities and Options Pricing rules, currently under the Equities Rule 7000 Series and Options Chapter XV, into the Rulebook's shell structure, respectively, under Equity 7 and Options 7 (both named ''Pricing Schedule''); (b) make conforming cross-reference changes throughout the Rulebook; and (c) amend the Equity 4's title, ''Equity Listing Rules,'' in the shell structure, as detailed below.

(a) Relocation of the Pricing Rules

The Exchange, as part of its continued effort to promote efficiency and the conformity of its processes with those of the Affiliated Exchanges,[4] and the goal of harmonizing and uniformizing its rules, proposes to relocate the Equities Pricing rules, currently under the Rule 7000 Series, into Equity 7, Pricing Schedule, of the shell structure. Specifically, the Exchange will add the word ''Section'' and renumber the Equities Pricing rules as detailed in the table below:

Rule 7000 Series	Equity 7
7000	Section 1.
7001	Section 10.
7002	Section 20.
7003	Section 30.
7010	Section 100.
7011	Section 111.
7012	Section 112.
7013	Section 113.
7014	Section 114.
7015	Section 115.
7016	Section 116.
7017	Section 117.
7018	Section 118.
7019	Section 119.
7020	Section 120.
7021	Section 121.
7022	Section 122.
7023	Section 123.
7024	Section 124.
7025	Section 125.
7026	Section 126.
7027	Section 127.
7028	Section 128.
7029	Section 129.
7030	Section 130.
7031	Section 131.
7032	Section 132.
7033	Section 133.
7034	Section 134.
7035	Section 135.
7039	Section 139.
7047	Section 147.
7051	Section 151.
7055	Section 155.
7058	Section 158.

The Exchange will also relocate the Options Pricing rules, currently under Chapter XV, into Options 7, Pricing Schedule, of the shell structure. No renumbering of the Options Pricing Schedule will be necessary other than replacing the abbreviated word ''Sec.'' with the full word ''Section.''

The Exchange believes that the relocation of the Equities and Options Pricing rules will facilitate the use of the Rulebook by Members [5] of the Exchange, including those who are members of other Affiliated Exchanges, and other market participants. Moreover, the proposed changes are of a non-substantive nature and they will not amend the relocated rules, other than to update their numbers as detailed above.

[3] In 2017, the Exchange added a shell structure to its Rulebook with the purpose of improving efficiency and readability and to align its rules closer to those of its five sister exchanges, The Nasdaq Stock Market LLC; Nasdaq PHLX LLC; Nasdaq ISE, LLC; Nasdaq GEMX, LLC; and Nasdaq MRX, LLC (''Affiliated Exchanges''). *See* Securities Exchange Act Release No. 82174 (November 29, 2017), 82 FR 57492 (December 5, 2017) (SR–BX–2017–054).

[4] *See* footnote 3.

[5] Exchange Rule 0120(i).

(b) Cross-Reference Updates

In connection with the changes described above, the Exchange proposes to update all cross-references in the Rulebook that direct the reader to the current placement of the Equities and Options Pricing rules and/or any of their subsections. Furthermore, the Exchange notes that the proposed amendments include cross-reference updates to the Connectivity rules under General 8, Section 1.[6] Moreover, for consistency with the current title of General 8, Section 2 (''Direct Connectivity''), the Exchange proposes to update the description provided under Rule 7011(a) (to be relocated under Equity 7, Section 111(a)) by removing the text ''to BX''.

(c) Amendment of the Equity 4's Title

Finally, the Exchange will amend Equity 4's title in the shell structure, currently ''Equity Listing Rules,'' and replace it with the word ''Reserved,'' since no rules will be placed in this section of the shell structure.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by promoting efficiency and structural conformity of the Exchange's processes with those of the Affiliated Exchanges and to make the Exchange's Rulebook easier to read and more accessible to its Members and market participants. The Exchange believes that the relocation of the Equities and Options Pricing rules, cross-reference updates, and the amendment to the Equity 4's title are of a non-substantive nature.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes do not impose a burden on competition because, as previously stated, they (i) are of a non-substantive nature, (ii) are intended to harmonize the structure of the Exchange's rules with those of its Affiliated Exchanges, and (iii) are intended to organize the Rulebook in a way that it will ease the Members' and market participants' navigation and reading of the rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. Waiver of the operative delay would allow the Exchange to promptly relocate the Pricing Schedule rules and continue to reorganize its Rulebook to promote efficiency and structural consistency between the Exchange's rules and those of the Affiliated Exchanges. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–BX–2018–046 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–BX–2018–046. 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

[6] *See* Securities Exchange Act Release No. 83535 (June 28, 2018), 83 FR 31241 (July 3, 2018) (SR–BX–2018–024).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–BX–2018–046 and should be submitted on or before October 26, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84327; File No. SR–CboeEDGX–2018–041]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a New Order Type Called the MidPoint Discretionary Order (''MDO'') Under Paragraph (g) of Exchange Rule 11.8 and To Amend the Definition of the Super Aggressive Instruction Under Paragraph (n)(2) of Exchange Rule 11.6

October 1, 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 September 19, 2018, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt a new order type called the MidPoint Discretionary Order (''MDO'') under paragraph (g) of Exchange Rule 11.8 and to amend the definition of the Super Aggressive instruction under paragraph (n)(2) of Exchange Rule 11.6.

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a new order type known as the MDO under new paragraph (g) of Exchange Rule 11.8 and to amend the definition of the Super Aggressive instruction under paragraph (n)(2) of Exchange Rule 11.6.

Proposed MDOs on EDGX

MDOs are designed to exercise discretion to execute to the midpoint of the NBBO and provide price improvement to contra-side orders over the NBBO. The proposed MDO would function similarly to the MDO offered by EDGA,[5] but would also include certain aspects that mirror functionality currently available through the Discretionary Pegged Order and MPL–ALO Order offered by NYSE Arca, as well as the Discretionary Peg Order offered by IEX.[6] The core functionality of the proposed MDO, EDGA's MDO, NYSE Arca's Discretionary Pegged Order, and IEX's Discretionary Peg Order would be the same—being pegged to the NBBO, as applicable, with discretion to execute to the midpoint of the NBBO.

Proposed Operation. An MDO would be defined as a Limit Order[7] that is executable at the National Best Bid (''NBB'') for an order to buy or the National Best Offer (''NBO'') for an order to sell while resting on the EDGX Book,[8] with discretion to execute at prices to and including the midpoint of the NBBO. Upon entry, an MDO will only execute against resting orders that include a Super Aggressive instruction[9] priced at the MDO's pegged price if the MDO also contains a Displayed instruction[10] and against orders with a Non-Displayed Swap (''NDS'') instruction[11] priced at the MDO's pegged price or within its discretionary range. As a result, an MDO will not act as a liquidity remover upon entry against resting orders at its pegged price or at any price within its discretionary range. Should a resting contra-side order within the MDO's discretionary range not include an NDS instruction, the incoming MDO will be placed on the EDGX Book and its discretionary range shortened to equal the limit price of the contra-side resting order. Likewise, where an incoming order with a Post Only instruction[12] does not remove

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* EDGA Rule 11.8(e).

[6] *See* NYSE Arca Rule 7.31–E(h)(3) (defining the Discretionary Pegged Order). *See also* Securities Exchange Act Release No. 78181 (June 28, 2016), 81 FR 43297 (July 1, 2016) (order approving the Discretionary Pegged Order). *See* NYSE Arca Rule 7.31–E(d)(3)(F). *See* IEX Rule 11.190(a)(3) (defining Pegged Orders and a non-displayed order which may be pegged to the inside quote on the same side of the market with discretion to the midpoint of the NBBO, *i.e.,* Discretionary Peg orders). *See also* Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (order approving the IEX exchange application, which included IEX's Discretionary Peg Orders and Discretionary Peg Order).

[7] *See* Exchange Rule 11.8(b). In sum, a Limit Order is an order to buy or sell a stated amount of a security at a specified price or better.

[8] *See* Exchange Rule 1.5(d).

[9] *See* Exchange Rule 11.6(n)(2).

[10] Pursuant to the terms of the Super Aggressive instruction, such orders execute against incoming orders with a Post Only instruction only when such orders also contain a Displayed instruction. *See* Exchange Rule 11.6(n)(7). As noted below, the Exchange also proposes to amend the definition of the Super Aggressive instruction to reflect the addition of the MDO order type. Further, although an order with a Super Aggressive instruction resting at the pegged price of an MDO should be a rare occurrence, because orders with a Super Aggressive instruction route to locking or crossing quotes at away Trading Centers and an MDO is pegged to the NBBO (*i.e.,* the locking price), it is possible to have an order with a Super Aggressive instruction at such price based on the Exchange's matching and routing logic as well as the Exchange's calculation of the NBBO and processing of quote updates. *See, e.g.,* Securities Exchange Act Release No. 74072 (January 15, 2015), 80 FR 3282 (January 22, 2015) (SR–EDGX–2015–02) (describing the Exchange's calculation of the NBBO, including router feedback and other details).

[11] *See* Exchange Rule 11.6(n)(7).

[12] *See* Exchange Rule 11.6(n)(4).

liquidity on entry against a resting MDO, the discretionary range of the resting MDO will be shortened to equal the limit price of the incoming contra-side order with a Post Only instruction. Shortening the MDO's discretionary range in such circumstances is intended to avoid the discretionary range extending past the contra-side order's limit price, which could create a price priority issue should a later order be entered and be eligible to execute against the resting MDO within its discretionary range but at a price that extends beyond the contra-side order with a Post Only instruction. Once resting on the EDGX Book, an MDO will only act as a liquidity provider against all incoming orders that are executable at the resting MDO's pegged price or at any price within the resting MDO's discretionary range.[13]

An MDO's pegged price and discretionary range would be bound by its limit price. For example, an MDO to buy or sell with a limit price that is less than the prevailing NBB or higher than the prevailing NBO, respectively, would be posted to the EDGX Book at its limit price. The pegged prices of an MDO are derived from the NBB or NBO, and cannot independently establish or maintain the NBB or NBO. An MDO will exercise the least amount of price discretion necessary from its pegged price to its discretionary price. An MDO in a stock priced at $1.00 or more can only be executed in sub-penny increments when it executes at the midpoint of the NBBO.

Notwithstanding that an MDO may be a Limit Order and include a discretionary range, its operation and available modifiers would be limited to its description under proposed Rule 11.8(g). Exchange rules describe Discretionary Range as an instruction the User may attach to an order to buy (sell) a stated amount of a security at a specified, displayed or non-displayed ranked price with discretion to execute up (down) to another specified, non-displayed price.[14] The discretionary range of an MDO would not operate like the Discretionary Range instruction in certain respects. For instance, orders that include a Discretionary Range instruction may become a liquidity remover for fee purposes despite being posted to the EDGX Book (*i.e.,* a ''liquidity swap'') in certain scenarios that are outlined in Exchange Rule 11.6(d).[15] The Exchange does not propose for MDOs executed within their discretionary range to engage in the liquidity swapping scenarios set forth under the description of the Discretionary Range instruction under Exchange Rule 11.6(d), including where an MDO's displayed or non-displayed ranked price is equal to an incoming order with a Post Only instruction that does not remove liquidity on entry pursuant to Exchange Rule 11.6(n)(4).[16]

While MDOs would function similarly to the MDO offered by EDGA,[17] it would also include certain aspects that mirror functionality currently available through the Discretionary Pegged Order and MPL–ALO Order offered by NYSE Arca, as well as the Discretionary Peg Order offered by IEX.[18] The core functionality of the proposed MDO, EDGA's MDO, NYSE Arca's Discretionary Pegged Order, and IEX's Discretionary Peg Order would be the same—being pegged to the NBBO, as applicable, with discretion to execute to the midpoint of the NBBO. The similarities and differences amongst these order types are explained below.

Similarities to the EDGA MDO. The following aspects of the proposed MDO's functionality are identical to functionality of MDOs on EDGA.[19] The proposed EDGX MDO's pegged price and discretionary range would be bound by its limit price. An MDO to buy or sell with a limit price that is less than the prevailing NBB or higher than the prevailing NBO, respectively, would be posted to the EDGX Book at its limit price. The pegged prices of an MDO would be derived from the NBB or NBO, and cannot independently establish or maintain the NBB or NBO. An MDO in a stock priced at $1.00 or more would only be executed in sub-penny increments when it executes at the midpoint of the NBBO.[20]

Also like EDGA's MDO,[21] the proposed EDGX MDO may only contain the following time-in-force terms: Day, RHO, GTX, GTD, PRE, PTX, or PTD.[22] Proposed paragraph (2) of Rule 11.8(g) would state that MDOs may be entered as a Round Lot or Mixed Lot.[23] A User may include a Minimum Execution Quantity instruction on a MDO with a Non-Displayed instruction.[24] Proposed paragraph (3) of Rule 11.8(g) would state that MDOs may be executed during the Early Trading Session, Pre-Opening Session, Regular Session, and Post-Closing Session.[25] An MDO would default to a Displayed instruction unless the User [26] includes a Non-Displayed instruction on the order.[27] Proposed paragraph (4) of Rule 11.8(g) would also specify that a User may elect for an MDO that is displayed on the EDGX Book to include the User's market participant identifier (''MPID'') by selecting the Attributable instruction.[28] Otherwise, an MDO with a Displayed instruction will automatically default to a Non-Attributable [29] instruction. This is also consistent with the current operation of orders that are to be displayed on the EDGX Book.[30] Under proposed paragraph (5) of Rule 11.8(g), MDOs would not be eligible for routing pursuant to Exchange Rule 11.11, Routing to Away Trading Centers.[31]

Proposed paragraph (6) of Rule 11.8(g) would describe the operation of MDOs under the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608

[13] *See infra* note 15 and accompanying text.

[14] *See* Exchange Rule 11.6(d).

[15] The scenarios under Exchange Rule 11.6(d) in which an order with a Discretionary Range may liquidity swap but the proposed MDO would not are: (i) To the extent an order with a Discretionary Range instruction's displayed or non-displayed ranked price is equal to an incoming order with a Post Only instruction that does not remove liquidity on entry pursuant to Exchange Rule 11.6(n)(4), the order with a Discretionary Range instruction will remove liquidity against such incoming order; and (ii) any contra-side order with a time-in-force other than Immediate-or-Cancel or Fill-or-Kill and a price in the discretionary range but not at the displayed or non-displayed ranked price will be posted to the EDGX Book and then the Discretionary Order will remove liquidity against such posted order.

[16] *Id.*

[17] *See* EDGA Rule 11.8(e).

[18] *See supra* note 6.

[19] *See* EDGA Rule 11.8(e).

[20] Unlike the EDGA MDO, the proposed EDGX MDO would not execute upon entry at sub-penny prices pursuant to Exchange Rule 11.10(a)(4)(D) because EDGX MDOs will only be eligible for execution upon entry against orders with a Super Aggressive instruction at its pegged price or against orders with an NDS instruction priced at its pegged price or within its discretionary range. Such execution will occur at the price of the contra-side order and not at a sub-penny increment. *See, e.g.,* Securities Exchange Act Release No. 82087 (November 15, 2017), 82 FR 55472 (November 21, 2017) (Notice of Filing and Immediate Effectiveness of SR–BatsEDGA–2017–29) (describing, among other things, when an MDO on EDGA may execute at a non-midpoint or sub-penny midpoint).

[21] *See* EDGA Rule 11.8(e)(1).

[22] Each of these time-in-force instructions are defined in Exchange Rule 11.6(q).

[23] The terms Round Lot and Mixed Lot are defined in Exchange Rule 11.6(s). However, unlike on EDGA, MDOs may not be entered on EDGX as an Odd Lot. *See* EDGA Rule 11.8(e)(2). The term Odd Lot is defined in Exchange Rule 11.6(s).

[24] *See* Exchange Rule 11.6(h) for a description of the Minimum Execution Quantity instruction. The Exchange understands that EDGA plans to submit a proposed rule filing to allow non-displayed EDGA MDOs to also include a Minimum Execution Quantity instruction.

[25] The terms Early Trading Session, Pre-Opening Session, Regular Session, and Post-Closing Session are defined in Exchange Rule 1.5(ii), (s), (hh), and (r), respectively. *See also* EDGA Rule 11.8(e)(3).

[26] *See* Exchange Rule 1.5(ee).

[27] The terms Displayed and Non-Displayed are defined in Exchange Rule 11.6(e). *See also* EDGA Rule 11.8(e)(4).

[28] *See* Exchange Rule 11.6(a). *See also* EDGA Rule 11.8(e)(4).

[29] *See* Exchange Rule 11.6(a)(1).

[30] *See, e.g,* Exchange Rule 11.8(b)(4).

[31] *See* EDGA Rule 11.8(e)(5).

of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'').[32] Pursuant to Exchange Rule 11.10(a)(3), an MDO to buy would be re-priced to the Upper Price Band [33] where the price of the Upper Price Band moves below an existing Protected Bid.[34] An MDO to sell will be re-priced to the Lower Price Band [35] where the price of the Lower Price Band moves above an existing Protected Offer.[36] MDOs will only execute at their pegged prices and not within their Discretionary Ranges when: (i) The price of the Upper Price Band equals or moves below an existing Protected Bid; or (ii) the price of the Lower Price Band equals or moves above an existing Protected Offer. When the conditions in (i) or (ii) of the preceding sentence no longer exist, MDOs will resume trading against other orders in their Discretionary Range and being pegged to the NBBO.

Pursuant to proposed paragraph (7) of Rule 11.8(g), any unexecuted portion of an MDO that is resting on the EDGX Book would receive a new time stamp each time its pegged price is automatically adjusted in response to changes in the NBBO.[37]

Proposed paragraph (8) of Rule 11.8(g) would describe the operation of MDOs during a locked or crossed market.[38] With respect to an MDO with either a Displayed instruction or a Non-Displayed instruction, when the EDGX Book is crossed by another market, the MDO's pegged price will be automatically adjusted to the current NBO (for bids) or the current NBB (for offers) with no discretion to the midpoint of the NBBO. If an MDO displayed on the Exchange would be a Locking Quotation or Crossing Quotation,[39] the displayed price of the order will be automatically adjusted by the System to one Minimum Price Variation below the current NBO (for bids) or to one Minimum Price Variation above the current NBB (for offers) with no discretion to execute to the midpoint of the NBBO.

Differences with the EDGA MDO. As highlighted above, the proposed MDO would operate identically to EDGA's MDO [40] in nearly all respects, however, as proposed, it will function differently in two areas. These differences are based on functionality included as part of NYSE Arca's Discretionary Pegged Order and MPL–ALO Order as well as IEX's Discretionary Pegged Order [41] and are designed to provide Users with increased control over which price points their order may execute upon entry as well as when the order would act as a liquidity provider or remover once resting on the EDGX Book. These differences are: (i) The proposed EDGX MDO would only execute upon entry against resting orders that include a Super Aggressive instruction priced at the MDO's pegged price (if the MDO also contained a Displayed instruction) and against orders with an NDS instruction priced at the MDO's pegged price or within its discretionary range; and (ii) the proposed EDGX MDO would not engage in liquidity swapping behavior once resting on the EDGX Book as other orders with a Discretionary Range instruction may do, including the EDGA MDO. As a preliminary note, once posted to the EDGX Book, the proposed MDO would share the same core functionality as EDGA's MDO, NYSE Arca's Discretionary Pegged Order and IEX's Discretionary Peg Order—executable at the NBB for an order to buy or the NBO for an order to sell, with discretion to execute at prices to and including the midpoint of the NBBO. Additional similarities with NYSE Arca's Discretionary Pegged Order and MPL–ALO Order as well as IEX's Discretionary Pegged Order are explained below.

First, an EDGX MDO would only execute upon entry against resting orders that include a Super Aggressive instruction priced at the MDO's pegged price if the MDO also contains a Displayed instruction and against orders with an NDS instruction priced at the MDO's pegged price or within its discretionary range. This would allow the MDO to ensure it would act as a liquidity adder even when executing upon entry. Orders with either a Super Aggressive instruction or NDS instruction are willing to engage in a liquidity swap with an incoming order priced at its limit price.[42] In such case, an incoming MDO to buy (sell) would execute against an order to sell (buy) with either a Super Aggressive instruction or NDS instruction priced at the NBB (NBO). Similarly, an incoming MDO to buy (sell) would execute against an order to sell (buy) with an NDS instruction priced within its discretionary range. In both cases, the incoming MDO would act as the liquidity adder and the resting order with either a Super Aggressive or NDS instruction would act as the liquidity remover. In contrast, on EDGA an incoming MDO with a Displayed instruction will also execute on entry within its discretionary range against an order with a Super Aggressive instruction, not just at the price of the NBB (for a sell MDO) or NBO (for a buy MDO).

The Exchange believes it is reasonable to execute resting orders with an NDS instruction within the incoming MDO's discretionary range but not execute orders with a Super Aggressive instruction within the incoming MDO's discretionary range due to the different purposes of each order instruction. Orders including the Super Aggressive instruction will route to an away Trading Center that displays an order that either locks or crosses the limit price of the Super Aggressive order. Pursuant to Rule 11.6(n)(2), orders with a Super Aggressive instruction will likewise execute against incoming orders with a Post Only instruction and a Displayed instruction that are priced equal to its limit price. In general, Users of the Super Aggressive instruction tend to use it for best execution purposes because the order instruction enables the order to be routed away or executed locally when an order is displayed at a price equal to or better than the order's limit price. Furthermore, a User submitting an order with a Super Aggressive instruction wishes to execute against displayed liquidity either at its price or better, and if priced within the discretionary range of an incoming MDO order, that MDO would be displayed not at the price of the order with a Super Aggressive instruction, but rather the NBB/NBO to which it is pegged. For best execution, the intention of a User submitting an order with a Super Aggressive instruction is to ensure an execution at the best available price of a displayed order on another Trading Center or against an incoming order that would have been displayed on the EDGX Book but for the execution and is willing to engage in a liquidity swap on the Exchange to ensure an execution. Conversely, an order with an NDS instruction is not routable and engages in a liquidity swap only to execute against an incoming order that would lock it. Orders with an NDS instruction and Super Aggressive instruction differ on how they interact with contra-side orders—orders with a Super Aggressive instruction execute against displayed liquidity only while

[32] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''). *See also* EDGA Rule 11.8(e)(6).

[33] As defined in the Limit Up-Limit Down Plan.

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *See* EDGA Rule 11.8(e)(7).

[38] *See* EDGA Rule 11.8(e)(8).

[39] The terms Locking Quotation or Crossing Quotation are defined in Exchange Rule 11.6(g) and (c), respectively.

[40] *See* EDGA Rule 11.8(e).

[41] *See supra* note 6.

[42] *See* paragraphs (n)(2) and (7) of Exchange Rule 11.6.

an order with an NDS instruction will execute against an order that locks it, regardless of whether the contra-side order would have been displayed. Therefore, the Exchange believes it is reasonable to execute an incoming MDO against a resting order with an NDS instruction priced within its discretionary range as the NDS order is aggressively seeking to execute against incoming orders at its limit price and is willing to act as a liquidity remover to do so.

The above-proposed behavior is similar to the operation of NYSE Arca's MPL–ALO order, which also does not act as a liquidity remover upon entry.[43] Specifically, NYSE Arca's MPL–ALO order will only execute upon entry against a resting order that includes a Non-Display Remove modifier which, like the NDS and Super Aggressive instructions, enables that order to switch from a liquidity adder to a remover. This is also similar to NYSE Arca's ALO Order which will also only trade with resting contra-side orders that include a Non-Display Remove Modifier.[44]

Second, EDGA's MDO would perform a liquidity swap when executed within its Discretionary Range as set forth in EDGA Rule 11.6(d). The proposed EDGX MDO would not. However, not performing a liquidity swap within the discretionary range is identical to the operation of NYSE Arca's Discretionary Pegged Order.[45] The proposed MDO would also not liquidity swap at its pegged price once resting on the EDGX Book. This is similar to NYSE Arca's ALO Order.[46]

Order Priority. The Exchange also proposes to amend Exchange Rule 11.9 to describe the execution priority of the proposed MDO when it is resting on the EDGX Book. The proposed priority of MDOs on EDGX would be identical to the priority of MDOs on EDGA.[47] In general, where orders to buy (sell) are entered into the System at the same price, the order clearly established as the first entered into the System at such particular price shall have precedence at that price, up to the number of shares of stock specified in the order. Under paragraph (a)(2)(A) of Rule 11.9, the System currently ranks equally priced trading interest resting on the EDGX Book in time priority in the following order: The portion of a Limit Order with a Displayed instruction; Limit Orders with a Non-Displayed instruction; orders with a Pegged and Non-Displayed instruction; the Reserve Quantity of Limit Orders; Limit Orders executed within their Discretionary Range; and Supplemental Peg Orders. For purposes of MDO priority, the Exchange proposes that the pegged price of an MDO, whether displayed or non-displayed, be treated like a Limit Order that is resting on the EDGX Book. Accordingly, the pegged prices of MDOs displayed on the EDGX Book will have the same priority as displayed Limit Orders. Likewise, the pegged price of an MDO that is not displayed will have the same priority as Limit Orders with a Non-Displayed instruction, and therefore will not be treated for priority purposes like other orders with a Pegged and Non-Displayed instruction. As such, the Exchange proposes to amend paragraph (a)(2)(D)(i) of Rule 11.9 to specify that the pegged prices of an MDO will be treated as a Limit Order for purposes of order priority under Exchange Rule 11.9(a)(2)(A). The Exchange proposes to amend paragraph (a)(2)(A)(v) of Rule 11.9 to specify that MDOs executed within their Discretionary Range maintain the same priority as Limit Orders executed within their Discretionary Range. The above proposed priority sequence is consistent with the priority of MDOs on EDGA.[48]

Paragraph (a)(2)(B) of Rule 11.9 sets forth separate priority for orders executed at the midpoint of the NBBO. Where orders to buy (sell) are priced at the midpoint of the NBBO, the order clearly established as the first shall have precedence at the mid-point of the NBBO, up to the number of shares of stock specified in the order. Orders at the midpoint of the NBBO resting on the EDGX Book are executed in following order: Limit Orders to which the Display-Price Sliding instruction has been applied; Limit Orders with a Non-Displayed instruction; Orders with a Pegged instruction; MidPoint Peg Orders; the Reserve Quantity of Limit Orders; and Limit Orders executed within their Discretionary Range. Like proposed above for the general priority of orders, the Exchange proposes to amend paragraph (a)(2)(B)(vi) of Rule 11.9 to specify that MDOs executed within their Discretionary Range at the midpoint of the NBBO shall have the same priority as Limit Orders executed within their Discretionary Range.

Examples. The following examples illustrate the operation of the proposed MDO when resting on the EDGX Book. Assume the NBBO is $10.00 by $10.04. There is a displayed MDO to buy at $10.02 on the EDGX Book that is pegged to the NBB at $10.00 with discretion to execute to $10.02, the midpoint of the NBBO. A Limit Order to buy at $10.00 with a Displayed instruction is then entered. Next, a Limit Order to sell at $10.00 with a Non-Displayed instruction is entered. The Limit Order to sell would execute against the MDO to buy at $10.00, with the MDO exercising no discretion. The displayed MDO has time priority ahead of the displayed Limit order to buy. The pegged price of a displayed or non-displayed MDO has the same priority as displayed or non-displayed Limit Orders, respectively, that are resting on the EDGX Book at the same price.

Assume the same facts as above but that the MDO instead included a Non-Displayed instruction. In that case, the Limit Order to sell would execute as a liquidity remover against the displayed Limit Order to buy at $10.00 because displayed orders always have priority over non-displayed orders at the same price.

The following example illustrates the operation of a resting MDO on the EDGX Book and an incoming Limit Order that also includes a Post Only instruction. Assume again the NBBO is $10.00 by $10.04 resulting in a midpoint of $10.02. There is a resting MDO to buy at $10.02 displayed on the EDGX Book that is pegged to the NBB at $10.00 with discretion to execute to $10.02, the midpoint of the NBBO. A Limit Order to sell at $10.01 with a Non-Displayed instruction and Post Only instruction is then entered. No execution occurs. The MDO to buy resting on the EDGX Book would only act as a liquidity provider and the incoming order to sell with Post Only instruction will not remove liquidity. Therefore, the MDO to buy resting on the EDGX Book would have its discretionary range shortened from $10.02 to $10.01, which is the price of the incoming Limit Order to sell. The Limit Order with a Non-Displayed instruction to sell will be posted to the EDGX Book at $10.01, its limit price.

The MDO's discretionary range is shortened to avoid the following priority issue that may result from an

[43] *See* NYSE Arca Rule 7.31–E(d)(3)(F) and (e)(2)(B)(iv) (stating that, unless the resting order includes a Non-Display Remove modifier which enable that order to switch from a liquidity adder to a remover, an ALO order will only trade with arriving contra-side interest).

[44] *See* NYSE Arca Rule 7.31–E(e)(2). The only time an ALO Order will execute upon entry is when the resting order includes the Non-Display Remove Modifier.

[45] *See* NYSE Arca Rule 7.31–E(h)(3) (the rule does not provide for a liquidity swap to occur within the order's discretionary range).

[46] *See* NYSE Arca Rule 7.31–E(e)(2) (stating that an ALO order will not remove liquidity from the NYSE Arca Book, and will be re-priced to avoid a locked or crossed market). An ALO order will only act as a liquidity taker where it crosses an order resting on the NYSE Arca Book. Because it is pegged to the NBBO, the proposed MDO would never cross an order resting on the EDGX Book.

[47] *See generally* EDGA Rule 11.9(a).

[48] *See* EDGA Rule 11.9(a)(2)(A)(vi) and (a)(2)(C)(i).

internally crossed market issue. Assume a Limit Order to sell at $10.02 with a Non-Displayed instruction is subsequently entered. Absent the shortening of the buy MDO's discretionary range to $10.01, the sell Limit Order at $10.02 would have executed against the resting buy MDO with discretion to $10.02, creating a priority issue for the first sell Limit Order that is ranked at $10.01.

Assume the same facts as the preceding example, but that the first sell Limit Order with a Post Only instruction to sell was priced at $9.99. In that case, the Limit Order to sell would execute against the resting MDO to buy at $10.00 in accordance with Exchange Rule 11.6(n)(4), receiving one cent of price improvement. The MDO would remain the liquidity provider and the Limit Order to sell would act as the liquidity remover.

The following examples illustrate the operation of the proposed MDO upon entry. Assume again the NBBO is $10.00 by $10.04 resulting in a midpoint of $10.02. There is a non-displayed order with an NDS instruction to sell at $10.00 resting on the EDGX Book. An MDO to buy with a Displayed instruction is entered that, if posted to the EDGX Book, would be pegged to the NBB at $10.00 with discretion to execute to $10.02, the midpoint of the NBBO. In such case, the MDO to buy would execute against the resting order with an NDS instruction to sell at $10.00 because the MDO's pegged price equals the limit price of the order with an NDS instruction. The incoming MDO would act as the liquidity adder and the order with an NDS instruction would act as the liquidity remover. The same result would occur if the order to sell resting on the EDGX Book included a Super Aggressive instruction rather than an NDS instruction. However, if the order to sell resting on the EDGX book did not include either a Super Aggressive instruction or NDS instruction, no execution would occur and the MDO order to buy would be posted to the EDGX Book at $10.00 with its discretionary range shortened from $10.02 to $10.00, which is the price of the resting non-displayed order to sell.

Assume the same facts as the preceding example but that the non-displayed order with an NDS instruction to sell resting on the EDGX Book is priced at $10.01 rather than $10.00. The resting order with an NDS instruction to sell is priced within the discretionary range of the incoming MDO to buy. The MDO to buy would execute against the resting order with an NDS instruction to sell at $10.01 because the MDO's discretionary range includes a price equal to the limit price of the order with an NDS instruction. The incoming MDO would act as the liquidity adder and the order with an NDS instruction would act as the liquidity remover.

Assume instead that the non-displayed order to sell resting on the EDGX Book did not include an NDS instruction. No execution would occur and the order to sell would remain on the EDGX Book. The incoming MDO to buy would be posted to the EDGX Book at $10.00 with its discretionary range shortened from $10.02 to $10.01, which is the price of the resting non-displayed order to sell. Like in an above example, the MDO's discretionary range is shortened to avoid the following priority issue that may result from an internally crossed market issue. Assume a Limit Order to sell at $10.02 with a Non-Displayed instruction is subsequently entered. Absent the shortening of the buy MDO's discretionary range to $10.01, the sell Limit Order at $10.02 would have executed against the resting buy MDO with discretion to $10.02, creating a priority issue for the first sell Limit Order that is ranked at $10.01.

Assume instead that the order to sell at $10.01 resting on the EDGX Book included a Super Aggressive instruction rather than an NDS instruction. No execution would occur because the order with a Super Aggressive instruction is priced within the discretionary range of the incoming MDO. The order with a Super Aggressive instruction would remain on the EDGX Book until it is eligible to be routed away or executed. The incoming MDO would be posted to the EDGX Book at $10.00 with its discretionary range shortened from $10.02 to $10.01, which is the price of the resting non-displayed order to sell with a Super Aggressive instruction.

Proposed Amendment to Super Aggressive Instruction

In addition to the adoption of MDOs, the Exchange proposes to amend Rule 11.6(n)(2), which defines the Super Aggressive instruction. Specifically, the current definition states that when any order with a Super Aggressive instruction is locked by an incoming order with a Post Only instruction and a Displayed instruction that does not remove liquidity pursuant to Rule 11.6(n)(4), the order with a Super Aggressive instruction is converted to an executable order and will remove liquidity against such incoming order. Consistent with the proposed operation of MDOs, the Exchange proposes to add reference to MDOs with a Displayed instruction as another order against which a resting order with a Super Aggressive instruction will interact, converting to an executable order and removing liquidity against such order.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [49] in general, and furthers the objectives of Section 6(b)(5) of the Act [50] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed MDO would remove impediments to and promote just and equitable principles of trade because it would provide Users with an optional order type that is designed to exercise discretion to execute to the midpoint of the NBBO, enhancing order execution opportunities at the Exchange that provide price improvement opportunities over the NBBO. The proposed rule change would also remove impediments to and perfect the mechanism of a free and open market and a national market system by potentially increasing liquidity at the NBBO and to midpoint of the NBBO on the Exchange, thereby improving execution opportunities for market participants at these price points and enhancing the quality of the EDGX Book. The Exchange designed the proposed order type to include functionality that is included as part of similar order types offered by other exchanges to provide Users with increased control over which price points their order may execute upon entry as well as when the order would act as a liquidity provider or remover once resting on the EDGX Book.

As proposed, MDOs on the Exchange would operate similarly to NYSE Arca's Discretionary Pegged Orders and IEX's Discretionary Peg Order, except that both of the IEX and NYSE Arca order types include ''crumbling quote'' functionality and neither order type is able to be displayed on the applicable exchange's order book.[51]

The EDGX proposed MDO also operates identically to EDGA's MDO,[52] except in two scenarios. These differences are: (i) The proposed EDGX

[49] 15 U.S.C. 78f(b).

[50] 15 U.S.C. 78f(b)(5).

[51] *See supra* note 6.

[52] *See* EDGA Rule 11.8(e).

MDO would only execute upon entry against resting orders that include a Super Aggressive instruction priced at the MDO's pegged price if the MDO also contains a Displayed instruction and against orders with an NDS instruction priced at the MDO's pegged price or within its discretionary range; and (ii) the proposed EDGX MDO would not engage in liquidity swapping behavior as other orders with a Discretionary Range instruction may do, including the EDGA MDO. Ensuring that an EDGX MDO will act as a liquidity adder even upon entry promotes just and equitable principles of trade because Users of the proposed EDGX MDO would have greater control over their orders in exchange for providing enhanced execution opportunities at prices more aggressive than the midpoint of the NBBO to incoming contra-side orders when the MDO is posted to the EDGX Book. The proposed MDO would share the same core functionality as EDGA's MDO, NYSE Arca's Discretionary Pegged Order and IEX's Discretionary Peg Order—executable at the NBB for an order to buy or the NBO for an order to sell, with discretion to execute at prices to and including the midpoint of the NBBO.

The proposed differences with the EDGA MDO are based on NYSE Arca's ALO Order, MPL–ALO order and Discretionary Pegged order as well as IEX's Discretionary Peg Order and are designed to provide Users with additional control over their order upon entry as well as certainty that their order would act as a liquidity provider. Specifically, the proposed behavior is similar to the operation of NYSE Arca's MPL–ALO order which will also not act as a liquidity remover upon entry.[53] NYSE Arca's MPL–ALO order will only execute upon entry against a resting order that includes a Non-Display Remove modifier which, like the NDS and Super Aggressive instructions, enables that order to switch from a liquidity adder to a remover. This is also similar to NYSE Arca's ALO Order which will only execute upon entry when the resting order includes the Non-Display Remove Modifier.[54]

The proposed operation of the EDGX MDO enables it to act as a liquidity provider while increasing its opportunities to rest on the EDGX Book and seek to execute against incoming orders at prices equal to or more aggressive than the midpoint of the NBBO. Therefore, the EDGX MDO promotes just and equitable principles of trade by increasing the potential price improvement opportunities for incoming orders that may execute against a resting MDO within its discretionary range. The proposed rule change would facilitate transactions in securities and improve trading within the national market system.

The Exchange believes it is reasonable to execute resting orders with an NDS instruction within the incoming MDO's discretionary range but not execute orders with a Super Aggressive instruction within the incoming MDO's discretionary range due to the different purposes of each order instruction. As stated above, Users of the Super Aggressive instruction tend to use it for best execution purposes because the order instruction enables the order to be routed away or executed locally when an order is displayed at a price equal to or better than the order's limit price. Conversely, an order with an NDS instruction is not routable and only executes against an incoming order that would lock it. The User of the NDS instruction is generally agnostic to whether the order is displayed on an away Trading Center or priced at the NBBO. It simply seeks to execute against an order that is priced at its limit price and engages in a liquidity swap to do so, even if the contra-side interest contains a Non-Displayed instruction.

Under the proposal and in accordance with Exchange Rule 11.9(a)(2)(A), when MDOs execute at their pegged displayed price, they would have the same priority as that of displayed Limit Orders. Similarly, when MDOs execute at their non-displayed pegged price, they would have the same priority as that of non-displayed Limit Orders. When MDOs execute within their Discretionary Range in general or at the midpoint of the NBBO, the Exchange proposes that they maintain the same priority as a Limit Order executed within its Discretionary Range. The Exchange believes the proposed priority is consistent with the Act because it continues to provide priority to displayed orders on the Exchange and to orders that are designed to provide liquidity at a set price level, such as the mid-point of the NBBO. Lastly, the Exchange notes that the proposed priority is identical to the priority for MDOs on EDGA.[55]

The Exchange's proposed modification to the Super Aggressive instruction will ensure that the definition of such instruction is consistent with the proposed functionality of the MDO order type, as described above.

For the reasons set forth above, the Exchange believes the proposal removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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, as amended. On the contrary, the Exchange believes the proposed MDO promotes inter-market competition because it will enable the Exchange to offer functionality similar to that offered by NYSE Arca and IEX.[56] The proposed EDGX MDO will improve competition because it provides enhanced execution opportunities at prices equal to or more aggressive than the midpoint of the NBBO to incoming contra-side orders, improving the overall competiveness of the Exchange. The Exchange also believes the proposed rule change will not impact intra-market competition because it will be available to all Users. Therefore, the Exchange does not believe 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments were solicited or received on the proposed rule change.

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[57] and Rule 19b–4(f)(6) thereunder.[58]

[53] *See* NYSE Arca Rule 7.31–E(d)(3)(F) and (e)(2)(B)(iv) (stating that, unless the resting order includes a Non-Display Remove modifier which enables that order to switch from a liquidity adder to a remover, an ALO order will only trade with arriving contra-side interest).

[54] *See* NYSE Arca Rule 7.31–E(e)(2).

[55] *See* EDGA Rule 11.9(a)(2).

[56] *See supra* note 6.

[57] 15 U.S.C. 78s(b)(3)(A).

[58] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule

Continued

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[59] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[60] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing, noting that use of MDOs on the Exchange is optional, similar functionality is already offered by other market centers, and operative delay waiver would allow the Exchange to make the proposed functionality available to Exchange Users more promptly. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[61]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeEDGX–2018–041 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–CboeEDGX–2018–041. 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–CboeEDGX–2018–041, and should be submitted on or before October 26, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[62]

Eduardo A. Aleman,

Assistant Secretary.

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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.

[59] 17 CFR 240.19b–4(f)(6).

[60] 17 CFR 240.19b–4(f)(6)(iii).

[61] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[62] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84323; File No. SR–BOX–2018–33]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility To Revise Certain Qualification Thresholds and Fees in Sections I.B.1, Primary Improvement Order, and I.B.2, BOX Volume Rebate

October 1, 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 September 20, 2018, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule on the BOX Market LLC (''BOX'') options facility. Changes to the fee schedule pursuant to this proposal will be effective upon filing. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule on BOX. Specifically, the Exchange proposes to revise certain qualification thresholds and fees in Sections I.B.1 of the BOX Fee Schedule, Primary Improvement Order and I.B.2 of the BOX Fee Schedule, the BOX Volume Rebate (''BVR'').

Primary Improvement Order

Under the tiered fee schedule for Primary Improvement Orders, the Exchange assesses a per contract execution fee to all Primary Improvement Order executions where the corresponding PIP or COPIP Order is from the account of a Public Customer. Percentage thresholds are calculated on a monthly basis by totaling the Initiating Participant's Primary Improvement Order volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes. The current tiered fee schedule for Primary Improvement Orders is as follows:

Tier	Percentage thresholds of national customer volume in multiply-listed options classes (monthly)	Per contract fee (all account types)
1	0.000%–0.079%	$0.25
2	0.080%–0.159%	0.20
3	0.160%–0.499%	0.12
4	0.500% and Above	0.02

The Exchange proposes to adjust the percentage thresholds in Tiers 1 through 4. Additionally, the Exchange proposes to decrease the fees associated with Tiers 2 and 3 from $0.20 to $0.12 and $0.12 to $0.07, respectively. The new tiered fee schedule for Primary Improvement Orders will be as follows:

Tier	Percentage thresholds of national customer volume in multiply-listed options classes (monthly)	Per contract fee (all account types)
1	0.000%–0.049%	$0.25
2	0.050%–0.129%	0.12
3	0.130%–0.449%	0.07
4	0.450% and Above	0.02

BVR

Next, the Exchange proposes to adjust certain percentage thresholds and fees within the BVR. Under the BVR, the Exchange offers a tiered per contract rebate for all Public Customer PIP Orders and COPIP Orders of 250 and under contracts that do not trade solely with their contra order. Percentage thresholds are calculated on a monthly basis by totaling the Participant's PIP and COPIP volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes. The current fee schedule for all Public Customer PIP and COPIP Order of 250 and under contracts that do not trade solely with their contra order is as follows:

Tier	Percentage thresholds of national customer volume in multiply-listed options classes (monthly)	Per contract rebate (all account types)	
		PIP	COPIP
1	0.000% to 0.159%	($0.00)	($0.00)
2	0.160% to 0.339%	(0.02)	(0.02)
3	0.340% to 0.499%	(0.04)	(0.04)
4	0.500% and Above	(0.11)	(0.08)

The Exchange proposes to adjust the percentage thresholds in Tiers 1 through 4. Additionally, the Exchange proposes to increase the per contract rebates in Tier 2, Tier 3 and Tier 4. Specifically, the Exchange proposes to increase the per contract rebate for Tier 2 to $0.05 from $0.02 for PIP and COPIP Orders. Further, the Exchange proposes to increase the rebates in Tier 3 to $0.08 from $0.04 for PIP and COPIP Orders. Lastly, the Exchange is proposing to increase the per contract rebate for COPIP Orders in Tier 4 to $0.11 from $0.08. The new fee schedule for all Public Customer PIP and COPIP Orders of 250 and under contracts that do not trade solely with their contra order will be as follows:

Tier	Percentage thresholds of national customer volume in multiply-listed options classes (monthly)	Per contract rebate (all account types)	
		PIP	COPIP
1	0.000% to 0.049%	($0.00)	($0.00)
2	0.050% to 0.299%	(0.05)	(0.05)
3	0.300% to 0.449%	(0.08)	(0.08)
4	0.450% and Above	(0.11)	(0.11)

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

BOX believes it is reasonable, equitable and not unfairly discriminatory to adjust the volume based thresholds and fees within the BOX Fee Schedule. The volume thresholds with their tiered fees and rebates are meant to incentivize Participants to direct order flow to the Exchange to obtain the benefit of the lower fee or higher rebate, which in turn benefits all market participants by increasing liquidity on the Exchange.

The Exchange believes the proposed amendments to the Primary Improvement Order volume based thresholds are reasonable, equitable and not unfairly discriminatory. The proposed changes to the thresholds in Tiers 1 through 4 are equitable and not unfairly discriminatory as they are available to all BOX Participants that initiate Auction Transactions on the behalf of Public Customers, and Participants may choose whether or not to take advantage of the percentage thresholds and their applicable discounted fees. Further, the Exchange believes that the proposed changes to the thresholds in Tiers 1 through 4 are reasonable and competitive as they are intended to allow more Participants to qualify for the higher tiers, which the Exchange believes will incentivize Participants to direct order flow to the Exchange, in turn benefiting all market participants on the Exchange. The Exchange believes that the proposed amendments to the fees associated with Tiers 2 and 3 [6] are reasonable and appropriate, as this Tiered Fee Schedule is in place to provide incentives to BOX Participants to submit their Public Customer Orders into the PIP for potential price improvement. These reduced fees combined with the lower threshold levels are meant to incentivize more Participants to submit Price Improvement Orders to the Exchange, which the Exchange believes will further incentivize Participants to direct order flow to the Exchange, in turn benefiting all market participants on the Exchange. The Exchange believes that the proposed thresholds and fees remain competitive when compared to the auction transaction fees on other exchanges.[7]

The Exchange also believes the proposed amendments to the BVR in Section I.B.2 of the BOX Fee Schedule are reasonable, equitable and not unfairly discriminatory. The BVR was adopted to attract Public Customer order flow to the Exchange by offering these Participants incentives to submit their Public Customer PIP and COPIP Orders to the Exchange and the Exchange believes it is appropriate to now amend the BVR. The Exchange believes it is equitable and not unfairly discriminatory to amend the BVR, as all Participants have the ability to qualify for a rebate, and rebates are provided equally to qualifying Participants. Other exchanges employ similar incentive programs; [8] and the Exchange believes that the proposed changes to the volume thresholds and fees are reasonable and competitive when compared to incentive structures at other exchanges. Finally, the Exchange believes it is reasonable and appropriate to continue to provide incentives for Public Customers, which will result in greater liquidity and ultimately benefit all Participants trading on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is simply proposing to amend certain percentage thresholds and fees for Auction Transaction fees and rebates in the BOX Fee Schedule. The Exchange believes that the volume based rebates and fees increase intermarket and intramarket competition by incenting Participants to direct their order flow to the exchange, which benefits all participants by providing more trading opportunities and improves competition on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] The Exchange notes that the fees in Tiers 1 and 4 are not being changed.

[7] Comparative fees at other exchanges range from $0.02 to $0.20. *See* Section IV of the Phlx Pricing Schedule entitled ''PIXL Pricing''; Nasdaq ISE LLC (''ISE'') Schedule of Fees, Section I. Regular Order Fees and Rebates ''Select Symbols.''

[8] *See* Section B of the Nasdaq Phlx LLC Pricing Schedule entitled ''Customer Rebate Program'' and Cboe Exchange Inc. (''Cboe'') Volume Incentive Program (VIP).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2018–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2018–33. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. 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–BOX–2018–33, and should be submitted on or before October 26, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Assistant Secretary.

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84328; File No. SR–NASDAQ–2018–077]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Minimum Quantity Order Attribute

October 1, 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 September 19, 2018, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to specify that an Order with a Minimum Quantity Order Attribute is ineligible to participate in the Nasdaq Opening, Halt or Closing Crosses and is not included in the calculation of the Cross price.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to specify that an Order [3] with a Minimum Quantity Order Attribute [4] is ineligible to participate in the Nasdaq Opening,[5] Halt [6] or Closing [7] Crosses (collectively, the ''Nasdaq Crosses'') and is not included in the calculation of the Cross price. Minimum Quantity is an Order Attribute that allows a Participant to provide that an Order will not execute unless a specified minimum quantity of shares can be obtained. In 2011, the Exchange amended its rules concerning the Minimum Quantity Order Attribute to remove a restriction from the rule, which only allowed Orders with a Minimum Quantity Order Attribute to immediately execute.[8] Thus, the proposed change allowed an Order with a Minimum Quantity Order Attribute to post to the Nasdaq Book [9] if it is not able to execute immediately and, once posted to the Nasdaq Book, the Order would execute if an incoming Order that is marketable against it would satisfy its minimum quantity requirement.[10] In proposing the new Order Attribute, the Exchange did not address participation of the Order Attribute in the Nasdaq Crosses; however, it never intended for Orders with a Minimum Quantity Order Attribute to participate in any of the Nasdaq Crosses. The Minimum Quantity Order Attribute allows market participants avoid transacting with smaller Orders that they believe

[3] The term ''Order'' means an instruction to trade a specified number of shares in a specified System Security submitted to the Nasdaq Market Center by a Participant. An ''Order Type'' is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. An ''Order Attribute'' is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. The available Order Types and Order Attributes, and the Order Attributes that may be associated with particular Order Types, are described in Rules 4702 and 4703. One or more Order Attributes may be assigned to a single Order; provided, however, that if the use of multiple Order Attributes would provide contradictory instructions to an Order, the System will reject the Order or remove non-conforming Order Attributes. *See* Rule 4701(e).

[4] *Id.*

[5] *See* Rule 4752.

[6] *See* Rule 4753.

[7] *See* Rule 4754.

[8] *See* Securities Exchange Act Release No. 65536 (October 12, 2011), 76 FR 64411 (October 18, 2011) (SR–NASDAQ–2011–140).

[9] *See* Rule 4701(a)(1).

[10] *See* note 8, *supra.*

ultimately increase the cost of the transaction. In particular, if a market participant that seeks to execute a large number of shares is able to execute in larger sizes, the contra-party to the execution is less likely to be a participant that reacts to short term changes in the stock price. As such, the price impact to the stock could be less acute when larger individual executions are obtained by the market participant. The Minimum Quantity Order Attribute is also designed to give a participant flexibility in whether its Order will receive partial executions in a volatile market. Because the Nasdaq Crosses offer a controlled price discovery process, flexibility and avoidance of small-sized executions is not required. In proposing the Minimum Quantity Order Attribute amendments in 2011, Nasdaq stated:

> A Minimum Quantity Order provides a means by which a market participant may avoid partial executions of orders at sizes that it considers inadequate to achieve its purposes. For example, a market participant seeking to sell a large position in a trading session with high volatility may use the order type to avoid selling only a small portion of the order at the price it considers acceptable.[11]

Consequently, use of the Minimum Quantity Order Attribute outside of the continuous market is inconsistent with the purpose of this Order Attribute. Upon adoption of the Minimum Quantity Order Attribute amendments in 2011, the Exchange also clearly notified market participants via an Equity Trader Alert that Orders with a Minimum Quantity Order Attribute are ineligible to participate in the Nasdaq Crosses.[12]

In light of this ambiguity in the Rules,[13] the Exchange is proposing to specify that an Order with a Minimum Quantity Order Attribute is ineligible to participate in the Nasdaq Opening, Halt or Closing Crosses and is not included in the calculation of the Cross price.[14]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by specifying in its rules that an Order with a Minimum Quantity Order Attribute may not participate in the Nasdaq Crosses and is not included in the calculation of the Cross price. As described above, the Minimum Quantity Order Attribute allows market participants to avoid transacting with smaller Orders that they believe ultimately increase the cost of the transaction, particularly if they have a large number of shares to be executed. As such, the price impact to the stock could be less acute when larger individual executions are obtained by the market participant. The Minimum Quantity Order Attribute is also designed to give a participant flexibility in whether its Order will receive partial executions in a volatile market. Because the Nasdaq Crosses offer a controlled price discovery process, flexibility and avoidance of small-sized executions is not required. The Exchange notes that no market participant has requested participation of their Orders with a Minimum Quantity Order Attribute in any of the Nasdaq Crosses. The proposed change will further perfect the Exchange's rules and protect investors and the public interest by avoiding any confusion caused by vague rules. Adding specificity to the rules with respect to Orders with a Minimum Quantity Order Attribute will ensure that the rule concerning this Order Attribute is consistent with the Exchange's intent upon its adoption.[17]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change makes the Exchange's rules more specific by explicitly stating that an Order with a Minimum Quantity Order Attribute is ineligible to participate in the Nasdaq Opening, Halt or Closing Crosses and is not included in the calculation of the Cross price, which will enhance market participants' understanding of the operation of Orders with a Minimum Quantity Order Attribute in the Nasdaq Crosses. Moreover, the proposed change is consistent with the intent of the Order Attribute. As described above, the Minimum Quantity Order Attribute is designed to help market participants reduce costs of executing large-sized Orders, which otherwise may execute in many small transactions, each potentially increasing the price of the transaction. The Nasdaq Crosses provide a controlled price discovery process, in which the control and flexibility of the Minimum Quantity Order Attribute is not needed. The Exchange notes that no market participant has requested participation of the Minimum Quantity Order Attribute in any of the Nasdaq Crosses. Accordingly, the proposed rule change does not implicate competition whatsoever.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

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[11] *See* note 8, *supra* at 64412.

[12] Specifically, the Exchange provided a series of FAQ's, which included the following: ''Can orders with Minimum Quantity instructions participate in auctions (*i.e.* open, halt, close)? No, orders with MinQty instructions will not participate in auctions (*i.e.* open, halt, close).'' *See* Nasdaq Equity Trader Alert #2011–51 (available at: *http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2011-51*).

[13] Notwithstanding the ambiguity in the Rules, no market participant has requested participation of their Orders with a Minimum Quantity Order Attribute in any of the Nasdaq Crosses.

[14] The Exchange notes that it recently identified an issue with the handling of Orders with a Minimum Quantity Order Attribute, which allowed such Orders to participate in the Crosses but they were not included in the calculation of the Cross price. *See* Nasdaq Market System Status Alert, August 24, 2018 and August 30, 2018 (available at: *http://www.nasdaqtrader.com/Trader.aspx?id=MarketSystemStatusSearch*). The Exchange further notes that neither the Rules concerning the Nasdaq Crosses nor the Minimum Quantity Rule addressed participation of Minimum Quantity Orders in the Nasdaq Crosses. To make the treatment consistent with the Exchange's original intent when implementing the new Order Attribute, the Exchange has determined to exclude Orders with a Minimum Quantity Order Attribute from both the calculation of the Cross price (which is currently the case) and possible execution in the Nasdaq Crosses. The Exchange is correcting the issue concurrent with the implementation of this proposed rule change.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* note 12, *supra*.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [20] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [21] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. Waiver of the operative delay would allow the Exchange to promptly amend its rule to exclude Orders with a Minimum Quantity Order Attribute from the Nasdaq Crosses and Cross price calculations,[22] and promptly implement system changes in accordance with the rule. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2018–077 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–NASDAQ–2018–077. 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–NASDAQ–2018–077, and should be submitted on or before October 26, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–21679 Filed 10–4–18; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] According to the Exchange, no market participant has requested participation of the Minimum Quantity Order Attribute in any of the Nasdaq Crosses.

[23] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84330; File No. SR–NYSE–2018–43]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 67 To Specify That D-Quote Functionality Under Rule 67(f)(5) Will Continue To Be in Effect Until Six Months After the End of the Pilot Period

October 1, 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 September 24, 2018, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') 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 amend Rule 67 (Tick Size Pilot Plan) to specify that d-Quote functionality under Rule 67(f)(5) will continue to be in effect until six months after the end of the pilot period (which will be April 2, 2019). 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 67 (Tick Size Pilot Plan) to specify that d-Quote functionality described under Rule 67(f)(5) will continue to be in effect for all pilot securities (''Pilot Securities'') under the plan for the Tick Size Pilot Program (the ''Plan'') until six months after the end of the pilot period (which will be April 2, 2019).

Background

On August 25, 2014, NYSE Group, Inc., on behalf of Bats BZX Exchange, Inc. (f/k/a BATS Exchange, Inc.), Bats BYX Exchange, Inc. (f/k/a BATS Y-Exchange, Inc.), Chicago Stock Exchange, Inc., Bats EDGA Exchange, Inc. (f/k/a EDGA Exchange, Inc.), Bats EDGX Exchange, Inc. (f/k/a EDGX Exchange, Inc.), the Financial Industry Regulatory Authority, Inc. (''FINRA''), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, NYSE MKT LLC, NYSE Arca, Inc., and the Exchange (collectively, the ''Participants''), filed the Plan to Implement a Tick Size Pilot Program (''Plan'') [4] with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 11A of the Act [5] and Rule 608 of Regulation NMS thereunder.[6] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014 (the ''June 2014 Order'').[7] The Plan was published for comment in the **Federal Register** on November 7, 2014,[8] and approved by the Commission, as modified, on May 6, 2015.[9]

The Plan includes stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Plan consists of a control group (''Control Group'') of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each selected by a stratified sampling.[10]

During the pilot, Pilot Securities in the Control Group are quoted at the current tick size increment of $0.01 per share and trade at the currently permitted increments. Pilot Securities in the first test group (''Test Group One'') are quoted in $0.05 minimum increments but continue to trade at any price increment that is currently permitted.[11] Pilot Securities in the second test group (''Test Group Two'') are quoted in $0.05 minimum increments and trade at $0.05 minimum increments subject to a midpoint exception, a retail investor exception, and a negotiated trade exception.[12] Pilot Securities in Test Group Three are subject to the same terms as Test Group Two and are also subject to the ''Trade-at'' requirement to prevent price matching by a person not displaying at a price of a Trading Center's ''Best Protected Bid or ''Best Protected Offer,'' unless an enumerated exception applies.[13] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that closely resemble those under Rule 611 of Regulation NMS (''Rule 611'') [14] apply to the Trade-at requirement.

The pilot period commenced on October 3, 2016 and is in effect for a period of two years following commencement, until April 2, 2019 (the ''Pilot Period'')[sic]. Pursuant to an exemption granted under Rule 608(e) of Regulation NMS, the quoting and trading requirements of the Plan will terminate at the end of trading on Friday, September 28, 2018, instead of at the end of trading on Tuesday, October 2, 2018.[15] At the close of trading on September 28, 2018, all Pilot Securities will be moved into the Control Group and certain data collection provisions under Appendix B and C of the Plan will continue to apply through six (6) months after the end of the Pilot Period, which will be April 2, 2019.[16]

Amendment to Rule 67—d-Quotes

The Exchange adopted Rule 67 to implement the requirements specified in the Plan. Rule 67(f)(5) states that, in all Pilot Securities, d-Quotes to buy (sell) will not exercise discretion if (i) exercising discretion would result in an execution equal to or higher (lower) than the price of a protected offer (bid), or (ii) the price of a protected bid (offer) is equal to or higher (lower) than the filed price of the d-Quote. As noted above, at the end of the Pilot Period, Test Group One, Test Group Two and Test Group Three Pilot Securities will be moved into the Control Group. Because Rule 67(f)(5) applies to all Pilot Securities, including Pilot Securities in the Control Group, all Pilot Securities will continue to be subject to Rule 67(f)(5) for the six-month period after the end of the Pilot Period. To make this clear, the Exchange proposes to amend the first paragraph of Rule 67, which currently provides that ''The provisions of this Rule will be in effect during a pilot to coincide with the Pilot Period for the Regulation NMS Tick Size Pilot Plan,'' to add that ''[p]aragraph (f)(5) of this Rule will continue to be in effect for all Pilot Securities for six months after the end of the Pilot Period.'' The Exchange believes that this proposed rule change will promote transparency that the existing Rule 67(f)(5) requirement, which is applicable to Control Group Pilot Securities, would continue to be applicable to all Pilot Securities for the six-month period following the end of the Pilot Period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with the Act because it facilitates data analysis during the data collection period specified under a Plan

[4] *See* Securities and Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (File No. 4–657) (''Tick Plan Approval Order''). *See,* also, Securities and Exchange Act Release No. 76382 (November 6, 2015) (File No. 4–657), 80 FR 70284 (File No. 4–657) (November 13, 2015), which extended the pilot period commencement date from May 6, 2015 to October 3, 2016. The Plan was submitted to the Commission pursuant to Rule 608 of Regulation NMS. 17 CFR 242.608.

[5] 15 U.S.C. 78k–1.

[6] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[7] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[8] *See* Securities and Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423 (File No. 4–657) (Tick Plan Filing).

[9] *See* Tick Plan Approval Order, *supra* note 4. *See also* Securities Exchange Act Release No. 77277 (March 3, 2016), 81 FR 12162 (March 8, 2016) (File No. 4–657), amending the Plan to add National Stock Exchange, Inc. as a Participant.

[10] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[11] *See* Section VI(B) of the Plan. Pilot Securities in Test Group One will be subject to a midpoint exception and a retail investor exception.

[12] *See* Section VI(C) of the Plan.

[13] *See* Section VI(D) of the Plan.

[14] 17 CFR 242.611.

[15] *See* Letter from David S. Shillman, Associate Director, for the Commission, by the Division of Trading of Markets, pursuant to delegated authority, to John Ramsay, Chief Market Policy Officer, IEX Group, Inc., dated September 10, 2018.

[16] *See,* supra, note 16.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

approved by the Commission pursuant to an order issued by the Commission in reliance on Section 11A of the Act.[19] More specifically, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote transparency and clarity in Exchange rules that an existing provision in Rule 67 relating to how Control Group Pilot Securities are processed would continue during the six-month period following the end of the Pilot Period and during which certain data collection provisions under Appendix B and C of the Plan will continue to apply. By specifying that Rule 67(f)(5) would continue to apply through the six-month period after the end of the Pilot Period, during which all Pilot Securities will be in the Control Group, this proposed rule change ensures that the Exchange's system functionality during the six-month period after the end of the Pilot Period will be in compliance with the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the trading and quoting requirements specified in the Plan, of which other equities exchanges are also Participants. The proposed changes facilitate data analysis during the data collection period specified under the Plan. Therefore, the proposed changes would not impose any burden on competition, while providing certainty of treatment and execution of trading interests on the Exchange to market participants in NMS Stocks that are acting in compliance with the requirements specified in the Plan.

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

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)[20] of the Act and Rule 19b–4(f)(6) thereunder.[21]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[22] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[23] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that the Plan's quoting and trading rule obligations will cease on September 28, 2018, and this proposed rule change should be operative on or before that date in order to provide notice to members that the provisions of Rule 67(f)(5) would continue to apply during the six-month period following the end of the Pilot Period. The Commission believes that the proposed rule change provides clarity as to the requirements under Rule 67(f)(5) during the post-Pilot Period. In addition, the Commission believes that the proposed rule change should ensure that the data collected under the Tick Size Pilot during the post-Pilot Period remains consistent with the data collected during the Pilot Period. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[24]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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–NYSE–2018–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2018–43. 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–NYSE–2018–43 and should

[19] *See,* supra, note 5.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

be submitted on or before October 26, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–21678 Filed 10–4–18; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15707 and #15708; Northern Mariana Islands Disaster Number MP–00007]

Presidential Declaration of a Major Disaster for the Commonwealth of the Northern Mariana Islands

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the Commonwealth of the NORTHERN MARIANA ISLANDS (FEMA–4396–DR), dated 09/29/2018.

Incident: Typhoon Mangkhut.

Incident Period: 09/10/2018 through 09/11/2018.

DATES: Issued on 09/29/2018.

Physical Loan Application Deadline Date: 11/28/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 07/01/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/29/2018, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Areas (Physical Damage and Economic Injury Loans): Rota, Saipan, Tinian.

Contiguous Areas (Economic Injury Loans Only):

None.

	Percent
The Interest Rates are:	
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.000
Homeowners without Credit Available Elsewhere	2.000
Businesses with Credit Available Elsewhere	7.350
Businesses without Credit Available Elsewhere	3.675
Non-Profit Organizations with Credit Available Elsewhere	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.675
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 157078 and for economic injury is 157080.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–21707 Filed 10–4–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration Number #15711 Disaster Number #ZZ–00014]

The Entire United States and U.S. Territories; Military Reservist Economic Injury Disaster Loan Program (MREIDL)

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Military Reservist Economic Injury Disaster Loan Program (MREIDL), dated 10/01/2018.

DATES: Issued on 10/01/2018.

MREIDL Loan Application Deadline Date: 1 year after the essential employee is discharged or released from active duty.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of Public Law 106–50, the Veterans entrepreneurship and Small Business Development Act of 1999, and the Military Reservist and Veteran Small Business Reauthorization Act of 2008, this notice establishes the application filing period for the Military Reservist Economic Injury Disaster Loan Program (MREIDL).

Effective 10/01/2018, small businesses employing military reservists may apply for economic injury disaster loans if those employees are called up to active duty during a period of military conflict or have received notice of an expected call-up, and those employees are essential to the success of the small business daily operations.

The purpose of the MREIDL program is to provide funds to an eligible small business to meet its ordinary and necessary operating expenses that it could have met, but is unable to meet, because an essential employee was called-up or expects to be called-up to active duty in his or her role as a military reservist. These loans are intended only to provide the amount of working capital needed by a small business to pay its necessary obligations as they mature until operations return to normal after the essential employee is released from active duty. For information/applications contact 1–800–659–2955 or visit *www.sba.gov.*

Applications for the Military Reservist Economic Injury Disaster Loan Program may be filed at the above address.

The Interest Rate for eligible small businesses is 4.000.

The number assigned is 157110.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–21705 Filed 10–4–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 15701 and # 15702; Hawaii Disaster Number HI–00052]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Hawaii

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of HAWAII (FEMA–4395–DR), dated 09/27/2018.

Incident: Hurricane Lane.

[25] 17 CFR 200.30–3(a)(12).

Incident Period: 08/22/2018 through 08/29/2018.

DATES: Issued on 09/27/2018.

Physical Loan Application Deadline Date: 11/26/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 06/27/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/27/2018, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Hawaii, Kauai, Maui.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 157018 and for economic injury is 157020.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–21711 Filed 10–4–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15709 and #15710; Northern Mariana Islands Disaster Number MP–00008]

Presidential Declaration of a Major Disaster for Public Assistance Only for the Commonwealth of the Northern Mariana Islands

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of the NORTHERN MARIANA ISLANDS (FEMA–4396–DR), dated 09/29/2018.

Incident: Typhoon Mangkhut.

Incident Period: 09/10/2018 through 09/11/2018.

DATES: Issued on 09/29/2018.

Physical Loan Application Deadline Date: 11/28/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 07/01/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/29/2018, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Areas: Rota, Saipan, Tinian.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 157098 and for economic injury is 157100.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–21706 Filed 10–4–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 15700; Oregon Disaster Number OR–00092 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Oregon

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Oregon, dated 09/27/2018.

Incident: Wildfires.

Incident Period: 07/15/2018 and continuing.

DATES: Issued on 09/27/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 06/27/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Jackson, Josephine, Klamath.

Contiguous Counties:

Oregon: Curry, Deschutes, Douglas, Lake, Lane.

California: Del Norte, Modoc, Siskiyou.

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	3.610

	Percent
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for economic injury is 157000

The States which received an EIDL Declaration # are Oregon, California. (Catalog of Federal Domestic Assistance Number 59008)

Dated: September 27, 2018.

Linda E. McMahon,

Administrator.

[FR Doc. 2018–21687 Filed 10–4–18; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 10578]

Privacy Act of 1974; System of Records

AGENCY: Department of State.

ACTION: Notice of a Modified System of Records.

SUMMARY: Family Liaison Office Records are used to manage the Family Liaison Office's programs and to provide services to its clients in each of its major areas of interest: Family Member Employment, Naturalization, Education and Youth, Unaccompanied Tours, Community Liaison Office Program and Support Services.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this system of records notice is effective upon publication, with the exception of the routine uses that are subject to a 30-day period during which interested persons may submit comments to the Department. Please submit any comments by November 5, 2018.

ADDRESSES: Questions can be submitted by mail or email. If mail, please write to: U. S. Department of State; Office of Global Information Systems, Privacy Staff; A/GIS/PRV; SA–2, Suite 8100; Washington, DC 20522–0208. If email, please address the email to the Privacy Division Chief, Christina Jones-Mims, at *Privacy@state.gov.* Please write ''Family Liaison Office Records, State-50'' on the envelope or the subject line of your email.

FOR FURTHER INFORMATION CONTACT: Christina Jones-Mims, Privacy Division Chief; Office of Global Information Services, A/GIS; Department of State, SA–2; 515 22nd Street NW, Washington, DC 20522–8100, or at *Privacy@state.gov.*

SUPPLEMENTARY INFORMATION: The Department of State proposes that the system name be changed to ''Family Liaison Office Records''. In accordance with the Privacy Act of 1974, the Department of State proposes to consolidate two record systems: Family Liaison Office Centralized Data Bank of Family Member Skills and Direct Communication Network Records, State-50 (previously published at 43 FR 45958) and Skills Catalogue Records, State-49 (previously published at 43 FR 45957). These two systems are being merged because the records are very similar.

SYSTEM NAME AND NUMBER

Family Liaison Office Records, State-50.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of State, 2201 C Street NW, Washington, DC 20520.

SYSTEM MANAGER(S):

Director, Family Liaison Office, and Chief, Personnel Management, Operating Systems Division, Department of State, 2201 C Street NW, Washington, DC 20520.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C 4026(b).

PURPOSE(S) OF THE SYSTEM:

The information in the system is used to manage the Family Liaison Office's programs and to provide services to its clients in each of its major areas of interest: Family Member Employment, Naturalization, Education and Youth, Unaccompanied Tours, Community Liaison Office program and Support Services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and past participants of Family Liaison Office (FLO) programs and individuals who have requested to receive information from FLO including: (1) U.S. direct-hire employees from all U.S. foreign affairs agencies; (2) Eligible family members and members of households from all U.S. foreign affairs agencies; (3) Community Liaison Office Coordinators at post; (4) friends and family of employees assigned to an unaccompanied post; (5) children of employees assigned to an unaccompanied post through the Children's Medal Program. The term ''individual'' is defined by 5 U.S.C. 552a(a)(2).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, email address, social security number, employee identification number, affiliate agency, current or future post, dates of arrival and departure from post, date of birth, career field, social media identifications, gender, age, phone number, employment status, current and/or future post, college transcripts and foreign education credentials, copy of passport, copy of naturalization certificate (if applicable), relationship to U.S. direct-hire employee, job title and position number, security clearance level, GS/FS level, employment and training history, work experience, country of birth, citizenship GS/FS rating code, work preference code, current mailing address, location code of assignment, and other biographic data including educational background, language skills, transfer eligibility date.

RECORD SOURCE CATEGORIES:

These records contain information that is primarily obtained from the individual who is the subject of the records or their U.S. direct-hire employee sponsor.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information contained in these records may be disclosed:

(a) To other government agencies, multinational corporations, international organizations, business firms, foundations, foreign governments and other entities and persons with employment opportunities for family members or who may be interested in hiring family members to perform a task commensurate with their work experience or to utilize their services in performing voluntary work.

(b) To appropriate agencies, entities, and persons when (1) the Department of State suspects or has confirmed that there has been a breach of the system of records; (2) the Department of State has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of State (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of State efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(c) To another Federal agency or Federal entity, when the Department of State determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2)

preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

The Department of State periodically publishes in the **Federal Register** its standard routine uses which apply to all of its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement (published in Volume 73, Number 136, Public Notice 6290, on July 15, 2008). All these standard routine uses apply to Family Liaison Office Records, State-50.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored both in hard copy and on electronic media. A description of standard Department of State policies concerning storage of electronic records is found here *https://fam.state.gov/FAM/05FAM/05FAM0440.html.* All hard copies of records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel only.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By individual name of the family member, name of the U.S. direct-hire employee sponsor, his/her agency and current post.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retired or destroyed in accordance with published Department of State Disposition Schedules as approved by the National Archives and Records Administration (NARA) and outlined here *https://foia.state.gov/Learn/RecordsDisposition.aspx.* More specific information may be obtained by writing to the Director, Office of Information Programs and Services, A/GIS/IPS; SA–2, Department of State; 515 22nd Street NW, Washington, DC 20522–8100.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All users are given cyber security awareness training which covers the procedures for handling Sensitive But Unclassified (SBU) information, including personally identifiable information (PII). Annual refresher training is mandatory. In addition, all Foreign Service and Civil Service employees and those Locally Engaged Staff who handle PII are required to take the Foreign Service Institute distance learning course, PA 459, instructing employees on privacy and security requirements, including the rules of behavior for handling PII and the potential consequences if it is handled improperly.

Access to the Department of State, its annexes and posts abroad is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All paper records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel only. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage. When it is determined that a user no longer needs access, the user account is disabled.

Before being granted access to Family Liaison Office Records, a user must first be granted access to the Department of State computer system. Remote access to the Department of State network from non-Department owned systems is authorized only to unclassified systems and only through a Department approved access program. Remote access to the network is configured with the authentication requirements contained in the Office of Management and Budget Circular Memorandum A–130. All Department of State employees and contractors with authorized access have undergone a thorough background security investigation.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to them should write to the Director; Office of Information Programs and Services, A/GIS/IPS; SA–2 Department of State; 515 22nd Street NW, Washington, DC 20522–8100.

CONTESTING RECORD PROCEDURES:

See above.

NOTIFICATION PROCEDURES:

Individuals who have reason to believe that the Family Liaison Office might have records pertaining to him or her should write to the following address: Director; Office of Information Programs and Services, A/GIS/IPS; SA–2 Department of State; 515 22nd Street NW, Washington, DC 20522–8100.

The individual must specify that he or she request the records of the Family Liaison Office to be checked. At a minimum, the individual must include the following: Name, date and place of birth, current mailing address and zip code, agency, current post, signature, and any other information helpful in identifying the record.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The Department of State proposes to consolidate two record systems: Family Liaison Office Centralized Data Bank of Family Member Skills and Direct Communication Network Records, State-50 (previously published at 43 FR 45958) and Skills Catalogue Records, State-49 (previously published at 43 FR 45957).

Eric F. Stein,

Acting Senior Agency Official for Privacy, Acting Deputy Assistant Secretary, Office of Global Information Services, Bureau of Administration, Department of State.

[FR Doc. 2018–21689 Filed 10–4–18; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice PN 10579]

Notice of Department of State Sanctions Actions Pursuant To Section 231(a) of the Countering America's Adversaries Through Sanctions Act of 2017 (CAATSA) and Executive Order 13849 of September 20, 2018, and Notice of Additions To the CAATSA Section 231(d) Guidance

ACTION: Notice.

SUMMARY: The Secretary of State has determined, pursuant to CAATSA Section 231(a), that the Chinese entity Equipment Development Department of the Central Military Commission (EDD), formerly known as the General Armaments Department (GAD), has knowingly, on or after August 2, 2017, engaged in a significant transaction with a person that is part of, or operates for or on behalf of, the defense or intelligence sectors of the Government of the Russian Federation. The Secretary of State has selected certain sanctions to be imposed upon EDD and Li Shangfu, EDD's Director, who has been determined to be a principal executive officer of EDD, or to perform similar functions with similar authorities as such an officer.

The Secretary of State is also updating previously issued guidance pursuant to CAATSA Section 231(d) to specify additional persons that are part of, or operate for or on behalf of, the defense and intelligence sectors of the Government of the Russian Federation.

DATES: The Secretary of State's determination that EDD has knowingly, on or after August 2, 2017, engaged in a significant transaction with a person that is part of, or operates for or on behalf of, the defense or intelligence sectors of the Government of the Russian Federation, and the Secretary of State's selection of certain sanctions to be imposed upon EDD and Li Shangfu, are effective on September 20, 2018. The Secretary of State's updates to previously issued guidance pursuant to CAATSA Section 231(d) to specify additional persons that are part of, or operate for or on behalf of, the defense and intelligence sectors of the Government of the Russian Federation are effective on September 20, 2018.

FOR FURTHER INFORMATION CONTACT: Thomas W. Zarzecki, Director, Task Force 231, Bureau of International Security and Nonproliferation, Department of State, Washington, DC 20520, tel.: 202–647–7594, *ZarzeckiTW@state.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 231(a) of CAATSA and Executive Order 13849 the Secretary of State has selected the following sanctions to be imposed upon EDD:

- United States Government departments and agencies shall not issue any specific license or grant any other specific permission or authority under any statute that requires the prior review or approval of the United States Government as a condition for the export or re-export of goods or technology to EDD;
- A prohibition on any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which EDD has any interest;
- A prohibition on any transfers of credit or payments between financial institutions, or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of EDD;
- All property and interests in property of EDD that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in; and
- Imposition on the principal executive officer or officers of EDD, or on persons performing similar functions and with similar authorities as such officer or officers, certain sanctions, as selected by the Secretary of State and described below.

The Secretary of State has selected the following sanctions to be imposed upon Li Shangfu, EDD's Director, who has been determined to be a principal executive officer of EDD, or to perform similar functions with similar authorities as such an officer:

- A prohibition on any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which Li Shangfu has any interest;
- A prohibition on any transfers of credit or payments between financial institutions, or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of Li Shangfu;
- All property and interests in property of Li Shangfu that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in; and
- The Secretary of State shall deny a visa to Li Shangfu, and the Secretary of Homeland Security shall exclude Li Shangfu from the United States, by treating Li Shangfu as a person covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Also, pursuant to the authority in CAATSA Section 231(d), the Secretary of State is issuing updated guidance specifying the following additional persons that are part of, or operate for or on behalf of, the defense and intelligence sectors of the Government of the Russian Federation:

Section 231(d) List Regarding the Defense Sector of the Government of the Russian Federation

- Komsomolsk-na-Amur Aviation Production Organization (KNAAPO)
- Oboronlogistika, OOO
- PMC Wagner

Section 231(d) List Regarding the Russian Intelligence Sector of the Government of the Russian Federation

- Antonov, Boris Alekseyevich
- Aslanov, Dzheykhun Nasimi Ogly
- Badin, Dmitriy Sergeyevich
- Bogacheva, Anna Vladislavovna
- Bovda, Maria Anatolyevna
- Bovda, Robert Sergeyevich
- Burchik, Mikhail Leonidovich
- Bystrov, Mikhail Ivanovich
- Concord Catering
- Concord Management and Consulting LLC
- Gizunov, Sergey Aleksandrovich
- Internet Research Agency LLC
- Kaverzina, Irina Viktorovna
- Korobov, Igor Valentinovich
- Kovalev, Anatoliy Sergeyevich
- Kozachek, Nikolay Yuryevich
- Krylova, Aleksandra Yuryevna
- Lukashev, Aleksey Viktorovich
- Malyshev, Artem Andreyevich
- Morgachev, Sergey Aleksandrovich
- Netyksho, Viktor Borisovich
- Osadchuk, Aleksandr Vladimirovich
- Podkopaev, Vadim Vladimirovich
- Polozov, Sergey Pavlovich
- Potemkin, Aleksey Aleksandrovich
- Prigozhin, Yevgeniy Viktorovich
- Vasilchenko, Gleb Igorevich
- Venkov, Vladimir
- Yermakov, Ivan Sergeyevich
- Yershov, Pavel Vyacheslavovich

Christopher A. Ford,

Assistant Secretary of State.

[FR Doc. 2018–21684 Filed 10–4–18; 8:45 am]

BILLING CODE 4710–27–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 497 (Sub-No. 7X)]

Minnesota Northern Railroad, Inc.—Abandonment Exemption—in Norman and Polk Counties, MN

Minnesota Northern Railroad, Inc. (MNN) filed a verified notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon approximately 5.8 miles of its ''P Line'' Subdivision between milepost 40.2 at the north end of the Marsh River Bridge, near Shelly, MN, and milepost 46.0 at Second Street in Nielsville, MN, in Norman and Polk Counties, MN (the Line). The Line traverses United States Postal Service Zip Codes 56561, 56568, and 56581.

MNN has certified that: (1) No local freight traffic has moved over the Line for at least two years; (2) no overhead traffic has moved over the Line for at least two years; (3) no formal complaint filed by a user of rail service on the line (or a state or local government acting on behalf of any such user) regarding cessation of service over the line either is pending before the Surface Transportation Board or any U.S. District Court or has been decided in favor of the complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the

abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) [1] has been received, this exemption will be effective on November 5, 2018, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 15, 2018. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 25, 2018, with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to MNN's representative, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South La Salle Street, Suite 1666, Chicago, IL 60604–1228.

If the verified notice contains false or misleading information, the exemption is void ab initio.

MNN has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by October 12, 2018. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), MNN shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by MNN's filing of a notice of consummation by October 5, 2019, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *www.stb.gov.*

Decided: September 28, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–21545 Filed 10–4–18; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board modified its OFA procedures effective July 29, 2017. Among other things, the OFA process now requires potential offerors, in their formal expression of intent, to make a preliminary financial responsibility showing based on a calculation using information contained in the carrier's filing and publicly available information. *See Offers of Financial Assistance,* EP 729 (STB served June 29, 2017); 82 FR 30,997 (July 5, 2017).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,800. *See Regulations Governing Fees for Servs. Performed in Connection with Licensing & Related Servs.—2017 Update,* EP 542 (Sub-No. 25), slip op. App. B at 13 (STB served August 8, 2018).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2018–76]

Petition for Exemption; Summary of Petition Received; The Boeing Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 25, 2018.

ADDRESSES: Send comments identified by docket number FAA–2018–0845 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

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

FOR FURTHER INFORMATION CONTACT: Mark Forseth, AIR–673, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198, phone and fax 206–231–3179, email *mark.forseth@faa.gov;* or Alphonso Pendergrass, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, phone 202–267–4713, email *Alphonso.Pendergrass@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Des Moines, Washington.

Victor Wicklund,

Manager, Transport Standards Branch.

Petition for Exemption

Docket No.: FAA–2018–0845.

Petitioner: Bombardier Inc.

Section(s) of 14 CFR Affected: 25.1322(a)(2).

Description of Relief Sought: Bombardier Inc. requests time-limited relief from the requirements for engine-

flameout caution alerting on Bombardier Model BD–700–2A12 airplanes.

[FR Doc. 2018–21656 Filed 10–4–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Funding Opportunity for the Department of Transportation's Nationally Significant Federal Lands and Tribal Projects Program for Fiscal Year 2018

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice of funding opportunity.

SUMMARY: This notice announces a funding opportunity and requests grant applications for the Nationally Significant Federal Lands and Tribal Projects (NSFLTP) Program. The Fixing America's Surface Transportation (FAST) Act established the NSFLTP Program to provide Federal funding to projects of national significance for construction, reconstruction, or rehabilitation of transportation facilities within, adjacent to, or providing access to Federal or Tribal lands. As per the Consolidated Appropriations Act, 2018, the Secretary of Transportation may award up to $300 million—the amount appropriated by Congress to the NSFLTP Program in the Department of Transportation Appropriations Act, 2018—through the FHWA's Office of Federal Lands Highway. The FHWA will distribute these funds as described in this notice on a competitive basis in a manner consistent with the selection criteria.

DATES: Applications will be accepted on a rolling basis and evaluated quarterly, until available funding has been exhausted. The first application deadline is December 17, 2018. After that, subsequent deadlines will be 11:59 p.m. on the last business day of the next fiscal quarter.

ADDRESSES: Applications must be submitted through *Grants.gov*. Refer to CFDA Number: 20.205, Highway Planning and Construction.

FOR FURTHER INFORMATION CONTACT: Jeffrey Mann, Office of Program Development, FHWA, Office of Federal Lands Highway, 21400 Ridgetop Circle, Sterling, VA 20166–6511, Telephone: 703–404–6230 or email: *Jeffrey.Mann@dot.gov.*

Scott Johnson, Office of Program Development, FHWA, Office of Federal Lands Highway, 21400 Ridgetop Circle, Sterling, VA 20166–6511, Telephone: 703–404–6231 or email: *Scott.Johnson@dot.gov.*

In addition, the FHWA will regularly post information about the NSFLTP Program on its website at *https://flh.fhwa.dot.gov/programs/nsfltp/.*

SUPPLEMENTARY INFORMATION: Each section of this notice contains information and instructions relevant to the application process for NSFLTP Program grants. The applicant should read this notice in its entirety to submit eligible and competitive applications.

Table of Contents

A. Program Description

The FAST Act, Public Law 114–94, section 1123, established the NSFLTP Program to fund projects to construct, reconstruct, or rehabilitate transportation facilities within, adjacent to, or accessing Federal and Tribal lands.

The NSFLTP Program provides an opportunity to address significant challenges across the Nation for transportation facilities that serve Federal and Tribal lands.

B. Federal Award Information

1. Amount Available—For FY 2018, the Secretary may award up to $300 million in grants on a competitive basis to Federal and Tribal lands projects of national significance that meet the requirements. The $300 million funding amount is based on the amount appropriated for the NSFLTP Program in the Department of Transportation Appropriations Act, 2018.

2. Award Size—The NSFLTP Program provides discretionary funding for projects that have an estimated construction cost of at least $25 million, with construction projects with an estimated cost equal to or exceeding $50 million receiving priority consideration in the selection process.

3. Availability of Funds—The funds provided for this program under the FY 2018 Appropriations Act are available until expended.

C. Eligibility Information

1. Eligible Applicants

a. Entities eligible to receive funds under the Federal Lands Access Program (23 United State Code (U.S.C.) 204), the Federal Lands Transportation Program (23 U.S.C. 203), the Tribal Transportation Program (23 U.S.C. 202), and the Federal Lands Planning Program (23 U.S.C. 201) may apply for funding under the NSFLTP Program, except that a State, county, or unit of local government may only apply for funding under the NSFLTP Program if sponsored by an eligible Federal land management agency (FLMA) or federally recognized Indian Tribe.

b. As sponsors, FLMAs and Tribes will provide quarterly a list of project applications they are sponsoring from their organization on behalf of State or local governments.

I. To promote effective communication and coordination, an FLMA or Tribe should identify one individual within their organization who will serve as Sponsorship Coordinator.

II. The Sponsorship Coordinator is responsible for providing the list of sponsored projects to the NSFLTP Program contacts listed on page 1 of this NOFO. The use of *Grants.gov* permits a wide range of eligible applicants to enter project applications. The Sponsorship Coordinator role ensures applications have been coordinated through and approved by FLMA and/or Tribal leaders.

III. The list of sponsored projects should provide enough detail so that FHWA can match the projects to those received via *Grants.gov*.

IV. A list of Sponsorship Coordinators can be obtained from the NSFLTP Program contacts listed on page 1 of this NOFO, or at the following website—*https://flh.fhwa.dot.gov/programs/nsfltp/.*

c. FLMAs and Tribes may sponsor applications on behalf of:

I. A State or group of States;

II. a metropolitan planning organization;

III. a unit of local government or group of local governments;

IV. a political subdivision of a State or local government;

V. a special purpose district or public authority with a transportation function, including a port authority;

VI. a group of FLMAs;

VII. a consortium of Tribal governments; or

VIII. a multi-State or multijurisdictional group of public entities.

d. Recipients of NSFLTP Program funding are responsible for meeting reporting requirements.

2. Cost Sharing and Matching

a. The Federal share of the cost of the project shall be up to 90 percent.

b. The non-Federal share shall not be less than 10 percent of the cost of the project and can be:

I. Any other Federal funds, as long as they were not authorized under title 23 or title 49, U.S.C.;

II. Any private or public source, as long as the source did not receive the funds through programs authorized under title 23 or title 49, U.S.C.; and

III. ''Soft-matches'' or ''in-kind matches'' (*e.g.,* donations of funds, materials, services, right-of-way acquisition, utility relocation).

IV. Tapered matches are permissible to allow for greater flexibility. Tapered match is a form of Federal-aid matching flexibility that allows a project's Federal share to vary over the life of the project as long as the final contribution of Federal funds does not exceed the project's maximum authorized share. Indicate that a tapered match will be sought within the project narrative when describing how the non-Federal share will be funded.

c. The application and project agreement must document the match requirement and any related commitments.

3. Other

a. To meet the minimum statutory requirements for eligibility, a project must meet all of the following conditions:

b. The project is a single continuous project;

c. The project meets at least one of the following definitions of transportation facilities from section 101 of Title 23, U.S.C., except that such facilities are not required to be included in an inventory described in section 202 or 203 of such title:

I. ''Federal lands transportation facility'', which means a public highway, road, bridge, trail, or transit system that is located on, is adjacent to, or provides access to Federal lands for which title and maintenance responsibility is vested in the Federal Government;

II. ''Federal lands access transportation facility'', which means a public highway, road, bridge, trail, or transit system that is located on, is adjacent to, or provides access to Federal lands for which title or maintenance responsibility is vested in a State, county, town, township, tribal, municipal, or local government; or

III. ''Tribal transportation facility'', which means a public highway, road, bridge, trail, or transit system that is located on or provides access to tribal land.

d. All activities required under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) demonstrate completion through:

I. A record of decision, if the NEPA class of action is an environmental impact statement;

II. A finding of no significant impact, if the NEPA class of action is an environmental assessment; or

III. A determination that the project is a categorical exclusion under the lead Federal agency's NEPA policies;

e. The project must have estimated construction costs, based on the results of preliminary engineering, equal to or greater than $25,000,000, with priority consideration for projects with estimated construction costs equal to or exceeding $50,000,000; and

f. The project will use NSFLTP Program funds only for construction, reconstruction, or rehabilitation of transportation facilities, *i.e.,* project design costs are not eligible for NSFLTP Program funds.

D. Application and Submission Information

1. Address to Request Application—Applications must be submitted to *Grants.gov*.

2. Content and Form of Application Submission—Include in the application package the following:

a. Standard Form 424 (Application for Federal Assistance);

b. Standard Form 424C (Budget Information for Construction Programs);

c. Standard Form 424D (Assurances for Construction Programs);

d. A cover page, including the following chart:

Project name	
Previously Incurred Project Eligible Costs.	$
Future Eligible Project Costs	$
Total Project Cost	$
NSFLTP Program Grant Request Amount.	$
Federal (DOT) Funding including Program Funds Requested.	$
Is the project within, adjacent to, or accessing Federal and/or Tribal land.	Yes/No

e. A project narrative—The application must include information required for the FHWA to determine that the project satisfies the eligibility requirements described in Section IV above. The FHWA recommends the project narrative adhere to the following basic guidelines to clearly address the program requirements and make critical information readily apparent.

I. Project Description—Describe what activities the requested NSFLTP Program funds and matching funds will support, how the project is nationally significant based on authorized criteria and Secretary's objectives, information on the expected users of the project, a description of the transportation challenges the project aims to address, and how the project will address these challenges.

II. Project Location—Provide a detailed description of the location of proposed project and geospatial data for the project, as well as a map of the project's location and its connections to existing transportation infrastructure.

III. Project Parties—Provide information about who is involved and their respective roles in supporting the project.

IV. Grant Funds, Sources, and Uses of Project Funds—

i. Funding—Document the funding that will be used to construct this project, including past or pending Federal funding requests for this project. Include the size, nature, and source(s) of the required match for those funds, if applicable. Demonstrate that the requested NSFLTP Program funds do not exceed 90 percent of project costs.

ii. Budget—Provide a detailed project budget containing a breakdown of how the funds will be spent. The budget should estimate—by dollar amount and percentage of cost—the cost of construction work for each project component.

V. Project Readiness—Provide the expected start date, with supporting rationale for that date.

VI. To the extent practicable, provide data and evidence of project merits in a form that is verifiable or publicly available. The FHWA may ask any applicant to supplement data in its application, but expects applications to be complete upon submission.

VII. Include a table of contents, maps, and graphics, as appropriate, to make the information easier to review.

VIII. The FHWA recommends that the project narrative not exceed 10 pages, excluding supporting documentation, and be prepared with as a single-spaced document, using a standard 12-point font such as Times New Roman, with 1-inch margins.

IX. Provide website links to supporting documentation rather than copies of these supporting materials. If supporting documents are submitted,

clearly identify the relevant portion of the project narrative that each document supports.

X. The FHWA recommends using appropriately descriptive names (*e.g.,* ''Project Narrative,'' ''Maps,'' ''Memoranda of Understanding and Letters of Support,'' etc.) for all attachments.

3. Unique Entity Identifier and SAM—

a. Each applicant must:

I. Be registered in SAM before submitting its application;

II. provide a valid unique entity identifier in its application; and

III. continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. The Department may not make a grant to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Department is ready to make a grant, the Department may determine that the applicant is not qualified to receive a grant and use that determination as a basis for making a grant to another applicant.

4. Submission Dates and Timelines—

a. Deadline—Applications will be accepted on a rolling basis and evaluated quarterly, until available funding has been exhausted. The application deadline will be 11:59 p.m. on the last business day of each fiscal quarter. The first application deadline is December 17, 2018. Subsequent, quarterly deadline dates include March 29, 2019, and June 28, 2019. It is possible for all funding to be awarded in the first round. Information regarding awards and available funding will be posted to the website cited on page 1 of this NOFO.

b. To submit an application through *Grants.gov*, applicants must:

I. Obtain a DUNS number;

II. Register with SAM at *www.SAM.gov*;

III. Create a *Grants.gov* username and password; and

IV. Respond to the registration email sent to the applicants E-Business Point of Contact (POC) from *Grants.gov* and login at *Grants.gov* to authorize the applicant as the Authorized Organization Representative (AOR).

c. Please note there can be more than one AOR for an organization. Applicants are encouraged to submit applications in advance of the application deadline; however, applications will not be evaluated, and awards will not be made until after the application deadline.

d. Please note the *Grants.gov* registration process usually takes 2–4 weeks to complete and the Department will not consider late applications that are the result of failure to register or comply with *Grants.gov* applicant requirements in a timely manner. For information and instruction on each of these processes, please see instructions at *http://www.grants.gov/web/grants/applicants/applicant-faqs.html.* If applicants experience difficulties at any point during the registration or application process, please call the *Grants.gov* Customer Service Support Hotline at 1(800) 518–4726, Monday-Friday from 7 a.m. to 9 p.m. EST.

e. Consideration of Applications—Only applicants who comply with all submission deadlines described in this notice and electronically submit valid, sponsor-approved applications through *Grants.gov* will be eligible for award. Applicants are strongly encouraged to make submissions in advance of deadlines.

f. Late Applications—Applications received after a quarterly deadline will be considered in the following fiscal quarter.

5. Intergovernmental Review—The NSFLTP Program is not subject to the Intergovernmental Review of Federal Programs.

6. Funding Restrictions—Developmental phase activities including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering, design, and other preconstruction activities are not eligible for funding under the NSFLTP Program.

E. Application Review Information

The FHWA will award NSFLTP Program funds based on the selection criteria and policy considerations outlined below.

1. Statutory Criteria—In accordance with the FAST Act, section 1123, when selecting projects for funding under the NSFLTP Program, the FHWA will evaluate the extent to which the project:

a. Furthers the goals of DOT, including safety, state of good repair, economic competitiveness, and quality of life, by considering;

I. An analysis of the project's safety improvements compared to a baseline in which the project is not done. For more information, see Section 4.3, pages 13 through 15, of the DOT's Benefit-Cost Analysis Guidance for TIGER and INFRA Applications, *https://cms.dot.gov/sites/dot.gov/files/docs/mission/office-policy/transportation-policy/284031/benefit-cost-analysis-guidance-2017_1.pdf.*

II. Technical data provided about existing facilities in poor repair or, where the project is new construction, the extent to which the existing conditions demonstrate a need for new transportation facilities;

III. An analysis of the project's economic benefits—such as travel time savings, and vehicle operating cost savings, and emissions reductions—compared to a baseline in which the project is not done. For more information on what impacts are considered economic benefits and how to estimate the value of such effects, see section 4 of the Department's guidance on benefit-cost analysis. Where values cannot be monetized, provide other quantitative or qualitative information.

IV. How the project is expected to improve the quality of life for a local community and/or the traveling public, providing data and analysis where relevant and feasible, such as estimates of trips and/or vehicle miles traveled.

b. Improves the condition of critical transportation facilities, including multimodal facilities, by considering the requirements the applicant communicates in the application. Examples may include but are not limited to: A bridge in poor condition that may be subject to closure in the absence of funds; primary transportation facility that provides access to critical community services, high use recreation destination areas and/or economic generators within Tribal and/or Federal lands.

c. Needs construction, reconstruction, or rehabilitation;

d. Has costs matched by funds that are not provided under the NSFLTP Program or titles 23 or 49 by giving preference to;

I. Projects with over 30 percent in non-NSFLTP Program funding, with additional preference given to projects that exceed even this threshold; followed by

II. Projects with between 20 percent and 30 percent in non-NSFLTP Program funding; followed by

III. Projects with between 10 percent and 19 percent in non-NSFLTP Program funding; followed by

IV. Projects with the minimum 10 percent in non-NSFLTP Program funding;

e. Is included in or eligible for inclusion in the National Register of Historic Places;

f. Uses new technologies and innovations that enhance the efficiency of the project;

g. Is supported by funds, other than funds received under the NSFLTP

Program, to construct, maintain, and operate the facility, by considering what other funds exist, besides those available for match, to aid in maintenance and operation of the facility, as well as the reasonable expectation that those funds will remain available;

h. Spans two or more States; and

i. Serves land owned by multiple Federal agencies or Indian Tribes.

2. Departmental criteria—After applying the above preferences, the Federal Highway Administrator will take into account the following key Departmental objectives:

a. Using innovative approaches to improve safety and expedite project delivery;

b. Supporting economic vitality at the national and regional level;

c. Utilizing alternative funding sources and innovative financing models to attract non-Federal sources of infrastructure investment;

d. Accounting for the life-cycle costs of the project to promote the state of good repair; and

e. Beginning projects in a timely manner after award of NSFLTP Program funding.

3. Review and Selection Process—The FHWA will review all eligible applications received within a fiscal quarter. The review and selection process will consist of a Technical Review and Senior Review.

a. Technical Review—In the Technical Review, a team comprising technical staff from FHWA will review all eligible applications and rate each project's alignment with the selection criteria, using the following guidelines.

I. Highly Recommended—The project aligns extremely well with the objectives of the selection statutory criteria under consideration. Projects with several criteria rated as ''Strong Alignment'' are likely to receive this rating, as well as projects that have ''Alignment'' with all of the statutory criteria.

II. Recommended—The project aligns well with the objectives of the selection criterion. Projects with at least one criteria rated as ''Strong Alignment'' or that have ''Alignment'' with most of the statutory criteria are likely to receive this rating.

III. Acceptable—The project somewhat aligns well with the objectives of the selection criterion under consideration. Projects with no criteria rated as ''Strong Alignment'' but with a several criteria rated as ''Alignment'' are likely to receive this rating.

IV. Not Recommended—The project does not align well with objectives of the selection criterion under consideration.

b. The Senior Review Team, comprised of senior leadership from FHWA, will determine which projects rated as Acceptable and higher by the Technical Review Team to advance to the Secretary.

4. The final funding decisions will be made by the Secretary of Transportation.

5. Additional Information—Prior to award, each selected applicant will be subject to a risk assessment required by 2 CFR 200.205. The Department must review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM, currently the Federal Awardee Performance and Integrity Information System (FAPIIS). An applicant may review information in FAPIIS and comment on any information about itself. The Department will consider comments by the applicant in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants.

F. Federal Award Administration Information

1. Federal Award Notices—The FHWA will announce awarded projects by posting a list of selected projects at *https://flh.fhwa.dot.gov/programs/nsfltp/*. Following the announcement, the FHWA will contact the POC listed in form SF–424 to initiate negotiation of a project-specific agreement.

2. Administrative and National Policy Requirements—All awards will be administered pursuant to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards found in 2 CFR part 200, as adopted by DOT at 2 CFR part 1201. In addition, applicable Federal laws, rules and regulations of the FHWA will apply to the projects that receive NSFLTP Program funds, including planning requirements, agreements, Buy America compliance, and other grant program requirements.

3. Reporting—Each recipient of NSFLTP Program funding must submit the Federal Financial Report (SF–425) on the financial condition of the project and the project's progress bi-annually, as well as an Annual Budget Review and Program Plan to monitor the use of Federal funds and ensure accountability and financial transparency in the NSFLTP Program. The FHWA reserves the right to request additional information, if deemed needed, to better understand the status of the project.

4. Reporting Matters Related to Integrity and Performance—If the total value of a selected recipient's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then the applicant during that period of time must maintain the information reported to SAM and FAPIIS, about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111–212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

G. Federal Awarding Agency Contact(s)

For further information concerning this notice please contact:

1. Jeffrey Mann, NSFLTP Program Manager, via email at *jeffrey.mann@dot.gov*; by telephone at 202–366–9494; Office hours are from 7 a.m. to 3:30 p.m. EDT., Monday through Friday, except Federal holidays.

2. Scott Johnson, Director Office of Program Development, via email at *scott.johnson@dot.gov*; by phone at 202–366–9494; Office hours are from 7 a.m. to 3:30 p.m. EDT., Monday through Friday, except Federal holidays.

3. Both can also be reached by mail at Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

4. For legal questions, please contact Ms. Vivian Philbin, Office of the Chief Counsel, by telephone at (720) 963–3445; by email at *vivian.philbin@dot.gov*; or by mail at Federal Highway Administration, Central Federal Lands Highway Division, 12300 West Dakota Avenue, Lakewood, CO 80228. Office hours are from 7:30 a.m. to 4 p.m. MDT., Monday through Friday, except Federal holidays.

H. Other Information

1. Protection of Confidential Business Information—All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methods that are accepted by industry practice and standards, to the extent possible. If the application includes information the applicant considers to be a trade secret or confidential

commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI)''; (2) mark each affected page ''CBI''; and (3) highlight or otherwise denote the CBI portions. The FHWA protects such information from disclosure to the extent allowed under applicable law. In the event FHWA receives a Freedom of Information Act (FOIA) request for the information, FHWA will follow DOT procedures described in its FOIA regulations at 49 CFR 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

Authority: Section 1123 of Public Law 114–94.

Issued on: October 1, 2018.

Brandye L. Hendrickson,

Deputy Administrator.

[FR Doc. 2018–21826 Filed 10–3–18; 4:15 pm]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On October 2, 2018, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals:

1. MORIO, Utao (Japanese: 森尾卯太男), 2-138 Fujimi-cho, Yonago-shi, Tottori-ken, Japan (Japanese: 富士見町二丁目１３８番地, 米子市, 鳥取県, Japan); DOB 29 Jul 1953; Gender Male (individual) [TCO] (Linked To: YAMAGUCHI-GUMI).

Designated pursuant to section 1(a)(ii)(B) of Executive Order 13581 of July 24, 2011, "Blocking Property of Transnational Criminal Organizations" (E.O. 13581), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the YAMAGUCHI-GUMI. Also designated pursuant to section 1(a)(ii)(C) of E.O. 13581 for having acted or purported to act for or on behalf of, directly or indirectly, the YAMAGUCHI-GUMI.

2. TSUDA, Chikara (Japanese: 津田力), 25-1 Motoderamachi Nishinocho, Wakayama-shi, Wakayama-ken 640-8007, Japan (Japanese: 元寺町西ノ丁25-1, 和歌山市, 和歌山県 640-8007, Japan); DOB 23 Dec 1958; Gender Male (individual) [TCO] (Linked To: YAMAGUCHI-GUMI).

Designated pursuant to section 1(a)(ii)(B) of Executive Order 13581 of July 24, 2011, "Blocking Property of Transnational Criminal Organizations" (E.O. 13581), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the YAMAGUCHI-GUMI. Also designated pursuant to section 1(a)(ii)(C) of E.O. 13581 for having acted or purported to act for or on behalf of, directly or indirectly, the YAMAGUCHI-GUMI.

3. TAKAGI, Yasuo (Japanese: 高木康男), 1-20-7 Yagusu, Yaizu-shi, Shizuoka-ken, Japan (Japanese: 八楠一丁目２０番の７, 焼津市, 静岡県, Japan); 138-9 Ibara-cho Shimizu-ku, Shizuoka-shi 424-0114, Japan; DOB 30 Jan 1948; Gender Male (individual) [TCO] (Linked To: YAMAGUCHI-GUMI).

Designated pursuant to section 1(a)(ii)(B) of Executive Order 13581 of July 24, 2011, "Blocking Property of Transnational Criminal Organizations" (E.O. 13581), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the YAMAGUCHI-GUMI. Also designated pursuant to section 1(a)(ii)(C) of E.O. 13581 for having acted or purported to act for or on behalf of, directly or indirectly, the YAMAGUCHI-GUMI.

4. MITSUYASU, Katsuaki (Japanese: 光安克明), 3-6-26 Shinohara Nakamachi, Nada-ku, Kobe, Hyogo, Japan (Japanese: 灘区篠原中町三丁目６番２６号, 神戸市, 兵庫県, Japan); 5-22-36 Hakataekiminami Hakata-ku, Fukuoka-shi 812-0016, Japan; DOB 29 Nov 1959; Gender Male (individual) [TCO] (Linked To: YAMAGUCHI-GUMI).

Designated pursuant to section 1(a)(ii)(B) of Executive Order 13581 of July 24, 2011, "Blocking Property of Transnational Criminal Organizations" (E.O. 13581), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the YAMAGUCHI-GUMI. Also designated pursuant to section 1(a)(ii)(C) of E.O. 13581 for having acted or purported to act for or on behalf of, directly or indirectly, the YAMAGUCHI-GUMI.

Entities:

1. YAMAKI, K.K. (Japanese: 株式会社山輝) (a.k.a. KK YAMATERU), 5-10-11, Shinohara Nakamachi, Nada-ku, Kobe, Hyogo 657-0066, Japan (Japanese: 灘区篠原中町五丁目１０番１１号, 神戸市, 兵庫県 657-0066, Japan); Company Number 1400-01-004182 (Japan) [TCO] (Linked To: YAMAGUCHI-GUMI; Linked To: MORIO, Utao; Linked To: TSUDA, Chikara).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13581 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the YAMAGUCHI-GUMI and for being owned or controlled by Utao MORIO and Chikara TSUDA.

2. TOYO SHINYO JITSUGYO K.K. (Japanese: 東洋信用実業株式会社), 5-10-11, Shinohara Nakamachi, Nada-ku, Kobe, Hyogo, Japan (Japanese: 灘区篠原中町五丁目１０番１１号, 神戸市, 兵庫県, Japan); Company Number 1400-01-025616 (Japan) [TCO] (Linked To: YAMAGUCHI-GUMI; Linked To: TAKAGI, Yasuo).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13581 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the YAMAGUCHI-GUMI and for being owned or controlled by Yasuo TAKAGI.

Dated: October 2, 2018.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2018–21738 Filed 10–4–18; 8:45 am]

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Part II

Environmental Protection Agency

Response to Clean Air Act Section 126(b) Petitions From Delaware and Maryland; Notice

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2018–0295; FRL–9984–32–OAR]

RIN 2060–AT40, 2060–AT39, 2060–AT38, 2060–AT37, 2060–AT36

Response to Clean Air Act Section 126(b) Petitions From Delaware and Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action on petition.

SUMMARY: The Environmental Protection Agency (EPA) is denying four petitions submitted by the state of Delaware and one petition submitted by the state of Maryland under Clean Air Act (CAA or Act) section 126(b). The petitions were submitted between July and November 2016. Each of Delaware's four petitions requested that the EPA make a finding that emissions from individual sources in Pennsylvania or West Virginia are significantly contributing to Delaware's nonattainment of the 2008 and 2015 8-hour ozone national ambient air quality standards (NAAQS). Maryland's petition requested that the EPA make a finding that emissions from 36 electric generating units in Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia are significantly contributing to ozone levels that exceed the 2008 8-hour ozone NAAQS in Maryland, and, therefore, are interfering with nonattainment and maintenance of the 2008 ozone NAAQS. The EPA is denying the petitions based on the best information available to the agency at this time, and particularly in light of an existing regulation already addressing emissions from these facilities: The Cross-State Air Pollution Rule Update for the 2008 ozone NAAQS (CSAPR Update). The EPA's denial finds that Delaware has not demonstrated that the named sources emit or would emit in violation of the CAA's ''good neighbor'' provision. Further, the agency's independent analysis indicates that the identified sources in Delaware's and Maryland's petitions do not currently emit and are not expected to emit pollution in violation of the good neighbor provision for either the 2008 or 2015 ozone NAAQS.

DATES: This final action is effective on October 5, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0295. All documents in the docket are listed and publicly available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in the docket or in hard copy at the EPA Docket Center, William Jefferson Clinton (WJC) West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC. 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 Office of Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Questions concerning this final action should be directed to Mr. Lev Gabrilovich, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539–01, Research Triangle Park, NC 27711, telephone (919) 541–1496; email at *gabrilovich.lev@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this document is organized as follows:

I. Executive Summary of the EPA's Decision on CAA Section 126(b) Petitions From Delaware and Maryland

In 2016, the states of Delaware and Maryland submitted a total of five petitions requesting that the EPA make findings pursuant to CAA section 126(b) that emissions from numerous upwind sources significantly contribute to nonattainment and/or interfere with maintenance of the ozone NAAQS in violation of CAA section 110(a)(2)(D)(i)(I), otherwise known as the ''good neighbor'' provision. Delaware submitted four petitions, each alleging good neighbor violations by individual sources located in Pennsylvania or West Virginia with respect to the 2008 and 2015 ozone NAAQS. Maryland submitted a single petition alleging good neighbor violations by 36 electric generating units (EGUs) in five states with respect to the 2008 ozone NAAQS. On May 31, 2018, the EPA issued a proposal to deny all five CAA section 126(b) petitions. 83 FR 26666 (June 8, 2018). The agency solicited comments on the proposal and hosted a public hearing on June 22, 2018, where nine speakers testified. The EPA also received 117 written comments submitted to the docket on the proposed denial. This **Federal Register** notice addresses certain significant comments the agency received. The remaining comments are addressed in the Response to Comments (RTC) document available in the docket for this action.

As described in further detail in this notice, the EPA is finalizing the denial of the CAA section 126(b) petitions submitted by the states of Delaware and Maryland. Generally, the Delaware and Maryland petitions (and commenters who were supportive of the EPA's granting these petitions) suggest that Delaware and Maryland residents are exposed to unhealthy levels of ground-level ozone pollution. They identify certain EGUs in upwind states, most with post-combustion nitrogen oxides (NO_X) controls,[1] that historically were not optimally operating for pollution abatement. The petitions ask EPA to impose federally enforceable short-term, rate-based emissions limits on these EGUs to ensure that the NO_X controls are optimally operated. The EPA proposed to deny these petitions in May of 2018, and has considered public

[1] In the case of one facility, Brunner Island Steam Generating Station in Pennsylvania, Delaware cites, the facility's ability to combust natural gas in electricity generation and thereby reduce NO_X relative to combusting coal at the facility.

comments on that proposal in crafting this final action.

Consistent with the EPA's proposal and based on the best data available to the agency at this time, the agency is finalizing its denial of these petitions. The EPA's denial for Delaware is based on its findings that air quality modeling of ozone levels in 2017 from the Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS [2] (CSAPR Update) and more recent air quality modeling of ozone levels in 2023 show no air quality problems in the state with regard to the 2008 and 2015 ozone NAAQS, respectively. For both the Delaware and Maryland petitions, the EPA's denial is also based on the fact that the agency has already evaluated the ozone transport issues and NO_X control strategies raised in the petitions and finalized the CSAPR Update to implement the NO_X control strategies achievable in states upwind of Delaware and Maryland, including at the specific EGUs named in both Delaware's and Maryland's petitions. 81 FR 74504. Although the CSAPR Update only explicitly addressed the 2008 ozone NAAQS, the EPA's conclusion in that action as to the control strategies available at the named sources is relevant to its analysis of Delaware's and Maryland's petitions with regard to both the 2008 ozone NAAQS (addressed in all five petitions) and the 2015 ozone NAAQS (addressed in the Delaware petitions) because the EPA's determination that the cost-effective control strategy is already being implemented at the named sources in the context of the CSAPR allowance trading program applies regardless of which NAAQS is being addressed, as explained below.

Because the CSAPR Update is a final rule in which the EPA has evaluated substantially the same environmental issues and concerns as those that Delaware and Maryland raise in their CAA section 126(b) petitions, the agency has reviewed those petitions in light of, among other factors, the CSAPR Update record analysis and the findings made therein. In doing so, the EPA found that the named EGUs do not have further cost-effective [3] NO_X reduction potential beyond the level of NO_X control stringency already finalized in the CSAPR Update emissions budgets. In other words, the agency determines that the CSAPR Update appropriately quantified the cost-effective NO_X reduction potential from the EGUs named in the CAA section 126(b) petitions and the EPA does not find any further NO_X reductions that may be available from these EGUs at more stringent levels of NO_X control to be cost effective considering additional relevant factors such as NO_X reduction potential and air quality impacts.

Further, the EPA finds that the CSAPR Update is, in fact, controlling emissions from the named EGUs specifically and from all EGUs collectively in the named upwind states that impact ozone concentrations in Delaware and Maryland. Based on the 2017 ozone season emissions data, the CSAPR Update reduced regional ozone season NO_X emissions by approximately 77,000 tons (21 percent) from 2016 levels. Additionally, the average 2017 ozone season NO_X emissions rate across the EGUs named in the Delaware or Maryland petitions was 0.116 pounds/one million British thermal units (lbs/mmBtu) compared with average rates of 0.257 and 0.208 lbs/mmBtu in 2015 and 2016, respectively. Thus, the best data that the agency has available at this time—2017 emissions data—indicate that the CSAPR Update ozone season allowance trading program is reducing summer-time NO_X emissions and these data suggest that the units named in the CAA section 126(b) petitions are collectively controlling their NO_X emissions consistent with the NO_X control strategies identified in the petitions.

The agency does not at this time find adequate technical or legal grounds for granting the Delaware or Maryland CAA section 126(b) petitions in light of the existing and effective CSAPR Update regulation. The agency, therefore, denies these petitions due to the lack of further cost-effective controls relative to the emissions reductions already required by the CSAPR Update and based on the best available information—2017 emissions data—indicating that the CSAPR Update is being appropriately implemented to reduce NO_X emissions regionally and from the named EGUs. The EPA also notes several technical deficiencies in the Delaware analyses. As further described in this notice, the EPA is, therefore, denying Delaware's petitions based on the petitioner's failure to meet its burden under CAA section 126(b) to establish a basis for the finding requested. The EPA additionally is denying both Delaware's and Maryland's petitions based on the agency's own independent analysis of the interstate transport of ozone pollution conducted for the CSAPR Update, which rebuts several assertions in these petitions, as well as additional technical analysis regarding current unit operations. Finally, the EPA is also denying Delaware's petitions for the 2015 ozone NAAQS based on its own recent analyses projecting emissions levels to a relevant future year, which found no expected nonattainment or maintenance problems in Delaware for that NAAQS. In making this final decision, the EPA reviewed the incoming petitions, the public comments received, the relevant statutory authorities, and other relevant materials. Accordingly, the EPA denies the CAA section 126(b) petitions from Delaware and Maryland.

The remainder of this notice is organized as follows: Section II of this notice provides background information, a summary of the relevant issues raised in Delaware's and Maryland's CAA section 126(b) petitions, and a summary of the EPA's May 31, 2018, proposed action; Section III of this notice provides information regarding the EPA's approach to addressing the interstate transport of ozone and the statutory authority under CAA sections 110(a)(2)(D)(i) and 126(b); and Section IV of this notice details the basis for the EPA's final action to deny these petitions, including responses to significant comments received on the proposal.

II. Background

A. Ozone and Public Health

Ground-level ozone is not emitted directly into the air but is a secondary air pollutant created by chemical reactions between NO_X and volatile organic compounds (VOCs) in the presence of sunlight. These precursor emissions can be transported downwind directly or, after transformation in the atmosphere, as ozone. As a result, ozone formation, atmospheric residence, and transport can occur on a regional scale (*i.e.,* hundreds of miles). For further discussion of ozone-formation chemistry, the regional nature of interstate transport of ozone pollution, and health effects, *see* the CSAPR Update, 81 FR 74513–14.

[2] 81 FR 74504 (October 26, 2016).

[3] In the CSAPR Update, the EPA evaluated several levels of EGU NO_X control stringency and represented those levels using an estimated marginal cost per ton of NO_X reduced. The final CSAPR Update action selected the level of control stringency that included operating and optimizing existing SCR post-combustion controls, installing state-of-the-art NO_X combustion controls, and shifting generation to existing units with lower NO_X emission rates within the same state. This level of NO_X control stringency was represented by a marginal cost of $1,400 per ton. In other words, the agency considered these NO_X reduction strategies to be cost effective at marginal cost of $1,400 per ton. The EPA selected this level of control stringency by applying a multi-factor test, which indicated that this level of control stringency maximized NO_X reductions and air quality improvement relative to cost, as compared to the other control levels evaluated.

On March 12, 2008, the EPA promulgated a revision to the ozone NAAQS, lowering both the primary and secondary standards to 75 parts per billion (ppb).[4] On October 1, 2015, the EPA further revised the ground-level ozone NAAQS to 70 ppb.[5]

B. The CAA Section 126(b) Petitions From Delaware

In 2016, the state of Delaware, through the Delaware Department of Natural Resources and Environmental Control (Delaware), submitted four petitions alleging that emissions from the Conemaugh Generating Station (Conemaugh), the Homer City Generating Station (Homer City), and the Brunner Island Steam Generating Station (Brunner Island) in Pennsylvania, and the Harrison Power Station (Harrison) in West Virginia, significantly contribute to exceedances of the 2008 and 2015 8-hour ozone NAAQS in the state of Delaware.[6]

The petitions identify a total of 59 exceedance days in Delaware for the 2008 ozone NAAQS in the six ozone seasons between 2010 and 2015. Furthermore, Delaware contends that if the 2015 8-hour ozone NAAQS had been in effect during this period, Delaware would have experienced a total of 113 exceedance days in those ozone seasons. As discussed in Section III.D of the proposal, each of the Delaware petitions alleges that an individual source significantly contributes to nonattainment of the 2008 and 2015 8-hour ozone NAAQS in Delaware based on two common arguments. First, all four petitions allege that the EPA's modeling conducted in support of the CSAPR Update shows that the states in which these sources are located contribute one percent or more of the 2008 8-hour ozone NAAQS to ozone concentrations in Delaware. Second, all four petitions point to additional modeling to support these same claims. The Brunner Island and Harrison petitions cite an August 6, 2015 technical memorandum from Sonoma Technology, Inc. (STI), which describes contribution modeling results. The Conemaugh and Homer City petitions cite to October 24, 2016 modeling documentation from the Comprehensive Air Quality Model with Extensions (CAMx), but Delaware did not submit this documentation with its petitions or otherwise provide it to the EPA. Based on the August 6, 2015 technical memorandum from STI and the October 24, 2016 CAMx modeling documentation, the petitions claim that all four named sources had modeled contributions above one percent of the 2008 8-hour ozone NAAQS to locations in Delaware on select days during the 2011 ozone season.[7]

All four petitions contend that the absence of short-term NO_X emissions limits cause the named sources to significantly contribute to Delaware's nonattainment of the 2008 and 2015 ozone NAAQS. The petitions ask the EPA to implement short-term NO_X emissions limits as a remedy under CAA section 126(c) to ensure optimal operation at these units. The petitions identify existing regulatory programs aimed at limiting NO_X emissions at the sources but argue that these programs are not effective at preventing emissions from significantly contributing to downwind air quality problems in Delaware. In the case of Brunner Island, Homer City, and Conemaugh, Delaware argues that the Pennsylvania regulations addressing the reasonable available control technology (RACT) requirements for NO_X [8] include a 30-day averaging period for determining compliance with emissions rates, which will allow the facilities to emit above the rate limit on specific days while still meeting the 30-day average limit. Furthermore, the state argues that, although all four facilities named in their petitions have been subject to several NO_X emissions allowance trading programs that effectively put a seasonal NO_X emissions mass cap on the fleet of subject units, the subject units are not required to limit their NO_X emissions over any particular portion of the ozone season as long as they are able to obtain sufficient NO_X allowances to cover each unit's actual ozone season NO_X mass emissions. The state alleges that the sources have, therefore, been able to comply with the allowance trading program requirements without having to make any significant reductions in their ozone season average NO_X emissions rates.

Notably, each of the facilities is equipped with combustion and/or post-combustion controls. Harrison is equipped with low NO_X burners (LNBs), overfire air (OFA), and selective catalytic reduction (SCR) for control of NO_X emissions at all three coal-fired units. Homer City is equipped with LNBs, OFA, and SCR for control of NO_X emissions at all three coal-fired units. Conemaugh is equipped with LNBs, close-coupled and separated overfire air (CC/SOFA), and SCR for control of NO_X emissions at both coal-fired units. Brunner Island is equipped with LNBs and combustion air controls and has the ability to burn coal, gas, or both to provide steam to its generators. Delaware acknowledges that Brunner Island can use natural gas as fuel at all three units, lowering the units' NO_X emissions, but argues that Brunner Island's ability to also use coal indicates that, without a short-term NO_X emissions limit, the units will continue to significantly contribute to nonattainment or interfere with maintenance of the ozone NAAQS in Delaware. In the case of Conemaugh, Harrison, and Homer City, Delaware similarly contends that current NO_X emissions regulations applicable to sources in Pennsylvania and West Virginia do not prevent significant contribution to Delaware's nonattainment of the ozone NAAQS. As indicated in this notice, these EGUs all have SCR to control NO_X emissions. Delaware argues that a review of emissions rates since the SCRs were installed indicates that the SCRs were at times turned off or operated at reduced levels of effectiveness in the ozone season. Thus, in Delaware's view, these sources also need a short-term NO_X emissions limit to implement effective and consistent NO_X control operation. For more information on the sources identified in the petitions, *see* Sections III.D and III.E of the proposal.

Subsequent to receiving the petitions, the EPA published notices extending the statutory deadline for the agency to take final action on all four of Delaware's CAA section 126(b) petitions. CAA section 126(b) of the Act requires the EPA to either make a finding or deny a petition within 60 days of receipt of the petition and after holding a public hearing. However, any action taken by the EPA under CAA section 126(b) is subject to the procedural requirements of CAA section 307(d). *See* CAA section 307(d)(1)(N). CAA section 307(d) requires the EPA to conduct notice-and-comment rulemaking, including issuance of a notice of proposed action, a period for public comment, and a public hearing before making a final determination whether to make the requested finding. In light of the time required for notice-and-comment rulemaking, CAA section 307(d)(10) provides for a time extension,

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

[5] *See* National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015).

[6] *See* Petitions from the state of Delaware under CAA section 126(b) requesting that the EPA find that Conemaugh, Homer City, Brunner Island, and Harrison are emitting air pollutants in violation of the provisions of CAA section 110(a)(2)(D)(i) of the CAA with respect to the 2008 and the 2015 ozone NAAQS, available in the docket for this action.

[7] *See* 83 FR 26670.

[8] *Additional RACT Requirements for Major Sources of NO_X and VOC*; 25 Pa Code 129.96–100 (also known as the ''RACT II rule'').

under certain circumstances, for rulemakings subject to the CAA section 307(d) procedural requirements. In accordance with CAA section 307(d)(10), the EPA determined that the 60-day period for action on Delaware's petitions would be insufficient for the EPA to complete the necessary technical review, develop an adequate proposal, and allow time for notice and comment, including an opportunity for public hearing. In 2016, the EPA published notices extending the deadlines to act on all four of Delaware's petitions by 6 months. The notices extending these deadlines can be found in the docket for this rulemaking.

C. The CAA Section 126(b) Petition From Maryland

On November 16, 2016, the state of Maryland, through the Maryland Department of the Environment, submitted a CAA section 126(b) petition alleging that emissions from 36 EGUs significantly contribute to ozone levels that exceed the 2008 ozone NAAQS in Maryland and, therefore, significantly contribute to nonattainment and interfere with maintenance of the NAAQS.[9] These sources are coal-fired EGUs located in Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia, which Maryland notes are states that EPA has already determined are significantly contributing to nonattainment in Maryland under the 2008 ozone NAAQS. Maryland indicates that all of these sources have SCR or selective non-catalytic reduction (SNCR) to control NO_X emissions. In addition, Maryland's technical support document discusses modeling conducted by the University of Maryland, which claims to show that ozone concentrations would be reduced if these EGUs were to optimize running their SCR and SNCR controls. Maryland argues that these projected reductions in ozone concentrations at Maryland monitors demonstrate that optimizing the post-combustion controls at the 36 units with SCR or SNCR would allow Maryland to attain, or come very close to attaining, the 2008 8-hour ozone NAAQS. Maryland also provides the results of control optimization modeling scenarios which project the ozone impacts of optimizing emissions controls in 2018. Maryland suggests, by way of using its own state regulation as an example, that optimizing controls means operating controls consistent with technological limitations, manufacturers' specifications, good engineering and maintenance practices, and good air pollution control practices for minimizing emissions.

The petition further alleges that Maryland's proposed remedy—discussed further below—will influence how areas in Maryland and other Mid-Atlantic states are designated under the new 2015 ozone NAAQS. According to Maryland, the proposed remedy, if implemented in 2017, would most likely allow the Baltimore area and the Washington, DC, multi-state area, which includes portions of Maryland, to both be designated attainment for the 2015 ozone NAAQS.

Maryland alleges that, although the 36 named EGUs have existing post-combustion control mechanisms that should prevent significant contribution, the facilities have either ceased to operate the controls regularly during the ozone season or have chosen to operate them in a sub-optimal manner. Maryland presents an analysis based on 2005–2015 ozone-season data to support this contention.[10] Maryland argues that whether controls are optimally run can be determined by comparing current ozone season average emissions rates to the lowest ozone season average emissions rate achieved either after 2005 or after the unit installed SCR or SNCR, whichever is later. Maryland further alleges that NO_X emissions rates at the 36 EGUs have increased significantly since the SCR and SNCR installation and initial testing, indicating that these EGUs are not operating their post-combustion controls efficiently on each day of the ozone season.

Maryland also submitted a number of technical memoranda to support its argument. Maryland submitted analyses of control technology optimization for coal-fired EGUs in eastern states, which they contend demonstrate that NO_X emissions rates at specific EGUs are well above what is considered representative of an EGU running post-combustion controls efficiently; that 2015 and 2016 EPA data show that many EGUs have not been running their post combustion controls as efficiently as they have in the past during the ozone season; and that the EPA should, therefore, ensure these controls are operating during the 2017 ozone season by including requirements that each named EGU to minimize emissions by optimizing existing control technologies, enforced through use of a 30-day rolling average rate.[11]

Maryland also submitted the following documents: A review of its own NO_X regulations for coal fired EGUs;[12] a study conducted by Maryland and the University of Maryland regarding regional ozone transport research and analysis efforts in Maryland;[13] an August 6, 2015 STI report alleging that source apportionment modeling indicates that emissions from Brunner Island (a source not specifically addressed in Maryland's petition) contribute significantly to ozone formation in Pennsylvania and neighboring states during the modeled ozone season;[14] a list of recommended language for the EPA to include in federal orders related to the named EGUs to remedy significant contribution;[15] and an evaluation of cost savings Maryland alleges the units have incurred in 2014 by not fully running their controls compared with the cost of running their controls at full efficiency.[16]

Maryland supplemented its petition with several further appendices submitted in 2017. Maryland submitted an additional optimization analysis comparing NO_X emissions rates in 2006, 2015, and 2016 for EGUs listed in its petition;[17] an analysis comparing 2016 ozone season average emissions rates to the lowest demonstrated ozone season average emissions rates between 2005 and 2015 at 369 coal-fired EGUs in 29 states identified as the Eastern Modeling Domain;[18] an analysis comparing of average emissions data at 21 units in Pennsylvania in the first quarter of 2017 to the lowest demonstrated ozone season average emissions rate between 2005–2016;[19] and additional photochemical modeling conducted by the University of Maryland regarding the impact of the 36 named EGUs in the five upwind states on ozone concentrations in Maryland, which concludes that emissions from these units significantly contribute to ozone concentrations in Maryland and, therefore, contribute to nonattainment and interfere with the maintenance of the 8-hour ozone NAAQS.[20]

Maryland's petition requests a remedy that will compel the named EGUs to

[9] *See* Petition to the United States Environmental Protection Agency Pursuant to Section 126 of the Clean Air Act for Abatement of Emissions from 36 Coal-Fired Electric Generating Units at 19 Plants in Five States that Significantly Contribute to Nonattainment of, and Interfere with Maintenance of, the 2008 Ozone National Ambient Air Quality Standard in the State of Maryland, available in the docket for this action.

[10] Maryland Petition, Appendix A, Part 2, available in the docket for this action.

[11] *See id.*

[12] *Id.* Appendix B.

[13] *Id.* Appendix C.

[14] *Id.* Appendix D.

[15] *Id.* Appendix E.

[16] *Id.* Appendix F.

[17] *Id.* Supplemental Appendix A.

[18] *Id.* Supplemental Appendix B.

[19] *Id.* Supplemental Appendix C.

[20] *Id.* Supplemental Appendix D.

optimize their SCR and SNCR. Maryland indicates that its petition is focused on ensuring controls are run at the units every day of the ozone season. According to Maryland, the CSAPR Update, earlier federal allowance trading programs, and many state regulations allow for longer compliance periods, which means that controls do not necessarily need to be run effectively every day to comply with these requirements. Maryland claims that this has resulted in situations where sources in the five upwind states have not run their controls efficiently on many days with high ozone, and, therefore, these sources are impacting Maryland in violation of CAA section 110(a)(2)(D)(i)(I). Maryland also claims that, on some of those days, the 36 EGUs in these states emitted in the aggregate over 300 more tons of NO_X than they would have if they had run their control technologies efficiently. Additionally, Maryland states that these days are often the same days where downwind ozone levels are likely to be highest because of hot, ozone-conducive weather. Maryland supports its claim by alleging that over the entire ozone season, the relief requested in its petition could result in very large reductions. Maryland contends that in 2015, approximately 39,000 tons of NO_X reductions could have been achieved in the ozone season if the 36 EGUs had simply run their controls efficiently. Therefore, Maryland states that, based on the EPA's past approaches to establishing significant contributions based on cost-effective controls, the NO_X emissions from these 36 EGUs must be abated on each day of the ozone season starting in May of 2017.

Maryland contends that emissions at the 36 named EGUs can be reduced at reasonable cost, or with potentially no actual new costs to the EGUs at all,[21] because this requested remedy rests on the use of existing control equipment. Maryland suggests two methods to ensure optimized use of controls at these sources. First, Maryland requests that the EPA include language in federal and state regulations or operating permits requiring the owners or operators of the relevant EGUs to use all installed pollution control technology consistent with technological limitations, manufacturers' specifications, good engineering and maintenance practices, and good air pollution control practices. Second, Maryland requests that the EPA enforce this requirement by comparing each unit's maximum 30-day rolling average emissions rate to the unit's lowest reported ozone emissions rate. Maryland also requests that this remedy be implemented by 2017 to help areas in Maryland achieve attainment in time to inform area designations in the state for the 2015 ozone NAAQS.

Consistent with CAA section 307(d), as discussed in Section III.D of the proposal, the EPA determined that the 60-day period for responding to Maryland's petition is insufficient for the EPA to complete the necessary technical review, develop an adequate proposal, and allow time for notice and comment, including an opportunity for public hearing, on a proposed finding regarding whether the 36 EGUs identified in the petition significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in Maryland. On January 3, 2017, the EPA published a notice extending the deadline for acting on Maryland's CAA section 126(b) petition to July 15, 2017.[22]

D. Summary of the EPA's May 31, 2018, Proposal

In Section IV of the proposal, the EPA explained its bases for proposing to deny the CAA section 126(b) petitions from Delaware and Maryland. Given that ozone is a regional pollutant and that the EPA had recently evaluated regional ozone pollution in the CSAPR Update, the EPA proposed to evaluate the petition consistent with the same four-step regional analytic framework—described in more detail in the following section—that the EPA has used in previous regulatory actions to evaluate regional interstate ozone transport. Within this framework, the EPA also proposed to evaluate whether the sources named in the petitions emit or would emit in violation of the good neighbor provision based on both current and future anticipated emissions levels. The EPA identified multiple bases for the proposed denial.

The EPA noted that the agency's historical approach to evaluating CAA section 126(b) petitions looks first to see whether a petition, standing alone, identifies or establishes a technical basis for the requested CAA section 126(b) finding. 83 FR 26674. In this regard, the agency proposed to find that several aspects of Delaware's analyses are insufficient to support Delaware's conclusion that the four sources named in the petitions emit or would emit in violation of the good neighbor provision. First, the EPA proposed to find that Delaware does not provide sufficient information to indicate that there is a current or expected future downwind air quality problem in the state with respect to either the 2008 and 2015 ozone NAAQS. *Id.* at 26676. Second, the EPA proposed to find that the emissions information Delaware relies upon for its air quality modeling is not representative of current or future projected emissions levels at the named EGUs. *Id.* Third, the EPA proposed to find that Delaware's analyses regarding ozone contributions to modeled and/or measured ozone levels are unclear and, therefore, insufficient to support Delaware's position that the named sources are significantly contributing to nonattainment or interfering with maintenance of the NAAQS on specific days. *Id.* The EPA also proposed to find that material elements of the analysis provided in Maryland's petition are technically deficient. *Id.* at 26677.

The EPA further proposed to rely on its own independent analysis to evaluate the requested CAA section 126(b) findings. *Id.* First, the EPA proposed to find that its independent analysis provides no basis to conclude that any of the sources named by Delaware are linked to a downwind air quality problem with regard to the 2008 ozone NAAQS in steps one and two of the four-step framework. The EPA explained that, based on the modeling conducted in support of the CSAPR Update, Delaware was not projected to have any nonattainment or maintenance receptors in 2017 with respect to the 2008 ozone NAAQS, and, therefore, the states named in Delaware's petitions are not linked to a downwind air quality problem in the state under that standard. *Id.* at 26678. Furthermore, both to confirm the projections in the CSAPR Update modeling and in response to the petition's assertion that current air quality data show that Delaware has a downwind problem for the 2008 ozone NAAQS, the EPA examined Delaware's 2014–2016 design values and found that no monitors were violating the 2008 ozone NAAQS. *Id.* The EPA also proposed to find that available future year modeling data do not suggest that Delaware will have air quality problems by the relevant attainment date for the 2015 ozone NAAQS.

Second, the EPA evaluated whether there are further cost-effective NO_X emissions reductions available at the specific sources named in the petitions,

[21] Although Maryland suggests emissions could potentially be reduced with no actual new costs to the EGUs, Maryland does not provide further information supporting its suggestion that zero-cost reductions may be available. To the contrary, Maryland states that the cost per ton range would be from $670 to $1,000, depending on whether the SCR systems are in partial operation or totally idled. *See* Maryland Petition Appendix F, available in the docket for this action.

[22] 82 FR 22 (January 3, 2017).

consistent with step three of the four-step framework. For units in the Delaware and Maryland petitions already equipped with SCRs, the EPA proposed to determine that the CSAPR Update emissions budgets already reflect emissions reductions associated with the turning on and optimizing of existing SCR controls at the EGUs that are the subject of the petitions for the 2008 ozone NAAQS, which is the same control strategy identified in the petitions as being both feasible and cost effective. *Id.* at 26679. Therefore, the EPA proposed to determine that all identified cost-effective emission reductions have already been implemented with respect to these sources, and therefore that those sources neither emit nor would emit in violation of the good neighbor provision for the 2008 NAAQS. The EPA proposed to determine that this conclusion is also appropriate with regard to the 2015 ozone NAAQS for those sources addressed in the Delaware petitions because the EPA's determination that the cost-effective control strategy is already being implemented applies regardless of which NAAQS is being addressed. In other words, because the strategy of optimizing existing controls relative to the 2008 ozone NAAQS has already been implemented via the CSAPR Update for the sources Delaware named for the 2015 NAAQS, the EPA proposed there are no additional control strategies available to further reduce NO_X emissions at these sources to address this standard. *Id.*

To the extent that the Delaware and Maryland petitions also identify sources without SCR, the EPA also proposed to deny the petitions. Maryland cited two sources operating selective non-catalytic reduction post-combustion controls (SNCR). The EPA proposed to deny Maryland's petition with respect to these sources based on its conclusion in the CSAPR Update that fully operating with SNCR is not a cost-effective NO_X emission reduction strategy with respect to addressing transport obligations for the 2008 ozone NAAQS. The EPA, therefore, proposed to find that these sources do not emit and would not emit in violation of the good neighbor provision with respect to the 2008 ozone NAAQS. Additionally, one of Delaware's petitions alleges significant contribution from the Brunner Island facility, which currently has neither SCR nor SNCR installed. The EPA proposed to determine that an independent step three analysis still provides a basis for denying Delaware's Brunner Island petition. The EPA explained that the facility primarily burned natural gas with a low NO_X emission rate in the 2017 ozone season and that the EPA reasonably expects the facility to continue operating primarily by burning natural gas in future ozone seasons. *Id.* at 26680. As such, the EPA proposed to deny the Brunner Island petition because the agency found that there are no additional feasible and cost-effective NO_X emission reductions available at Brunner Island.

E. Historical Regional Analyses of Good Neighbor Obligations Related to Ozone

As explained in the proposal, given that formation, atmospheric residence, and transport of ozone occur on a regional scale (*i.e.,* hundreds of miles) over much of the eastern United States, the states and the EPA have historically addressed interstate transport of ozone pursuant to the good neighbor provision through a series of regional rulemakings focused on the reduction of NO_X emissions. These rulemakings have included findings that downwind states' problems attaining and maintaining the ozone NAAQS result, in part, from the contribution of pollution from multiple upwind sources located in different upwind states. Specifically, to support each historical action, an evaluation of the extent of the ozone transport problem (*i.e.,* the breadth of downwind ozone problems and the contributions from upwind states) was performed. Historically, these assessments have found interstate ozone transport to be an interconnected system of upwind and downwind ozone transport such that a regional trading program would be effective at implementing the CAA's good neighbor requirements.[23]

1. Description of the Four-Step Transport Framework

The EPA has promulgated several transport rulemakings that have addressed the good neighbor provision, including four addressing interstate transport with respect to various ozone NAAQS. Each of these rulemakings essentially followed the same four-step transport framework to quantify and implement emission reductions necessary to address the interstate transport requirements of the good neighbor provision. These steps are:

(1) Identifying downwind air quality problems relative to the NAAQS. The EPA has identified downwind areas with air quality problems (referred to as ''receptors'') considering monitored air quality data, where appropriate, and air quality modeling projections to a future compliance year. The EPA has focused its analysis on a future year in light of the forward-looking nature of the good neighbor obligation in CAA section 110(a)(2)(D)(i)(I). Specifically, the statute requires that states prohibit emissions that ''will'' significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state. The EPA has reasonably interpreted this language as permitting states and the EPA in implementing the good neighbor provision to prospectively evaluate downwind air quality problems and the need for further upwind emissions reductions. *See North Carolina* v. *EPA,* 531 F.3d 896, 913–14 (D.C. Cir. 2008) (affirming as reasonable the EPA's interpretation of ''will'' to refer to future, projected ozone concentrations). The agency has thus identified areas expected to be in nonattainment with the NAAQS and those areas that may struggle to maintain the NAAQS;

(2) Determining which upwind states are linked to these identified downwind air quality problems and warrant further analysis to determine whether their emissions violate the good neighbor provision. In the EPA's most recent transport rulemakings for the 2008 ozone NAAQS, the agency identified such upwind states to be those modeled to contribute at or above a threshold equivalent to one percent of the applicable NAAQS;

(3) For upwind states linked to downwind air quality problems, identifying on a statewide basis emissions (if any) that will significantly contribute to nonattainment or interfere with maintenance of a standard, based on cost and air quality factors evaluated in a multi-factor test. In all four of the EPA's prior rulemakings for ozone, the agency apportioned emission reduction responsibility among multiple upwind states linked to downwind air quality problems using several particular cost- and air quality-based factors to quantify the reduction in a linked upwind state's emissions that the rulemaking would require pursuant to the good neighbor provision; and

(4) For states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, implementing the necessary emission reductions within the state. When the EPA has promulgated federal implementation plans (FIPs) addressing the good neighbor provision for the ozone NAAQS in prior transport rulemakings, the EPA has typically required affected sources in upwind states to participate in allowance trading

[23] The Supreme Court has also concurred with the EPA's assessment regarding the complexity and interconnectivity underpinning ozone transport. *See EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584, 1593–94 (2014).

programs to achieve the necessary emission reductions.[24] In addition, the EPA has also offered states the opportunity to participate in similar EPA-operated allowance trading programs to achieve the necessary emission reductions through state implementation plans (SIPs).

2. Prior Regional Rulemakings Under the Good Neighbor Provision

The EPA's first regional rulemaking regarding interstate transport, the NO_X SIP Call, addressed the 1979 ozone NAAQS. 63 FR 57356 (October 27, 1998). The NO_X SIP Call was the result of the analytic work and recommendations of the Ozone Transport Assessment Group (OTAG), which was organized by and led by states in consultation with the EPA and other stakeholders. The EPA used this collaboratively developed analysis to conclude in the NO_X SIP Call that ''[t]he fact that virtually every nonattainment problem is caused by numerous sources over a wide geographic area is a factor suggesting that the solution to the problem is the implementation over a wide area of controls on many sources, each of which may have a small or unmeasurable ambient impact by itself.'' 63 FR 57356, 57377 (October 27, 1998). The NO_X SIP Call promulgated statewide emission budgets and required upwind states to adopt SIPs that would decrease their NO_X emissions by a sufficient amount to meet these budgets, thereby prohibiting the emissions that significantly contribute to nonattainment or interfere with maintenance of the ozone NAAQS in downwind states. The EPA also promulgated a model rule for a regional allowance trading program called the NO_X Budget Trading Program that states could adopt in their SIPs as a mechanism to achieve some or all of the required emission reductions. All of the jurisdictions covered by the NO_X SIP Call ultimately chose to adopt the NO_X Budget Trading Program into their SIPs. The NO_X SIP Call was upheld by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in all pertinent respects. *See Michigan* v. *EPA,* 213 F.3d 663 (2000).

In coordination with the NO_X SIP Call rulemaking under CAA section 110(a)(2)(D)(i)(I), the EPA also addressed several pending CAA section 126(b) petitions submitted by eight northeastern states regarding the same air quality issues addressed by the NO_X SIP Call (*i.e.,* interstate ozone transport for the 1979 ozone NAAQS). These CAA section 126(b) petitions asked the EPA to find that ozone emissions from numerous sources located in 22 states and the District of Columbia had adverse air quality impacts on the petitioning downwind states. Half of the petitioning states requested that the NO_X reductions to address regional interstate ozone pollution transport be implemented using an allowance trading program.[25] Based on analysis conducted for the NO_X SIP Call regarding upwind state impacts on downwind air quality, the EPA in May 1999 made technical determinations regarding the claims in the petitions, but did not at that time make the CAA section 126(b) findings requested by the petitions. 64 FR 28250 (May 25, 1999). In making these technical determinations, the EPA concluded that the NO_X SIP Call would fully address and remediate the claims raised in these petitions, and that the EPA would, therefore, not need to take separate action to remedy any potential violations of the CAA section 110(a)(2)(D)(i) prohibition. 64 FR 28252. However, subsequent litigation over the NO_X SIP Call led the EPA to ''de-link'' the CAA section 126(b) petition response from the NO_X SIP Call, and the EPA made final CAA section 126(b) findings for 12 states named in the petitions and the District of Columbia. The EPA found that sources in these states emitted in violation of the prohibition in the good neighbor provision with respect to the 1979 ozone NAAQS based on the affirmative technical determinations made in the May 1999 rulemaking. In order to remedy the violation under CAA section 126(c), the EPA required affected sources in the upwind states to participate in a regional allowance trading program whose requirements were designed to be interchangeable with the requirements of the optional NO_X Budget Trading Program model rule provided under the NO_X SIP Call. 65 FR 2674 (January 18, 2000). The EPA's action on these CAA section 126(b) petitions was upheld by the D.C. Circuit. *See Appalachian Power Co.* v. *EPA,* 249 F.3d 1032 (D.C. Cir. 2001).

The EPA next promulgated the Clean Air Interstate Rule (CAIR), 70 FR 25162 (May 12, 2005) to address interstate transport under the good neighbor provision with respect to the 1997 ozone NAAQS, as well as the 1997 fine particulate matter ($PM_{2.5}$) NAAQS. 70 FR 25172. The EPA adopted the same framework for quantifying the level of states' significant contribution to downwind nonattainment in CAIR as it used in the NO_X SIP Call, based on the determination in the NO_X SIP Call that downwind ozone nonattainment is due to the impact of emissions from numerous upwind sources and states. 70 FR 25162, 25172 (May 12, 2005). The EPA explained that ''[t]ypically, two or more States contribute transported pollution to a single downwind area, so that the 'collective contribution' is much larger than the contribution of any single State.'' 70 FR 25186. CAIR included two distinct regulatory processes: (1) A rulemaking to define significant contribution (*i.e.,* the emission reduction obligation) under the good neighbor provision and provide for submission of SIPs eliminating that contribution, 70 FR 25162 (May 12, 2005); and (2) a rulemaking to promulgate, where necessary, FIPs imposing emission limitations in the event states did not submit SIPs. 71 FR 25328 (April 28, 2006). The FIPs required EGUs in affected states to participate in regional allowance trading programs, which replaced the previous NO_X Budget Trading Program.

In conjunction with the second CAIR rulemaking, which promulgated backstop FIPs, the EPA acted on a CAA section 126(b) petition received from the state of North Carolina on March 19, 2004, seeking a finding that large EGUs located in 13 states were significantly contributing to nonattainment and/or interfering with maintenance of the 1997 ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS in North Carolina. Citing the analyses conducted to support the promulgation of CAIR, the EPA denied North Carolina's CAA section 126(b) petition in full based on determinations either that the named states were not adversely impacting downwind air quality in violation of the good neighbor provision, or that such impacts were fully remedied by implementation of the emission reductions required by the CAIR FIPs. 71 FR 25328, 25330 (April 28, 2006).

The D.C. Circuit found that EPA's approach to CAA section 110(a)(2)(D)(i)(I) in CAIR was ''fundamentally flawed'' in several respects, and the rule was remanded in July 2008 with the instruction that the EPA replace the rule ''from the ground up.'' *North Carolina,* 531 F.3d at 929.

[24] While the EPA has chosen to implement emission reductions through allowance trading programs for states found to have a downwind impact, upwind states can choose to submit a SIP that implements such reductions through other enforceable mechanisms that meets the requirements of the good neighbor provision, such as the enforceable mechanisms that petitioners apparently favor and argue for in their petition.

[25] Connecticut, Maine, New York, and Pennsylvania requested an allowance trading program to reduce NO_X emissions and remedy regional interstate ozone transport. 63 FR 56297.

The decision did not find fault with the EPA's general multi-step framework for addressing interstate ozone transport, but rather concluded the EPA's analysis and compliance mechanisms did not address all elements required by the statute. The EPA's separate action denying North Carolina's CAA section 126(b) petition was not challenged.

On August 8, 2011, the EPA promulgated CSAPR to replace CAIR. 76 FR 48208 (August 8, 2011). CSAPR addressed the same (1997) ozone and $PM_{2.5}$ NAAQS as CAIR and, in addition, addressed interstate transport for the 2006 $PM_{2.5}$ NAAQS by requiring 28 states to reduce sulfur dioxide (SO_2) emissions, annual NO_X emissions, and/or ozone season NO_X emissions that would significantly contribute to other states' nonattainment or interfere with other states' ability to maintain these air quality standards. Consistent with prior determinations made in the NO_X SIP Call and CAIR, the EPA again found that multiple upwind states contributed to downwind ozone nonattainment in multiple downwind states. Specifically, the EPA found ''that the total 'collective contribution' from upwind sources represents a large portion of $PM_{2.5}$ and ozone at downwind locations and that the total amount of transport is composed of the individual contribution from numerous upwind states.'' 76 FR 48237. Accordingly, the EPA conducted a regional analysis, calculated emission budgets for affected states, and required EGUs in these states to participate in new regional allowance trading programs to reduce statewide emission levels.[26] CSAPR was subject to nearly 4 years of litigation. Ultimately, the Supreme Court upheld the EPA's approach to calculating emission reduction obligations and apportioning upwind state responsibility under the good neighbor provision, but also held that the EPA was precluded from requiring more emission reductions than necessary to address downwind air quality problems, or ''over-controlling'' upwind state emissions. *See EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584, 1607–09 (2014) (*EME Homer City*).[27]

Most recently, the EPA promulgated the CSAPR Update to address the good neighbor provision requirements for the 2008 ozone NAAQS. 81 FR 74504 (October 26, 2016). The CSAPR Update built upon previous regulatory efforts in order to address the collective contributions of ozone pollution from 22 states in the eastern United States to widespread downwind air quality problems. As was also the case for the previous rulemakings, the EPA evaluated the nature (*i.e.,* breadth and interconnectedness) of the ozone problem and NO_X reduction potential from EGUs, including those sources named in the Delaware and Maryland CAA section 126(b) petitions. The CSAPR Update is described in more detail in Section IV.B of this final action.

In finalizing the CSAPR Update, the EPA found that it was at that time unable to determine whether the rule fully resolved good neighbor obligations for most of the states subject to that action, including those addressed in Delaware's and Maryland's petitions (Indiana, Kentucky, Ohio, Pennsylvania and West Virginia), and noted that, based on its analysis at that time, the emission reductions required by the rule ''may not be all that is needed'' to address transported emissions.[28] 81 FR 74521 through 74522. The EPA noted that the information available at that time suggested that downwind air quality problems would remain in 2017 after implementation of the CSAPR Update and that upwind states continued to be linked to those downwind problems at or above the one-percent threshold. However, in the CSAPR Update the EPA could not determine whether, in step three of the four-step framework, the EPA had quantified all emission reductions that may be considered cost effective because the rule did not evaluate non-EGU ozone season NO_X reductions and further EGU control strategies (*i.e.,* the implementation of new post-combustion controls) that were achievable on timeframes extending beyond the 2017 analytic year.

On July 10, 2018, the EPA proposed to find that, based on the latest available emissions inventory and air quality modeling data for a 2023 analytic year, the CSAPR Update fully addresses the good neighbor provision requirements for the 2008 ozone NAAQS for the 20 eastern states (among the 22) previously addressed in the CSAPR Update. 83 FR 31915. The EPA's proposed determination was premised on the finding that there would be no remaining nonattainment or maintenance receptors for the 2008 ozone NAAQS in the eastern U.S. in 2023. The proposed determination applied the four-step CSAPR framework but did not progress past step one since no air quality receptors were identified. Therefore, with the CSAPR Update fully implemented, the EPA has proposed to find that states are not expected to contribute significantly to nonattainment in, or interfere with maintenance by, any other state with regard to the 2008 ozone NAAQS. EPA is currently reviewing comments on the proposed rule and anticipates taking final action by December 2018. The remaining two states were determined to have no remaining good neighbor obligation for the 2008 ozone NAAQS in the CSAPR Update (Tennessee), 81 FR 74540 (October 26, 2016), and in a separate SIP approval (Kentucky), 81 FR 33730 (July 17, 2018).

III. CAA Sections 126 and 110 and Standard of Review for This Action

The following subsections describe both the statutory authority and the EPA's standard of review for the final action on Delaware's and Maryland's CAA section 126(b) petitions. Section III.A of this notice describes the EPA's authority and interpretation of key terms under both CAA sections 126 and 110(a)(2)(D)(i)(I), including the relationship between the good neighbor provision and CAA section 126(b). Section III.B of this notice describes the reasonableness of applying the four-step framework and certain prior findings under the CSAPR Update as the standard of review in evaluating Delaware's and Maryland's CAA section 126(b) petitions.

A. Statutory Authority Under CAA Sections 126 and 110(a)(2)(D)(i)(I)

The statutory authority for this action is provided by CAA sections 126 and 110(a)(2)(D)(i). Section 126(b) of the CAA provides that any state or political subdivision may petition the Administrator of the EPA to find that any major source or group of stationary sources in an upwind state emits or would emit any air pollutant in violation of the prohibition of CAA

[26] The CSAPR trading programs included assurance provisions to ensure that emissions are reduced within each individual state, in accordance with North Carolina, 531 F.3d at 907–08 (holding the EPA must actually require elimination of emissions from sources that contribute significantly to nonattainment and interfere with maintenance in downwind areas). Those provisions were also included in the CSAPR Update and went into effect with the 2017 CSAPR compliance periods.

[27] On remand from the Supreme Court, the D.C. Circuit further affirmed various aspects of the CSAPR, while remanding the rule without vacatur for reconsideration of certain states' emissions budgets where it found those budgets may over-control emissions beyond what was necessary to address the good neighbor requirements. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (2015) (*EME Homer City II*). The EPA addressed the remand in several rulemaking actions in 2016 and 2017.

[28] The EPA determined that the emission reductions required by the CSAPR Update satisfied the full scope of the good neighbor obligation for Tennessee with respect to the 2008 ozone NAAQS. 81 FR 74551–22.

section 110(a)(2)(D)(i).[29] Petitions submitted pursuant to this section are commonly referred to as CAA section 126(b) petitions. Similarly, findings by the Administrator, pursuant to this section, that a source or group of sources emits air pollutants in violation of the CAA section 110(a)(2)(D)(i) prohibition are commonly referred to as CAA section 126(b) findings.

CAA section 126(c) explains the effect of a CAA section 126(b) finding and establishes the conditions under which continued operation of a source subject to such a finding may be permitted. Specifically, CAA section 126(c) provides that it is a violation of section 126 of the Act and of the applicable SIP: (1) For any major proposed new or modified source subject to a CAA section 126(b) finding to be constructed or operate in violation of the prohibition of CAA section 110(a)(2)(D)(i); or (2) for any major existing source for which such a finding has been made to stay in operation more than 3 months after the date of the finding. The statute, however, also gives the Administrator discretion to permit the continued operation of a source beyond 3 months if the source complies with emission limitations and compliance schedules provided by the EPA to bring about compliance with the requirements contained in CAA sections 110(a)(2)(D)(i) and 126 as expeditiously as practicable, but in any event no later than 3 years from the date of the finding.

Section 110(a)(2)(D)(i) of the CAA, referred to as the good neighbor provision of the Act, requires states to prohibit certain emissions from in-state sources if such emissions impact the air quality in downwind states. Specifically, CAA sections 110(a)(1) and 110(a)(2)(D)(i)(I) require all states, within 3 years of promulgation of a new or revised NAAQS, to submit SIPs that contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to that NAAQS. As described in the prior section, the EPA has developed a number of regional rulemakings to address CAA section 110(a)(2)(D)(i)(I) for the various ozone NAAQS. Notably, the EPA's most recent rulemaking, the CSAPR Update, was promulgated to address interstate transport under section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS and required implementation of specific emission budgets starting in 2017. 81 FR 74504.

The EPA's historical approach to evaluating CAA section 126(b) petitions evaluates whether a petition establishes a sufficient basis for the requested CAA section 126(b) finding. *See, e.g.,* 76 FR 19662, 19666 (April 7, 2011) (proposed response to petition from New Jersey regarding SO_2 emissions from the Portland Generating Station); 83 FR 16064, 16070 (April 13, 2018) (final response to petition from Connecticut regarding ozone emissions from Brunner Island). The EPA first evaluates the technical analysis in the petition to see if that analysis, standing alone, is sufficient to support a CAA section 126(b) finding. The EPA focuses on the analysis in the petition because the statute does not require the EPA to conduct an independent technical analysis to evaluate claims made in CAA section 126(b) petitions. The petitioner, thus, bears the burden of establishing, as an initial matter, a technical basis for the specific finding requested. The EPA has no obligation to prepare an analysis to supplement a petition that fails, on its face, to include an initial technical demonstration. Such a petition, or a petition that fails to identify the specific finding requested, can be denied as insufficient. Nonetheless, the EPA has the discretion to conduct independent analyses when helpful in evaluating the basis for a potential CAA section 126(b) finding or developing a remedy if a finding is made.

With respect to the statutory requirements of both section 110(a)(2)(D)(i) and section 126 of the CAA, the EPA has consistently acknowledged that Congress created these provisions as two independent statutory processes to address the problem of interstate pollution transport. *See, e.g.,* 76 FR 69052, 69054 (November 7, 2011). Congress provided two separate statutory processes without indicating any preference for one over the other, suggesting it viewed either approach as a legitimate means to produce the desired result. While either provision may be applied to address interstate transport, they are also closely linked in that a violation of the prohibition in CAA section 110(a)(2)(D)(i) is a condition precedent for action under CAA section 126(b) and, critically, significant contribution to nonattainment and interference with maintenance are construed identically for purposes of both provisions (since the identical terms are naturally interpreted as meaning the same thing in the two linked provisions). *See Appalachian Power,* 249 F.3d at 1049–50.

While section 126(b) of the CAA provides a mechanism for states and other political subdivisions to seek abatement of pollution in other states that may affect their air quality, it does not identify specific criteria or a specific methodology for the Administrator to apply when deciding whether to make a CAA section 126(b) finding or deny a petition. Therefore, the EPA has discretion to identify relevant criteria and develop a reasonable methodology for determining whether a CAA section 126(b) finding should be made. Thus, in addressing a CAA section 126(b) petition that addresses ozone transport, the EPA believes it is appropriate to interpret these ambiguous terms consistent with the EPA's historical approach to evaluating interstate ozone pollution transport under the good neighbor provision, and its interpretation and application of that related provision of the statute. This approach is particularly applicable to the Delaware and Maryland petitions because the EPA recently finalized and began implementation of the CSAPR Update, which evaluated and addresses interstate ozone pollution transport, inclusive of the named states' impacts on Delaware and Maryland. As described further in Section II of this notice, ozone is a regional air pollutant and previous EPA analyses and regulatory actions have evaluated the regional interstate ozone transport problem using a four-step analytic framework. The EPA most recently applied this four-step framework in promulgating the CSAPR Update to address interstate transport with respect to the 2008 ozone NAAQS under CAA section 110(a)(2)(D)(i)(I) and believes it may be generally useful in analyzing the 2015 ozone NAAQS. Given the specific cross-reference in CAA section 126(b) to the substantive prohibition in CAA section 110(a)(2)(D)(i), the EPA believes any prior findings made under the good neighbor provision are informative—if not determinative—for a CAA section 126(b) action. Therefore, in this instance, the EPA's decision whether to grant or deny the CAA section 126(b) petitions regarding both the 2008 8-hour ozone and 2015 ozone NAAQS depends on application of the four-step framework. The application of the four-step framework to the EPA's analysis of Maryland's and Delaware's CAA section 126(b) petitions regarding the 2008

[29] The text of CAA section 126 as codified in the U.S. Code cross-references CAA section 110(a)(2)(D)(ii) instead of CAA section 110(a)(2)(D)(i). The courts have confirmed that this is a scrivener's error and the correct cross-reference is to CAA section 110(a)(2)(D)(i). *See Appalachian Power Co.* v. *EPA,* 249 F.3d 1032, 1040–44 (D.C. Cir. 2001).

ozone NAAQS is, therefore, legally appropriate given the EPA has previously interpreted (and addressed) significant contribution and interference with maintenance under CAA section 110(a)(2)(D)(i) under this framework via the CSAPR Update.

Unlike the 2008 ozone NAAQS, the EPA has not to date engaged in a rulemaking action regarding the good neighbor provision for the 2015 ozone NAAQS. However, the EPA has recently released technical information intended to assist states' efforts in development of SIPs to address this standard.[30] As part of the memo releasing the technical information, the EPA acknowledged that states have flexibility to pursue approaches that may differ from the EPA's historical approach to evaluating interstate transport in developing their good neighbor SIPs. Nonetheless, the EPA's technical analysis and the potential flexibilities identified in the memo generally followed the basic elements of the EPA's historical four-step framework. Thus, in light of the EPA's discretion to identify relevant criteria and develop a reasonable methodology for determining whether a CAA section 126(b) finding should be made, the EPA continues to evaluate the claims regarding the 2015 ozone NAAQS for the specific sources named in in Delaware's CAA section 126(b) petitions consistent with the EPA's four-step framework. To the extent that the EPA made determinations in either the CSAPR Update or other analytic exercises that are pertinent to the evaluation of the 2015 ozone NAAQS under the four-step framework for the sources named in the petitions, it is appropriate to consider that relevant information as well.[31]

The EPA notes that Congress did not specify how the EPA should determine that a major source or group of stationary sources ''emits or would emit'' any air pollutant in violation of the prohibition of CAA section 110(a)(2)(D)(i)(I) under the terms of CAA section 126(b). The EPA also believes, given the more regional, rather than localized, impact of NO_X emissions on downwind ozone concentrations, it is reasonable and appropriate at each step to consider whether the facility ''emits or would emit'' in light of the facility's current or reasonably anticipated future operating conditions. Therefore, the EPA interprets the phrase ''emits or would emit'' in the context of acting on Delaware's and Maryland's petitions to mean that a source may ''emit'' in violation of the good neighbor provision if, based on current emission levels, the upwind state in which the source is located contributes to downwind air quality problems and the individual source may be further controlled as determined through a multi-factor test that includes consideration of cost-effective controls, technical feasibility, and air quality factors. Similarly, in evaluating the sources named under these petitions, a source ''would emit'' in violation of the good neighbor provision if, based on reasonably anticipated future emission levels (accounting for existing conditions), the upwind state in which the source is located contributes to downwind air quality problems and the individual source could be further controlled as determined through a multi-factor test that includes consideration of cost-effective controls, technical feasibility, and air quality factors. Consistent with this interpretation, the EPA has, therefore, evaluated, in this notice, whether the sources cited in the petitions emit or would emit in violation of the good neighbor provision based on both current and anticipated future emission levels.

In interpreting the phrase ''emits or would emit in violation of the prohibition of section [110(a)(2)(D)(i)],'' if the EPA or a state has already adopted adequate provisions that eliminate the significant contribution to nonattainment or interference with maintenance of the NAAQS in downwind states, then there simply is no violation of the CAA section 110(a)(2)(D)(i)(I) prohibition, and, hence, no grounds to grant a CAA section 126(b) petition. Put another way, requiring additional reductions would result in eliminating emissions that do not contribute significantly to nonattainment or interfere with maintenance of the NAAQS, an action beyond the scope of the prohibition in CAA section 110(a)(2)(D)(i)(I) and, therefore, beyond the scope of the EPA's authority to make the requested finding under CAA section 126(b). *See EME Homer City,* 134 S. Ct. at 1604 n.18, 1608–09 (holding the EPA may not over-control by requiring sources in upwind states to reduce emissions by more than necessary to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS in downwind states under the good neighbor provision).

Thus, for example, if the EPA has already approved a state's SIP as adequate to meet the requirements of CAA section 110(a)(2)(D)(i)(I), the EPA has no basis to find that a source in that state emits or would emit in violation of the prohibition of CAA section 110(a)(2)(D)(i)(I) absent new information demonstrating that the SIP is now insufficient to address the prohibition. Similarly, if the EPA has promulgated a FIP that it has determined fully eliminates emissions that significantly contribute to nonattainment or interfere with maintenance in a downwind state, the EPA has no basis to find that sources in the upwind state are emitting or would emit in violation of the CAA section 110(a)(2)(D)(i)(I) prohibition, absent new information to the contrary.

The EPA notes that the approval of a SIP or promulgation of a FIP implementing CAA section 110(a)(2)(D)(i)(I) means that a state's emissions are adequately prohibited for the particular set of facts analyzed under approval of a SIP or promulgation of a FIP. If a petitioner produces new data or information showing a different level of contribution or other facts not considered when the SIP or FIP was promulgated, compliance with a SIP or FIP may not be determinative regarding whether the upwind sources would emit in violation of the prohibition of CAA section 110(a)(2)(D)(i)(I). *See* 64 FR 28274 n.15; 71 FR 25336 n.6; *Appalachian Power,* 249 F.3d at 1067 (later developments can provide the basis for another CAA section 126(b) petition). Thus, in circumstances where a SIP or FIP addressing CAA section 110(a)(2)(D)(i)(I) is being implemented, the EPA will evaluate the CAA section 126(b) petition to determine if it raises new information that merits further consideration.

Several commenters disagreed with the EPA's interpretation of the

[30] *See* ''Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)'' (March 27, 2018), available in the docket for this proposed action. By operation of statute, states are required to submit to the EPA their SIPs to address the good neighbor provision for the 2015 ozone NAAQS in October 2018.

[31] As discussed further in Section IV.B.1 of this notice, in the CSAPR Update the EPA found that it was not at that time able to determine whether the Update fully resolved good neighbor obligations for the 2008 ozone NAAQS for most of the states subject to that action, including those addressed in Delaware's and Maryland's petitions (Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia), and noted that the emission reductions required by the rule may not be all that is needed to address transported emissions. 81 FR 74521. The EPA is not making a final determination regarding any remaining good neighbor obligation for those states as part of this action, other than with respect to emissions from the sources named in the petition with respect to the particular NAAQS at issue. (Any determination made in this final rule is only with respect to the sources specifically named in Delaware's and Maryland's petitions for the applicable NAAQS.) However, the EPA notes that in a separate, pending action, the EPA has proposed to determine that the CSAPR Update fully addresses certain states' good neighbor obligations regarding the 2008 ozone NAAQS. *See* 83 FR 31915 (July 10, 2018).

relationship between the good neighbor provision under CAA section 110(a)(2)(D)(i)(I) and section 126(b), contending that Congress intended CAA section 126(b) petitions to be a legal tool to address interstate problems separate and distinct from SIP and FIP actions under CAA section 110. Commenters cite to legislative history and the D.C. Circuit's opinion in *Appalachian Power* in support of their assertions that CAA section 126 is intended to remedy interstate transport problems notwithstanding the existence of CAA section 110. Commenters accordingly assert the EPA is incorrect in determining that its four-step approach under CAA section 110(a)(2)(D)(i)(I) is appropriate for evaluating under CAA section 126(b) whether an upwind source or group of sources will significantly contribute to nonattainment or interfere with maintenance of the 2008 and the 2015 ozone NAAQS in a petitioning downwind state.

The EPA has consistently acknowledged in prior actions under CAA section 126(b) that Congress created the good neighbor provision and CAA section 126 as two independent statutory processes to address one problem: Interstate pollution transport. *See, e.g.,* 83 FR 26666, 26675 (June 8, 2018) (proposal for this final action); 76 FR 69052, 69054 (November 7, 2011) (proposed action for the EPA's final action on New Jersey's CAA section 126(b) petition regarding SO_2 emissions from Portland Generating Station). As the commenters point out, courts have upheld the EPA's position that CAA sections 110(a)(2)(D)(i) and 126 are two independent statutory processes to address the same problem of interstate transport. *See GenOn REMA, LLC* v. *EPA,* 722 F.3d 513, 520–23 (3d Cir. 2013); *Appalachian Power,* 249 F.3d at 1047. However, the commenters misread the courts' holding regarding the EPA's interpretation of the interplay between the two provisions. Both the D.C. Circuit and Third Circuit spoke to the question of the *timing* of these processes—specifically, whether the EPA could act on a CAA section 126(b) petition in instances where the agency had not yet acted on a CAA section 110 SIP addressing interstate transport for the same NAAQS. Both courts upheld the EPA's position that it need not wait for the CAA section 110 process to conclude in order to act on a CAA section 126(b) petition, thus affirming that both statutory provisions are independent from one another from a timing perspective. Here, the agency has not deferred action on Delaware's petitions regarding the 2015 ozone NAAQS, for which good neighbor SIPs are not due until October 2018, until its action on the good neighbor SIPs (for the named upwind states) has concluded. Therefore, by taking action in this instance on Delaware's section 126(b) petitions regarding the 2015 ozone NAAQS before action under section 110 has been concluded, the EPA believes it has given CAA section 126(b) independent meaning as intended by Congress and the courts.

The D.C. Circuit's opinion in *Appalachian Power,* which commenters specifically point to, further supports the EPA's interpretation taken in this action: That while the agency need not wait for the CAA section 110 process to conclude before taking action on a CAA section 126(b) petition, the EPA reasonably interprets the substantive requirements of the two provisions to be closely linked. The court in *Appalachian Power* specifically considered whether it was appropriate for the EPA to rely on findings made under the good neighbor provision in the NO_X SIP Call rulemaking in granting several CAA section 126(b) petitions raising similar interstate transport concerns with regards to the same NAAQS. Petitioners in that case argued that the EPA should instead make a finding that ''the specified stationary sources within a given state *independently* met [the statute's] threshold test for effect on downwind nonattainment.'' 249 F.3d at 1049. The court found that by referring to stationary sources that emit pollutants ''in violation of the prohibition of [CAA section 110(a)(2)(D)(i)],'' Congress ''clearly hinged the meaning of section 126 on that of section 110(a)(2)(D)(i).'' *Id.* at 1050. The court, therefore, concluded that given CAA section 126's silence on what it means for a stationary source to violate CAA section 110(a)(2)(D)(i), the EPA's approach of relying on findings under CAA section 110(a)(2)(D)(i) was reasonable and, therefore, entitled to deference under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 843 (1984). *Id.* The EPA's approach to addressing the CAA section 126(b) petitions considered the *Appalachian Power* case is consistent with the EPA's application of the four-step framework and consideration of findings made in the CSAPR Update in acting on Maryland's and Delaware's CAA section 126(b) petitions.

Commenters also contend that the EPA is erecting a ''new barrier'' to CAA section 126(b) petitions by requiring a petitioner to disprove the validity of the SIP or FIP in place for a source. However, the commenters mischaracterize the EPA's position. As described, where a SIP or FIP is already in place to address the prohibition in CAA section 110(a)(2)(D)(i)(I), the EPA has already made a determination that sources subject to that SIP or FIP have been adequately addressed for purposes of interstate transport. A petitioner need not demonstrate that the EPA's original determination underlying the SIP or FIP is flawed. Rather, the EPA has recognized that circumstances may change after the EPA makes its determination under CAA section 110, in which case it is incumbent upon the petitioner in the first instance to provide information demonstrating that the named sources is unlawfully impacting the petitioning state in spite of the SIP or FIP, in light of newly available information. The EPA disagrees that this is a ''new'' position the agency is taking regarding the linkage between good neighbor SIPs and FIPs and CAA section 126(b) petition. As described earlier in this section, the EPA has interpreted CAA section 126(b) to impose this burden on petitioners in each section 126(b) petition addressed by the agency in the last two decades. *See, e.g.,* 64 FR 28274 n.15 (action on eight states' petitions for the 1979 ozone NAAQS); 71 FR 25336 n.6 (action on North Carolina's petition for the 1997 ozone NAAQS).

B. Reasonableness of Applying the Four-Step Transport Framework for This Action

As discussed in Section II of this notice, the EPA has consistently analyzed ozone transport with the understanding that nonattainment and maintenance concerns result from the cumulative air quality impacts of contributions from numerous anthropogenic sources across several upwind states (as well as from within the downwind state). Consistent with this understanding, the EPA has evaluated ozone transport based in part on the relative contribution of all anthropogenic sources within a state, as measured against to a screening threshold, and then identified particular source sectors and units for regulatory consideration.[32] This approach to evaluating ozone transport is reasonable because the statute's use of ''significantly'' as a modifier to ''contribute'' implies a relationship, *e.g.,*

[32] The EPA has used cost as a factor in its multi-factor approach for quantifying significant contribution from multiple contributing states. Cost is used in a relative (*i.e.,* least-cost abatement) approach that also requires examining individual source impact and reduction potential in the context of the larger universe of contributors.

the impact a source or collection of sources has relative to other relevant sources of that pollutant. Therefore, although CAA section 126(b) allows downwind states to petition the EPA regarding specific sources or groups of sources that they believe are contributing to the downwind air quality problems, the EPA believes it is reasonable and appropriate to evaluate the emissions from sources named in a petition in the context of all relevant anthropogenic sources of that pollutant to determine whether or not emissions from the named sources are in violation of the good neighbor provision.

The EPA notes that the four-step framework provides a logical, consistent, and systematic approach for addressing interstate transport for a variety of criteria pollutants under a broad array of national, regional, and local scenarios. Consequently, the EPA finds it reasonable to apply the same four-step transport framework used to evaluate regional ozone transport under the good neighbor provision in considering a CAA section 126(b) petition addressing the impacts of individual sources on downwind attainment and maintenance of the ozone NAAQS. As the four-step framework is applied to evaluate a particular interstate transport problem, the EPA can determine whether upwind sources are actually contributing to a downwind air quality problem; whether and which sources can be cost effectively controlled relative to that downwind air quality problem; what level of emissions should be eliminated to address the downwind air quality problem; and the means of implementing corresponding emission limits (*i.e.,* source-specific rates, or statewide emission budgets in a limited regional allowance trading program). The outcome of this assessment will vary based on the scope of the air quality problem, the availably and cost of controls at sources in upwind states, and the relative impact of upwind emission reductions on downwind ozone concentrations. For a more localized pollutant like SO_2, the use of the four-step framework could result in a finding that emissions from a unit were significantly contributing to nonattainment, or interfering with maintenance, under the first three steps, which may lead the agency in step four to require unit-specific compliance requirements (such as an emission rate).[33]

The complexity of atmospheric chemistry and the interconnected, long-distance nature of ozone transport also demonstrates the appropriateness of the four-step framework. As a result of this complexity, including domestic and international as well as anthropogenic and background contributions to ozone and its precursors, it is less likely that a single source is entirely responsible for impacts to a downwind area. For example, several commenters assert that the emissions from all of the sources named in the Maryland petition contribute 0.656 ppb to the Edgewood receptor in Maryland—an amount that is insufficient to itself cause nonattainment. Thus, a determination regarding whether this impact is sufficient to significantly contribute to nonattainment or interfere with maintenance of the NAAQS—in light of other anthropogenic emission sources impacting a downwind area—is necessarily more complicated. However, the EPA evaluates within step three of the framework whether upwind sources have emissions that significantly contribute to nonattainment or interfere with maintenance of the ozone NAAQS based on various control, cost, and air quality factors, including the magnitude of emissions from upwind states, the number of potential emission reductions from upwind sources, the cost of those potential emission reductions, and the potential air quality impacts of emission reductions.[34] The EPA believes it is reasonable to consider these factors whether evaluating ozone transport in the context of a good neighbor SIP under CAA section 110 or a section 126(b) petition.

The EPA has already conducted such an analysis for all sources named in Delaware and Maryland's petitions via the CSAPR Update. The EPA determined that the upwind states named by the petitioners emitted in violation of the good neighbor provision with respect to downwind states. The EPA, therefore, found that EGUs in these states, including the named sources, collectively needed to make reductions at a cost level commensurate with operating and optimizing existing SCR controls (among other NO_X reduction strategies included in the CSAPR Update). Based on the nature of ozone formation, the many receptors throughout the region, the many source sectors and numerous sources, and because EGUs had readily available low-cost and impactful emission reductions available, the EPA found that a limited allowance trading program would achieve emission reductions commensurate with applying these cost-effective controls. As discussed in more detail in Section IV of this notice, petitioners and commenters have not demonstrated, based on information available at this time, either that the particular sources named by petitioners should be required to make further emission reductions under the good neighbor provision in light of their contributions relative to other sources that are not named in the petitions, or that source-specific unit-level emission rates are necessary to ensure reductions are being achieved under the CSAPR Update. As further described in Section IV.B of this notice, the EPA's independent analysis finds that, contrary to the petitioners' and commenters' assertions, the CSAPR Update allowance trading program has been sufficient and successful in reducing regional emissions of ozone and emissions across the named EGUs.

For any analysis of a CAA section 126(b) petition regarding interstate transport of ozone, a regional pollutant with contribution from a variety of sources, the EPA reviews whether the particular sources identified by the petitioner should be controlled in light of the collective impact of emissions on

[33] For an example of such a case, the EPA's action on a prior CAA section 126(b) petition regarding SO_2 emissions from the Portland Generating Station in Pennsylvania analyzed similar factors as those outlined the four-step transport framework to evaluate whether the identified source was emitting in violation of the good neighbor provision. The EPA concluded that the petitioning downwind state had an air quality problem (step one) for the 2010 SO_2 NAAQS. The agency determined that emissions from the named source in the upwind state alone were sufficient not just to contribute to (step two), but to *cause* a violation of the NAAQS in the petitioning state. As such, the agency determined that the facility should be regulated because of the magnitude of its contribution and the relative lack of other contributing sources (step three). To address this impact, the EPA imposed federally enforceable source-specific rate limits to eliminate the source's significant contribution (step four). *See* Final Response to Petition From New Jersey Regarding SO_2 Emissions from the Portland Generating Station, 76 FR 69052 (November 7, 2011).

[34] ''We believe it is important to consider both [cost and air quality] factors because circumstances related to different downwind receptors can vary and consideration of multiple factors can help EPA appropriately identify each state's significant contribution under different circumstances. [. . .] Using both air quality and cost factors allows EPA to consider the full range of circumstances and state-specific factors that affect the relationship between upwind emissions and downwind nonattainment and maintenance problems. For example, considering cost takes into account the extent to which existing plants are already controlled as well as the potential for, and relative difficulty of, additional emissions reductions. Therefore, EPA believes that it is appropriate to consider both cost and air quality metrics when quantifying each state's significant contribution.'' Proposed Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone, 75 FR 45210, 45271 (August 2, 2010) (CSAPR proposal) (describing potential disparities between upwind and downwind state contributions to identified air quality problems and between levels of controls between states).

air quality in the area, including emissions from other anthropogenic sources. Thus, review of the named sources in the Delaware and Maryland petitions provides a starting point for the EPA's evaluation, but does not—as the commenters suggest—complete the evaluation to determine whether the named sources emit or would emit in violation of the good neighbor provision.

IV. The EPA's Final Response to Delaware's and Maryland's CAA Section 126(b) Petitions

The EPA is finalizing denials of the Maryland petition and all four of the Delaware petitions. Section IV.A of this notice describes the EPA's determination that Delaware has not demonstrated that the sources named in their petitions emit or would emit in violation of the good neighbor provision such that they will significantly contribute to nonattainment or interfere with maintenance of the 2008 or 2015 ozone NAAQS in Delaware. Section IV.B of this notice describes the EPA's independent analysis of the sources named in both states' petitions and concludes based on such analysis that there is no basis to find that the named sources emit or would emit pollution in violation of the good neighbor provision with respect to the 2008 ozone NAAQS (Delaware and Maryland) or the 2015 ozone NAAQS (Delaware only). In this section, and in the RTC document included in the docket for this action, the agency explains the rationale supporting its final action and provides its response to significant public comments on the proposed action.

A. The EPA's Evaluation of Whether the Petitions Are Sufficient To Support a CAA Section 126(b) Finding

1. Delaware's Petition Is Not Sufficient on Its Own Merit To Support a CAA Section 126(b) Finding

The EPA finds that Delaware's conclusions are not supported by the petitions' assessments based on several technical deficiencies. First, with respect to the 2008 ozone NAAQS, the EPA is finalizing its conclusion that Delaware does not provide sufficient information to indicate that there is a current or expected future air quality problem in the state. While the Delaware petitions identify individual exceedances of the ozone standard in the state between the 2000 and 2016 ozone seasons, this does not demonstrate that there is a resulting nonattainment or maintenance problem. Ozone NAAQS violations, as opposed to exceedances, are determined based on the fourth-highest daily maximum ozone concentration, averaged across 3 consecutive years.[35] In contrast, exceedances represent, in the case of the 2008 and 2015 ozone NAAQS, an 8-hour measurement above the level of the NAAQS. Violations, rather than exceedances, are the relevant metric for identifying nonattainment and maintenance problems. A design value is a statistic that describes the air quality status of a given location relative to the level of the NAAQS. Thus, individual exceedances at monitors do not by themselves indicate that a state is not attaining or maintaining the NAAQS. In prior transport rulemakings, the EPA identified both nonattainment and maintenance receptors based on air quality model projections of measured design values. In the CSAPR Update, the EPA identified nonattainment receptors as those with an average projected design value above the NAAQS and with current measured nonattainment. The EPA identified maintenance receptors as those monitors with a ''maximum'' future design value above the NAAQS in order to take into account historic variability in air quality at the monitor. *See* 81 FR 74531.

Several commenters have argued that Delaware is not attaining or maintaining the 2008 ozone NAAQS because there are areas in Delaware that are designated nonattainment for that standard. However, a nonattainment designation, which was first issued for the 2008 ozone NAAQS in 2012, does not by itself indicate that a state is currently failing to attain or struggling to maintain the NAAQS, or that it will have problems attaining or maintaining the standard in the future. The courts have confirmed that the EPA's authority to find that a source or state is in violation of the good neighbor provision is constrained to circumstances where an actual air quality problem has been identified. *See EME Homer City,* 134 S. Ct. at 1608–09 (holding the EPA cannot require more emission reductions than necessary to address downwind air quality problems); *EME Homer City II,* 795 F.3d 118 at 129–30 (D.C. Cir. 2015) (holding state emission budgets invalid where air quality modeling projected no downwind air quality problems). Delaware has not demonstrated that there is a current or expected future air quality problem in the state, nor did any commenters provide evidence of a current or anticipated future violation of the 2008 ozone NAAQS. As discussed in Section IV.B of this notice, the EPA's review of current and projected future air quality in Delaware indicates that the state is attaining and will maintain the 2008 ozone NAAQS. Accordingly, Delaware's petition provides insufficient evidence of a requisite air quality problem with respect to the 2008 ozone NAAQS within the state.

With respect to the 2015 ozone NAAQS, Delaware argues that if that NAAQS had been in effect from 2011 through 2016, Delaware monitors would have recorded more exceedances than they did under the 2008 ozone NAAQS. However, again, the identification of individual exceedances does not speak to whether there are current violations of the standard. Additionally, as discussed further in Section II of this notice, the EPA evaluates downwind ozone air quality problems for purposes of step one of the four-step framework using modeled *future* air quality concentrations for a year that considers the relevant attainment deadlines for the NAAQS, based on its interpretation of the term ''will'' in the good neighbor provision.[36] The petitions do not provide any analysis indicating that Delaware may violate or have difficulty maintaining 2015 ozone NAAQS in a year associated with the relevant attainment dates for that standard.

Several commenters allege that the EPA incorrectly identified technical deficiencies in Delaware's petition regarding whether there is an air quality problem in Delaware. The commenters also submitted additional data that they contend demonstrates current violations in the state. However, comments related to the 2008 ozone NAAQS either identified violating monitors outside of Delaware or identified further individual exceedances in Delaware without demonstrating that they contributed to a violating design value. The commenters have not submitted information that conclusively shows current or future violations of the 2008 ozone NAAQS within the state of Delaware. For the 2015 ozone NAAQS, the commenters identified current violating monitors in Delaware but did not identify any projected air quality violations in a future year associated with the relevant attainment dates. Commenters did not correct any of the technical deficiencies the EPA identified in Delaware's petitions. Thus, the EPA is concluding, as proposed, that the petition does not adequately identify a relevant air quality problem related to the 2008 or 2015 ozone NAAQS.

Second, with respect to step two of the four-step framework, material

[35] *See* 80 FR 65296 (October 26, 2015) for a detailed explanation of the calculation of the 3-year 8-hour average and the methodology set forth in 40 CFR part 50, appendix U.

[36] 81 FR 74517.

elements of Delaware's analysis regarding the contributions from the Brunner Island, Harrison, Homer City, and Conemaugh EGUs to air quality in Delaware are deficient and, therefore, the conclusions that the petitions draw are not supported by the technical assessment. As noted earlier, all four petitions rely upon air quality modeling that uses 2011 emissions to quantify the contribution from each of the four named sources to locations in Delaware on individual days in 2011. However, 2011 emissions are generally much higher than, and therefore not representative of, current or future projected emissions levels at these EGUs and in the rest of the region—levels that the EPA believes are most relevant to determining whether a source ''emits or would emit'' in violation of the good neighbor provision.[37] Thus, the 2011 modeling does not provide representative data regarding contributions that would result from either current or future emission levels from these EGUs. When evaluating a CAA section 126(b) petition, it is important and consistent with the language of the section to rely on current and relevant data known at the time the agency takes action. Were the EPA to act based on outdated or non-representative information solely because it was provided in a petition, that action could be arbitrary and unreasonable and could, for example, impose controls or emission limitations that are not appropriately tailored to the nature of the problem at the time of the EPA's final action or at the time when such controls or limitations would actually be implemented. This could result in unnecessary over-control (or under-control) of emissions, beyond (or short of) what is required to address the good neighbor provision, in violation of the Supreme Court's holding in *EME Homer City,* 134 S. Ct. at 1608–09.

Further, the analyses provided by Delaware regarding the alleged impacts of the four sources on downwind air quality include some information on the frequency and magnitude of ozone impacts, but the information provided does not account for the form of the 2008 or 2015 ozone standards—which indicates that a NAAQS violation occurs when the fourth highest daily maximum value in a calendar year at a specific monitor exceeds the standard—and, thus, is not informative of whether there is a nonattainment issue in the state. Specifically, Delaware does not identify the numeric modeled and/or measured ozone levels on the same days identified in Delaware's petitions with modeled impacts.[38] For example, Delaware's Homer City petition identifies modeled contributions from emissions at that source to three downwind monitoring sites in Delaware on July 18, 2011. However, the petition fails to identify whether there were measured and/or modeled exceedances of the ozone NAAQS on that particular day at those sites. Delaware's Harrison and Brunner Island petitions identify the days the contributions were modeled to occur, but not the specific monitoring sites where Delaware claims emissions from these sources impact air quality. Moreover, these two petitions do not provide information on whether the contributions were to design values that actually exceed the ozone NAAQS. Delaware's Conemaugh petition identifies 2011 contributions on days when some Delaware monitors exceeded the 2008 NAAQS, but the petition does not specify which monitors were impacted on those days. The petition therefore does not provide information to show that the modeled contributions occurred at monitoring sites that were exceeding either the 2008 or 2015 ozone NAAQS. Commenters did not provide additional information clarifying these deficiencies.

For the reasons described in this section, Delaware's analyses in its four petitions do not allow the EPA to conclude that there is a current or future nonattainment or maintenance problem in Delaware based on violations of the NAAQS, nor that the named sources are improperly impacting downwind air quality on days when such violations would be expected. Therefore, the EPA does not have a basis to grant Delaware's petition with respect to either the 2008 or 2015 ozone NAAQS based on data and analyses provided in the petitions.

2. The EPA's Analysis of the Technical Sufficiency of Maryland's Petition

The EPA is not finalizing its proposed finding that Maryland's petitions are technically deficient, but is finalizing the denial based on the EPA's independent assessment there are no additional cost-effective reductions relative to the CSAPR Update for the sources named in Maryland's petition. This topic is discussed in more detail in Section IV.B of this notice.

B. The EPA's Independent Analysis of the Petitions Consistent With the CSAPR Update

As discussed in Section III.A of this notice, the EPA may decide to conduct independent analyses when evaluating the basis for a potential CAA section 126(b) finding or when developing a remedy if a finding is made. Because the CSAPR Update recently evaluated interstate ozone pollution transport, including considering the air quality and EGU emissions described in the Delaware and Maryland 126(b) petitions, the EPA evaluated the petitions and comments received on the proposal in light of the agency's existing regulatory program, and the underlying analysis on which it is based. This constitutes the EPA's independent analysis for certain aspects of the petitions. The agency also evaluated additional technical information that became available after the CSAPR Update was finalized to independently evaluate other aspects of the petitions.

This section begins by explaining the relationship between the CSAPR Update and the EPA's independent analysis of the petitions. The subsequent subsections discuss the EPA's rationale for denying the petitions with respect to the named sources.

1. CSAPR Update as Context

The EPA promulgated the CSAPR Update to address the good neighbor provision requirements for the 2008 ozone NAAQS. 81 FR 74504. The final CSAPR Update built upon previous regulatory efforts in order to address the collective contributions of ozone pollution from 22 states in the eastern United States to widespread downwind air quality problems. As was also the case for the previous rulemakings, the EPA evaluated the nature (*i.e.,* breadth and interconnectedness) of the ozone problem and NO_X reduction potential

[37] As an example of how emissions have changed between 2011 and a recent historical year, the EPA notes that Pennsylvania's 2017 EGU NO_X ozone season emissions were 79 percent below 2011 levels. One of the named sources, Brunner Island, is located in Pennsylvania and reduced its individual ozone season NO_X emissions by 88 percent in 2017 relative to 2011 levels. (*https://www.epa.gov/ampd*). Additional emissions data from 2011 and a recent historical year is included in the docket, which also shows that 2011 emissions are generally higher than emissions in recent years. *See* 2011 to 2017 NO_X Comparisons, Ozone Season, available in the docket for this action.

[38] Existing EPA analyses of interstate ozone pollution transport focus on contributions to high ozone days at the specific downwind receptor in order to evaluate the impact on nonattainment and maintenance at the receptor. For example, in the CSAPR Update modeling, ozone contributions were calculated using data for the days with the highest future year modeled ozone concentrations. For the 2008 ozone NAAQS, only the highest measured ozone days from each year are considered for the calculation of ozone design values (the values that determine whether there is a measured NAAQS violation). Measured ozone values that are far below the level of the NAAQS do not cause an exceedance or violation of the NAAQS. For this reason, only ozone contributions to days that are among the highest modeled ozone days at the receptor are relevant to determining if a state or source is linked to downwind nonattainment or maintenance issues.

from EGUs, including those sources named in the Delaware and Maryland CAA section 126(b) petitions.

Of particular relevance to this action, the EPA determined in the CSAPR Update that emissions from the states identified in Maryland's petition were linked in steps one and two of the four-step framework to maintenance receptors for the 2008 ozone NAAQS in Maryland based on air quality modeling projections to 2017. 81 FR 74538 through 74539. With respect to Delaware, the CSAPR Update modeling revealed no monitors in the state with a projected average or maximum design value above the level of the 2008 ozone NAAQS in 2017.[39] Thus, the EPA in step one of the four-step framework did not identify any downwind air quality problems in Delaware with respect to the 2008 ozone NAAQS and, therefore, did not determine that emissions from any of the states identified in the state's four petitions would be linked to Delaware.

For states linked to downwind air quality problems in Maryland, the agency identified certain emissions from large EGUs as significantly contributing to nonattainment and/or interfering with maintenance of the NAAQS based on cost and air-quality factors. Considering these factors, the EPA found there were cost-effective emission reductions that could be achieved within upwind states at a level of control stringency available at a marginal cost of $1,400 per ton of NO_X reduced. This level of control stringency represented ozone season NO_X reductions that could be achieved in the 2017 analytic year and included the potential for operating and optimizing existing SCR post-combustion controls; installing state-of-the-art NO_X combustion controls; and shifting generation to existing units with lower NO_X emission rates within the same state. 81 FR 74551. The CSAPR Update quantified an emission budget for each state based on that level of control potential. The EPA found that these emission budgets were necessary to achieve the required emission reductions and mitigate impacts on downwind states' air quality in time for the July 2018 moderate area attainment date for the 2008 ozone NAAQS.

The CSAPR Update finalized enforceable measures necessary to achieve the emission reductions in each state by requiring power plants in covered states, including the sources identified in Maryland and Delaware's petitions, to participate in the CSAPR NO_X Ozone Season Group 2 allowance trading program, with more detailed assurance provisions applying to each covered state to ensure that they will be required to collectively limit their emissions, beginning with the 2017 ozone season. The CSAPR trading programs and the EPA's prior emission trading programs (*e.g.,* the NO_X Budget Trading Program associated with the NO_X SIP Call) have provided a proven, cost-effective implementation framework for achieving emission reductions. This implementation approach was shaped by previous rulemakings and reflects the evolution of these programs in response to court decisions and practical experience gained by states, industry, and the EPA.

As discussed in more detail later, the EPA has considered the CSAPR Update and related technical information in evaluating the section 126(b) petitions. This includes a review of the air quality modeling conducted for the CSAPR Update to evaluate projected nonattainment and maintenance concerns in each petitioning states in steps one and two of the four-step framework. The EPA has also considered the control strategies evaluated and implemented in the CSAPR Update to conclude, in step three, that the EPA has already implemented emission reductions associated with operation of existing SCRs at the named sources and that the EPA has already concluded that the operation of existing SNCR at two other named sources is not a cost-effective control strategy under the good neighbor provision.

2. The EPA's Step One and Two Analyses for Delaware and Maryland

As part of the EPA's independent analysis, the agency considered Delaware's and Maryland's petitions in light of recent agency analysis which applied steps one and two of the four-step framework. The EPA found that the named sources are not contributing to nonattainment or interfering with maintenance of Delaware's air quality for either the 2008 or 2015 ozone NAAQS, and that the sources named in Maryland's petition warranted further analysis of significant contribution to nonattainment and interference with maintenance for the 2008 ozone NAAQS in step three.

a. The EPA's Step One Analyses for Delaware

While the EPA, as discussed in Section IV.A of this notice, finds that Delaware's petitions do not on their own merits adequately establish the presence of a current or future nonattainment or maintenance problem in Delaware, the EPA also independently examined whether there is an air quality problem under the 2008 and 2015 ozone NAAQS (step one). As described in the following sections, the EPA finds that the named sources in Delaware's petitions are not, and will not be, emitting in violation of the good neighbor provision with respect to Delaware for either the 2008 or 2015 ozone NAAQS. The EPA also conducted a further independent assessment of the sources named in Delaware's petitions with respect to step three of the framework, discussed later in this notice, which further supports the EPA's denial of the Delaware petitions.

(1) The EPA's Independent Analysis Regarding Delaware's Step One Claims With Respect to the 2008 Ozone NAAQS

The EPA first looked to modeling conducted in 2016 that projects ozone concentrations at air quality monitoring sites in 2017, which was conducted for purposes of evaluating step one of the four-step framework for the 2008 ozone NAAQS as part of the CSAPR Update.[40] This modeling indicated that Delaware was not projected to have any nonattainment or maintenance receptors in 2017 with respect to the 2008 ozone NAAQS. *See* 83 FR 26678. Furthermore, the EPA examined Delaware's 2014–2016 design values, and found that no areas in Delaware had a design value that violated the 2008 ozone NAAQS. *See id.* An examination of the recently released 2015–2017 design values showed the same result.[41] Accordingly, the EPA has no basis to conclude that any of the sources named by Delaware in its petitions are linked to a downwind air quality problem in the state with regard to the 2008 ozone NAAQS. In the absence of a downwind air quality problem, the EPA has no authority to regulate upwind sources to address air quality in Delaware with respect to the 2008 ozone NAAQS.

[39] *See* Air Quality Modeling Technical Support Document for the Final Cross-State Air Pollution Rule Update. Available at *https://www.epa.gov/airmarkets/air-quality-modeling-technical-support-document-final-cross-state-air-pollution-rule.*

[40] Air Quality Modeling Technical Support Document for the Final Cross-State Air Pollution Rule Update (August 2016). Available at *https://www.epa.gov/sites/production/files/2017-05/documents/aq_modeling_tsd_final_csapr_update.pdf.*

[41] *See* 2017 Design Value Reports, available at *https://www.epa.gov/sites/production/files/2018-07/ozone_designvalues_20152017_final_07_24_18.xlsx.*

(2) The EPA's Independent Analysis Regarding Delaware's Step One Claims With Respect to the 2015 Ozone NAAQS

Additionally, the EPA independently examined whether there will be a downwind air quality problem in Delaware with regard to the 2015 ozone NAAQS. The modeling conducted in support of the CSAPR Update shows one monitor—monitor ID 100051003 in Sussex County—with a maximum 2017 projected design value (which the EPA has typically used to help identify maintenance receptors) above the 2015 ozone NAAQS.[42] Measured data show that two monitors exceeded the 2015 ozone NAAQS based on the 2014–2016 design values,[43] and three monitors show exceedances of the 2015 ozone NAAQS based on the 2015–2017 design values.[44] However, as described in Section II.B of this notice, the EPA evaluates downwind ozone air quality problems for the purposes of Step one of the four-step framework using modeled future air quality concentrations for a year that EPA selects in consideration of the relevant attainment deadlines for the NAAQS. Thus, the 2017 modeling data and the recent measured data are not necessarily indicative of a downwind air quality problem that would necessitate the control of upwind sources to address air quality in Delaware with respect to the 2015 ozone NAAQS.

Recent analyses projecting emission levels to a future year indicate that no air quality monitors in Delaware are projected to have nonattainment or maintenance problems with respect to the 2015 ozone NAAQS by 2023, which is the last year of ozone season data that will be considered in order to determine whether downwind nonattainment areas classified as moderate have attained the standard by the relevant 2024 attainment date.[45] Therefore, consistent with the EPA's interpretation of the term ''will'' in the good neighbor provision discussed in Section III of this notice, available future year information does not indicate Delaware will have air quality concerns by the attainment date for the 2015 ozone NAAQS that EPA has determined is relevant for purposes of this analysis. Accordingly, the EPA does not have a basis to regulate upwind sources to address air quality in Delaware with respect to the 2015 ozone NAAQS.

(3) Responses to Comments Regarding the EPA's Independent Analysis for Step One Under the 2008 and 2015 Ozone NAAQS

Commenters asserted that the EPA's conclusion that Delaware does not have current or future nonattainment or maintenance problems for the 2008 and 2015 ozone NAAQS is unreasonable in light of technical information in the record they claim demonstrates otherwise. Commenters further state that New Castle County, Delaware, was designated nonattainment as part of the multistate Philadelphia nonattainment area under both the 2008 and 2015 ozone NAAQS, and that the most recent design values for three monitors in New Castle County exceeded the 70 ppb 2015 ozone standard.

As an initial matter, the EPA disagrees with the way the commenters characterize an air quality problem in relation to CAA section 126(b). The EPA's statutory authority extends to addressing emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS. Commenters' focus on individual high ozone days does not account for the form of the 2008 or 2015 ozone standards (under which a violation occurs when the fourth-highest reading in a calendar year at a specific monitor exceeds the NAAQS) and thus is not informative of whether there is a nonattainment or maintenance issue. Thus, the petitioners and commenters raise contentions are ultimately misaligned with the EPA's logical approach of identifying downwind air quality problems for purposes of CAA sections 110(a)(2)(D)(i)(I) and 126(b) in a manner that is consistent with the form of the standard.

As described earlier, the EPA has evaluated air quality monitoring and modeling data for the 2008 ozone NAAQS, and found no current or anticipated future violations of the 2008 ozone NAAQS (in the form of the standard) at receptors within the state of Delaware. While the EPA evaluated modeling data for future projections of air quality for both the 2008 and 2015 ozone NAAQS consistent with the forward-looking nature of the good neighbor provision, monitoring data regarding current violations is a relevant analytic tool for the 2008 ozone NAAQS considering the attainment date for the standard has already passed. However, because the relevant attainment date for the 2015 ozone NAAQS has not yet passed, it is appropriate to evaluate future anticipated air quality in step one of determining whether sources must be controlled under the good neighbor provision. The EPA evaluated air quality modeling data for receptors located within the state of Delaware and found that, while there are monitors that are currently violating the 2015 ozone NAAQS, the data indicate no future air quality problem for this NAAQS by the relevant 2024 attainment date for that standard. Thus, although commenters state that current ambient monitoring data in Delaware for 2018 shows that three of Delaware's monitors (all in New Castle County) are exceeding the 2015 ozone NAAQS, the commenters have not provided any basis for the EPA to conclude that Delaware will have an air quality problem relative to the 2015 ozone NAAQS in the future year that it has selected as relevant for this analysis.

Additionally, commenters challenge the EPA's conclusion that Delaware does not have an air quality problem for the 2008 ozone NAAQS by pointing out that the Bellefonte site in Delaware has recorded 8-hour daily maximum values which exceed even the 1997 ozone NAAQS. These exceedances at the Bellefonte site are not relevant to actual or projected nonattainment or maintenance issues. Although there may be some exceedances of the 2008 ozone NAAQS at the Bellefonte monitor, the EPA does not have information to indicate that the fourth highest daily ozone value averaged across 3 consecutive years will exceed the 2008 ozone NAAQS at this site. The commenter has not provided information indicating that the monitor is currently violating the 2008 NAAQS.[46] As noted in this section,

[42] In prior transport rulemakings, the EPA identified both nonattainment and maintenance receptors based on air quality model projections of measured design values. In the CSAPR Update, the EPA identified nonattainment receptors as those with an average projected design value above the NAAQS and with current measured nonattainment. The EPA identified maintenance receptors as those monitors with a ''maximum'' future design value above the NAAQS in order to take into account historic variability in air quality at the monitor. *See* 81 FR 74531.

[43] *See* 2016 Design Value Reports, available at *https://www.epa.gov/air-trends/air-quality-design-values#report.* The official designations for these areas and information relied upon for those designations are contained in the EPA's designation actions for the 2015 ozone NAAQS. *See* 82 FR 54232 (November 16, 2017) and the docket for Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, EPA–HQ–OAR–2017–0548, and accompanying technical support documents.

[44] *See* 2017 Design Value Reports, available at *https://www.epa.gov/sites/production/files/2018-07/ozone_designvalues_20152017_final_07_24_18.xlsx.*

[45] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I) (March 27, 2017), available in the docket for this proposed action.

[46] The most current official design value at this monitor is 71 ppb. *See* 2017 Design Value Reports, available at *https://www.epa.gov/sites/production/*

Continued

individual exceedances at monitors do not by themselves indicate that a state is not attaining or maintaining the NAAQS. Thus, we have no basis to conclude there are any air quality problems with respect to the 2008 NAAQS in Delaware in a manner relevant for step one of the four-step transport framework. Thus, because all monitors were projected to attain and maintain the standard in the CSAPR Update modeling and are attaining the standard in the most recent monitoring period, the EPA has no basis to conclude that the sources in the upwind states emit or would emit in violation of the good neighbor provision in Delaware for the 2008 NAAQS.

Commenters point out that monitors in the Philadelphia nonattainment area, located outside of the state of Delaware, are violating both the 2008 and 2015 ozone NAAQS. The commenters assert that because Delaware's New Castle County is included with other counties which make up the Philadelphia nonattainment area for both the 2008 and 2015 ozone NAAQS, Delaware's attainment of the ozone NAAQS is tied to the attainment of the other monitors in the nonattainment area.

The EPA disagrees with commenter's suggestion that non-attaining monitoring data for nearby receptors outside the petitioning state support a CAA section 126(b) finding for Delaware, even if such monitors are located in a multistate nonattainment area that includes the petitioning state. The specific language of CAA section 126(b) does not say that a state may petition the EPA for a finding that emissions from a source, or group of sources, is impacting downwind receptors in a state other than the petitioning state. In addition, the legislative history for this provision suggests the provision was meant to address adverse air impacts only in the petitioning state.[47] Given the broader context of CAA section 126, the EPA reasonably interprets CAA section 126(b)'s petition authority to be limited to states and political subdivisions seeking to address interstate transport of pollution impacting downwind receptors within their geographical borders.

Additionally, the context of CAA section 126 as a whole suggests these provisions are meant to moderate interstate transport concerns between affected states and upwind sources, not between any third party (even if such party is another state) and upwind sources. CAA section 126(a), for example, requires upwind sources to provide notification of certain potential air quality impacts to nearby states which may be affected by the source, not to *all* states. Furthermore, CAA section 126(b) petitions may only be filed by states and political subdivisions. By contrast, other provisions that contain petition authority under the CAA expressly allow for any person to petition the EPA (*e.g.,* CAA section 505(b)(2)'s authority for any person to petition the EPA to object to the issuance of a Title V petition). The more restrictive text in CAA section 126(b) suggests that Congress intended access to the petition process to be narrowly available to states and political subdivisions directly affected by upwind pollution.

While the acknowledgement of multistate nonattainment areas in the CAA reflects Congress's understanding that pollution crosses state boundaries, that does not indicate that Congress clearly authorized all states in a multistate nonattainment area to petition EPA under CAA section 126(b) related to violating monitors outside their state. Portions of Delaware were included in the Philadelphia nonattainment area because the EPA determined that those portions were themselves contributing to the air quality problems in Pennsylvania.[48] Nothing in the CAA suggests that section 126(b) was intended to relieve states like Delaware of the specific planning obligations associated with its inclusion in an area designated nonattainment. To the extent a state has concerns about the impacts of upwind pollution on out-of-state monitors in a shared multistate nonattainment area, these issues can be addressed under other statutory processes. For example, every state has an obligation to submit a transport SIP under CAA section 110(a)(2)(D)(i)(I) that contains provisions adequate to prohibit emissions activity that contribute significantly to nonattainment or interfere with maintenance of the NAAQS in another state, which may also include a multistate nonattainment area if such area is being impacted by upwind emissions activity.

Furthermore, the commenters' assertion that monitors in the Philadelphia nonattainment area are currently measuring exceedances of the 2015 ozone NAAQS does not change the EPA's conclusion that Delaware has no air quality problem under the 2015 ozone NAAQS when looking toward a relevant future year. As described in Section IV.A of this notice, the EPA evaluates downwind ozone air quality problems for the purposes of step one of the four-step framework using modeled future air quality concentrations for a year that considers the relevant attainment deadlines for the NAAQS. Recent analyses projecting emission levels to a future year indicate that no air quality monitors in Delaware are projected to have nonattainment or maintenance problems with respect to the 2015 ozone NAAQS by 2023.[49] Therefore, consistent with the EPA's interpretation of the term ''will'' in the good neighbor provision, available future year information does not suggest Delaware will have air quality concerns by the relevant attainment date for the 2015 ozone NAAQS. Under step one of the transport framework, since there are no projected nonattainment or maintenance receptors in Delaware, the EPA concludes that it does not have sufficient evidence to determine that the upwind states and sources are significantly contributing to nonattainment or interfering with maintenance of the 2015 ozone NAAQS in Delaware.[50]

Several comments challenged the EPA's reliance on air quality modeling projections for 2023 to indicate that Delaware will not have an air quality problem under the 2015 ozone NAAQS. First, commenters asserted that even if attainment of the 2015 ozone NAAQS was assured for the Philadelphia nonattainment area by 2023, this

files/2018-07/ozone_designvalues_20152017_final_07_24_18.xlsx.

[47] When section 126 was added to the CAA, the Senate's amendment implementing the basic prohibition on interstate pollution stated that: ''Any State or political subdivision may petition the Administrator for a finding that a major stationary source in another state emits pollutants which would adversely affect the air quality in the petitioning State.'' (emphasis added). Clean Air Act Amendments of 1977, H.R. 95–564, 95th Cong. at 526 (1977). The House concurred with the Senate's amendment to CAA section 126, with changes to other portions of the amendment, but did not indicate changes to this sentence. Id. The lack of stated changes to this component of the Senate's original amendment suggest that Congress did not intend for the scope of the petitioning authority to be expanded to parties other than a state or political division in which downwind air quality is adversely affected.

[48] *See* Philadelphia-Wilmington-Atlantic City, PA-NJ-;MD-DE Nonattainment Area Final Designations for the 2015 Ozone National Ambient Air Quality Standards Technical Support Document. Available at *https://www.epa.gov/sites/production/files/2018-05/documents/phila_tsd_final.pdf.*

[49] *See* Supplemental Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I) (October 2017), available in the docket for this proposed action.

[50] The EPA notes that even if the Philadelphia area monitors were relevant to the EPA's analysis of Delaware's petition, EPA's analysis also shows that those monitors are not projected to have nonattainment or maintenance problems with respect to the 2015 ozone NAAQS by 2023.

analytic year is unacceptable because the agency should consider the August 2, 2021, marginal area attainment date as informative to the selection of an analytic year. The EPA does not agree that it is required to analyze air quality in a future year aligned with the attainment date for nonattainment areas classified as Marginal for the 2015 ozone NAAQS. Although the *North Carolina* decision held that the EPA must consider attainment dates in downwind states when establishing compliance timeframes for emission reductions in upwind states, the decision did not speak to which attainment date should influence the EPA's evaluation when there are several potentially relevant attainment dates. As the decision explains, the good neighbor provision instructs the EPA and states to apply its requirements ''consistent with the provisions of'' title I of the CAA. *North Carolina,* 531 F.3d. at 911–12. The EPA notes that this consistency instruction follows the requirement that plans ''contain adequate provisions prohibiting'' certain emissions in the good neighbor provision. The EPA, therefore, interprets the requirements of the good neighbor provision to apply in a manner consistent with the designation and planning requirements in title I that apply in downwind states and, in particular, the timeframe within which downwind states are required to implement specific emissions control measures in nonattainment areas relative to the applicable attainment dates. *See id.* at 912 (holding that the good neighbor provision's reference to title I requires consideration of both procedural and substantive provisions in title I).

Ozone nonattainment areas classified as Marginal are not generally required to implement specific emission controls at existing sources. *See* CAA section 182(a).[51] Existing regulations—either local, state, or federal—are typically a part of the reason why ''additional'' local controls are not needed to bring the area into attainment. As described in the EPA's record for its Classifications and Attainment Deadlines rule for the 2015 ozone NAAQS, history has shown that the majority of areas classified as Marginal for prior 8-hour ozone standards attained the respective standards by the Marginal attainment date (*i.e.,* without being re-classified to a Moderate designation). 83 FR 10376. As part of an historical lookback, the EPA calculated that by the relevant attainment date for areas classified as Marginal, 85 percent of such areas attained the 1979 1-hour ozone NAAQS, and 64 percent attained the 2008 ozone NAAQS. *Id.* at Response to Comments, section A.2.4.[52] Based on these historical data, the EPA expects that many areas classified Marginal for the 2015 ozone NAAQS will attain by the relevant attainment date as a result of emission reductions that are already expected to occur through implementation of existing local, state, and federal emission reduction programs. To the extent states have concerns about meeting their attainment deadline for a Marginal area, the CAA under section 181(b)(3) provides authority for them to voluntarily request a higher classification for individual areas, if needed. Where the ozone nonattainment area is classified as Moderate or higher, the responsible state is required to develop an attainment plan, which generally includes the application of various control measures to existing sources of emissions located in the nonattainment area, consistent with the requirements in Part D of title I of the Act. *See* generally CAA section 182.

Thus, given that downwind states are generally not required to impose additional controls on existing sources in a Marginal nonattainment area, the EPA believes that it would be inconsistent to interpret the good neighbor provision as requiring the EPA to evaluate the necessity for upwind state emission reductions based on air quality modeled in a future year aligned with the Marginal area attainment date. Rather, the EPA believes it is more appropriate and consistent with the nonattainment planning provisions in title I to evaluate downwind air quality and upwind state contributions, and, therefore, the necessity for upwind state emission reductions, in a year aligned with an area classification in connection with which downwind states are also required to implement controls on existing sources—*i.e.,* with the Moderate area attainment date, rather than the Marginal one. With respect to the 2015 ozone NAAQS, the Moderate area attainment date will be in the summer of 2024, and the last full year of monitored ozone-season data that will inform attainment demonstrations is, therefore, 2023.

Even assuming that a year aligned with the Marginal area attainment date could be an appropriate analytic year for the EPA to consider in evaluating future air quality in Delaware, the commenters have not submitted any information that indicates there will be an air quality problem under the 2015 ozone NAAQS in Delaware in the Marginal attainment-date year of 2021, nor did the petition provide any. As discussed in Section III of this notice, the petitioner bears the burden of establishing, as an initial matter, a technical basis for the specific finding requested and has not done so here.

The projected ozone design values for 2023 represent the best available data regarding expected air quality in Delaware in a future attainment year. These data were developed over the course of multiple years of analytic work, reflecting extensive stakeholder feedback and the latest emission inventory updates. The EPA assembled emissions inventory and performed air quality analytics in 2016 and released corresponding data and findings in a Notice of Data Availability (NODA) in January of 2017. Subsequent to stakeholder feedback on the NODA, the EPA was able to further update its inventories and air quality modeling and release results for 2023 future analytic year in October 2017. There are no comparable data available for earlier analytic years between 2017 and 2023 that have been through an equally rigorous analytic and stakeholder review process, and, thus, the 2023 data are the best data available currently for the EPA to evaluate Delaware's claims at this time.

Commenters additionally contend that the 3-year deadline for implementing a remedy under CAA section 126(c) suggests that the use of 2023, which is 5 years in the future, as an analytic year for purposes of evaluating Delaware's CAA section 126(b) petitions is inappropriate. The EPA disagrees. The EPA's evaluation of air quality in 2023 is a necessary step to determine whether the sources named in Delaware's petitions are in violation of the good neighbor provision, and the choice of 2023 as an analytic year does not preclude the implementation of a remedy in an earlier year if the necessary finding is made. While CAA section 126 contemplates that a source or group of sources may be found to have interstate transport impacts, it cannot be determined whether such source or sources are in violation of the good neighbor provision and whether controls are justified without analyzing emissions from a range of sources influencing regional-scale ozone transport, including sources not named in the petitions. In particular, as discussed in Section III of this notice, the EPA evaluates air quality in a year

[51] New source review (NSR) and conformity are still required for marginal areas, but their purpose is to ensure that new emissions don't interfere with attainment as opposed to reducing existing emissions.

[52] Available at *https://www.regulations.gov/document?D=EPA-HQ-OAR-2016-0202-0122.*

when emission reductions would be expected to be implemented under the good neighbor provision. Analysis of a future year aligned with anticipated compliance also ensures that any emission reductions the EPA may require under that provision are not in excess of what would be necessary to address downwind nonattainment and maintenance problems. The 2023 analytic year that the EPA has chosen for evaluating ozone transport with respect to the 2015 ozone NAAQS was selected because it aligns the downwind attainment dates and ensures that emission reductions required by that date will not over-control upwind state emissions because it accounts for changes in upwind state emissions and downwind state ozone concentrations expected between now and 2023. Additionally, even if the EPA were to determine based on 2023 as an analytic year that the named sources are projected to be in violation of the good neighbor provision, the EPA could still implement a remedy that complies with the earlier timeline set out under CAA section 126(c). Therefore, the EPA's reasonable choice of 2023 as an analytic year for evaluating Delaware's petition does not in and of itself preclude implementation of a remedy at an earlier date.

Commenters further assert that since Delaware's and Maryland's requested remedies are to require already existing controls to operate mean the EPA's justification for selecting the 2023 analytic year is incorrect. The EPA disagrees. First, the EPA believes it is appropriate for the EPA to consider air quality in 2023 because it is aligned with the attainment date for the 2015 ozone NAAQS. As discussed earlier, if there is no future air quality problem relative to this NAAQS, it would not be appropriate for EPA to require additional upwind emission reductions under CAA sections 110 or 126. Moreover, as discussed later in this notice, control optimization at the identified sources has already been addressed in the CSAPR Update, and emission reductions associated with the proposed control technology are already being realized. Thus, the EPA does not agree that the timeframe for implementation of a control strategy that is already in place should guide its selection of a future analytic year for this NAAQS.

Rather than focusing on optimization, the selection of an appropriate year for any additional mitigation measures necessary to eliminate upwind contribution would have to accommodate the corresponding technologies that could deliver incremental reductions. Therefore, the EPA identified an appropriate future analytic year that would allow for mitigation measures not yet considered in the CSAPR Update for sources across the region. These are technologies that were deemed to be infeasible to install for the 2017 ozone season. In establishing the CSAPR Update emissions budgets, the EPA identified but did not analyze the following two EGU NO_X control strategies in establishing the CSAPR Update emissions budgets because implementation by 2017 was not considered feasible: (1) Installing new SCR controls; and (2) installing new SNCR controls. For a variety of labor, material, engineering, and grid-related considerations, the EPA believes that 2023 would likely be an appropriate year to allow for these mitigation measures. *See* 81 FR 33730 (July 17, 2018); 83 FR 31915 (July 10, 2018).

And fourth, commenters assert that the 2023 modeling is flawed because it relies on optimistic assumptions that EGU controls would operate when there is no enforceable requirement for sources to do so under the existing allowance trading program. The commenter states that in the 2023 air quality modeling, the EPA incorrectly assumed individual units would make emission reductions. The EPA has made both a conceptual case as to why those reductions will be achieved through the CSAPR Update existing allowance trading program, and an evidence-based case that reductions based on control optimization already achieved in 2017. Not only were the anticipated reductions realized generally from EGUs in the upwind states identified by the petitioners, but reductions were also made by the fleet of individual sources (on a seasonal and daily basis) identified by the commenter. The reasonableness and feasibility of the EPA's 2023 EGU emission projections regarding the control-optimization reductions under a trading program are illustrated by the first year of CSAPR Update compliance emission levels in 2017. EGU emissions in 2017 dropped by 21 percent from 2016 levels and were seven percent below the collective CSAPR Update budgets for the 22 affected states. The EPA's 2023 projections for the 22 states were 10 percent below the collective CSAPR Update budgets, meaning in just one year, states have already achieved the majority of the EGU reductions anticipated by the EPA for 2023, suggesting that sources in these states are on pace to actually be below that level by 2023. For the five states addressed in the petitions, ozone-season NO_X EGU emissions dropped from 136,188 tons in 2016 to 92,189 tons in 2017 for EGUs greater than 25 MW. This reflects a 32 percent reduction in just one year.[53]

Data from 2017, the first year of ozone-season data that would be influenced by the CSAPR Update compliance requirements, are consistent with the EPA's assumption that the allowance trading program would drive SCR operation on a fleet-wide level. The EPA began its engineering analysis to project 2023 EGU emissions with 2016 monitored and reported data. For the units with existing SCRs that were operating below 0.10 lb/mmBtu in 2016, the EPA assumed that their operation would remain unchanged in 2023. For the units with existing SCRs that were operating above 0.10 lb/mmBtu in 2016 (totaling 82,321 tons of emissions in that year), the EPA assumed that SCRs would be optimized under a CSAPR Update scenario to 0.10 lb/mmBtu on average for 2023. This collective 2023 emissions estimates for these latter units were, therefore, adjusted down to 40,590 tons. In 2017, the very first year of CSAPR Update implementation, collective emissions from these units were 41,706 tons. This 2017 value is already very close to EPA's 2023 estimated value, and supports the EPA's assumption that these units would optimize SCR performance at 0.10 lb/mmBtu on average.

The EPA observes that this assumption is also reasonable for the units identified in the petitions. When examining the group of sources named in the petitions, the 2017 average ozone-season NO_X emission rate for SCR-controlled units was reduced by nearly half during the first year of the program relative to 2016 and 2015 levels. Moreover, preliminary data for the second quarter of 2018 suggest this pattern of lower emission rates at SCR-controlled units under the CSAPR Update is continuing.[54] Many of the analyses provided by commenters to suggest the group of named sources were not operating controls are based in the 2015–2016 time-period, before the CSAPR Update was implemented, when hourly, daily, and seasonal emissions were higher because controls were not being consistently run at optimized levels. Both CSAPR and the CSAPR

[53] See Engineering Analysis—Unit File. Available at *ftp://ftp.epa.gov/EmisInventory/2011v6/v3platform/reports/2011en_and_2023en/*.

[54] Preliminary 2018 data reflects first two months of 2018 ozone season available at the time of finalizing this action. *See* EPA's Clean Air Markets Division data, *available at https://ampd.epa.gov/ampd/*.

Update include assurance provisions that ensure that EGUs in each covered state will be required to collectively limit their emissions. These provisions include an assurance level for each state that serves as a statewide emissions cap. This assurance level is the sum of the state emission budget plus a variability limit equal to 21 percent of the state's ozone-season budget. This means that collectively EGU emissions in each state cannot exceed 121 percent of the state budget level without incurring penalties. The assurance levels are designed to help ensure each covered state in a region-wide trading program still reduces emissions—as opposed to purely relying on allowance purchases—from historical levels while allowing for the inherent variability in generation and emissions from year-to-year given changes in power sector market conditions. 76 FR 48212. These assurance levels help ensure that the emission reductions associated with the optimization of existing controls, on which the CSAPR Update budgets were based, or commensurate emission reductions from elsewhere in the state continue to be observed going forward. Therefore, even with fleet turnover and a growing allowance bank, emissions will continue to be limited within the state.

Finally, the EPA also disagrees to the extent the commenter claims that EGU emissions will increase, rather than decrease, in future years of the CSAPR Update implementation or that the market for allowance prices would have to price credits much higher in order to ensure that the emission reductions associated with control optimization will continue. This claim is not consistent with observed historical emission patterns over successive years of an allowance trading program's implementation. It is also not consistent with forward looking emissions projections in power sector models.[55] There are a variety of policy and market forces at work beyond CSAPR allowance prices that are anticipated to continue to drive generation to shift from higher emitting to lower emitting sources. These include changes such as sustained lower natural gas prices that make lower emitting natural gas combined cycle units more economic to build and dispatch, state energy policy and technology advancements which have made renewable energy (*e.g.,* solar and wind) more competitive compared to higher emitting fossil-fuel fired generation, and the aging of the coal fleet which is leading many companies to conclude that a significant number of higher emitting plants are reaching the end of their useful economic life. The EPA's experience implementing prior allowance trading programs shows that emissions from covered sources generally trend downwards (regardless of allowance price) as time extends further from the initial compliance year.[56] Both the Acid Rain Program and CSAPR SO_2 allowance banks grew in 2017 from their 2016 levels, indicating that sources are collectively adding to the bank by emitting below state budgets rather than drawing down the bank because of the availability of low-cost allowances. This illustrates that the EPA's assumptions underlying its projection of 2023 ozone-season NO_X levels for EGUs are reasonable and appropriate.

b. The EPA's Step One and Two Analysis for Maryland

With respect to steps one and two of the four-step framework for the Maryland petition, as the state noted in its petition and as the EPA acknowledged in the proposal, the EPA conducted an analysis in the CSAPR Update regarding the air quality impact of anthropogenic emissions from the five upwind states named in the state's petition on downwind air quality in Maryland with respect to the 2008 ozone NAAQS. In the CSAPR Update, the EPA found Maryland has a maintenance receptor for the 2008 NAAQS (step one), and that the upwind states that Maryland identifies in its petition are ''linked'' above the contribution threshold of one percent of the NAAQS (step two).[57] However, as discussed in Section III of this notice, the conclusion that a state's emissions met or exceeded this threshold only indicates that further analysis is appropriate to determine whether any of the upwind state's emissions meet the statutory criteria of significantly contributing to nonattainment or interfering with maintenance (step three). The EPA's independent step three analysis of the sources named in Maryland's petition is discussed in the following sections.

The state of Maryland submitted a comment challenging the EPA's decision to assess Maryland's petition only for the 2008 ozone NAAQS, asserting that the EPA failed to acknowledge that EPA's extended delay in acting on the CAA section 126(b) petition has impacted Maryland's designation under the 2015 ozone standard. Additionally, the comment asserts that since Maryland has a maintenance problem for the 2008 ozone NAAQS, and the states where the petitioned units are located are linked to that maintenance problem, applying the EPA's analysis under the 2008 ozone NAAQS to the more stringent 2015 ozone NAAQS necessarily demonstrates that the named sources are also linked to the same monitor under the 2015 ozone standard.

Maryland's petition did not allege that a source or group of sources emit or would emit in violation of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS, but rather merely alleged that emissions reductions resulting from Maryland's requested remedy could influence the 2015 ozone designations. As noted in the EPA's proposed action on Maryland's petition, the cover letter of the petition specifically requests that the agency make a finding ''that the 36 electric generating units (EGUs) . . . are emitting pollutants in violation of the provisions of Section 110(a)(2)(D)(i)(I) of the CAA with respect to the 2008 ozone National Ambient Air Quality Standards,'' and the petition throughout refers only to the 2008 ozone NAAQS when identifying alleged air quality problems in Maryland and the impacts from upwind sources. Maryland acknowledges that it did not submit a 126(b) petition requesting a finding with respect to the 2015 ozone NAAQS. Furthermore, because the EPA's proposal focused on the claims related to the 2008 ozone NAAQS raised in the petition, the EPA's proposed action on the petition did not provide notice to the public of any proposed conclusions or analysis that the public would need to appropriately comment on any determinations with respect to the 2015 ozone NAAQS, nor did it inform the public that any action might be taken with regard to a finding of a good neighbor violation with regard to the 2015 ozone NAAQS under Maryland's petition. Accordingly, taking final action on the petition in the context of the 2015 ozone NAAQS in response to Maryland's comments cannot be construed as a logical outgrowth of the proposal.

[55] See results from EPA's power sector modeling platform v6. Available at *https://www.epa.gov/airmarkets/results-using-epas-power-sector-modeling-platform-v6.*

[56] 2014 Program Progress, Clean Air Interstate Rule, Acid Rain Program, and Former NO_X Budget Trading Program. EPA. Available at *https://www.epa.gov/sites/production/files/2017-09/documents/2014_full_report.pdf.*

[57] *See* CSAPR Update, 81 FR 74504 (October 26, 2016). The EPA notes that based on 2015–2017 data, Maryland's highest ozone design value is 75 ppb at monitor ID 240251001, which is currently not violating the 2008 ozone NAAQS. *See* 2017 Design Value Reports, available at *https://www.epa.gov/sites/production/files/2018-07/ozone_designvalues_20152017_final_07_24_18.xlsx.*

Commenters further assert that it is improper for the agency to rely on 2023 ozone modeling projections to claim that Maryland does not have attainment problems with respect to the 2008 ozone NAAQS. This comment misconstrues the EPA's basis for denying Maryland's petition. Maryland's petition only requested a specific finding with respect to the 2008 ozone NAAQS. As described earlier in this section, the EPA determined that Maryland was projected to have a downwind air quality concern with respect to the 2008 ozone NAAQS under step one of the framework, and that the named upwind states are linked to Maryland in step two based on the 2017 modeling conducted for the CSAPR Update. The EPA did not evaluate whether Maryland has an air quality problem in 2023 in assessing its petition.

In conclusion, under steps one and two of the transport framework, the EPA has modeled a maintenance problem in 2017 at the Harford County receptor for the 2008 ozone NAAQS following the implementation of the CSAPR Update and the upwind states named in the petition are linked to that receptor in EPA's 2017 contribution modeling. *See* 81 FR 74533. The EPA concludes that it is appropriate to assess the additional steps of the transport framework for the sources named in Maryland's petition. This analysis is further described in this section.

3. The EPA's Step Three Analysis With Respect to EGUs Equipped With SCRs Named in Delaware and Maryland's Petitions

In the previous section, the EPA evaluated the petitions with regard to steps one and two of the transport framework, and the agency found that Delaware does not and is not expected to have a requisite air quality problem under step one for either the 2008 or 2015 ozone NAAQS, and, therefore, the EPA does not have a basis to impose additional emission limitations on the named upwind sources. While the EPA is finalizing a determination that Delaware's petitions should be denied based on the EPA's conclusions in step one of the four-step framework, the EPA is also evaluating the EGUs named in the Delaware petitions in this step three analysis because we believe that evaluation provides an additional independent basis for denial. Regarding the Maryland petition, application of steps one and two for the named upwind states indicated that it is appropriate to assess the additional steps of the transport framework for the named sources. Accordingly, this section discusses the step three analysis for the sources named in both the Delaware petitions (as an additional basis for denial) and the Maryland petition (as the sole basis for denial).

Generally, the EPA's analysis in step three considers cost, technical feasibility, and air quality factors in a multi-factor test to determine whether any emissions from states linked to downwind air quality problems in steps one and two will significantly contribute to nonattainment and/or interfere with maintenance of the NAAQS, and, therefore, must be eliminated pursuant to the good neighbor provision. Because the CSAPR Update was recently finalized to address regional interstate ozone pollution transport, the EPA considered its step three analysis of the sources named in the section 126(b) petitions in light of the existing CSAPR Update analysis and in light of additional analysis evaluating the impact of the CSAPR Update implementation.[58] Thus, in this section, the EPA explains how it identified and evaluated cost and air quality factors to evaluate the named sources in a multifactor test consistent with step three of the framework as applied in the CSAPR Update. The crucial factors the EPA considered include whether there are further NO_X emission reductions beyond what was already finalized in the CSAPR Update available at the specific sources named in the petitions, the cost of any such reductions, and the potential air quality improvements that would result from any such reductions. The EPA first analyzes this step with respect to those units identified in the Delaware and Maryland petitions that are equipped with SCR. The EPA then considers two named units that are equipped with SNCR, and finally, the one named unit that has neither SCR nor SCNR, but that has the ability to shift its fuel combustion to lower-emitting options.

a. Analysis of SCR for NO_X Mitigation

Three of Delaware's petitions identify EGUs (Conemaugh, Harrison, and Homer City) that are already equipped with SCRs, and 34 of the 36 EGUs identified in Maryland's petition are also equipped with SCRs.[59] In establishing each state's CSAPR Update EGU NO_X ozone season emission budgets, the agency quantified the emission reductions achievable from all NO_X control strategies that were feasible to implement within one year[60] and cost effective at a marginal cost of $1,400 per ton of NO_X removed. This level of NO_X control stringency was established explicitly to reflect the ability of sources in regulated states to turn on existing, idled SCR—*i.e.,* the operational behavior that the section 126(b) petitions generally ask EPA to mandate. In addition to turning on and optimizing existing idled SCR controls, this level of NO_X control stringency encompassed optimizing NO_X removal by existing, operational SCR controls; installing state-of-the-art NO_X combustion controls; and shifting generation to existing units with lower NO_X emission rates within the same state. 81 FR 74541. Thus, the CSAPR Update emission budgets already reflect emission reductions associated with turning on and optimizing existing SCR controls across the 22 CSAPR Update states, including at the EGUs that are the subject of the Maryland and Delaware petitions. This is the same control strategy identified in the petitions as being both feasible and cost effective. The EPA is determining that, as a result of the CSAPR Update, all identified cost-effective emission reductions have already been implemented for the 2008 ozone NAAQS with respect to the sources named in the Delaware and Maryland petitions that are already equipped with SCR.

Delaware and Maryland's petitions contend that, based on data available at the time the petitions were filed, the named sources are operating their NO_X emissions controls at low efficiency levels, or are not operating them at all at certain times. Delaware and Maryland, therefore, ask the EPA to impose unit-specific 30-day emission rate limits or other requirements to ensure the controls will be continually operated. The EPA acknowledges that in years prior to implementation of the CSAPR Update in 2017, the named sources may have operated as petitioners describe. However, implementation of the emission budgets promulgated in the CSAPR Update represents the most recent data regarding these EGUs' operations. In the years before 2017, the EPA observed

[58] All of the EGUs named in the petitions are subject to FIPs promulgated as part of the CSAPR Update that require EGUs in each state, including the EGUs named in the petitions, to participate in the CSAPR NO_X Ozone Season Group 2 allowance trading program, subject to statewide emission budgets with limited interstate trading.

[59] These facilities are located in Indiana (Alcoa Allowance Management Inc., Clifty Creek, Gibson, IPL—Petersburg Generating Station), Kentucky (East Bend Station, Elmer Smith Station, Tennessee Valley Authority Paradise Fossil Plant), Ohio (Killen Station, Kyger Creek, W. H. Zimmer Generating Station), Pennsylvania (Bruce Mansfield, Cheswick, Homer City, Keystone, Montour), and West Virginia (Harrison Power Station, Pleasants Power Station).

[60] The CSAPR Update was signed on September 7, 2016—approximately 8 months before the beginning of the 2017 ozone season on May 1.

similar emissions behavior for a substantial number of EGUs across the eastern United States (*i.e.,* this was not limited to just the named sources here) and suspected that the additional emissions resulting from the inefficient operation of controls were detrimentally affecting air quality for a substantial number of areas. Consequently, through a notice-and-comment rulemaking and after evaluating and responding to numerous stakeholder comments, the EPA finalized the CSAPR Update. That rulemaking found EGUs in the named states had emissions that could be cost effectively eliminated in order to address interstate ozone transport under the good neighbor provision. Therefore, the EPA imposed limits on statewide EGU emissions commensurate with running optimized SCR controls (and certain other control strategies). These emission reductions resulted in substantial modeled improvements in air quality throughout the region and had substantial benefits for the specific downwind areas identified in the petitions.

The EPA received several comments suggesting that emissions data indicate that the EPA's determination that the CSAPR Update would address interstate transport from these sources is flawed. Accordingly, the EPA has evaluated emissions data across the CSAPR Update region, including from the states and sources named in the petitions. As further described later, the EPA's analysis of such data demonstrates that, following implementation of the CSAPR Update, EGUs in the CSAPR Update regional generally and the named EGUs specifically have in fact achieved emission reductions commensurate with the operation of existing SCRs. Consequently, the EPA finds that CSAPR Update implementation is generally achieving the NO_X reductions identified in the section 126(b) petitions for mitigation at these sources. The EPA, therefore, determines that these sources neither emit nor would emit in violation of the good neighbor provision.

The EPA determines that this conclusion is appropriate with regard to the claims raised under the 2008 ozone NAAQS in both states' petitions. Moreover, because the cost-effective strategy of optimizing existing controls relative to the 2008 ozone NAAQS has already been implemented via the CSAPR Update for the sources Delaware named for its claims regarding the 2015 NAAQS, the EPA also determines there are no additional cost-effective control strategies available to further reduce NO_X emissions at these sources to address that most recent standard.

(1) Current Emissions Data Show NO_X Reductions Under the CSAPR Update

Based on observed emissions levels and emission rates in 2017, implementation of the CSAPR Update has resulted in actual emissions reductions at the named sources and/or commensurate reductions at other sources in the same state, both seasonally and on a daily basis. In other words, because the strategy of optimizing existing controls has already been implemented for these sources through the CSAPR Update, there is no information suggesting there are additional control strategies available to further reduce NO_X emissions at these sources to address for the 2008 ozone-NAAQS.

(a) Seasonal Reductions Under the CSAPR Update

The recent historical observed and reported data regarding emissions from the sources named in the petitions, and the states they are located in, illustrate the effectiveness of the EPA's allowance trading approach to reducing NO_X emissions. While much of the data presented in the petitions focused on emissions and emission rates prior to 2017, the 2017 ozone-season data illustrates that, during the first year of the CSAPR Update Rule: (1) The average emission rate improved nearly 50 percent on average at the 34 units identified in the petitions as having SCR controls, (2) EGU emissions declined by 46 percent at these 34 units, and (3) EGU emissions declined by 32 percent collectively in the states where these facilities are located.

TABLE 1—OZONE-SEASON NO_X EMISSION RATES AND EMISSIONS PRE- AND POST-CSAPR UPDATE

	2015	2016	2017
Average Ozone-Season Emission rate from 34 identified units (lb/mmBtu)	0.254	0.200	0.115
Total Emissions from 34 identified units (tons)	55,443	46,023	24,894
Total Emissions from states named in the petitions (tons)*	154,413	136,188	92,189

*IN, KY, OH, PA, and WV.

Table 1 shows the average emission rate across the 34 units, the total seasonal emissions from these units, and the total seasonal emissions from all units greater than 25 MW in the indicated states. These data illustrate that, in 2017, the control optimization and the emission reductions anticipated from the CSAPR Update are being realized from the 34 units with SCR controls. Moreover, the EPA examined control operation behavior at these units on a more granular basis and determined that these operating patterns prevailed on a smaller time scale as well. The EPA looked at the average *daily* emission rate and emissions from this group of 34 sources with SCR controls for 2015, 2016, and 2017 ozone seasons. The time-series figures in the docket for this action show that 2017 daily ozone values were significantly lower on both metrics relative to 2015 and 2016.[61] This finding supports the EPA's contention that no further regulatory actions are necessary to ensure emission reductions consistent with operation of these controls at this time.

The fact that these particular sources are mitigating emissions using the same technology and for the same standard identified in the petitions is not the sole fact on which EPA bases its determination that the measures adopted in the CSAPR Update have addressed reduction potential from these sources. Because the EPA implemented those reductions requirements though a limited trading program with state emission caps, it is also possible that some of the emission reductions corresponding to this identified mitigation measure are realized elsewhere in the state and have a similar beneficial impact on downwind air quality within the petitioning states. The EPA recognizes that a regional trading program with embedded state emission caps provides the flexibility to achieve emission reductions either at the sources through the identified mitigation measures or at

[61] The EPA has examined emission rate and tonnage reduction from the petitioner-identified sources with SCR-optimization potential prevails on a daily basis in addition to a seasonal basis and added them to the docket for this action. *See* Daily NO_X Emissions Rates for Identified SCR-Controlled Sources for Each Day of the Ozone-Season. Available in the docket for this action.

sources elsewhere in the state but disagrees with the petitioners' notion that this undermines the ability of the program to achieve meaningful emissions reductions from particular sources. The latest and best available data demonstrate that reductions are occurring at those sources. Moreover, even in the event of any single-unit variation in performance, the overall reductions are occurring within the same airshed due to the fact that state budgets and assurance levels were set to ensure those reduction levels statewide and regionwide. Thus, the design of the CSAPR Update accommodates emissions reductions based on unit-specific control optimization and observed data affirm its success at realizing this end.

In evaluating these petitions, the EPA analyzed ozone-season emission rates from all coal-fired units in the contiguous U.S. equipped with SCR and found that, based on 2017 emissions data reflecting implementation of the CSAPR Update, 261 of 274 units had ozone-season emission rates below 0.20 lb/mmBtu, indicating they were likely operating their post-combustion controls through most of the ozone season, including every unit with SCR named in Delaware's and Maryland's petitions.[62] On average, the 274 units were operating at an average emission rate of approximately 0.088 lb/mmBtu. Nine of the 13 units with 2017 emission rates above 0.20 lb/mmBtu are not located in the states where petitioners identified sources.[63] Of the remaining four, one retired in 2018, and the other three have preliminary 2018 ozone season data (for reported months of May and June) below 0.20 lb/mmBtu. Consequently, the EPA finds that on average, SCR-controlled units are operating their SCRs throughout the season when operating conditions make it feasible, and that the petitioner's assertion of the likelihood of not operating controls is not borne out in the most recently available data.

The CSAPR Update regional trading program has resulted in an approximately 50 percent improvement in emission rate performance at SCR-controlled units at the sources named in these petitions. The statewide EGU emissions limits help make those reductions permanent within the state and region. Therefore, the EPA has addressed upwind emission reductions commensurate with SCR optimization in the ozone season from the named sources.

Commenters state that the EPA's use of a fleet-wide average to demonstrate operation of SCRs at these units inappropriately ignores the ability of the named sources to achieve better emission rates. However, in the CSAPR Update, the EPA determined that, based on an aggregation of unit-level emission rates, an average fleet-wide rate emission rate of 0.10 lb/mmbtu would represent the optimized operation of SCR controls that were not at that time being operated or optimized. 81 FR 74543. In concluding that this rate would be appropriate for calculating emission reduction potential from implementation of this control strategy, the EPA recognized that some units would have optimized rates above that level and some below that level (consistent with the petitioner's own comments and analysis). Therefore, in using a fleet-wide average for setting regional and state emission limits, the EPA considered and relied on unit-level data. Nevertheless, the 0.10 lb/mmBtu emission rate used to reflect control optimization for the 2008 ozone NAAQS for the identified sources in the CSAPR Update was not reopened for comment in this action.

(b) Daily Reductions Under the CSAPR Update

Commenters disagree with the EPA's conclusion that data demonstrating that SCRs are being operated in the upwind states and at the named sources *seasonally* is representative of implementation of cost-effective controls. It is the commenter's position that for existing controls to be cost effective, they must be maintained and operated in accordance with good pollution control practices whenever feasible. Commenters assert that if shorter-term NO_X emission rate data are evaluated, the SCR controls do not appear to have been operated in accordance with good pollution control practices at all times the units were operating.

The petitions have alleged that short-term limits are necessary to prevent units from turning controls off intermittently on days with high ozone in order to harvest additional power that would otherwise be used for control operation. As described at proposal, the EPA examined the hourly NO_X emissions data reported to the EPA and did not observe many instances of units selectively turning down or turning off their emission control equipment during hours with high generation.[64] SCR-controlled units generally operated with lower emission rates during high generation hours, suggesting SCRs generally were in better operating condition—not worse, let alone idling—during those days/hours. In other words, the EPA compared NO_X rates for EGUs for hours with high energy demand and compared them with seasonal average NO_X rates and found very little difference. Thus, the data do not support the notion that units are reducing SCR operation on high demand days. Moreover, the auxiliary power used for control operation is small—typically less than one percent of the generation at the facility—and it is, therefore, unlikely that sources would cease operation of controls for such a limited energy savings. Instead, the data indicate that increases in total emissions on days with high generation are generally the result of additional units that do not normally operate coming online to satisfy increased energy demand and units that do regularly operate increasing hourly utilization, rather than reduced functioning of control equipment. The EPA notes that if, in fact, the emission reductions expected from the operation of control equipment at these facilities were no longer being realized in the future, this final action denying Delaware's and Maryland's petitions would not preclude either state from submitting another CAA section 126(b) petition for these sources raising new information not already considered herein. The EPA is not, however, pre-determining what action may be appropriate on any such future petition.

Commenters have observed that individual units equipped with SCR have operated in 2017 ozone season with rates higher than 0.2 lb/mmBtu on select days, suggesting that their SCR controls have been idled. The commenters identified the number of days this occurred at individual units (one unit at Homer City had the highest frequency of 15 days out of the 153-day ozone season, one unit at Harrison had two days, and Conemaugh had no days) and acknowledged that there may be engineering reasons for units to decrease or cease operation of controls on individual days (*e.g.,* to avoid damaging or plugging of the SCR or taking a forced outage where a breakdown leaves the

[62] As described in the CSAPR Update, optimized operation of combustion controls and SCR typically results in NO_X emission rates of 0.10 lb/mmBtu or below. Combustion controls alone typically result in rates down to 0.20 lb/mmBtu but can at times achieve results in the range of 0.14 lb/mmBtu. Therefore, units equipped with SCR that have emission rates above 0.20 lb/mmBtu are likely not significantly utilizing their SCR. The optimized rate for any particular unit depends on the unit-specific characteristics, such as boiler configuration, burner type and configuration, fuel type, capacity factor, and control characteristics such as the age, type, and number of layers of catalyst and reagent concentration and type.

[63] *See* Discussion of Short-term Emission Limits Final Rule, available in the docket for this action.

[64] *Id.*

unit unavailable to produce power). The EPA also observes that there appear to be engineering limitations to operating SCR at low hourly utilization rates (*e.g.,* at hourly capacity factors below about 25 percent, the EPA has observed limited operation of SCRs).[65] While Maryland acknowledges these engineering challenges to SCR performance in low capacity factor conditions, it is not clear how the suggested monthly unit-specific emission rate would accommodate those challenges. In particular, ozone season capacity factors (which reflect the actual output relative to potential output) have decreased over time, dropping from a heat-input weighted capacity factor of 77 percent in 2006 to a value of 67 percent in 2017, suggesting that units may spend fewer hours operating at the high hourly utilization factors associated with the most-efficient SCR operation and lowest emission rates.[66] In addition, units are now operating more frequently at hourly utilization rates at or below 40 percent in 2017 compared to 2006.

An individual unit may have high emissions from idling an SCR or SNCR or for burning coal (rather than natural gas) on a specific hour or day in the 2017 ozone season, or that the absence of daily emission limits leaves open the possibility that a unit at the facility may have high emissions on days that Maryland or Delaware monitors record ozone exceedances. However, in the context of regional ozone pollution, the EPA has concludes that reducing NO_X emissions regionally and seasonally while allowing flexibility in compliance is effective at reducing downwind peak ozone concentrations. Because of the regional nature of interstate ozone transport, in which emissions are transported hundreds of miles over the course of hours or days, the EPA has focused on reducing aggregate NO_X emissions, an approach that has successfully led to reductions in ozone concentrations across the east coast. As such, an emission event in one hour or on one day at a particular unit is not sufficient to suggest that the source is not adequately controlled over the course of the ozone season.

Petitioners and commenters asserted that that additional emission reductions are achievable (comparing the methodology and rates put forward by with what would be expected and/or realized under the CSAPR Update) and that these emission reductions would be cost effective.

Commenters assert that the maximum 30-day emission rates requested in Maryland's petition are (1) representative of well-run controls, (2) flexible to allow for multiple operating conditions and even sub-optimal operation of controls on some days, and (3) consistently achievable based on the units' own reported emissions data that indicates the units achieved this emission rate 123 times out of 123 attempts in their past-best ozone season. However, these assertions are flawed because the commenters' assessment included historical data that, through notice-and-comment rulemaking in the CSAPR Update, EPA determined were not representative of current or future operating conditions given SCR component degradation and maintenance schedules and changes in unit operation (*i.e.,* to lower capacity factors). For example, EPA's analysis of historical SCR performance in the CSAPR Update evolved through comments on the proposal, ultimately evaluating data from 2009 through 2015 because in this time period SCR controls were operated year-round starting in the first compliance period for the CAIR NO_X annual program (and subsequently CSAPR NO_X annual programs) rather than only seasonally as was done in years before 2009.[67] Further, the petitioners and commenters assert that the agency can apply historical SCR operating data to the future in a manner that is at odds with the EPA's conclusions reached through notice-and-comment in the CSAPR Update. For example, petitioners and commenters assert that the agency can consider data from the year of each unit's lowest historical average NO_X rate. In the CSAPR Update, the agency took comment on the representativeness of historical data in terms of future ongoing achievable NO_X rates. Stakeholder comment led the EPA to ultimately to focus on the third lowest ozone season rate from 2009 through 2015 to ensure that its selected rates represented efficient but routine SCR operation (*i.e.,* when the performance of the SCR was not simply the result of being new, or having a highly aggressive catalyst replacement schedule, but was the result of being well-maintained and well-run). These topics are as described further in the CSAPR Update RTC. Thus, the petitioners and commenters rely on inadequate arguments, based in part on analyzing unit behaviors over an inappropriate time-period and by overstating the potential NO_X reductions achievable at the sources. Considering the information received and EPA's assessment thereof, the EPA has not received sufficient information that necessitates updating or otherwise changing the agency's position with respect to the EPA's previous findings regarding cost-effective reductions at SCRs.

In addition, to the extent that commenters argue that the emission levels assumed for these units in the CSAPR Update (or alternatively as measured in 2017) are marginally higher than what commenters claim would be readily achievable, the air quality impacts of these differences on the design value are likely to be small. Specifically, Maryland indicates that the state anticipates an air quality benefit of 0.656 ppb attributable to the named units going from idled controls to Maryland's definition of ''optimized'' control operation. This is comparable to the estimated improvement in the CSAPR Update from the engineering base case to the control case of $1,400/ton, wherein the EPA estimated a 0.6 ppb improvement in air quality at the for Harford, Maryland receptor.[68] Subtracting the improvement estimated by the commenter from the value estimated by the EPA yields a marginal difference of 0.056 ppb.[69] Thus, the petitions do not provide system-wide impacts analysis showing that their requested unit-specific rate requirements, which would reduce sources' emissions only slightly below already achieved levels, would result in

[65] Hourly utilization factor is defined here as the ratio of the hourly heat input to the maximum rated hourly heat input rate. *See* Discussion of Short-term Emissions Limits Final Rule, available in the docket for this action.

[66] The EPA selected 2006 because a commenter identified 2006 as the best year of operation for a number of units and 2005 did not appear to have as comprehensive a data set.

[67] The EPA's analysis of SCR NO_X rates for the final CSAPR Update differed from the proposal. The evaluation focused on a more recent timeframe for analysis: 2009 through 2015, compared to 2003 through 2014. The EPA believed this change was reasonable because there were significant shifts in the power sector since 2003, particularly with respect to power sector economics (*e.g.,* lower natural gas prices in response to shale gas development) and environmental regulations (*e.g.,* CAIR and CSAPR). Because of these changes, the EPA considers it reasonable to evaluate SCR performance focusing on more recent historical data that better represent the current landscape of considerations affecting the power sector. The EPA chose 2009 because that is the first year of CAIR NO_X annual compliance. For further discussion, *see* page 522 of EPA's Response to Comments on the CSAPR Update available in the docket for that rule at EPA–HQ–OAR–2015–0500–0572 and EPA's EGU NO_X Mitigation Strategies Final Rule TSD available in the docket for that rule at EPA–HQ–OAR–2015–0500–0554.

[68] *See* CSAPR Update Final Ozone AQAT ''Summary DVs'' tab, comparing cell L12 and O12 (along with cell O28).

[69] While there are differences in modeling platforms, emission totals, and temporalization of the emissions within the modeling platforms that would affect this comparison, this provides some estimate of the difference.

regional reductions and air quality improvements as related to the EPA's analysis regarding the good neighbor provision.

(2) Reliance on Allowance Trading To Address Section 126(b) Petitions

One commenter asserts that evaluating Maryland's CAA section 126(b) petition for control for a specific source by relying on an average fleet-wide rate without any consideration of the emission rate that specific source is capable of achieving undermines the intent of section 126(b) of the CAA, which gives a state the authority to ask the EPA to set emissions limits for specific sources of air pollution.

As described earlier, while CAA section 126(b) addresses the same substantive prohibition as CAA section 110(a)(2)(D)(i), CAA section 126(b) provides an independent process for downwind states to address interstate transport. Commenters state that whether a specific source emits or would emit in violation of the good neighbor provision is primarily a factual determination based on monitored data and modeling, not a legal conclusion based on whether a source is meeting an emissions budget under a SIP or FIP.

The EPA disagrees with those commenters that argue that the EPA can only consider unit-level emission rates when evaluating CAA section 126(b) petitions and must ignore prior actions and reductions addressing interstate transport that pertain to the same NAAQS, the same mitigation measures, and the same units. If the EPA has already identified, mandated, and received commensurate emission reductions from those sources (or sources in a shared geographic region determined to be equally relevant to the downwind monitor) based on control optimization through a trading program, then ignoring that related action could lead to miscounting emission reductions from a mitigation technology for a given NAAQS. While the EPA does not disagree that these types of considerations need to be revisited when evaluating potential reductions to meet future updated NAAQS (just as they have been revisited in previous updates to the NAAQS) for which SIPs and FIPs have yet to be promulgated (*e.g.,* the 2015 ozone NAAQS), the agency disagrees that they are irrelevant considerations for other actions related to upwind contribution for the 2008 NAAQS for which actions have been promulgated.

According to commenters, evaluating Delaware's and Maryland's section 126(b) petitions based on whether the named sources participate in a trading program is a strained interpretation of section 126(b) because it fails to account for CAA section 126(c)'s reference to source-specific remedies, including emissions limitations. The EPA's position on why it is appropriate to evaluate a CAA section 126(b) under the four-step framework and CSAPR Update is described in Section III of this notice. Additionally, the EPA disagrees with commenters that taking account of compliance with an emissions budget as part of an analysis of a CAA section 126(b) petition is inconsistent with the nature of CAA section 126(c)'s specific alternative remedies. Under CAA section 302(k), an ''emission limitation'' is ''a requirement that limits the quantity, rate, or concentration of emission of air pollutants on a continuous basis.'' Under an allowance trading program, the Administrator sets an emission limitation for a defined region or regions and a compliance schedule for each unit subject to the program in that region. The emission limitation for each unit is the federally enforceable requirement that the quantity of the unit's emissions during a specified period cannot legally exceed the amount authorized by the allowances that the unit holds. The compliance schedule is set by establishing a deadline by which units must begin to comply with the requirement to hold allowances sufficient to cover emissions. Because an allowance trading program is a compliance mechanism that enables sources to make cost-effective decisions to meet their allowance requirements, which are, in essence, emission limits, the EPA believes considering compliance with such a program as part of its analysis of a CAA section 126(b) petition is in fact consistent with the forms of remedy authorized under CAA section 126(c).

Additionally, the EPA has previously relied on regional allowance trading programs intended to implement CAA section 110(a)(2)(D)(i)(I) to also address section 126(b) petitions. The EPA first used a regional trading program as a section 126(c) remedy for findings in response to section 126(b) petitions from eight states requesting upwind sources be regulated with respect to the 1979 ozone NAAQS. Based on findings made through the NO_X SIP call, the EPA established its Federal NO_X Budget Trading Program in response to these petitions. 65 FR 2674 (Jan. 18, 2000). The use of the regional analysis of ozone transport in the NO_X SIP call findings to respond to contemporaneous section 126(b) petitions was challenged in the D.C. Circuit in *Appalachian Power,* where Petitioners argued that findings based on statewide emissions cannot determine whether specific stationary source emissions are in violation of the good neighbor provision. Petitioners argued that instead of relying on the NO_X SIP call findings, the EPA needed first to make the more rigorous finding that the specified stationary sources within a given state independently met its threshold test for impacts on downwind areas. Given the linkage between section 126(b) and the good neighbor provision, the court determined it was reasonable for the EPA to tie its source-specific findings under section 126(b) to the significance of a state's total NO_X emissions as determined under section 110(a)(2)(D)(i). 249 F.3d at 1049–1050. While the court did not explicitly speak to the issue of whether an allowance trading program is an appropriate remedy under CAA section 126(c), the court's conclusion that a regional analysis is appropriate to evaluate ozone transport at individual sources also supports the conclusion that a regional remedy can effectively address the any air quality problem identified through such an analysis. The court ultimately upheld the EPA's regulatory action on the section CAA 126(b) petitions, which included reliance on the allowance trading program.

The EPA evaluated whether there is newly available information that leads to a determination that these sources are inadequately controlled by the CSAPR Update, as commenters assert. The petitioners and commenters claim that this is so, based on data that preceded implementation of the CSAPR Update that they assert illustrates that relatively large sources with existing control equipment were not operating at appropriate levels of NO_X abatement. The petitioners and commenters further assert that these sources are inadequately controlled because they do not always operate control equipment on high ozone days. They support their argument with an analysis of an allegedly achievable NO_X rate, which they claim is appropriate for regulatory application.

The EPA does not agree that these assertions support a determination that these sources are inadequately controlled by the CSAPR Update, and that additional regulatory measures for these sources are necessary under the good neighbor provision. Not only was that rule specifically designed to achieve the reductions necessary under the good neighbor provision, but recent data indicate that it is in fact achieving such reductions and that petitioners' assertions are not borne out by the

current or future operations of the named sources. As discussed earlier, based on reported 2017 ozone-season emissions under the first CSAPR Update compliance period, these sources as a group effectively reduced emissions to a degree consistent with the CSAPR Update remedy. Commenters provided no compelling additional recent emissions and air quality data that suggest controls were broadly underperforming on high ozone days.

The EPA notes that the power sector is a complex and interconnected system in which factors affecting one facility can result in effects across facilities within the state or dispatch region. Thus, granting the petitioners' request for source-specific emission limitations at certain EGUs could cause effects at other EGUs. For instance, rate requirements could result in generation shifting to higher-emitting units that were not named in the petition, potentially creating worse downwind air quality impacts on a statewide or regionwide basis. Petitioners fail to recognize or account for potential re-balancing across the power sector in response to their requested remedy. By only examining the impact of a subset of the units subject to the same cap, the petitioner does not fully account for the potential air quality impact from implementation of the proposed remedy.

The EPA received comments on the proposed action asserting that an allowance trading program, such as that promulgated in the CSAPR Update, cannot address significant contribution to nonattainment or interference with maintenance from a source or group of sources under CAA section 126. Commenters state that an allowance trading program is insufficient to constrain NO_X emissions where there are excess allowances. Commenters state that since ozone is observed on a daily basis and the form of the standard is based on daily observations, daily NO_X limits are necessary to prevent units from emitting at high rates on exceedance days and the days leading up to the exceedance. The EPA does not agree that an allowance trading program is an inadequate means of implementing emission reductions for interstate transport purposes and notes it has done so in response to CAA section 126(b) petitions previously.[70] Petitioners have not provided compelling new or novel information regarding the EPA's technical analysis of NO_X control potential or observation of CSAPR Update implementation. Implementation mechanisms based on seasonal NO_X requirements have demonstrated success at reducing peak ozone concentrations. For example, over the past decade, there has been significant improvement in ozone across the eastern United States, in part due to season-long allowance trading programs such as the NO_X Budget Trading Program, CAIR, and the CSAPR NO_X ozone-season allowance trading program. As a result, current measured air quality in all Eastern areas is below the 1997 ozone NAAQS. As such, based on the best information available to the agency at this time, the EPA believes that its current approach of implementing an allowance trading program at step four has proven effective at constraining NO_X emissions from covered sources, including the sources named in the petitions.

b. Analysis of SNCR for NO_X Mitigation

In its petition, Maryland also alleges that two facilities operating SNCR post-combustion controls—Cambria Cogen in Pennsylvania and Grant Town Power Plant in West Virginia—emit or would emit in violation of the good neighbor provision with respect to the 2008 ozone NAAQS and asks that the agency impose emission limits or other requirements to ensure that the facilities operate their SNCR during the ozone season. The EPA is finalizing its proposal to deny Maryland's petition with respect to sources operating SNCR based on its conclusion that fully operating with SNCR is not a cost-effective NO_X emissions reduction strategy for these sources, considering other relevant factors such as NO_X reduction potential and downwind air quality impact, with respect to addressing transport obligations for the 2008 ozone NAAQS. The EPA determined in the CSAPR Update that operating existing SNCR would be $3,400 per ton, which exceeded the level that the EPA determined would be cost effective for the good neighbor provision for the 2008 ozone NAAQS, and, therefore, the EPA is determining in this action that these sources do not emit and would not emit in violation of the good neighbor provision with respect to that NAAQS.

As discussed in Section IV.C.2 of the proposal, the EPA evaluated control strategies in the CSAPR Update that were considered feasible to implement by the 2017 ozone season and determined that EGU control strategies available at a marginal cost of $1,400 per ton of NO_X reduced were cost effective, using a multi-factor test that considered cost, NO_X reduction potential, and downwind air quality improvements at various levels of potential NO_X control stringency. In its evaluation, the EPA examined control strategies available at different cost thresholds, including turning on existing idled SNCR, which is the remedy proposed by Maryland in its petition for these two units. The EPA identified a marginal cost of $3,400 per ton as the level of uniform control stringency that represents turning on idled SNCR controls.[71] The EPA identified this higher marginal cost of operating SNCR at units in the CSAPR Update region, relative to operation of SCR, predominately based on the cost and quantity of reagent needed (*i.e.,* SNCRs require substantially more reagent compared with SCRs due to the absence of catalyst which greatly facilitates the reactions converting the NO_X).

The CSAPR Update finalized emission budgets using $1,400 per ton control stringency, finding within step three of the transport framework that this level of stringency represented the control level at which incremental EGU NO_X reductions and corresponding downwind ozone air quality improvements were maximized with respect to marginal cost. In finding that use of the $1,400 per ton control cost level was appropriate for the 2008 ozone NAAQS, the EPA determined that the more stringent emission budget level reflecting $3,400 per ton (representing turning on idled SNCR controls) yielded fewer additional emission reductions and fewer air quality improvements per additional dollar of control costs.

Based on the information, assumptions, and analysis in the CSAPR Update, the EPA determined that establishing emission budgets at $3,400 per ton and developing associated emissions budgets based on operation of idled SNCR controls was not cost effective for addressing good neighbor provision obligations for the 2008 ozone NAAQS because this level of control yielded fewer additional emission reductions and fewer air quality improvements relative to other less-costly control strategies. 81 FR 74550. A review of the emission levels at the

[70] *See* Rulemaking on Section 126 Petition From North Carolina To Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Clean Air Interstate Rule; Revisions to the Acid Rain Program, 71 FR 25328 (April 28, 2006); Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport, 65 FR 2674 (January 18, 2000).

[71] *See* EGU NO_X Mitigation Strategies Final Rule TSD (docket ID EPA–HQ–OAR–2015–0500–0554), available at *http://www.regulations.gov.*

sources named in Maryland's petition before implementation of the CSAPR Update, in particular, demonstrates that the two units are relatively small in size and have low emission levels, indicating that the units have a relatively limited ability to substantially reduce NO_X emissions and, thereby, improve air quality downwind.[72] Neither Maryland's petition nor public commenters provide any contradictory information demonstrating that fully operating SNCR is a cost-effective control for the two named sources, considering the marginal cost of implementation, the anticipated emission reduction, and the potential air quality benefits.[73] The EPA, thus, denies Maryland's petition with respect to these sources based on its conclusion that fully operating with SNCR is not a cost-effective NO_X emission reduction strategy with respect to addressing transport obligations for the 2008 ozone NAAQS for these sources, and, therefore, that these sources do not emit and would not emit in violation of the good neighbor provision with respect to the 2008 ozone NAAQS.

While the EPA determined that fully operating SNCR across the region was not cost effective with respect to addressing transport obligations for the 2008 ozone NAAQS, individual sources may nonetheless choose how to comply with the CSAPR ozone season NO_X allowance trading program. The operation of existing SNCR controls is one method to achieve emission reductions needed to comply with the requirements of the trading program. 81 FR 74561. For instance, during the 2017 ozone season, likely in part as the result of economic incentives under the CSAPR Update, the two Cambria units with SNCR appear to have operated their controls, resulting in average NO_X emissions rates of 0.15 and 0.16 lbs/mmBtu, respectively (a drop from the 2016 rates of 0.23 and 0.24 lbs/mmBtu, respectively).[74]

One commenter asserts that the EPA incorrectly analyzed Maryland's argument related to EGUs equipped with SNCR, as the availability of NO_X reductions under a 126(b) petition must be evaluated on a source-specific basis in order to determine if the proposed NO_X control is cost effective. The commenter alleges that when the EPA conducts cost-effectiveness determinations for RACT, SNCR installation is considered cost effective, and, therefore that running those installed controls is necessarily also cost effective in the context of the good neighbor provision as well. Another commenter asserts that the optimization of existing post-combustion controls is an immediately available cost-effective NO_X reduction strategy available in the EGU sector.

While the operation of SNCR could be implemented relatively quickly, as described earlier, the EPA does not have a basis to determine that the controls are cost effective at these units when considering cost, NO_X reduction potential, and downwind air quality improvements. Commenters have also not provided information demonstrating that, even at the unit level proposed by the commenter, operation of SNCR at the two units named in the Maryland petition are cost effective relative to NO_X reduction potential and downwind air quality improvements.

The EPA also does not agree that any conclusions drawn regarding cost effectiveness of controls in other contexts are directly applicable here. RACT determinations are evaluating whether implementation of certain controls within a nonattainment area will be effective at addressing a local air quality problem relative to the cost of implementing such controls. However, implementation of the same controls at sources that are significantly farther from a particular air quality problem may have very different air quality impacts a downwind area. As described earlier in this notice, ozone transport is the result of the collective contribution of many sources in several upwind states. The relative cost effectiveness of emission reductions from implementation of controls at a given upwind source, when considering NO_X reduction potential and downwind impacts, will necessarily be different than evaluation of the same controls at a more local source. The EPA's approach for assessing cost effectiveness in the context of regional interstate ozone pollution transport can, therefore, reasonably be considered as addressing a different air quality concern and thereby independent from cost-effectiveness determinations made under RACT.

Based on the EPA's conclusion that fully operating with SNCR is not a cost-effective NO_X emission reduction strategy with respect to addressing transport obligations for the 2008 ozone NAAQS for these sources, the EPA finds that the petition and the comments provide no grounds for the EPA to determine that that the two sources identified as operating SNCR emit or would emit in violation of the good neighbor provision with respect to the 2008 ozone NAAQS.

c. The EPA's Step Three Analysis With Respect to Brunner Island

The remaining facility addressed in one of Delaware's petitions is the Brunner Island facility, which currently has neither SCR nor SNCR installed. As noted earlier, the EPA has already determined that Delaware's petitions should be denied based on the EPA's conclusions that there are no downwind air quality impacts in Delaware in steps one and two of the four-step framework. Nonetheless, the EPA has evaluated Brunner Island with respect to step three because it provides another independent basis for EPA's denial of the petition.

With respect to the question of whether there are feasible and cost-effective NO_X emissions reductions available at Brunner Island, the facility primarily burned natural gas with a low NO_X emissions rate in the 2017 ozone season, and the EPA expects the facility to continue operating primarily by burning natural gas in future ozone seasons. As such, and as described in more detail in the following paragraphs, the EPA at this time finds that no additional feasible and cost-effective NO_X emissions reductions available at Brunner Island have been identified. The EPA, therefore, has no basis to determine, consistent with the standard of review outlined in Section IV.A of this notice, that Brunner Island emits or would emit in violation of the good neighbor provision with respect to the 2008 or 2015 ozone NAAQS.

Delaware's CAA section 126(b) petition first proposes that the operation of natural gas is an available cost-effective emissions reduction measure that could be implemented at Brunner Island. Brunner Island completed construction of a natural gas pipeline connection prior to the beginning of the 2017 ozone season (*i.e.,* by May 1, 2017) and operated primarily using natural gas as fuel for the 2017 ozone season. As a result, Brunner Island's actual ozone season NO_X emissions declined from 3,765 tons in 2016 to 877 tons in 2017,

[72] Cambria Cogen units one and two emitted 237 tons and 219 tons of ozone season NO_X in 2016, respectively, while Grant Town units 1A and 1B emitted 282 tons and 285 tons of ozone season NO_X in 2016, respectively. Ozone season NO_X emissions rates from these EGUs under the CSAPR Update in 2017 are described later.

[73] Since the EPA does not agree, and Maryland has not demonstrated in the first instance that the operation of SNCR at these units is cost effective, the EPA need not address Maryland's claim that short-term emission limits may be appropriate. In any event, the EPA notes that the same concerns with relying on the lowest historical emission rate for purposes of determining what is achievable for SCRs, discussed in Section IV.B.2 in the proposal, would also apply to Maryland's contentions with respect to SNCRs.

[74] *See* 2015, 2016, and 2017 Ozone-Season NO_X rates (lbs/mmBtu) for 41 units named in the petitions, available in the docket for this action.

and the facility's ozone season NO_X emissions rate declined from 0.370 lbs/mmBtu in 2016 to 0.090 lbs/mmBtu in 2017. Thus, Brunner Island has already implemented the emissions reductions consistent with what Delaware asserted would qualify as a cost-effective strategy for reducing NO_X emissions. Accordingly, the EPA has determined that Delaware's CAA section 126(b) petition does not demonstrate that, at this current level of emissions, Brunner Island emits in violation of the good neighbor provision.

Similarly, the EPA concludes that Delaware's petition does not demonstrate that Brunner Island would emit in violation of the good neighbor provision. The EPA believes Brunner Island will continue to primarily use natural gas as fuel during future ozone seasons for economic reasons. First, compliance with the CSAPR Update provides an economic incentive to cost-effectively reduce NO_X emissions. Specifically, Brunner Island's participation in the CSAPR NO_X Ozone Season Group 2 allowance trading program provides an economic incentive to produce electricity in ways that lower ozone season NO_X, such as by burning natural gas relative to burning coal at this particular power plant. Under the CSAPR Update, each ton of NO_X emitted by a covered EGU has an economic value—either a direct cost in the case that a power plant must purchase an allowance to cover that ton of emissions for CSAPR Update compliance or an opportunity cost in the case that a power plant must use an allowance in its account for compliance and, thereby, foregoes the opportunity to sell that allowance on the market. The EPA notes that Brunner Island's 2017 emissions would have been approximately 2,714 tons more than its actual 2017 emissions if it had operated as a coal-fired generator, as it did in 2016.[75] This reduction in NO_X emissions that is attributable to primarily burning natural gas has an economic value in the CSAPR allowance trading market.

Second, there are continuing fuel-market based economic incentives suggesting that Brunner Island will continue to primarily burn natural gas during the ozone season. Brunner Island elected to add the capability to primarily utilize natural gas by way of a large capital investment in a new natural gas pipeline capacity connection. Brunner Island's operators would have planned for and constructed this project during the recent period of relatively low natural gas prices. In the years preceding the completion of this natural gas pipeline connection project (*i.e.,* between 2009 and 2016), average annual Henry Hub natural gas spot prices ranged from $2.52/mmBtu to $4.37/mmBtu.[76] The capital expenditure to construct a natural gas pipeline connection suggests that natural gas prices within this range make it economic (*i.e.,* cheaper) for Brunner Island to burn natural gas to generate electricity relative to burning coal. As such, future natural gas prices in this same range suggest that Brunner Island will continue to primarily burn natural gas during future ozone seasons. The EPA and other independent analysts expect future natural gas prices to remain low and within this price range exhibited from 2009 to 2016 due both to supply and distribution pipeline buildout. For example, the Energy Information Administration's (EIA) 2018 Annual Energy Outlook (AEO) natural gas price projections for the Henry Hub spot price range from $3.06/mmBtu in 2018 to $3.83/mmBtu in 2023.[77] Moreover, the AEO short-term energy outlook and New York Mercantile Exchange futures further support the estimates of a continued low-cost natural gas supply.[78] These independent analyses of fuel price data and projections lead to the EPA's expectation that fuel-market economics will continue to support Brunner Island's primarily burning natural gas during future ozone seasons through at least 2023.[79]

The context in which Brunner Island installed natural gas-firing capability and burned natural gas is consistent with observed recent trends in natural gas utilization within the power sector, suggesting that Brunner Island's economic situation in which it primarily burns gas as fuel during the ozone season is not unique or limited. Comparing total heat input from 2014 with 2017 for all units that utilize natural gas and report to the EPA's Clean Air Markets Division, historical data showed an increased use of natural gas of 14 percent.[80] This overall increase results from both an increase in capacity from the construction of additional units and an increased gas-fired capacity factor at existing sources. The available capacity increased six percent while average capacity factor increased from 23 percent to 25 percent, which reflects an eight percent increase in utilization.

Considering the projected continued broader downward trends in NO_X emissions resulting in improved air quality in Delaware, the EPA anticipates that Brunner Island will likely continue to primarily burn natural gas during the ozone season as air quality in Delaware continues to improve. Accordingly, the EPA has no basis to conclude that the facility would emit in violation of the good neighbor provision with respect to either the 2008 or 2015 ozone NAAQS.

Commenters assert that the EPA's interpretation of ''emits'' or ''would emit'' inappropriately proposes to evaluate only a single year's worth of emissions data or anticipated future rates, without ensuring that the emission reductions (*i.e.* evaluated rates) are permanent and federally enforceable. The EPA disagrees that it is required to impose federally enforceable limitations at Brunner Island based on the facts before the agency. The prohibition of CAA section

[75] This estimated emissions difference was calculated as the difference between 2017 reported NO_X emissions of 877 tons and a counterfactual 2017 NO_X emissions estimate of 3,591 tons created using 2017 operations (*i.e.,* heat input of 19,406,872 mmBtu) multiplied by the 2016 NO_X emission rate of 0.37 lb/mmBtu reflecting coal-fired generation. These data are publicly available at *https://www.epa.gov/ampd.*

[76] Henry Hub is a significant distribution hub located on the natural gas pipeline system located in Louisiana. Due to the significant volume of trades at this location, it is seen as the primary benchmark for the North American natural gas market. These data are publicly available at *https://www.eia.gov/dnav/ng/hist/rngwhhdA.htm.*

[77] In the 2018 reference case Annual Energy Outlook (AEO) released February 6, 2018, created by the U.S. Energy Information Administration (EIA), natural gas prices for the power sector for 2018 through 2023. Available at *https://www.eia.gov/outlooks/aeo/data/browser/#/?id=13-AEO2018&cases=ref2018&sourcekey=0.* Projected delivered natural gas prices for the electric power sector in the Middle Atlantic region, where Brunner Island is located, ranged between $3.56 in 2018 and $4.08/mmBtu in 2023. The projected delivered coal prices for the electric power sector in the Middle Atlantic region remain relatively constant, ranging from $2.51 to $2.56/mmBtu. These data are publicly available at *https://www.eia.gov/outlooks/aeo/data/browser/#/?id=3-AEO2018&region=1-2&cases=ref2018&start=2016&end=2023&f=A&linechart=ref2018-d121317a.3-3AEO2018.1-2&map=ref2018-d121317a.4-3-AEO2018.1-2&sourcekey=0.*

[78] AEO short-term energy outlook available at *https://www.eia.gov/outlooks/steo/report/natgas.php.*

[79] The EPA also notes that a proposed consent decree between Sierra Club and Talen Energy may further ensure that Brunner Island will operate by burning gas in the ozone season in 2023 and future years. Under the settlement, Brunner Island agrees to operate only on natural gas during the ozone season (May 1–September 30) starting on January 1, 2023, (subjected to limited exceptions) and cease coal operations after December 31, 2028. Sierra Club, Talen Energy, and Brunner Island jointly moved the Middle District of Pennsylvania to enter the proposed the consent decree, and on August 31, 2018, the court granted the motion and entered the agreement. *See* Order Granting Joint Motion for Entry of Proposed Consent Decree and Stipulation Extending Defendants' Time to Respond to Complaint, *Sierra Club.* v *Talen Energy Corp.,* Case No. 1:18–cv–01042–CCC.

[80] From 8.4 billion mmBtu to 9.6 billion mmBtu. *See* EPA's Clean Air Markets Division data *available at https://ampd.epa.gov/ampd/.*

110(a)(2)(D)(i)(I) is linked directly to CAA section 126(b), in that a violation of the prohibition in CAA section 110(a)(2)(D)(i) is a condition precedent for action under CAA section 126(b) and, critically, that significant contribution to nonattainment and interference with maintenance should be construed identically for purposes of both provisions where EPA has already given meaning to the terms under one provision. 83 FR 7711 through 7722; *see also Appalachian Power,* at 1048–50 (affirming as reasonable the EPA's approach to interpreting a violation of CAA section 110(a)(2)(D)(i)(I) under CAA section 126 consistent with its approach in the NO_X SIP Call).

Given the inextricable link between the substantive requirements of the two provisions, the EPA applied the same four-step framework used in previous ozone transport rulemakings, including the CSAPR Update, for evaluating whether Brunner Island significantly contributes to nonattainment, or interferes with maintenance, of the 2008 and 2015 ozone NAAQS in Delaware. Pursuant to this framework, the EPA first determines in steps one and two whether emissions from an upwind state impact downwind air quality problems at a level that exceeds an air quality threshold, such that the state is linked and, therefore, contributes to the air quality problem. In step three, the EPA then determines whether the contribution is ''significant'' or interferes with maintenance of the NAAQS based on several factors, including the availability of cost-effective emission reductions at sources within the state. Where the EPA determines that a source does not have cost-effective emission reductions available, the EPA concludes that the source does not significantly contribute to nonattainment or interfere with maintenance of the NAAQS, and thus, that there are no emissions at the source that must be ''prohibited'' under CAA section 110(a)(2)(D)(i)(I), and the petition can also be denied on this basis.

Importantly, the EPA only implements federally enforceable limits under step four of the four-step framework for sources that the EPA determines have emissions that significantly contribute to nonattainment or interfere with maintenance of the ozone NAAQS downwind under steps one, two, and three. *See* 81 FR 74553 (declining to impose CSAPR Update FIP obligations for EGUs in District of Columbia and Delaware despite linkages to downwind receptors where EPA determined no cost-effective emission reductions were available). This is consistent with the statutory language of CAA section 110(a)(2)(D)(i)(I), which ''prohibit[s]'' only those emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state. The EPA has reasonably interpreted this to mean that where there is no such impact, the EPA and the states are not required to impose emission limitations.[81] The EPA does not dispute that, were it to find that Brunner Island emits or would emit in violation of the prohibition under CAA section 110(a)(2)(D)(i)(I), an appropriate remedy to mitigate the emission impacts would necessarily have to be federally enforceable, both under CAA section 126(c) (requiring compliance by a source with EPA-imposed emission limitations and compliance schedules) and CAA section 110(a)(2)(D)(ii) (requiring a state implementation plan to contain provisions ensuring compliance with the requirements of CAA section 126).

However, for the reasons described in the proposal and in this final action, the EPA has determined at this time that Brunner Island does not emit, or would not emit, in violation of CAA section 110(a)(2)(D)(i)(I) under steps one, two, and three for either the 2008 or 2015 ozone NAAQS. Therefore, under the four-step framework, the EPA does not reach step four's requirement of federally enforceable emission reductions. However, the EPA notes that if, in fact, Brunner Island's operations change such that the facility is operating primarily on coal during future ozone seasons and future emission levels increase so as to be in violation of the good neighbor provision, then this final action denying Delaware's petition would not preclude Delaware from submitting another petition regarding Brunner Island's impacts. The EPA is not, however, pre-determining what action may be appropriate on any such future petition, which would depend upon a variety of factors, including the level of emissions at Brunner Island and future ozone concentrations in Delaware.

[81] This is also consistent with designation requirements elsewhere in title I. Downwind areas are initially designated attainment or nonattainment for the ozone NAAQS based on actual measured ozone concentrations, regardless of whether the level of ozone concentrations is due to enforceable emission limits. Similarly, the EPA generally evaluates whether sources in nearby areas contribute to measured nonattainment in such areas for purposes of designations based on actual emission levels, and thus sources in those nearby areas are generally subject to nonattainment planning requirements only if actual emissions from that area are considered to contribute to the air quality problem. Here, where ''significant contribution'' is necessarily a higher standard than the contribution threshold used in designations, it is reasonable and consistent to determine that states or EPA need only impose emission limitations if it is determined that there is significant contribution or interference with maintenance.

V. Determinations Under Section 307(b)(1)

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if (i) the agency action consists of ''nationally applicable regulations promulgated, or final action taken, by the Administrator,'' or (ii) such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

The EPA finds that this final action regarding the pending CAA section 126(b) petitions is ''nationally applicable.'' or, in the alternative, is based on a determination of ''nationwide scope and effect'' within the meaning of CAA section 307(b)(1). Through this rulemaking action, the EPA interprets sections 110 and 126 of the CAA, statutory provisions which apply to all states and territories in the United States. In addition, the final action addresses emissions impacts and sources located in seven States, which are located in multiple EPA Regions and federal circuits.[82] This action is also based on a common core of factual findings and analyses concerning the transport of pollutants between the different states. Furthermore, the EPA intends this interpretation and approach to be consistently implemented nationwide with respect to CAA section 126(b) petitions for the 2008 and 2015 ozone NAAQS. Courts have found similar actions to be nationally applicable.[83] For these reasons, the Administrator finds that any final action related to this proposal is nationally applicable or, in the alternative, is based on a determination of nationwide scope and effect for purposes of CAA section 307(b)(1).

Thus, the EPA finds that pursuant to CAA section 307(b)(1) any petitions for review of this final action would be filed in the Court of Appeals for the District of Columbia Circuit within 60

[82] *See* H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

[83] *See, e.g., Texas* v. *EPA,* 2011 U.S. App. LEXIS 5654 (5th Cir. 2011) (finding SIP call to 13 states to be nationally applicable and thus transferring the case to the U.S. Court of Appeals for the D.C. Circuit in accordance with CAA section 307(b)(1)).

days from the date any final action is published in the **Federal Register**.

VI. Statutory Authority

42 U.S.C. 7410, 7426, 7601.

Dated: September 14, 2018.

Andrew R. Wheeler,

Acting Administrator.

[FR Doc. 2018–20854 Filed 10–4–18; 8:45 am]

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