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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AO-FV-16-0016; AMS-SC-16-0011; SC16-989-1]

Raisins Produced From Grapes Grown in California; Order Amending Marketing Order No. 989

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Marketing Order No. 989 (Order), which regulates the handling of raisins produced from grapes grown in California. Five amendments were proposed by the Raisin Administrative Committee (RAC) and three were proposed by the Agricultural Marketing Service (AMS). Seven of the eight proposed amendments were favored by California raisin growers in a mail referendum, held December 4 through 15, 2017. This final rule also makes administrative revisions to subpart headings to bring the language into conformance with the Office of **Federal Register** requirements.

DATES: This rule is effective November 26, 2018.

ADDRESSES: Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, Post Office Box 952, Moab, UT 84532; Telephone: (202) 557-4783, Fax: (435) 259-1502, or Michelle Sharrow, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202)

720-8938, or Email: Melissa.Schmaedick@ams.usda.gov or Michelle.Sharrow@ams.usda.gov.

Small businesses may request information on this proceeding by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on April 14, 2016, and published in the April 22, 2016, issue of the **Federal Register** (81 FR 23650) and a Recommended Decision issued on May 3, 2017, and published in the May 31, 2017, issue of the **Federal Register** (82 FR 24882); and a Secretary's Decision and Referendum Order issued September 19, 2017, and published in the September 29, 2017, issue of the **Federal Register** (82 FR 45517).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Orders 12866, 13563, and 13175. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See the Office of Management and Budget's (OMB) Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Notice of this rulemaking action was provided to tribal governments through the Department of Agriculture's (USDA) Office of Tribal Relations.

Preliminary Statement

This action, pursuant to 5 U.S.C. 556 and 557, finalizes amendments to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 989, as amended (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California. Part 989 (referred to as the Order) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This rule is formulated on the record of a public hearing held on May 3 and 4, 2016, in Clovis, California. The hearing was held pursuant to the provisions of the Act, and the applicable rules of practice and procedure governing the formulation and amendment of marketing agreements and orders (7 CFR part 900). Notice of this hearing was published in the **Federal Register** on April 22, 2016 (81 FR 23650). The notice of hearing contained five proposals submitted by the RAC and three proposals by AMS.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on May 3, 2017, filed with the Hearing Clerk, USDA, a Recommended Decision and Opportunity to File Written Exceptions thereto by June 30, 2017. One exception was filed. The exception filed opposed the proposed amendment to establish term limits.

A Secretary's Decision and Referendum Order was issued on September 29, 2017, directing that a referendum be conducted during the period of December 4 through 17, 2017, among eligible California raisin growers to determine whether they favored the proposed amendments to the Order. To become effective, the amendments had to be approved by at least two-thirds of those growers voting, or by voters representing at least two-thirds of the volume of raisins represented by voters voting in the referendum. The approved amendments were favored by over ninety percent of the growers voting in the referendum, representing over ninety percent of the total volume of raisins produced by those voting. The failed amendment was opposed by ninety-three percent of those voting and ninety-five percent of the represented volume.

The amendments favored by voters and included in this final order will: Authorize production research; establish new nomination procedures for independent grower member and alternate member seats; add authority to regulate quality; add authority to establish different regulations for different market destinations; add a continuance referenda requirement; and remove volume regulation and reserve pool authority from the Order.

USDA also made changes as were necessary to conform the Order provisions to the effectuated

amendments. Conforming changes and corrections proposed by USDA include: Revising all references of “offgrade” to “off-grade”; revising all references of “nonnormal” to “non-normal”; and, revising all references of “committee” to “Committee.” These corrections will result in consistent spelling of these terms throughout the Order. Also in this final rule, USDA will revise the amendment of § 989.58(d) from “interplant” and “interhandler” to “inter-plant” and “inter-handler” as it appears in amended § 989.59(e).

In addition, the words “Processed Products Standardization and Inspection Branch” in §§ 989.58(d) and 989.59(d) will be changed to “Specialty Crops Inspection Division.” Similarly, “Processed Products Branch, Fruit and Vegetable Division” in § 989.102 will be changed to “Specialty Crops Inspection Division.” These corrections will reflect the official name change of the AMS’s inspection service office for fruit, vegetables and specialty crops.

Lastly, an additional correction will change the amendatory language in §§ 989.55, 989.56, 989.65, 989.66, 989.67, 989.71, 989.72, 989.82, 989.154, 989.156, 989.166, 989.167, 989.221, 989.257 and 989.401, from “remove” to “remove and reserve.” This change will prevent the unintentional renumbering of remaining sections of the Order.

The amended marketing agreement was subsequently mailed to all raisin handlers in the production area for their approval. The marketing agreement was approved by handlers representing more than 50 percent of the volume of raisins handled by all handlers during the August 1, 2016, through July 31, 2017, representative period. Consequently, a companion handler agreement will also be established.

Small Business Consideration

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

According to the hearing transcript, there are approximately 3,000 raisin producers in California. According to National Agricultural Statistics Service data presented at the hearing, the total

value of production of raisins in the 2014/15 crop year is \$598,052,000. Taking the total value of production for raisins and dividing it by the total number of raisin producers provides an average return per producer of \$199,950.67. A small producer as defined by the Small Business Administration (SBA) (13 CFR 121.201) is one that grosses less than \$750,000 annually. Therefore, a majority of raisin producers are considered small entities under SBA’s standards.

According to the industry, there were 23 raisin handlers for the 2015/16 crop year. While individual handling operation information is proprietary, both testimonies offered by handler witnesses and an assessment of total value of dried production leads USDA to conclude that 13 handlers would be considered small entities under SBA’s standards.

According to the record, two of the 23 handlers handled roughly 60 percent of total production during the 2015/16 crop year. A calculation using the 2014 total value of production of \$598,052,000 puts the value handled by the cooperatives at \$358,831,200 (\$598,052,000 × 60 percent) and the value handled by all other handlers at \$239,220,800. With 21 non-cooperative handlers remaining, \$239,220,800 divided by that number results in an average handler receipt of \$11,391,467. Assuming a normal bell-curve distribution, coupled with the number of handlers self-identifying at the hearing as small business entities, USDA accepts the Committee’s assertion that 13 handlers fall under the SBA definition of small agricultural service firm. A small agricultural service firm as defined by the SBA is one that grosses less than \$7,500,000 annually. Thus, slightly more than half of the industry’s handlers are considered small entities under SBA’s standards.

The production area regulated under the Order covers the state of California. Acreage devoted to raisin production in the regulated area has declined in recent years. According to data presented at the hearing, bearing acreage for raisins reached a high of 280,000 acres during the 2000/01 crop year. Since then, bearing acreage for raisins has decreased 32 percent to 190,000 acres in 2014/15. As a result, the total production of raisins reached a high during the 2000/01 crop year of 484,500 tons (dried basis). Since the 2000/01 crop year, total production for raisins has decreased 32 percent to 328,600 tons in 2014/15.

During the hearing held May 3 and 4, 2016, interested persons were invited to present evidence on the probable regulatory and information collection

impact of the proposed amendments to the Order on small businesses. The evidence presented at the hearing shows that none of the proposed amendments would have any burdensome effects or a significant economic impact on a substantial number of small agricultural producers or firms.

Material Issues

Material Issue Number 1—Authorize Production Research

This action amends § 989.53 to authorize production research.

Currently, the California Raisin Marketing Board (CRMB) is the funding source for production research for the California raisin industry. Three years ago, payments of assessments to the CRMB were suspended due to the results of litigation. Without funding, the CRMB has been unable to conduct any new production research projects. The amendment to § 989.53 will authorize the RAC to conduct production research without having to rely on the CRMB for funding.

Witnesses stated that future research could potentially impact producers in many ways, such as reducing pesticide usage or the development of new varieties that are less labor intensive. Production research will provide the raisin industry the ability to meet the needs of the ever changing domestic and international markets. According to a witness’s testimony, the benefits of the proposed amendment will outweigh any costs and will not have a significant impact on a substantial number of small entities.

Material Issue Number 2—Authorize Separate Nominations for Independent Producer Member and Independent Producer Alternate Member Seats

This action amends §§ 989.29 and 989.129 to authorize separate nominations for independent producer members and independent producer alternate member seats.

Currently, the RAC has difficulty filling Committee seats designated for independent producer members and independent producer alternate members. Independent producer alternate member seats have gone unfilled for several consecutive years.

According to witnesses’ testimony, this amendment will increase the participation of independent producers willing to participate on the RAC. Allowing for separate nominations for members and alternates will encourage participation by those who wish to serve in one capacity and not the other. Full participation would give the independent producers full

representation on the Board they represented and a voice in RAC decisions.

It is determined that the benefits of increased RAC participation by independent producers will outweigh any costs associated with the implementation of this amendment.

Material Issue Number 3—Add Authority To Regulate Quality

This action will amend §§ 989.58, 989.59 and 989.61 to add authority to regulate quality under the Order. A corresponding change will also revise the heading prior to § 989.58 to include quality.

Currently, §§ 989.58 and 989.59 state that the RAC has the authority to recommend grade and condition standards under the Order. The attribute “quality” is not specifically mentioned. The amendment will add language to include “quality” as an attribute that can be regulated under the Order.

According to a witness at the hearing, the amendment will give the RAC flexibility to ensure consumer safety by setting quality standards for residue levels for herbicides, pesticides or fungicides. The quality standards will be equally applied to all handlers of raisins within the U.S.; some handlers are already testing for certain types of fungicides so the increased costs will be minimal.

It is determined that the additional costs incurred to regulate quality will be greatly outweighed by the increased flexibility for the industry, increased consumer safety, and other benefits gained from implementing this amendment. The costs of implementing it will not have a significant impact on a substantial number of small entities.

Material Issue Number 4—Add Authority To Establish Different Regulations for Different Markets

This action will amend § 989.59 to add authority to establish different regulations for different markets.

The Order does not currently allow for different quality or grade standards to be applied to different foreign markets. The language in the Order only has two classifications for grade and condition standards, Grade A or Grade B. The current grade and condition standards are consistent across all markets.

This amendment will give the RAC the authority to develop requirements for raisins intended for export to different foreign markets. Industry will have the flexibility to tailor product attributes to meet the foreign consumer profile and the customer demands for each individual market.

It is determined that any additional costs incurred for this amendment will be outweighed by the increased flexibility for the industry to respond to a changing global marketplace. The costs of implementing this amendment will not have a significant impact on a substantial number of small entities.

Material Issue Number 5—Continuance Referenda

This action will amend § 989.91 to require continuance referenda.

The amendment will require the USDA to conduct a continuance referendum between year five and year six after implementation for the first referendum, and every six years thereafter. A witness testified that a continuance referendum is the best tool for assuring that the Order remains responsive to the needs of the industry. While a continuance referendum will not directly improve producer returns, it will indirectly ensure that the industry believes that the Order is operating in the producer’s best interest.

For these reasons, it is determined that the benefits of conducting a continuance referendum will outweigh the potential costs of implementing this amendment. The costs of implementing this amendment will be minimal and will not have a significant impact on a substantial number of small entities.

Material Issue Number 6—Remove Volume Regulations and Reserve Pool Authority

This action will amend the Order to remove volume regulation and reserve pool authority. This will include: deleting and reserving §§ 989.55 and 989.56, §§ 989.65 through 989.67, §§ 989.71, 989.72, 989.82, 989.154, 989.156, 989.166, 989.167, 989.221, 989.257, and 989.401; revising §§ 989.11, 989.53, 989.54, 989.58, 989.59, 989.60, 989.73, 989.79, 989.80, 989.84, 989.158, 989.173, and 989.210; and re-designating § 989.70 as § 989.96. Corresponding changes will also remove the following headings: “Volume Regulation” prior to § 989.65; “Volume Regulation” prior to § 989.166; and, “Subpart-Schedule of Payments” prior to § 989.401.

The amendment will remove all authority for the RAC to recommend volume restrictions and a reserve pool. On June 22, 2015, the United States Supreme Court, in *Horne v. USDA*, ruled that the application of the Order’s reserve pool authority to the Horne’s was a taking under the Fifth Amendment to the U.S. Constitution. In a July 16, 2015, letter to the RAC, USDA stated, “In light of the Horne decision, the U.S. Department of Agriculture has

decided not to authorize the reserve program of the Federal marketing order for California raisins for the foreseeable future, effective immediately.”

One witness at the hearing explained that bearing acres have declined the past ten years, which supports the theory that the California raisin industry is adjusting to a decreasing or flat demand for the product. The witness stated that, in the future, supply will likely remain in better balance with demand and, therefore, the reserve pool and volume regulation are no longer as relevant as they were in higher production times. To further the point, the witness stated that the Order’s reserve pool authority has not been utilized since 2010.

The amendment will be a relaxation of regulatory requirements. For this reason, it is determined that no significant impact on small business entities is anticipated from this change.

The costs attributed to these amendments are minimal; therefore, there will not be a significant impact on a substantial number of small entities.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. These amendments are intended to improve the operation and administration of the Order and to assist in the marketing of California raisins.

RAC meetings regarding these amendments, as well as the hearing date and location, were widely publicized throughout the California raisin industry, and all interested persons were invited to attend the meetings and the hearing to participate in RAC deliberations on all issues. All RAC meetings and the hearing were public forums, and all entities, both large and small, were able to express views on these issues. Finally, interested persons were invited to submit information on the regulatory and information collection impacts of this action on small businesses.

Paperwork Reduction Act

Current information collection requirements for Part 989 are approved by OMB, under OMB Number 0581–0189—“Generic OMB Fruit Crops.” No changes are anticipated in these requirements as a result of this proceeding. Should any such changes become necessary, they will be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies.

AMS is committed to complying with the Government Paperwork Elimination

Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

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

Civil Justice Reform

The amendments to the Order stated herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. The amendments do not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Order Amending the Order Regulating the Handling of Raisins Produced From Grapes Grown in California¹

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary to the findings and determinations that were previously made in connection with the issuance of the Marketing Order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon further amendment of Marketing Order No. 989, regulating the handling of raisins produced from grapes grown in California.

Upon the basis of the record, it is found that:

(1) The Order, as amended, and as hereby further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The Order, as amended, and as hereby further amended, regulates the handling of raisins produced from grapes grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the Order upon which a hearing has been held;

(3) The Order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area that is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The Order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of raisins produced from grapes grown in California; and

(5) All handling of raisins produced from grapes grown in the production area as defined in the Order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of growers who are not engaged in processing, distributing, or shipping raisins covered by the Order as hereby amended) who, during the period August 1, 2016, through July 31, 2017, handled 50 percent or more of the volume of such raisins covered by said Order, as hereby amended, have signed an amended marketing agreement;

(2) The issuance of this amendatory Order, further amending the aforesaid Order, was favored or approved by at least two-thirds of the growers who participated in a referendum on the question of approval and who, during

the period of August 1, 2016, through July 31, 2017 (which has been deemed to be a representative period), have been engaged within the production area in the production of such raisins, such growers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum; and

(3) The issuance of this amendatory Order advances the interests of producers of raisins in the production area pursuant to the declared policy of the Act.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of raisins produced from grapes grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said Order as hereby amended as follows:

The provisions of the amendments to the Order contained in the Secretary's Decision issued September 19, 2017, and published in the September 29, 2017, issue of the **Federal Register** (82 FR 45517), with the exception of the proposal to establish term limits, will be and are the terms and provisions of this Order amending the Order and are set forth in full herein.

List of Subjects in 7 CFR Part 989

Raisins, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Subpart Redesignated as Subpart A

■ 2. Designate the subpart labeled “Order Regulating Handling” as subpart A.

■ 3. Section 989.11 is revised to read as follows:

§ 989.11 Producer.

Producer means any person engaged in a proprietary capacity in the production of grapes which are sun-dried or dehydrated by artificial means until they become raisins.

■ 4. In § 989.29:

■ a. Revise paragraph (b)(2)(ii);

■ b. Redesignate paragraph (b)(2)(iii) as paragraph (b)(2)(iv);

■ c. Add new paragraph (b)(2)(iii); and

■ d. Revise newly redesignated paragraph (b)(2)(iv).

The revisions and addition read as follows:

§ 989.29 Initial members and nomination of successor members.

* * * * *

(b) * * *

(2) * * *

(ii) Each such producer whose name is offered in nomination for producer member positions to represent on the Committee independent producers or producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall be given the opportunity to provide the Committee a short statement outlining qualifications and desire to serve if selected. Similarly, each such producer whose name is offered in nomination for producer alternate member positions to represent on the Committee independent producers or producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall be given the opportunity to provide the Committee a short statement outlining qualifications and desire to serve if selected. These brief statements, together with a ballot and voting instructions, shall be mailed to all independent producers and producers who are affiliated with cooperative marketing associations handling less than 10 percent of the total raisin acquisitions during the preceding crop year of record with the Committee in each district. The producer member candidate receiving the highest number of votes shall be designated as the first member nominee, the second highest shall be designated as the second member nominee until nominees for all producer member positions have been filled. Similarly, the producer alternate member candidate receiving the highest number of votes shall be designated as the first alternate member nominee, the second highest shall be designated as the second alternate member nominee until nominees for all member positions have been filled.

(iii) In the event that there are more producer member nominees than positions to be filled and not enough producer alternate member nominees to fill all positions, producer member nominees not nominated for a member seat may be nominated to fill vacant alternate member seats. Member seat nominees shall indicate, prior to the nomination vote, whether they are willing to accept nomination for an

alternate seat in the event they are not nominated for a member seat and there are vacant alternate member seats. Member seat nominees that do not indicate willingness to be considered for vacant alternate member seats shall not be considered.

(iv) Each independent producer or producer affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall cast only one vote with respect to each position for which nominations are to be made. Write-in candidates shall be accepted. The person receiving the most votes with respect to each position to be filled, in accordance with paragraph (b)(2)(ii) and (iii) of this section, shall be the person to be certified to the Secretary as the nominee. The Committee may, subject to the approval of the Secretary, establish rules and regulations to effectuate this section.

* * * * *

■ 5. In § 989.53, revise the introductory text of paragraph (a), and remove the undesignated paragraph that follows paragraph (a)(5) to read as follows:

§ 989.53 Research and development.

(a) *General.* The Committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research, market research and development, marketing promotion including paid advertising, designed to assist, improve, or promote the production, marketing, distribution, and consumption of raisins in domestic and foreign markets. These projects may include, but need not be limited to those designed to:

* * * * *

■ 6. In § 989.54:

■ a. Remove paragraphs (a) through (d) and (g);

■ b. Remove paragraph (e)(4);

■ c. Redesignate paragraphs (e)(5) through (e)(10) as (e)(4) through (e)(9), respectively;

■ d. Redesignate paragraphs (e), (f), and (h) as paragraphs (a), (b), and (c), respectively; and

■ e. Revise newly redesignated paragraphs (a) introductory text, (a)(1), (a)(4), (a)(5) and (c).

The revisions read as follows:

§ 989.54 Marketing policy.

(a) *Marketing policy.* Each crop year, the Committee shall prepare and submit to the Secretary a report setting forth its recommended marketing policy, including quality regulations for the pending crop. In developing the marketing policy, the Committee may

give consideration to the production, harvesting, processing, and storage conditions of that crop, as well as the following factors:

(1) The estimated tonnage held by producers and handlers at the beginning of the crop year;

* * * * *

(4) An estimated desirable carryout at the end of the crop year;

(5) The estimated market demand for raisins, considering the estimated world raisin supply and demand situation;

* * * * *

(c) *Publicity.* The Committee shall promptly give reasonable publicity to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider a marketing policy or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each marketing policy report or modification thereof, filed with the Secretary and of the Secretary's action thereon.

Copies of all marketing policy reports shall be maintained in the office of the Committee, where they shall be made available for examination by any producer, dehydrator, handler, or cooperative bargaining association representative. The Committee shall notify handlers, dehydrators and the cooperative bargaining association(s), and give reasonable publicity to producers of its computation.

§§ 989.55 and 989.56 [Removed and reserved]

■ 7. Sections 989.55 and 989.56 are removed and reserved.

■ 8. Revise the undesignated heading prior to § 989.58 to read as follows: "Grade, Quality, and Condition Standards".

■ 9. In § 989.58, revise paragraphs (a), (b), (d)(1), (e)(1), and (e)(4) to read as follows:

§ 989.58 Natural condition raisins.

(a) *Regulation.* No handler shall acquire or receive natural condition raisins which fail to meet such minimum grade, quality, and condition standards as the Committee may establish, with the approval of the Secretary, in applicable rules and regulations: *Provided*, That a handler may receive raisins for inspection, may receive off-grade raisins for reconditioning and may receive or acquire off-grade raisins for use in eligible non-normal outlets: *And provided further*, That a handler may acquire natural condition raisins which

exceed the tolerance established for maturity under a weight dockage system established pursuant to rules and regulations recommended by the Committee and approved by the Secretary. Nothing contained in this paragraph shall apply to the acquisition or receipt of natural condition raisins of a particular varietal type for which minimum grade, quality, and condition standards are not applicable or then in effect pursuant to this part.

(b) *Changes in minimum grade, quality, and condition standards for natural condition raisins.* The Committee may recommend to the Secretary changes in the minimum grade, quality, and condition standards for natural condition raisins of any varietal type and may recommend to the Secretary that minimum grade, quality, and condition standards for any varietal type be added to or deleted. The Committee shall submit with its recommendation all data and information upon which it acted in making its recommendation, and such other information as the Secretary may request. The Secretary shall approve any such change if he finds, upon the basis of data submitted to him by the Committee or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the Act.

* * * * *

(d) * * *

(1) Each handler shall cause an inspection and certification to be made of all natural condition raisins acquired or received by him, except with respect to:

(i) An inter-plant or inter-handler transfer of off-grade raisins as described in paragraph (e)(2) of this section, unless such inspection and certification are required by rules and procedures made effective pursuant to this amended subpart;

(ii) An inter-plant or inter-handler transfer of standard raisins as described in § 989.59(e);

(iii) Raisins received from a dehydrator which have been previously inspected pursuant to paragraph (d)(2) of this section;

(iv) Any raisins for which minimum grade, quality, and condition standards are not then in effect;

(v) Raisins received from a cooperative bargaining association which have been inspected and are in compliance with requirements established pursuant to paragraph (d)(3) of this section; and

(vi) Any raisins, if permitted in accordance with such rules and procedures as the Committee may

establish with the approval of the Secretary, acquired or received for disposition in eligible non-normal outlets. Except as otherwise provided in this section, prior to blending raisins, acquiring raisins, storing raisins, reconditioning raisins, or acquiring raisins which have been reconditioned, each handler shall obtain an inspection certification showing whether or not the raisins meet the applicable grade, quality, and condition standards: *Provided*, That the initial inspection for infestation shall not be required if the raisins are fumigated in accordance with such rules and procedures as the Committee shall establish with the approval of the Secretary. The handler shall submit or cause to be submitted to the Committee a copy of such certification, together with such other documents or records as the Committee may require. Such certification shall be issued by inspectors of the Processed Products Standardization and Inspection Branch of the U.S. Department of Agriculture, unless the Committee determines, and the Secretary concurs in such determination, that inspection by another agency would improve the administration of this amended subpart. The Committee may require that raisins held on memorandum receipt be re-inspected and certified as a condition for their acquisition by a handler.

* * * * *

(e) * * *

(1) Any natural condition raisins tendered to a handler which fail to meet the applicable minimum grade, quality, and condition standards may:

(i) Be received or acquired by the handler for disposition, without further inspection, in eligible non-normal outlets;

(ii) Be returned unstemmed to the person tendering the raisins; or

(iii) Be received by the handler for reconditioning. Off-grade raisins received by a handler under any one of the three described categories may be changed to any other of the categories under such rules and procedures as the Committee, with the approval of the Secretary, shall establish. No handler shall ship or otherwise dispose of off-grade raisins which he does not return to the tenderer, transfer to another handler as provided in paragraph (e)(2) of this section, or recondition so that they at least meet the minimum standards prescribed in or pursuant to this amended subpart, except into eligible non-normal outlets.

* * * * *

(4) If the handler is to acquire the raisins after they are reconditioned, his

obligation with respect to such raisins shall be based on the weight of the raisins (if stemmed, adjusted to natural condition weight) after they have been reconditioned.

* * * * *

■ 10. In § 989.59, revise paragraphs (a), (b), (d), (e), and (g) to read as follows:

§ 989.59 Regulation of the handling of raisins subsequent to their acquisition by handlers.

(a) *Regulation.* Unless otherwise provided in this part, no handler shall:

(1) Ship or otherwise make final disposition of natural condition raisins unless they at least meet the effective and applicable minimum grade, quality, and condition standards for natural condition raisins; or

(2) Ship or otherwise make final disposition of packed raisins unless they at least meet such minimum grade quality, and condition standards established by the Committee, with the approval of the Secretary, in applicable rules and regulations or as later changed or prescribed pursuant to the provisions of paragraph (b) of this section:

Provided, That nothing contained in this paragraph shall prohibit the shipment or final disposition of any raisins of a particular varietal type for which minimum standards are not applicable or then in effect pursuant to this part.

And provided further, That a handler may grind raisins, which do not meet the minimum grade, quality, and condition standards for packed raisins because of mechanical damage or sugaring, into a raisin paste. The Committee may establish, with approval of the Secretary, different grade, quality, and condition regulations for different markets.

(b) *Changes to minimum grade, quality, or condition standards.* The Committee may recommend changes in the minimum grade, quality, or condition standards for packed raisins of any varietal type and may recommend to the Secretary that minimum grade, quality, or condition standards for any varietal type be added or deleted. The Committee shall submit with its recommendation all data and information upon which it acted in making its recommendation, and such other information as the Secretary may request. The Secretary shall approve any such change if he finds, upon the basis of data submitted to him by the Committee or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the Act.

* * * * *

(d) *Inspection and certification.* Unless otherwise provided in this

section, each handler shall, at his own expense, before shipping or otherwise making final disposition of raisins, cause an inspection to be made of such raisins to determine whether they meet the then applicable minimum grade, quality, and condition standards for natural condition raisins or the then applicable minimum standards for packed raisins. Such handler shall obtain a certificate that such raisins meet the aforementioned applicable minimum standards and shall submit or cause to be submitted to the Committee a copy of such certificate together with such other documents or records as the Committee may require. The certificate shall be issued by the Processed Products Standardization and Inspection Branch of the United States Department of Agriculture, unless the Committee determines, and the Secretary concurs in such determination, that inspection by another agency will improve the administration of this amended subpart. Any certificate issued pursuant to this paragraph shall be valid only for such period of time as the Committee may specify, with the approval of the Secretary, in appropriate rules and regulations.

(e) *Inter-plant and inter-handler transfers.* Any handler may transfer from his plant to his own or another handler's plant within the State of California any raisins without having had such raisins inspected as provided in paragraph (d) of this section. The transferring handler shall transmit promptly to the Committee a report of such transfer, except that transfers between plants owned or operated by the same handler need not be reported. Before shipping or otherwise making final disposition of such raisins, the receiving handler shall comply with the requirements of this section.

(g) *Exemption of experimental and specialty packs.* The Committee may establish, with the approval of the Secretary, rules and procedures providing for the exemption of raisins in experimental and specialty packs from one or more of the requirements of the minimum grade, quality, or condition standards of this section, together with the inspection and certification requirements if applicable.

■ 11. Amend § 989.60 by revising paragraph (a) to read as follows:

§ 989.60 Exemption.

(a) Notwithstanding any other provisions of this amended subpart, the Committee may establish, with the approval of the Secretary, such rules

and procedures as may be necessary to permit the acquisition and disposition of any off-grade raisins, free from any or all regulations, for uses in non-normal outlets.

* * * * *

■ 12. Section 989.61 is revised to read as follows:

§ 989.61 Above parity situations.

The provisions of this part relating to minimum grade, quality, and condition standards and inspection requirements, within the meaning of section 2(3) of the Act, and any other provisions pertaining to the administration and enforcement of the Order, shall continue in effect irrespective of whether the estimated season average price to producers for raisins is in excess of the parity level specified in section 2(1) of the Act.

■ 13. Remove the undesignated heading "Volume Regulation" prior to § 989.65.

§§ 989.65, 989.66, and 989.67 [Removed and reserved]

■ 14. Sections 989.65, 989.66, and 989.67 are removed and reserved.

§ 989.70 [Redesignated as § 989.96]

■ 15. Redesignate § 989.70 as § 989.96.

§§ 989.71 and 989.72 [Removed and reserved]

■ 16. Sections 989.71 and 989.72 are removed and reserved.

■ 17. Amend § 989.73 by revising paragraph (b) to read as follows:

§ 989.73 Reports.

* * * * *

(b) *Acquisition reports.* Each handler shall submit to the Committee in accordance with such rules and procedures as are prescribed by the Committee, with the approval of the Secretary, certified reports, for such periods as the Committee may require, with respect to his acquisitions of each varietal type of raisins during the particular period covered by such report, which report shall include, but not be limited to:

(1) The total quantity of standard raisins acquired;

(2) The total quantity of off-grade raisins acquired pursuant to § 989.58(e)(1)(i); and

(3) Cumulative totals of such acquisitions from the beginning of the then current crop year to and including the end of the period for which the report is made. Upon written application made to the Committee, a handler may be relieved of submitting such reports after completing his packing operations for the season. Upon request of the Committee, each handler

shall furnish to the Committee, in such manner and at such times as it may require, the name and address of each person from whom he acquired raisins and the quantity of each varietal type of raisins acquired from each such person.

* * * * *

■ 18. Section 989.79 is revised to read as follows:

§ 989.79 Expenses.

The Committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each crop year, for the maintenance and functioning of the Committee and for such purposes as he may, pursuant to this subpart, determine to be appropriate. The funds to cover such expenses shall be obtained levying assessments as provided in § 989.80. The Committee shall file with the Secretary for each crop year a proposed budget of these expenses and a proposal as to the assessment rate to be fixed pursuant to § 989.80, together with a report thereon. Such filing shall be not later than October 5 of the crop year, but this date may be extended by the Committee not more than 5 days if warranted by a late crop.

■ 19. In § 989.80, revise paragraphs (a) through (c) to read as follows:

§ 989.80 Assessments.

(a) Each handler shall pay to the Committee, upon demand, his pro rata share of the expenses which the Secretary finds will be incurred, as aforesaid, by the Committee during each crop year less any amounts credited pursuant to § 989.53. Such handler's pro rata share of such expenses shall be equal to the ratio between the total raisin tonnage acquired by such handler during the applicable crop year and the total raisin tonnage acquired by all handlers during the same crop year.

(b) Each handler who reconditions off-grade raisins but does not acquire the standard raisins recovered therefrom shall, with respect to his assessable portion of all such standard raisins, pay to the Committee, upon demand, his pro rata share of the expenses which the Secretary finds will be incurred by the Committee each crop year. Such handler's pro rata share of such expenses shall be equal to the ratio between the handler's assessable portion (which shall be a quantity equal to such handler's standard raisins which are acquired by some other handler or handlers) during the applicable crop year and the total raisin tonnage acquired by all handlers.

(c) The Secretary shall fix the rate of assessment to be paid by all handlers on

the basis of a specified rate per ton. At any time during or after a crop year, the Secretary may increase the rate of assessment to obtain sufficient funds to cover any later finding by the Secretary relative to the expenses of the Committee. Each handler shall pay such additional assessment to the Committee upon demand. In order to provide funds to carry out the functions of the Committee, the Committee may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against such handler during the crop year. The payment of assessments for the maintenance and functioning of the Committee, and for such purposes as the Secretary may pursuant to this subpart determine to be appropriate, may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

* * * * *

§ 989.82 [Removed and reserved]

- 20. Section 989.82 is removed and reserved.
- 21. Section 989.84 is revised to read as follows:

§ 989.84 Disposition limitation.

No handler shall dispose of standard raisins, off-grade raisins, or other failing raisins, except in accordance with the provisions of this subpart or pursuant to regulations issued by the committee.

- 22. In § 989.91:
 - a. Redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively; and
 - b. Add new paragraph (c).
The addition reads as follows:

§ 989.91 Suspension or termination.

* * * * *

(c) No less than five crop years and no later than six crop years after the effective date of this amendment, the Secretary shall conduct a referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six crop years thereafter. The Secretary may terminate the provisions of this part at the end of any crop year in which the Secretary has found that continuance of this part is not favored by a two-thirds majority of voting producers, or a two-thirds majority of volume represented thereby, who, during a representative period determined by the Secretary, have been engaged in the production for market of grapes used in the production of raisins in the State of California. Such

termination shall be announced on or before the end of the crop year.

* * * * *

Subpart Redesignated as Subpart B and Amended

- 23. Redesignate “Subpart-Administrative Rules and Regulations” as subpart B and revise the heading to read as follows:

Subpart B—Administrative Requirements

- 24. Section 989.129 is revised to read as follows:

§ 989.129 Voting at nomination meetings.

Any person (defined in § 989.3 as an individual, partnership, corporation, association, or any other business unit) who is engaged, in a proprietary capacity, in the production of grapes which are sun-dried or dehydrated by artificial means to produce raisins and who qualifies under the provisions of § 989.29(b)(2) shall be eligible to cast one ballot for a nominee for each producer member position and one ballot for a nominee for each producer alternate member position on the committee which is to be filled for his district. Such person must be the one who or which: Owns and farms land resulting in his or its ownership of such grapes produced thereon; rents and farms land, resulting in his or its ownership of all or a portion of such grapes produced thereon; or owns land which he or it does not farm and, as rental for such land, obtains the ownership of a portion of such grapes or the raisins. In this connection, a partnership shall be deemed to include two or more persons (including a husband and wife) with respect to land the title to which, or leasehold interest in which, is vested in them as tenants in common, joint tenants, or under community property laws, as community property. In a landlord-tenant relationship, wherein each of the parties is a producer, each such producer shall be entitled to one vote for a nominee for each producer member position and one vote for each producer alternate member position. Hence, where two persons operate land as landlord and tenant on a share-crop basis, each person is entitled to one vote for each such position to be filled. Where land is leased on a cash rental basis, only the person who is the tenant or cash renter (producer) is entitled to vote. A partnership or corporation, when eligible, is entitled to cast only one vote for a nominee for each

producer position to be filled in its district.

- 25. Remove the undesignated heading “Marketing Policy” prior to § 989.154.

§§ 989.154 and 989.156 [Removed and reserved]

- 26. Sections 989.154 and 989.156 are removed and reserved.
- 27. Section 989.158(c)(4)(i) is revised to read as follows:

§ 989.158 Natural condition raisins.

* * * * *

- (c) * * *
- (4) * * *

(i) The handler shall notify the inspection service at least one business day in advance of the time such handler plans to begin reconditioning each lot of raisins, unless a shorter period is acceptable to the inspection service. Such notification shall be provided verbally or by other means of communication, including email. Natural condition raisins which have been reconditioned shall continue to be considered natural condition raisins for purposes of reinspection (inspection pursuant to § 989.58(d)) after such reconditioning has been completed, if no water or moisture has been added; otherwise, such raisins shall be considered as packed raisins. The weight of the raisins reconditioned successfully shall be determined by reweighing, except where a lot, before reconditioning, failed due to excess moisture only. The weight of such raisins resulting from reconditioning a lot failing account excess moisture may be determined by deducting 1.2 percent of the weight for each percent of moisture in excess of the allowable tolerance. When necessary due to the presence of sand, as determined by the inspection service, the requirement for deducting sand tare and the manner of its determination, as prescribed in paragraph (a)(1) of this section, shall apply in computing the net weight of any such successfully reconditioned natural condition raisins. The weight of the reconditioned raisins acquired as packed raisins shall be adjusted to natural condition weight by the use of factors applicable to the various degrees of processing accomplished. The applicable factor shall be that selected by the inspector of the reconditioned raisins from among factors established by the Committee with the approval of the Secretary.

* * * * *

- 28. Remove the undesignated heading “Volume Regulation” prior to § 989.166.

§§ 989.166 and 989.167 [Removed and reserved]

- 29. Sections 989.166 and 989.167 are removed and reserved.
- 30. In § 989.173:
 - a. Remove paragraphs (b)(2)(ii), (f), and (g)(1)(ii);
 - b. Redesignate paragraphs (b)(2)(iii) and (g) as paragraphs (b)(2)(ii) and (f), respectively;
 - c. Redesignate newly designated paragraph (f)(1)(iii) as paragraph (f)(1)(ii); and
 - d. Revise paragraphs (a), (b)(2)(i), newly redesignated paragraph (b)(2)(ii), (c)(1) introductory text, (d)(1) introductory text, (d)(1)(v), and newly redesignated paragraphs (f)(1)(i), (f)(2)(i), and (f)(3) introductory text.

The revisions read as follows:

§ 989.173 Reports.

(a) *Inventory reports.* Each handler shall submit to the Committee as of the close of business on July 31 of each crop year, and not later than the following August 6, an inventory report which shall show, with respect to each varietal type of raisins held by such handler, the quantity of off-grade raisins segregated as to those for reconditioning and those for disposition as such. *Provided*, That, for the Other Seedless varietal type, handlers shall report the information required in this paragraph separately for the different types of Other Seedless raisins. Upon request by the Committee, each handler shall file at other times, and as of other dates, any of the said information which may reasonably be necessary and which the Committee shall specify in its request.

(b) * * *

(2) * * *

(i) The total net weight of the standard raisins acquired during the reporting period; and

(ii) The cumulative totals of such acquisitions from the beginning of the then current crop year.

* * * * *

(c) * * *

(1) Each month each handler who is not a processor shall furnish to the Committee, on an appropriate form provided by the Committee and so that it is received by the Committee not later than the seventh day of the month, a report showing the aggregate quantity of each varietal type of packed raisins and standard natural condition raisins which were shipped or otherwise disposed of by such handler during the preceding month (exclusive of transfers within the State of California between plants of any such handler and from such handler to other handlers):

Provided, That, for the Other Seedless varietal type, handlers shall report such information for the different types of Other Seedless raisins. Such required information shall be segregated as to:

* * * * *

(d) * * *

(1) Any handler who transfers raisins to another handler within the State of California shall submit to the Committee not later than five calendar days following such transfer a report showing:

* * * * *

(v) If packed, the transferring handler shall certify that such handler is transferring only acquired raisins that meet all applicable marketing order requirements, including reporting, incoming inspection, and assessments.

* * * * *

(f) * * *

(1) * * *

(i) The quantity of raisins, segregated as to locations where they are stored and whether they are natural condition or packed;

* * * * *

(2) * * *

(i) The total net weight of the standard raisins acquired during the reporting period; and

* * * * *

(3) *Disposition report of organically-produced raisins.* No later than the seventh day of each month, handlers who are not processors shall submit to the Committee, on an appropriate form provided by the Committee, a report showing the aggregate quantity of packed raisins and standard natural condition raisins which were shipped or otherwise disposed of by such handler during the preceding month (exclusive of transfer within the State of California between the plants of any such handler and from such handler to other handlers). Such information shall include:

* * * * *

Subpart Redesignated as Subpart C and Amended

- 31. Redesignate “Subpart-Supplementary Regulations” as subpart C and revise the heading to read as follows:

Subpart C—Supplementary Requirements

- 32. In § 989.210:
 - a. Remove paragraphs (b), (c) and (e);
 - b. Redesignate paragraph (d) as (b), paragraph (f) as (c), and paragraph (g) as (d); and

- c. Revise newly redesignated paragraph (b).

The revisions read as follows:

§ 989.210 Handling of varietal types of raisins acquired pursuant to a weight dockage system.

* * * * *

(b) *Assessments.* Assessments on any lot of raisins of the varietal types specified in paragraph (a) of this section acquired by a handler pursuant to a weight dockage system shall be applicable to the creditable weight of such lot.

* * * * *

§§ 989.221 and 989.257 [Removed and reserved]

- 33. Sections 989.221 and 989.257 are removed and reserved.

Subpart Redesignated as Subpart D

- 34. Designate the subpart labeled “Subpart-Assessment Rates” as subpart D.

Subpart Removed

- 35. Subpart—Schedule of Payments is removed.

Subpart Redesignated as Subpart E

- 36. Designate the subpart labeled “Conversion Factors” as subpart E.

Subpart Redesignated as Subpart F

- 37. Designate the subpart labeled “Quality Control” as subpart F.

Subpart Redesignated as Subpart G

- 38. Designate the subpart labeled “Antitrust Immunity and Liability” as subpart G.

- 39. In part 989 revise all references to “offgrade” to read “off-grade” and revise all references to “Offgrade” to read “Off-grade”.

- 40. In part 989 revise all references to “nonnormal” read “non-normal.”

- 41. In part 989 revise all references to “committee” to read “Committee.”

§§ 989.58, 989.59, and 989.102 [Amended]

- 42. In the list below, for each section indicated in the left column, remove the title indicated in the middle column from wherever it appears in the section, and add the title indicated in the right column:

Section	Remove	Add
989.58(d)(1)	Processed Products Standardization and Inspection Branch	Specialty Crops Inspection Division.
989.59(d)	Processed Products Standardization and Inspection Branch	Specialty Crops Inspection Division.
989.102	Processed Products Branch, Fruit and Vegetable Division	Specialty Crops Inspection Division.

Dated: October 17, 2018.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2018-23089 Filed 10-25-18; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2018-0898; Product Identifier 2018-NE-29-AD; Amendment 39-19456; AD 2018-20-22]

RIN 2120-AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all General Electric Company (GE) GE90-110B1, GE90-113B, and GE90-115B turbofan engines with a certain case combustor assembly (combustion case) installed. This AD requires removal of affected combustion cases from service and their replacement with a part eligible for installation. This AD was prompted by the discovery of a quality escape at a manufacturing facility involving unapproved welds on combustion cases. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 13, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 13, 2018.

We must receive comments on this AD by December 10, 2018.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room

W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact General Electric Company, GE Aviation, 1 Neumann Way, Cincinnati, OH 45215; telephone 513-552-3272; email:

aviation.fleetsupport@ge.com. You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781-238-7759. It is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0898.

Examining the AD Docket

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0898; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations (phone: 800-647-5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Matthew Smith, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7735; fax: 781-238-7199; email: matthew.c.smith@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We learned from GE of a quality escape that one of their suppliers, AECC Aero Science and Technology Co., Ltd., was performing welds on newly-manufactured components to correct errors introduced in their manufacturing process. These welds were not reviewed or approved by either GE or the FAA. GE's review of manufacturing records determined that these parts include

combustion cases installed on GE GE90-100 turbofan engines. These combustion cases are life limited. The unapproved repairs reduced the material capability of these cases, which requires their removal prior to reaching their published Airworthiness Limitation Section life limit. This condition, if not addressed, could result in failure of the combustion case, engine fire, and damage to the airplane. We are issuing this AD to address the unsafe condition on these products.

Related Service Information Under 14 CFR Part 39

We reviewed GE GE90-100 Service Bulletin (SB) SB 72-0784 R00, dated May 4, 2018; GE SB GE90-100 S/B 72-0788, Revision 4, dated July 30, 2018; and GE SB GE90-100 SB 72-0793 R00, dated August 10, 2018. The SBs describe procedures for removing the affected combustion cases from the engine. GE SB GE90-100 SB 72-0784 R00 is effective for GE90-100 turbofan engines with the combustion case S/Ns listed in that SB. GE SB GE90-100 S/B 72-0788 is effective for GE90-100 turbofan engines with the combustion case S/Ns listed in that SB. GE SB GE90-100 SB 72-0793 R00 is effective for GE90-100 turbofan engines with the combustion case S/Ns listed in that SB. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires removal of the affected combustion cases from service and their replacement with a part eligible for installation.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice

and comment prior to the adoption of this rule because the compliance time for the required action is shorter than the time necessary for the public to comment and for us to publish the final rule. Certain combustion cases must be removed within 10 cycles after the effective date of this AD to ensure they do not fail. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA-2018-0898 and Product Identifier 2018-NE-29-AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will

consider all comments received by the closing date and may amend this final rule because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this final rule.

Costs of Compliance

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

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement of the combustion case	20 work-hours × \$85 per hour = \$1,700	\$623,700	\$625,400	\$3,752,400

Authority for This Rulemaking

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

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a

substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018-20-22 General Electric Company:
Amendment 39-19456; Docket No. FAA-2018-0898; Product Identifier 2018-NE-29-AD.

(a) Effective Date

This AD is effective November 13, 2018.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to General Electric Company (GE) GE90-110B1, GE90-113B, and GE90-115B turbofan engines with a case combustor assembly (combustion case), part number (P/N) 2063M37G01 or 2082M19G04, installed with combustion case serial number (S/N) listed in:

(i) Table 1 in paragraph 1.A., Planning Information, of GE GE90-100 Service Bulletin (SB) S/B 72-0788, Revision 4, dated July 30, 2018; or

(ii) Paragraph 1.A, Table 1 of GE SB GE90-100 SB 72-0793 R00, dated August 10, 2018; or

(iii) Paragraph 1.A., Planning Information, of GE SB GE90-100 SB 72-0784 R00, dated May 4, 2018.

(2) [Reserved.]

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by the discovery of a quality escape at a manufacturing facility involving unapproved welds on combustion cases. We are issuing this AD to prevent failure of the combustion case. The unsafe condition, if not addressed, could result in engine fire and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) For combustion cases listed in Planning Information, Table 1, paragraph 1.A. of GE

SB GE90–100 S/B 72–0788, Revision 4, dated July 30, 2018, except combustion cases with S/Ns FDBK3717, FDBK3872, or FDBK4849,

remove the affected cases from service, using the cycles specified in Table 1 to paragraph (g) of this AD.

Table 1 to Paragraph (g) of this AD – Compliance Times

Cycles Since New (CSN) of combustion case on Effective Date of this AD	Remove from Service (cycles after the effective date of this AD)
Less than 1000	150 cycles
1001 to 2000	125 cycles
2001 to 3000	100 cycles
3001 to 4000	75 cycles
4001 to 5000	50 cycles
5001 or more	25 cycles

(2) For combustion cases with S/Ns listed in Table 3, paragraph 1.C., Planning Information, of GE SB GE90–100 S/B 72–0788, Revision 4, dated July 30, 2018, remove the affected cases from service before exceeding the Maximum In-Service CSN listed in Table 3, of GE SB GE90–100 S/B 72–0788, Revision 4, dated July 30, 2018.

(3) For combustion cases with S/Ns listed in paragraph 1.A., Planning Information, of GE SB GE90–100 SB 72–0784 R00, dated May 4, 2018, remove the affected cases from service within 10 cycles in service from the effective date of this AD.

(4) For combustion cases with S/Ns listed in Table 1, paragraph 1.A., Planning Information, of GE SB GE90–100 SB 72–0793 R00, dated August 10, 2018, remove the affected cases from service at the next engine shop visit.

(5) Replace the removed combustion case with a part eligible for installation before further flight.

(h) Definitions

(1) For the purpose of this AD, an “engine shop visit” is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation of the engine, without subsequent engine maintenance, does not constitute an engine shop visit.

(2) For the purpose of this AD, a “part eligible for installation” is any combustion case not identified in paragraph (c)(1) of this AD or a combustion case listed in this AD that has been inspected and repaired by a method approved by the Manager, ECO Branch, FAA.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector

or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov*.

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

(j) Related Information

For more information about this AD, contact Matthew Smith, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7735; fax: 781–238–7199; email: *matthew.c.smith@faa.gov*.

(k) Material Incorporated by Reference

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

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

(i) General Electric Company (GE) GE90–100 Service Bulletin (SB) SB 72–0784 R00, dated May 4, 2018.

(ii) GE SB GE90–100 S/B 72–0788, Revision 4, dated July 30, 2018.

(iii) GE SB GE90–100 SB 72–0793 R00, dated August 10, 2018.

(3) For service information identified in this AD, contact General Electric Company, GE Aviation, 1 Neumann Way, Cincinnati, OH 45215; telephone 513–552–3272; email: *aviation.fleetsupport@ge.com*.

(4) You may view this service information at FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

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

Issued in Burlington, Massachusetts, on October 18, 2018.

Karen M. Grant,

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

[FR Doc. 2018–23468 Filed 10–25–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2018–0406; Product Identifier 2013–NE–30–AD; Amendment 39–19457; AD 2018–20–23]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2017–07–04 for General Electric Company (GE) GE90–110B1 and GE90–115B turbofan engines with certain high-pressure compressor (HPC) rotor stage 2–5 spools installed. AD 2017–07–04 required removing certain HPC rotor stage 2–5 spools from service at times determined by a drawdown plan. This AD requires

removing certain HPC rotor stage 2–5 spools from service before reaching the new reduced life limit and replacing them with parts eligible for installation. This AD was prompted by the publication of a GE service bulletin (SB) that increases the number of affected HPC rotor stage 2–5 spools and includes HPC rotor stage 2–5 spools that were inadvertently omitted from the applicability of AD 2017–07–04. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 30, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 30, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of April 21, 2017 (82 FR 16728, April 6, 2017).

ADDRESSES: For service information identified in this final rule, contact General Electric Company, 1 Neumann Way, Room 285, Cincinnati, OH 45215; phone: 513–552–3272; email: geae.aoc@ge.com. You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2018–0406.

Examining the AD Docket

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2018–0406; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: David Bethka, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7129; fax: 781–238–7199; email: david.bethka@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–07–04, Amendment 39–18842 (82 FR 16728, April 6, 2017), (“AD 2017–07–04”). AD 2017–07–04 applied to GE GE90–110B1 and GE90–115B turbofan engines with certain HPC rotor stage 2–5 spools installed. The NPRM published in the **Federal Register** on June 25, 2018 (83 FR 29474). The NPRM was prompted by the publication of a GE SB that increases the number of affected HPC rotor stage 2–5 spools and includes HPC rotor stage 2–5 spools that were inadvertently omitted from the applicability of AD 2017–07–04. The NPRM proposed to require removing certain HPC rotor stage 2–5 spools from service before reaching the new reduced life limit and replacing them with parts eligible for installation. We are issuing this AD to address the unsafe condition on these products.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA’s response to each comment.

Request To List Additional Service Information in Required Actions

All Nippon Airways (ANA), Azur Aviation, and Lufthansa Technik AG (Lufthansa) questioned why HPC rotor stage 2–5 spools listed in paragraph (c) of this AD, identified in GE SB GE90–100 SB 72–0499 R01, dated February 5, 2014, are not required to be replaced in paragraph (g) of this AD. Lufthansa reasoned that GE SB GE90–100 SB 72–0499 R01, dated February 5, 2014, requires replacement of affected spools, but this AD does not.

We disagree. Based on information provided by GE, and to the best of our knowledge, all HPC rotor stage 2–5 spools listed in paragraph 1.A. of GE SB GE90–100 SB 72–0499 R01, dated February 5, 2014, have been removed from service. Because these HPC rotor stage 2–5 spools have been removed from service, we did not require their removal under paragraph (g) of this AD. This AD, however, includes an installation prohibition under paragraph (h) to prevent installation of these HPC rotor stage 2–5 spools. We did not change this AD.

Request To Consider a Threshold Rework Option

FedEx Express (FedEx) requested that certain HPC rotor stage 2–5 spools be considered for a potential GE rework option to extend their life beyond

allowances of this AD, before removal from service. FedEx reasoned that GE intends to provide a rework option that will extend the life of HPC rotor stage 2–5 spools that are removed before reaching 4,500 cycles. This rework option could extend the on-wing times for some engines.

We disagree. While GE intends to provide a rework option to extend the life of certain HPC rotor stage 2–5 spools, we do not require compliance based on information that has not yet been published. We based the compliance on the most recently published service information. This AD and the associated GE service information do not allow credit for rework or life extensions. We did not change this AD.

Request To Verify Applicability and Purpose

ANA requested clarification regarding whether the proposed AD intends to require removing the following three (3) HPC rotor stage 2–5 spool configurations from service at a time determined by this AD:

- (1) HPC rotor stage 2–5 spools that use the original seal teeth coating. (Known as Population-1);
- (2) HPC rotor stage 2–5 spools that use the modified seal teeth coating. (Known as Population-2); and
- (3) HPC rotor stage 2–5 spools that use the modified seal teeth coating without inner-teeth coating. (Known as Population-3).

We interpret ANA’s comment as request to verify if this AD requires removal of the HPC rotor stage 2–5 spools identified in GE SB GE90–100 SB 72–0499 R01, dated February 5, 2014; GE SB GE90–100 SB 72–0659 R01, dated February 18, 2016; and GE SB GE90–100 S/B 72–0714, Revision 01, dated February 16, 2018. ANA commented that requirements and actions in this AD are difficult to understand.

The purpose of this AD is to remove the HPC rotor stage 2–5 spools identified in GE SB GE90–100 SB 72–0659 R01, dated February 18, 2016, and GE SB GE90–100 S/B 72–0714, Revision 01, dated February 16, 2018, from service, and to prohibit the installation of those HPC rotor stage 2–5 spools and the HPC rotor stage 2–5 spools identified in GE SB GE90–100 SB 72–0499 R01, dated February 5, 2014. Paragraphs (c) and (g) of this AD list the affected part numbers and serial numbers. We did not change this AD.

Support for the AD

The Air Line Pilots Association, Boeing Company, and American

Airlines expressed support for the NPRM as written.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

We reviewed GE SB GE90–100 SB 72–0499 R01, dated February 5, 2014; GE SB GE90–100 SB 72–0659 R01, dated February 18, 2016; and GE SB GE90–100 S/B 72–0714, Revision 01, dated February 16, 2018.

GE SB GE90–100 SB 72–0499 R01 describes procedures for identification and removal from service of HPC rotor stage 2–5 spools that use the original seal tooth coating process. GE SB GE90–100 SB 72–0659 R01 describes procedures for identification and removal from service of HPC rotor stage 2–5 spools that use a modified seal tooth coating process. GE SB GE90–100

S/B 72–0714, Revision 01 describes procedures for identification and removal from service of HPC rotor stage 2–5 spools that use the modified seal tooth coating process, without coating between the seal teeth.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Costs of Compliance

We estimate that this AD affects 85 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Paragraph (g)(1) Spools Replacement	0 work-hours × \$85 per hour = \$0	\$229,737	\$229,737	\$5,054,214
Paragraph (g)(2) Spools Replacement	0 work-hours × \$85 per hour = \$0	39,048	39,048	2,460,024

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2017–07–04, Amendment 39–18842 (82 FR 16728, April 6, 2017), and adding the following new AD:

2018–20–23 General Electric Company:
Amendment 39–19457; Docket No. FAA–2018–0406; Product Identifier 2013–NE–30–AD.

(a) Effective Date

This AD is effective November 30, 2018.

(b) Affected ADs

This AD replaces AD 2017–07–04, Amendment 39–18842 (82 FR 16728, April 6, 2017).

(c) Applicability

This AD applies to General Electric Company (GE) GE90–110B1 and GE90–115B turbofan engines with HPC rotor stage 2–5 spools, with:

- (1) A serial number (S/N) listed in either, paragraph 4, Appendix A of GE Service Bulletin (SB) No. GE90–100 SB 72–0499 R01, dated February 5, 2014; in paragraph 4, Appendix A of GE SB GE90–100 SB 72–0659 R01, dated February 18, 2016; or in paragraph 4, Appendix A, of GE SB GE90–100 S/B 72–0714, Revision 01, dated February 16, 2018.
- (2) A part number (P/N) 351–103–109–0, P/N 351–103–110–0, P/N 351–103–147–0 or P/N 351–103–152–0, with any S/N.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by reports of cracks in HPC rotor stage 2–5 spool aft spacer arms. We are issuing this AD to prevent failure of the HPC rotor stage 2–5 spools. The unsafe condition, if not addressed, could result in uncontained spool release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) Remove from service HPC rotor stage 2–5 spools with S/Ns listed in paragraph 4, Appendix A, of GE SB GE90–100 SB 72–0659 R01, dated February 18, 2016, as follows, or before further flight, whichever occurs later:

(i) For spools with fewer than 4,500 flight cycles since new (CSN) as of April 21, 2017, remove before exceeding 5,000 CSN.

(ii) For spools with 4,500 CSN or more but fewer than 5,200 CSN as of April 21, 2017, remove within 500 CIS but not to exceed 5,500 CSN.

(iii) For spools with 5,200 CSN or more but fewer than 5,600 CSN as of April 21, 2017, remove within 300 CIS but not to exceed 5,800 CSN.

(iv) For spools with 5,600 CSN or more but fewer than 5,800 CSN as of April 21, 2017, remove within 200 CIS but not to exceed 5,850 CSN.

(v) For spools with 5,800 CSN or more but fewer than 6,000 CSN as of April 21, 2017, remove within 50 CIS but not to exceed 6,000 CSN.

(vi) For spools with 6,000 CSN or more as of April 21, 2017, remove before the next flight.

(2) Remove from service HPC rotor stage 2–5 spools listed in paragraph (c)(2) of this AD and HPC rotor stage 2–5 spools with S/Ns listed in paragraph 4, Appendix A, of GE SB GE90–100 S/B 72–0714, Revision 01, dated February 16, 2018, before exceeding 8,200 CSN, or before further flight, whichever occurs later.

(h) Installation Prohibition

(1) After the effective date of this AD, do not install or reinstall onto any engine, any HPC rotor stage 2–5 spool with an S/N listed in paragraph 4, Appendix A, of GE SB No. GE90–100 SB 72–0499 R01, dated February 5, 2014, or paragraph 4, Appendix A, of GE SB GE90–100 SB72–0659 R01, dated February 18, 2016, that exceeds 5,000 CSN.

(2) After the effective date of this AD, do not install or reinstall onto any engine, any HPC rotor stage 2–5 spool listed in paragraph (c)(2) of this AD, or HPC rotor stage 2–5 spool with an S/N listed in paragraph 4, Appendix A, of GE SB GE90–100 S/B 72–0714, Revision 01, dated February 16, 2018, that exceeds 8,200 CSN.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector

or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov*.

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

(j) Related Information

For more information about this AD, contact David Bethka, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7129; fax: 781–238–7199; email: *david.bethka@faa.gov*.

(k) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on November 30, 2018.

(i) General Electric Company (GE) Service Bulletin (SB) GE90–100 SB 72–0499 R01, dated February 5, 2014.

(ii) GE SB GE90–100 S/B 72–0714, Revision 01, dated February 16, 2018.

(4) The following service information was approved for IBR on April 21, 2017 (82 FR 16728, April 6, 2017).

(i) GE SB GE90–100 SB 72–0659 R01, dated February 18, 2016.

(ii) [Reserved.]

(5) For service information identified in this AD, contact General Electric Company, 1 Neumann Way, Room 285, Cincinnati, OH 45215; phone: 513–552–3272; email: *geae.aoc@ge.com*.

(6) You may view this service information at FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

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

Issued in Burlington, Massachusetts, on October 17, 2018.

Karen M. Grant,

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

[FR Doc. 2018–23466 Filed 10–25–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2018–0094; Airspace Docket No. 18–ASW–4]

RIN 2120–AA66

Amendment of Class D Airspace; Tulsa, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace designated as an extension at Tulsa Lloyd Jones Jr. Airport, Tulsa, OK. This action is a result of an airspace review caused by the decommissioning of the Glenpool VHF omnidirectional range (VOR) navigation aid as part of the VOR Minimum Operational Network (MON) Program and the cancellation of the associated instrument procedures. The geographic coordinates of the airport are also updated; to coincide with the FAA’s aeronautical database, as well as an editorial change removing the city associated with the airport name in the airspace legal description. Also, the outdated term “Airport/Facility Directory” is replaced with “Chart Supplement”.

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 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: Rebecca Shelby, Federal Aviation Administration, Operations Support

Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5857.

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 modifies Class D airspace designated as an extension at Tulsa Lloyd Jones Jr. Airport, Tulsa, OK, to support instrument flight rules operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 14785; April 6, 2018) for Docket No. FAA-2018-0094 to amend the Class D airspace Designated as an extension at Tulsa Lloyd Jones Jr. Airport, Tulsa, OK. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received from the Aircraft Owners and Pilots Association (AOPA). In their comment, AOPA stated that the NPRM did not comply with FAA guidance in FAA Order 7400.2L, Procedures for Handling Airspace Matters, because a graphic was not included in the docket. Additionally, AOPA encouraged the FAA to follow their guidance in the Order by making the action effective date coincidental to the sectional chart publication date.

The FAA has determined AOPA's comments raised no substantive issues with respect to the proposed changes to the airspace addressed in the NPRM. To the extent the FAA failed to follow its policy guidance reference publishing graphics in the docket and establishing the Class D airspace effective date to match the sectional chart date, we note the following.

With respect to AOPA's comment addressing graphics, FAA Order 7400.2L, paragraph 2-3-3.c. requires the official docket to include available graphics. For this airspace action, no graphics were deemed necessary or produced in the review or development

of the proposed airspace amendments noted in the NPRM; therefore, no graphics were available to include in the docket.

Specific to AOPA's comment regarding the FAA already creating a graphical depiction of new or modified airspace overlaid on a Sectional Chart for quality assurance purposes, this is not correct nor required in all cases. During the airspace reviews, airspace graphics may be created, if deemed necessary, to determine if there are any terrain issues, or if cases are considered complex. However, in many cases when developing an airspace amendment proposal, a graphic is not required. It was unclear if the graphic AOPA argued was already created with a sectional chart background was actually the airspace graphic created by the Aeronautical Information Services office in preparation of publishing the sectional charts. However, that graphic is normally created after the rulemaking determination is published.

With respect to AOPA's comment addressing effective dates, FAA Order 7400.2L, paragraph 2-3-7.a.4. states that, to the extent practicable, Class D airspace area and restricted area rules should become effective on a sectional chart date and that consideration should be given to selecting a sectional chart date that matches a 56-day en route chart cycle date. The FAA does consider publishing Class D airspace amendment effective dates to coincide with the publication of sectional charts, to the extent practicable; however, this consideration is accomplished after the NPRM comment period ends in the final rule. Substantive comments received to NPRMs, flight safety concerns, management of IFR operations at affected airports, and immediacy of required proposed airspace amendments are some of the factors that must be taken into consideration when selecting the appropriate effective date. After considering all factors, the FAA may determine that selecting an effective date that conforms to a 56-day en route chart cycle date that is not coincidental to sectional chart dates is better for the National Airspace System and its users than awaiting the next sectional chart date.

Class D airspace designations are published in paragraphs 5000 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class D 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 modifies Class D airspace extending upward from the surface to and including 3,100 feet MSL, within a 4-mile radius of Richard Lloyd Jones Jr. Airport, and within 1 mile each side of the 190° radial from the airport RWY 01L-LOC extending from the 4-mile radius to 4.1 miles south of the airport (reduced from 1.3 miles each side of the 350° radial of the Glenpool VOR extending from the 4-mile radius to 4.7 miles south of the airport). This action is necessary due to the decommissioning of the Glenpool VOR as part of the VOR MON Program and cancellation of the associated instrument approach.

The geographic coordinates of the airport are also updated to coincide with the FAA's aeronautical database. Additionally, this action makes an editorial change to the Class D airspace legal description replacing "Airport/Facility Directory" with "Chart Supplement."

Also, an editorial change will be made removing the airport name from the airspace designation, and removing the word "Tulsa" from the airport name, to comply with a change to FAA Order 7400.2L, Procedures for Handling Airspace Matters.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic

procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASW OK D Tulsa, OK [Amended]

Richard Lloyd Jones Jr., OK
(Lat. 36°02'22" N, long. 95°59'05" W)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 4-mile radius of Richard Lloyd Jones Jr. Airport, and within 1 mile each side of the 190° bearing from the Richard Lloyd Jones Jr. Airport RWY 01L–LOC from the 4 mile radius to 4.1 miles south of the airport, excluding that airspace within the Tulsa International Airport, OK, Class C airspace area. This Class D airspace 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 Fort Worth, Texas, on October 18, 2018.

Walter Tweedy,

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

[FR Doc. 2018–23401 Filed 10–25–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0468; Airspace
Docket No. 18–AEA–13]

RIN 2120–AA66

Amendment of Class E Airspace; Cambridge, MD

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet or more above the surface at Cambridge-Dorchester Regional Airport, Cambridge, MD, to accommodate airspace reconfiguration due to the decommissioning of the Cambridge 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 corrects the region identifier in the description header, and updates the airport name and geographic coordinates.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Cambridge-Dorchester Regional Airport, Cambridge, MD, to support standard instrument approach procedures for IFR operations in the area.

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (83 FR 38098, August 3, 2018) for Docket No. FAA–2018–0468 to amend Class E airspace extending upward from 700 feet or more above the surface at Cambridge-Dorchester Regional Airport, Cambridge, MD.

Subsequent to publication, the FAA found that the airspace designation header was incorrect, and is corrected in this rule.

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 71.1. The 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) amends part 71 by amending Class E airspace extending upward from 700 feet or more above the surface at Cambridge-Dorchester Regional Airport to within a 6.6-mile radius (increased from a 6.4-mile radius) of the airport due to the decommissioning of the Cambridge NDB, and cancellation of the NDB approach. The airspace redesign enhances the safety and management of IFR operations at the airport. The geographic coordinates of the airport also are adjusted to coincide with the FAA's aeronautical database, and the airport name is updated to Cambridge-Dorchester Regional Airport, (formerly Cambridge-Dorchester Airport).

Finally, the region identifier in the designation header is corrected to "AEA" from "ANE".

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and 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.

* * * * *

AEA ME E5 Cambridge, MD [Amended]

Cambridge-Dorchester Regional Airport, MD (Lat. 38°32'22" N, long. 76°01'49" W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Cambridge-Dorchester Regional Airport.

Issued in College Park, Georgia, on October 18, 2018.

Debra Hogan,

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

[FR Doc. 2018–23403 Filed 10–25–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9442; Airspace Docket No. 16–ASO–15]

RIN 2120–AA66

Establishment of Class E Airspace; Crystal Springs, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Copiah County

Airport, Crystal Springs, MS, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures serving the airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at 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 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: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace extending upward from 700 feet above the surface at Copiah County Airport, Crystal Springs, MS, to

support standard instrument approach procedures for IFR operations at this airport.

History

The FAA published a notice of proposed rulemaking (NPRM in the **Federal Register** (83 FR 36482, July 30, 2018) for Docket No. FAA-2016-9442 to establish Class E surface area airspace at Copiah County Airport, Crystal Springs, MS.

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 proposes to amend 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 establishing Class E airspace extending upward from 700 feet above the surface within a 7-mile radius of Copiah County Airport, Crystal Springs, MS, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for IFR operations at the airport.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO MS E5 Crystal Springs, MS [New]

Copiah County Airport, MS
(Lat. 31°54'09" N, long. 90°22'00" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Copiah County Airport.

Issued in College Park, Georgia, on October 18, 2018.

Debra L. Hogan,

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

[FR Doc. 2018–23402 Filed 10–25–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0369; Airspace Docket No. 18–ASO–8]

RIN 2120–AA66

Amendment of Class E Airspace, Augusta, GA, and Establishment of Class E Airspace, Waynesboro, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface in Augusta, GA, by recognizing the name change of Augusta Regional Airport at Bush Field (formerly Augusta Regional at Bush Field Airport); removing Burke County Airport and Millen Airport from the airspace designation and establishing these two airports under Waynesboro, GA, designation; and updating the geographic coordinates of Daniel Field, Augusta, GA, and Millen Airport, Waynesboro, GA. This action accommodates airspace reconfiguration due to the decommissioning of the Millen non-directional radio beacon (NDB) and cancellation of the NDB approach at Millen Airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at these airports.

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 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: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 305-6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace, at Augusta, GA, and establishes Class E airspace at Waynesboro, GA, to support airspace reconfiguration due to the decommissioning of the Millen non-directional radio beacon (NDB) and cancellation of the NDB approach at Millen Airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 39384, August 9, 2018) for Docket No. FAA-2018-0369 to amend Class E airspace area extending upward from 700 feet or more above the surface, and establish Class E airspace area extending upward from 700 feet or more above the surface at Burke County Airport and Millen Airport, Waynesboro, GA as the Millen NDB has been decommissioned and the NDB approach cancelled.

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 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 amendment to Title 14 Code of Federal Regulations (14 CFR) amends part 71 by amending Class E airspace extending upward from 700 feet above the surface in Augusta, GA, by recognizing the name change of Augusta Regional Airport at Bush Field (formerly Augusta Regional at Bush Field Airport); removing Burke County Airport and Millen Airport from the airspace designation and establishing these two airports under Waynesboro, GA, designation due to the cancellation of the Millen NDB and cancellation of the associated approach; and updating the geographic coordinates of Daniel Field, Augusta, GA, to be in concert with the FAA's aeronautical database.

Class E airspace extending upward from 700 feet above the surface is established at Burke County Airport, Waynesboro, GA, within a 6.7-mile (increased from a 6.6-mile) radius of the airport.

Class E airspace extending upward from 700 feet above the surface is established at Millen airport within a 7.4-mile (increased from a 7.3-mile) radius of the airport. The geographic coordinates are adjusted 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 Federal Aviation Administration Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and 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.

* * * * *

ASO GA E5 Augusta, GA [Amended]

Augusta Regional Airport at Bush Field, GA
(Lat. 33°22'12" N, long. 81°57'52" W)
Daniel Field
(Lat. 33°28'00" N, long. 82°02'22" W)
Emory NDB
(Lat. 33°27'46" N, long. 81°59'49" W)

That airspace extending upward from 700 feet above the surface within an 8.6-mile radius of Augusta Regional Airport at Bush Field, and within 3.2 miles either side of the 168° bearing from the airport extending from the 8.6-mile radius to 12.5 miles south of the airport, and within a 7-mile radius of Daniel Field, and within 8 miles west and 4 miles east of the 349° bearing from the Emory NDB extending from the 7-mile radius to 16 miles north of the Emory NDB.

ASO GA E5 Waynesboro, GA [New]

Burke County Airport, GA
(Lat. 33°02'29" N, long. 82°00'10" W)
Millen Airport

(Lat. 32°53'35" N, long. 81°57'55" W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Burke County Airport, and within a 7.4-mile radius of Millen Airport.

Issued in College Park, Georgia, on October 17, 2018.

Ken Brissenden,

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

[FR Doc. 2018–23399 Filed 10–25–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA–2018–0927; Amdt. No. 91–353]

RIN 2120–AL06

Prohibition Against Certain Flights in the Baghdad Flight Information Region (FIR) (ORBB)

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

ACTION: Final rule.

SUMMARY: This action reissues, with modifications to reflect changed conditions in Iraq, the Special Federal Aviation Regulation (SFAR) that prohibits certain flights in the Baghdad Flight Information Region (FIR) (ORBB) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except where the operator of such aircraft is a foreign air carrier.

DATES: This final rule is effective on October 26, 2018.

FOR FURTHER INFORMATION CONTACT: Michael Filippell, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–8166; email michael.e.filippell@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action reissues, with modifications to address changed conditions in Iraq, Special Federal Aviation Regulation (SFAR) No. 77, § 91.1605, which prohibits certain flight operations in the Baghdad FIR (ORBB) by all: U.S. air carriers; U.S. commercial operators; persons exercising the

privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except where the operator of such aircraft is a foreign air carrier. The reissued rule prohibits operations in the Baghdad FIR (ORBB) below Flight Level (FL) 260, except operations necessary to climb out of, or descend into, the Kuwait FIR (OKAC), subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Iraq.

Conditions in Iraq have improved since action was last taken on SFAR No. 77, § 91.1605 by the FAA in May 2015, which expired on May 11, 2017.¹ The coalition of Iraqi security forces, allied nations, and supporting militia elements has successfully reduced the area under Islamic State of Iraq and Ash-Sham (ISIS) control. In addition, the operational anti-aircraft-capable weapons possessed by ISIS or other anti-U.S. extremist/militant elements are altitude-limited and would not pose a risk to U.S. civil aviation overflights at or above FL 260, provided that the flights remain clear of areas where fighting is likely to occur or re-emerge. The appropriate authorities of Iraq have taken steps to prohibit civil aviation operations at or above FL 260 in such areas. Therefore, on December 9, 2017, the FAA issued KICZ NOTAM A0025/17, amending its prohibition on U.S. civil aviation operations in the Baghdad FIR (ORBB) to allow overflights at or above FL 260.

There continues to be an unacceptable level of risk to U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL 260, as described in this rule, resulting from the potential for fighting in certain areas of Iraq and ongoing concerns about the extremist/militant threat to U.S. civil aviation throughout Iraq. With limited exceptions described in this final rule, U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL 260 remain prohibited consistent with KICZ NOTAM A0025/17. Consequently, the FAA is reissuing the modified SFAR to remain in effect until October 26, 2018. The FAA finds this action necessary due to continued hazards to U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL 260.

¹ Due to continuing hazards and to avoid interruption of the flight prohibition, the FAA issued KICZ NOTAM A0010/17 under the Administrator's emergency authority (49 U.S.C. 46105(c)) to temporarily continue the SFAR flight prohibition until a final rule became effective.

II. Legal Authority and Good Cause

A. Legal Authority

The FAA is responsible for the safety of flight in the U.S. and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. The FAA Administrator's authority to issue rules on aviation safety is found in title 49, U.S. Code, Subtitle I, sections 106(f) and (g). Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the U.S. Government under international agreements.

This rulemaking is promulgated under the authority described in title 49, U.S. Code, subtitle VII, Part A, subpart III, section 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security.

This regulation is within the scope of FAA's authority, because it prohibits the persons described in paragraph (a) of SFAR No. 77, § 91.1605, from conducting flight operations in the Baghdad FIR (ORBB) at altitudes below FL 260, with limited exceptions, due to the continued hazards to the safety of U.S. civil flight operations, as described in the preamble to this final rule.

The FAA also finds that this action is fully consistent with the obligations under 49 U.S.C. 40105(b)(1)(A) to ensure that the FAA exercises its duties consistently with the obligations of the United States under international agreements.

B. Good Cause for Immediate Adoption

Section 553(b)(3)(B) of title 5 of the United States Code (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency for "good cause" finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Section 553(d) also authorizes agencies to forgo the delay in the effective date of the final rule for good cause found and published with the rule. In this instance, the FAA finds

good cause to forgo notice and comment because notice and comment would be impracticable and contrary to the public interest. The FAA has identified an immediate need to address the continued hazardous situation for U.S. civil aviation that exists in the Baghdad FIR (ORBB) at altitudes below FL 260 due to the potential for fighting in certain areas of Iraq and ongoing concerns about the extremist/militant threat to U.S. civil aviation throughout Iraq. These hazards are further described in the preamble to this rule. To the extent that the rule is based upon classified information, such information is not permitted to be shared with the general public. Also, threats to U.S. civil aviation and intelligence regarding these threats are fluid. As a result, the agency's original proposal could become unsuitable for minimizing the hazards to U.S. civil aviation in the affected airspace during or after the notice and comment process.

Additionally, it is contrary to the public interest to delay the effective date of this SFAR. This action reissues SFAR No. 77, § 91.1605, with appropriate modifications, to codify the provisions of the FAA's December 9, 2017, NOTAM, which will reduce the potential for confusion over whether certain overflights of Iraq by U.S. operators and airmen are permitted.

For these reasons, the FAA finds good cause to forgo notice and comment and any delay in the effective date for this rule.

III. Background

On October 9, 1996, the FAA issued SFAR No. 77 to prohibit flight operations over or within the territory of Iraq by any U.S. air carrier or commercial operator; by any person exercising the privileges of an airman certificate issued by the FAA, except persons operating U.S.-registered aircraft for a foreign air carrier; or by any person operating an aircraft registered in the U.S., unless the operator of such aircraft was a foreign air carrier. The FAA extended and amended SFAR No. 77 several times to respond to evolving circumstances and their corresponding hazards to U.S. civil operations.² Most recently, on May 11, 2015, the FAA published a final rule amending SFAR No. 77, § 91.1605, to prohibit U.S. civil aviation operations in the Baghdad FIR (ORBB) at all altitudes due to the hazardous situation created by armed conflict, which formalized a flight prohibition NOTAM issued under

the Administrator's emergency authority. 80 FR 26822. SFAR No. 77, § 91.1605, expired on May 11, 2017. On May 10, 2017, the FAA issued KICZ NOTAM A0010/17 under the Administrator's safety and emergency authority (49 U.S.C. 40113(a) and 46105(c), respectively) to continue the prohibition of certain flight operations in the Baghdad FIR (ORBB) without interruption due to the continuing hazards to U.S. civil aviation operations.

The FAA continued to monitor developments in Iraq relevant to the safety of U.S. civil aviation after issuing its May 10, 2017, NOTAM. The FAA assessed that conditions in Iraq had improved, as the coalition of Iraqi security forces, allied nations, and supporting militia elements had successfully reduced the area under ISIS control. In addition, the FAA assessed that the operational anti-aircraft-capable weapons possessed by ISIS or other anti-U.S. extremist/militant elements did not pose a risk to U.S. civil aviation overflights at or above FL 260, provided that the flights remain clear of areas where fighting is likely to occur or re-emerge. The appropriate authorities of Iraq had taken steps to prohibit civil aviation operations at or above FL 260 in such areas. As a result, the FAA determined that the risk to U.S. civil aviation at or above FL 260 in the Baghdad FIR (ORBB) had been sufficiently reduced to allow U.S. civil aviation overflights at or above FL 260 to resume. The FAA also determined that it was safe to allow limited operations below FL 260 when necessary due to climb performance.

On December 9, 2017, the FAA issued a revised flight prohibition NOTAM prohibiting U.S. civil operations within the Baghdad FIR (ORBB) below FL 260 and thus permitting overflights above FL 260. The NOTAM permitted, by exception, U.S. civil operations departing from countries adjacent to Iraq to operate at altitudes below FL 260 in the Baghdad FIR (ORBB) to the extent necessary to permit a climb to or above FL 260, if the climb performance of the aircraft does not permit it to attain FL 260 prior to entering the Baghdad FIR (ORBB), subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Iraq. This change permitted U.S. operators to conduct limited overflights of Iraq, potentially saving travel time and operational costs associated with alternate, less direct routes in a region constrained by multiple SFARs prohibiting operations.

IV. Discussion of the Final Rule

The FAA continues to assess the situation in the Baghdad FIR (ORBB) as being hazardous for U.S. civil aviation at altitudes below FL 260, subject to the limited exceptions described in this final rule. The risk to U.S. civil aviation originates from the potential for fighting in certain areas of northern and western Iraq between the Islamic State of Iraq and ash-Sham (ISIS), other extremist/militant elements, Iraqi security forces and other elements. ISIS and other extremist/militant elements are known to possess a variety of anti-aircraft-capable weapons, including man-portable air defense systems, and have fired on military aircraft during combat operations in Iraq. This presents a continued risk of anti-aircraft fire to civil aircraft, particularly in areas where fighting may occur. There is also a risk of potential hostile activity by ISIS elements or other anti-U.S. militants/extremists elsewhere in Iraq.

The FAA assesses that the risk to U.S. civil aviation operating in the Baghdad FIR (ORBB) over southeastern Iraq has been sufficiently reduced to allow flights to operate at altitudes below FL 260 to the extent necessary to climb-out from or descend into the Kuwait FIR (OKAC). Southeastern Iraq has a lower concentration of ISIS-affiliated and other anti-U.S. extremists/militants, and is at lower risk for fighting to occur, than other parts of Iraq. The terrain in southeastern Iraq is of very low elevation, low enough to provide a reasonable buffer against the remaining risk from anti-aircraft-capable weapons fired from the surface. Additionally, aircraft climbing out of Kuwait are only exposed to any of the remaining risks to operations in the Baghdad FIR (ORBB) at altitudes below FL 260 for the limited time necessary to climb to FL 260, in accordance with Iraqi air traffic control instructions. Similarly, aircraft descending toward Kuwait below FL 260, in accordance with Iraqi air traffic control instructions, are also exposed to such risks for only a limited period of time.

Finally, the routine and expected procedures for hand-offs between Iraqi air traffic control and Kuwaiti air traffic control require operators to cross the Iraq-Kuwait border below FL 260. The FAA has determined that the safety risks of potential traffic conflicts associated with continuing to require U.S. operators and airmen to fly different profiles than those normally flown by civil air traffic in this very busy airspace outweigh the previously described residual risks to U.S. civil aviation operating over southeastern

² 61 FR 54020. For a more comprehensive history of SFAR 77, § 91.1605, see the final rule published on May 11, 2015. 80 FR 26822, 26823–26824.

Iraq from potential fighting and anti-U.S. militant/extremist activity.

Upon further examination of the risks to U.S. civil aviation in other areas of Iraq, the FAA has determined that the remaining risks to U.S. civil aviation climbing out of or descending into the other countries that border Iraq have not been sufficiently reduced to permit operations below FL 260. Therefore, while KICZ NOTAM A0025/17 had permitted flights departing from countries adjacent to Iraq to operate at altitudes below FL 260 in the Baghdad FIR (ORBB) to the extent necessary to permit a climb to or above FL 260, under certain circumstances, this rule does not permit such climbouts. The reasons for not extending climbout relief from the other bordering FIRs are discussed in the following paragraphs. Nevertheless, the FAA has determined there are no operational impacts caused by this change. Available information indicates U.S. operators have not relied upon the NOTAM's exception to transition from neighboring FIRs, other than Kuwait, at altitudes below FL 260.

Iraq shares most of its western border with Syria. The FAA currently prohibits U.S. civil aviation operations in the Damascus FIR (OSTT) at all altitudes, including the entire country of Syria, due to the presence of anti-aircraft weapons controlled by non-state actors, threats made by extremist groups, de-confliction concerns, and ongoing fighting. In addition, the Iraqi border region adjacent to Syria is susceptible to extremist/militant cross-border activity that poses a risk to U.S. civil aviation operating below FL 260 within the Baghdad FIR (ORBB). Areas of western and southwestern Iraq near its borders with Jordan and Saudi Arabia have a higher concentration of ISIS-affiliated and other anti-U.S. extremists/militants than southeastern Iraq. The presence of, or potential for, extremist/militant activity within Iraq near its borders with Jordan and Saudi Arabia poses a greater risk to U.S. civil aviation operating below FL 260 inside the Baghdad FIR (ORBB) than that which exists for U.S. civil aviation operating below FL 260 in the Baghdad FIR (ORBB) near Iraq's border with Kuwait.

Iraq shares most of its eastern border with Iran. In the region of Iraq bordering Iran, there is a risk to U.S. civil aviation operating in the Baghdad FIR (ORBB) below FL 260 from potential cross-border extremist/militant activity and inadequate de-confliction of civil and military flights. The Iraq-Iran border region also has areas of high elevation terrain, in comparison to Iraq's border region with Kuwait, which could expose U.S. civil aviation operating below FL

260 over such terrain to greater risk from possible ground-based anti-aircraft weapons in comparison to Iraq's border region with Kuwait.

Iraq borders Turkey to the north. There is a potential for a residual ISIS presence, other extremist/militant activity, and associated counter-terrorism operations in the Iraq-Turkey border region. This activity poses a risk to U.S. civil aviation operating below FL 260 in the Baghdad FIR (ORBB), particularly due to the higher elevation terrain in this region, which could expose U.S. civil aviation, operating below FL 260 over such terrain, to greater risk from ground-based anti-aircraft weapons in comparison to Iraq's border region with Kuwait. The FAA does not believe that there are countervailing aviation safety considerations, such as the air traffic control considerations relative to Kuwait, of sufficient magnitude to outweigh these risks.

Therefore, as a result of the significant continuing risk to the safety of U.S. civil aviation in the Baghdad FIR (ORBB) at altitudes below FL 260, the FAA reissues SFAR No. 77, § 91.1605, with an expiration date of October 26, 2020, to maintain the prohibition on flight operations at altitudes below FL 260, with certain limited exceptions described in the rule. This prohibition applies to all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except where the operator of such aircraft is a foreign air carrier. The reissued SFAR No. 77, § 91.1605, permits those subject to the rule to operate at altitudes below FL 260 to the extent necessary to climb out of, or descend into, the Kuwait FIR (OKAC), subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Iraq. While the FAA's flight prohibition does not apply to foreign air carriers, DOT codeshare authorizations prohibit foreign air carriers from carrying a U.S. codeshare partner's code on a flight segment that operates in airspace for which the FAA has issued a flight prohibition.

The FAA will continue to actively monitor the situation and evaluate the extent to which U.S. civil operators and airmen may be able to operate safely in the Baghdad FIR (ORBB) at altitudes below FL 260 in the future. Further amendments to SFAR No. 77, § 91.1605, may be appropriate if the risk to aviation safety and security changes.

The FAA may amend or rescind SFAR No. 77, § 91.1605, as necessary, prior to its expiration date.

V. Approval Process Based on a Request From a Department, Agency, or Instrumentality of the United States Government

If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person covered under SFAR No. 77, § 91.1605, including a U.S. air carrier or commercial operator, to conduct a charter to transport civilian or military passengers or cargo, or other operations, in the Baghdad FIR (ORBB) at altitudes below FL 260, that department, agency, or instrumentality may request that the FAA approve persons covered under SFAR No. 77, § 91.1605(a), to conduct such operations.

An approval request must be made directly by the requesting department, agency, or instrumentality of the U.S. Government to the FAA's Associate Administrator for Aviation Safety in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality. The FAA will not accept or consider requests for approval submitted by anyone other than the requesting department, agency, or instrumentality. In addition, the senior official signing the letter requesting FAA approval on behalf of the requesting department, agency, or instrumentality must be sufficiently positioned within the organization to demonstrate that the senior leadership of the requesting department, agency, or instrumentality supports the request for approval and is committed to taking all necessary steps to minimize operational risks to the proposed flights. The senior official must also be in a position to: (1) Attest to the accuracy of all representations made to the FAA in the request for approval and (2) ensure that any support from the requesting U.S. Government department, agency, or instrumentality described in the request for approval is in fact brought to bear and is maintained over time. Unless justified by exigent circumstances, requests for approval must be submitted to the FAA no less than 30 calendar days before the date on which the requesting department, agency, or instrumentality intends to commence the proposed operations.

The letter must be sent by the requesting department, agency, or instrumentality to the Associate Administrator for Aviation Safety, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. Electronic submissions are

acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the approval request is granted. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Air Transportation Division, Flight Standards Service, at (202) 267-8166 to obtain the appropriate email address. A single letter may request approval from the FAA for multiple persons covered under SFAR No. 77, § 91.1605, and/or for multiple flight operations. To the extent known, the letter must identify the person(s) covered under the SFAR on whose behalf the U.S. Government department, agency, or instrumentality is seeking FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service to be provided by the person(s) covered by the SFAR;
- To the extent known, the specific locations in the Baghdad FIR (ORBB) at altitudes below FL 260 where the proposed operation(s) will be conducted, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Baghdad FIR (ORBB) at altitudes below FL 260 and the airports, airfields and/or landing zones at which the aircraft will take-off and land; and
- The method by which the department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of the proposed operations (*i.e.*, the pre-mission planning and briefing, in-flight, and post-flight phases).

The request for approval must also include a list of operators with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or with whom its prime contractor has a subcontract(s)) for specific flight operations in the Baghdad FIR (ORBB) at altitudes below FL 260. Additional operators may be identified to the FAA at any time after the FAA approval is issued. However, all additional operators must be identified to, and obtain an Operations Specification (OpSpec) or Letter of Authorization (LOA), as appropriate, from the FAA for operations in the Baghdad FIR (ORBB) at altitudes below FL 260, before such operators commence such operations. The approval conditions discussed below apply to any such additional operators. Updated lists should be sent

to the email address to be obtained from the Air Transportation Division by calling (202) 267-8166.

If an approval request includes classified information, requestors may contact Aviation Safety Inspector Michael Filippell for instructions on submitting it to the FAA. His contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

FAA approval of an operation under SFAR No. 77, § 91.1605, does not relieve persons subject to this SFAR of their responsibility to comply with all other applicable FAA rules and regulations. Operators of civil aircraft must also comply with the conditions of their certificate, OpSpecs, and LOAs, as applicable. Operators must further comply with all rules and regulations of other U.S. Government departments and agencies that may apply to the proposed operations, including, but not limited to, the regulations issued by the Transportation Security Administration.

Approval Conditions

If the FAA approves the request, the FAA's Aviation Safety Organization will send an approval letter to the requesting department, agency, or instrumentality informing it that the FAA's approval is subject to all of the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator, while still allowing the operator to achieve its operational objectives.

(2) Before any approval takes effect, the operator must submit to the FAA:

(a) A written release of the U.S. Government from all damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the Baghdad FIR (ORBB) at altitudes below FL 260; and

(b) The operator's agreement to indemnify the U.S. Government with respect to any and all third-party damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the Baghdad FIR (ORBB) at altitudes below FL 260.

(3) Other conditions that the FAA may specify, including those that may be imposed in OpSpecs or LOAs, as applicable.

The release and agreement to indemnify do not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy

issued by the FAA under chapter 443 of title 49, U.S. Code.

If the FAA approves the proposed operation(s), the FAA will issue an OpSpec or an LOA, as applicable, to the operator(s) identified in the original request authorizing them to conduct the approved operation(s), and will notify the department, agency, or instrumentality that requested the FAA's approval of any additional conditions beyond those contained in the approval letter.

VI. Requests for Exemption

Any operations not conducted under an approval issued by the FAA through the approval process set forth previously must be conducted under an exemption from SFAR No. 77, § 91.1605. A petition for an exemption must comply with 14 CFR part 11 and requires exceptional circumstances beyond those contemplated by the approval process set forth in the previous section. In addition to the information required by 14 CFR 11.81, at a minimum, the requestor must describe in its submission to the FAA—

- The proposed operation(s), including the nature of the operation;
- The service to be provided by the person(s) covered by the SFAR;
- The specific locations in the Baghdad FIR (ORBB) at altitudes below FL 260 where the proposed operation(s) will be conducted, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Baghdad FIR (ORBB) at altitudes below FL 260 and the airports, airfields and/or landing zones at which the aircraft will take-off and land;
- The method by which the operator will obtain current threat information, and an explanation of how the operator will integrate this information into all phases of its proposed operations (*i.e.*, the pre-mission planning and briefing, in-flight, and post-flight phases); and
- The plans and procedures that the operator will use to minimize the risks, identified in the preamble, to the proposed operations, so that granting the exemption would not adversely affect safety or would provide a level of safety at least equal to that provided by this SFAR. The FAA has found comprehensive, organized plans and procedures of this nature to be helpful in facilitating the agency's safety evaluation of petitions for exemption from flight prohibition SFARs.

Additionally, the release and agreement to indemnify, as referred to previously, are required as a condition of any exemption that may be issued under SFAR No. 77, § 91.1605.

The FAA recognizes that operations that may be affected by SFAR No. 77, § 91.1605, may be planned for the governments of other countries with the support of the U.S. Government. While these operations will not be permitted through the approval process, the FAA will consider exemption requests for such operations on an expedited basis and prior to any private exemption requests.

VII. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as codified in 5 U.S.C. 603 *et seq.*, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96–39), 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as codified in 2 U.S.C. Chapter 25, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined that this final rule has benefits that justify its costs and is a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, because it raises novel policy issues contemplated under that Executive Order. As notice and comment under 5 U.S.C. 553 are not required for this final rule, the regulatory flexibility analyses described in 5 U.S.C. 603 and 604 regarding impacts on small entities are not required. This rule will not create unnecessary obstacles to the foreign commerce of the United States, and will not impose an unfunded mandate on State, local, or tribal governments, or on

the private sector, by exceeding the threshold identified previously.

A. Regulatory Evaluation

Due to a reduction in the level of risk to U.S. civil aviation operations in the Baghdad FIR (ORBB) at or above FL 260, the FAA's December 9, 2017, NOTAM prohibited U.S. civil aviation operations below FL 260, thus permitting overflights above FL 260. Due to the continued significant hazards to U.S. civil aviation in the Baghdad FIR (ORBB) at altitudes below FL 260 described in the preamble, the December 9, 2017, NOTAM continued the prohibition on U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL 260, with limited exceptions. The reissued SFAR No. 77, § 91.1605, permits persons to climb out of, or descend into, the Kuwait FIR (OKAC) at altitudes below FL 260, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Iraq.

The FAA believes there are very few U.S. operators who wish to operate in the Baghdad FIR (ORBB) at altitudes below FL 260, where U.S. civil aviation operations will continue to be prohibited. The FAA has received three requests for approval or exemption to conduct flight operations in the Baghdad FIR (ORBB) at altitudes below FL 260 since May 11, 2015. Consequently, the FAA estimates the costs of this rule to be minimal. These minimal costs are exceeded by the benefits of avoided risks of deaths, injuries, and property damage that could result from a U.S. operator's aircraft being shot down (or otherwise damaged) due to the hazards described in the preamble. Consequently, the FAA estimates that the benefits of this rule will exceed the costs.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever an agency is required by 5 U.S.C. 553, or any other law, to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553, after being required by that section, or any other law, to publish a general notice of proposed rulemaking. The FAA found good cause to forgo notice and comment and any delay in the effective date for this rule. As notice and comment under 5 U.S.C. 553 are not

required in this situation, the regulatory flexibility analyses described in 5 U.S.C. 603 and 604 are not required.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the effect of this final rule. The purpose of this rule is to protect the safety of U.S. civil aviation from hazards to their operations in the Baghdad FIR (ORBB) at altitudes below FL 260, a location outside the U.S. Therefore, the rule is in compliance with the Trade Agreements Act of 1979.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$155.0 million in lieu of \$100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International

Civil Aviation, it is FAA's policy to conform to ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to this regulation.

G. Environmental Analysis

The FAA has analyzed this action under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions (44 FR 1957, January 4, 1979), and DOT Order 5610.1C, Paragraph 16. Executive Order 12114 requires the FAA to be informed of environmental considerations and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the United States. The FAA has determined that this action is exempt pursuant to Section 2-5(a)(i) of Executive Order 12114 because it does not have the potential for a significant effect on the environment outside the United States.

In accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 8-6(c), FAA has prepared a memorandum for the record stating the reason(s) for this determination; this memorandum has been placed in the docket for this rulemaking.

VIII. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a "significant energy action" under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

D. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This rule is not subject to the requirements of E.O. 13771 (82 FR 9339, Feb. 3, 2017) because it is issued with respect to a national security function of the United States.

IX. Additional Information

A. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the internet by—

- Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
- Visiting the FAA's Regulations and Policies web page at http://www.faa.gov/regulations_policies; or
- Accessing the Government Publishing Office's web page at <http://www.fdsys.gov>.

Copies may also be obtained by sending a request (identified by amendment or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677. Please identify the docket or amendment number of this rulemaking in your request.

Except for classified material, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the internet through the Federal eRulemaking Portal referenced above.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding

this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Iraq.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, part 91, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. In subpart M, add § 91.1605 to read as follows:

§ 91.1605 Special Federal Aviation Regulation No. 77—Prohibition Against Certain Flights in the Baghdad Flight Information Region (FIR) (ORBB).

(a) *Applicability.* This section applies to the following persons:

- (1) All U.S. air carriers and U.S. commercial operators;
- (2) All persons exercising the privileges of an airman certificate issued by the FAA, except such persons operating U.S.-registered aircraft for a foreign air carrier; and
- (3) All operators of civil aircraft registered in the United States, except where the operator of such aircraft is a foreign air carrier.

(b) *Flight prohibition.* Except as provided in paragraphs (c) and (d) of this section, no person may conduct flight operations in the Baghdad Flight Information Region (FIR) (ORBB) at altitudes below FL 260.

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations in the Baghdad FIR (ORBB) at altitudes below FL 260 in the following circumstances:

- (1) Aircraft departing from the Kuwait Flight Information Region (FIR) (OKAC) may operate at altitudes below FL 260 in the Baghdad FIR (ORBB) to the extent necessary to permit a climb during

takeoff to or above FL 260, subject to the approval of and in accordance with the conditions established by, the appropriate authorities of Iraq; or

(2) Aircraft descending into the Kuwait FIR (OKAC) may operate at altitudes below FL 260 in the Baghdad FIR (ORBB) to the extent necessary to permit descent for landing within the Kuwait FIR (OKAC), subject to the approval of and in accordance with the conditions established by, the appropriate authorities of Iraq; or

(3) The flight operations in the Baghdad FIR (ORBB) at altitudes below FL 260 are conducted under a contract, grant, or cooperative agreement with a department, agency, or instrumentality of the U.S. Government (or under a subcontract between the prime contractor of the department, agency, or instrumentality, and the person described in paragraph (a) of this section), with the approval of the FAA, or under an exemption issued by the FAA. The FAA will consider requests for approval or exemption in a timely manner, with the order of preference being: First, for those operations in support of U.S. Government-sponsored activities; second, for those operations in support of government-sponsored activities of a foreign country with the support of a U.S. Government department, agency, or instrumentality; and third, for all other operations.

(d) *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this section to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of part 119, 121, 125, or 135 of this chapter, each person who deviates from this section must, within 10 days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the responsible Flight Standards office a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons for it.

(e) *Expiration.* This SFAR will remain in effect until October 26, 2020. The FAA may amend, rescind, or extend this SFAR, as necessary.

Issued under the authority provided by 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), in Washington, DC, on October 18, 2018.

Daniel K. Elwell,
Acting Administrator.

[FR Doc. 2018-23398 Filed 10-25-18; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Chapter II

Airline Reporting of Data on Mishandled Baggage, Wheelchairs, and Scooters

AGENCY: Office of Aviation Enforcement and Proceedings, Office of the Secretary, U.S. Department of Transportation (Department).

ACTION: Notification of enforcement.

SUMMARY: This document addresses the obligations of large U.S. airlines to report to the Department mishandled baggage, wheelchairs, and scooters data following the enactment of the FAA Reauthorization Act of 2018.

DATES: This enforcement notification is applicable on October 26, 2018.

FOR FURTHER INFORMATION CONTACT: John Wood, Senior Attorney, Office of Aviation Enforcement and Proceedings (C-70), U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, 202-366-9342 (telephone), john.wood@dot.gov (email).

SUPPLEMENTARY INFORMATION: On November 2, 2016, the Department published a final rule in the **Federal Register** titled “Reporting of Data for Mishandled Baggage and Wheelchairs and Scooters Transported in Aircraft Cargo Compartments.” 81 FR 76300. This November 2 final rule changed the methodology that airlines are required to use in reporting to the Department their mishandled baggage data, from the number of mishandled baggage reports (MBRs) filed with the airline and the number of domestic passenger enplanements to the number of mishandled bags and the number of enplaned bags.¹ The rule also requires airlines to report separate statistics for mishandled wheelchairs and scooters. On November 3, 2016, the Department published another final rule titled “Enhancing Airline Passenger Protections III,” 81 FR 76826, that, among other things, lowered the reporting carrier threshold for

¹ Currently, airlines report the number of MBRs filed by passengers with the airline. One MBR might cover more than one bag because a single MBR could be submitted by a family—or even an individual—with multiple mishandled bags. Under the new methodology, airlines report the number of bags that were mishandled as opposed to the number of MBRs filed by passengers. Also, today, airlines report the number of passenger enplanements. Under the new methodology, U.S. airlines will report the number of checked bags enplaned (including bags checked at the gate and “valet” bags) rather than the number of passenger enplanements.

mishandled baggage from at least 1 percent of domestic scheduled passenger revenues to at least 0.5 percent. The November 3 final rule further requires reporting carriers that market domestic scheduled codeshare flights to file separate mishandled baggage data for codeshare flights that carry only one U.S. carrier’s code. In March 2017, the Department provided that carriers would be required to comply with the changes to mishandled baggage reporting requirements made by these two final rules with respect to air transportation occurring on or after January 1, 2019. See 82 FR 14437 (March 21, 2017); 82 FR 14604 (March 22, 2017).

On October 5, 2018, the President signed the FAA Reauthorization Act of 2018 (FAA Act) into law. See Public Law 115-254. Section 441 of the FAA Act states that “[t]he compliance date of the final rule, dated November 2, 2016, on the reporting of data for mishandled baggage and wheelchairs in aircraft cargo compartments (81 FR 76300) shall be effective not later than 60 days after the date of enactment of this Act.”²

By this notification, the Office of Aviation Enforcement and Proceedings (Enforcement Office) is providing guidance to affected U.S. carriers on compliance with mishandled baggage, wheelchair, and scooter reporting requirements following the enactment of the FAA Act. Section 441 of the FAA Act provides that the compliance date for the November 2, 2016 final rule shall be effective not later than 60 days after

² The FAA Act also includes another section related to mishandled baggage reporting. Section 410 of the FAA Act states that “[n]ot later than 6 months after the date of enactment of this Act, the Secretary of Transportation shall study and publicize for comment a cost-benefit analysis to air carriers and consumers of changing the baggage reporting requirements of section 234.6 of title 14, Code of Federal Regulations, before implementation of such requirements . . .” The Department must also report to Congress on the findings of the cost-benefit analysis. The Department does not view sections 441 and 410 as inconsistent with each other, because it interprets section 410 as applying only to prospective changes, and as not applying to the changes made by the final rules issued November 2, 2016 and November 3, 2016. In June 2018, the Department announced its initiation of a rulemaking, Reporting of Data for Mishandled Baggage and Wheelchairs and Scooters Transportation in Aircraft Cargo Compartments II (RIN #2105-AE77), “to address substantial challenges in accurately reporting, under the mishandled baggage reporting final rules published in November 2016, data for bags handled by multiple airlines and bags that traveled on both reportable domestic segments and nonreportable international segments.” See <https://www.transportation.gov/regulations/report-on-significant-rulemakings>. The Department will conduct a cost-benefit analysis for proposed changes to the baggage reporting requirements of 14 CFR 234.6 and report to Congress as required by section 410 of the FAA Act.

enactment of the Act, which is December 4, 2018. Accordingly, airlines determined by the Department's Office of Airline Information (OAI) as accounting for at least 1 percent of domestic scheduled passenger revenues for calendar year 2018³ must submit mishandled baggage data to the Department using the new mishandled baggage methodology and must separately report statistics for mishandled wheelchairs and scooters for domestic scheduled flights they operate beginning December 4, 2018 and through December 31, 2018. See 81 FR 73000 (November 2, 2016). The airlines must submit this data to the Department no later than January 15, 2019.⁴ The data would consist of: (1) Operating carrier code; (2) month and year of data; (3) number of mishandled bags; (4) number of bags enplaned; (5) number of mishandled wheelchairs and scooters; (6) number of wheelchairs and scooters enplaned; (7) certification that to the best of the signing official's knowledge and belief the data is true, correct, and complete; and (8) date of submission, name of airline representative, and signature.

If a reporting carrier is unable to report accurate data on the total number of mishandled bags and enplaned bags for the entire reportable period beginning December 4, 2018, and ending December 31, 2018, the Enforcement Office will exercise its enforcement discretion as appropriate.⁵ An airline should inform the Enforcement Office no later than January 3, 2019, if the airline is unable to provide accurate mishandled baggage data using the methodology set forth in the November 2, 2016 rule for the December 2018 reportable period. To the extent the Enforcement Office decides not to pursue action against an airline that does not report the required

data because of reliability concerns, in the interest of providing air travel consumers with access to reliable mishandled baggage data, the Enforcement Office expects that the airline will accurately report mishandled baggage data to the Department using the prior mishandled bag reporting methodology (*i.e.*, the total number of passengers enplaned and the total number of MBRs filed with the airline in the manner described in 14 CFR 234.6(a) and OAI Technical Reporting Directive #29A, for the flights it operates December 1 through 31, 2018). Even if an airline indicates an inability to report accurately the total number of mishandled bags and enplaned bags, the Enforcement Office will expect the airline to accurately report the total number of mishandled wheelchairs and scooters and total number of wheelchair and scooters enplaned. Because the Enforcement Office expects that airlines should be able to accurately report mishandled wheelchair and scooter data, the Enforcement Office requests a detailed explanation no later than January 3, 2019, from any airline asserting that it is not able to accurately report wheelchair and scooter data to the Department for flights beginning December 4, 2018.

Issued in Washington, DC, on October 22, 2018.

Blane A. Workie,

Assistant General Counsel for Aviation Enforcement and Proceedings.

[FR Doc. 2018-23475 Filed 10-25-18; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM17-13-000; Order No. 850]

Supply Chain Risk Management Reliability Standards

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) approves supply chain risk management Reliability Standards CIP-013-1 (Cyber Security—Supply Chain Risk Management), CIP-005-6 (Cyber Security—Electronic Security Perimeter(s)) and CIP-010-3 (Cyber Security—Configuration Change Management and Vulnerability

Assessments) submitted by the North American Electric Reliability Corporation (NERC). In addition, the Commission directs NERC to develop and submit modifications to the supply chain risk management Reliability Standards so that the scope of the Reliability Standards include Electronic Access Control and Monitoring Systems.

DATES: This rule is effective December 26, 2018.

FOR FURTHER INFORMATION CONTACT:

Simon Slobodnik (Technical Information) Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-6707, simon.slobodnik@ferc.gov.

Patricia Eke (Technical Information) Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-8388, patricia.eke@ferc.gov.

Kevin Ryan (Legal Information) Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-6840, kevin.ryan@ferc.gov.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Cheryl A. LaFleur, Neil Chatterjee, and Richard Glick.

1. Pursuant to section 215(d)(2) of the Federal Power Act (FPA), the Commission approves supply chain risk management Reliability Standards CIP-013-1 (Cyber Security—Supply Chain Risk Management), CIP-005-6 (Cyber Security—Electronic Security Perimeter(s)) and CIP-010-3 (Cyber Security—Configuration Change Management and Vulnerability Assessments).¹ The North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), submitted the supply chain risk management Reliability Standards for approval in response to a Commission directive in Order No. 829.² As discussed below, we approve the supply chain risk management Reliability Standards as they are responsive to Order No. 829 and improve the electric industry's cybersecurity posture by requiring that entities mitigate certain cybersecurity risks associated with the supply chain for BES Cyber Systems.³

¹ 16 U.S.C. 824o(d)(2).

² *Revised Critical Infrastructure Protection Reliability Standards*, Order No. 829, 156 FERC ¶ 61,050, at P 43 (2016).

³ BES Cyber System is defined as "[o]ne or more BES Cyber Assets logically grouped by a responsible entity to perform one or more reliability tasks for a functional entity." Glossary of Terms Used in NERC Reliability Standards (NERC Glossary), http://www.nerc.com/files/glossary_of_terms.pdf. The acronym BES refers to the bulk electric system.

³ For calendar year 2018, 12 airlines reached the reporting threshold of 906,261,000 in domestic scheduled passenger revenue (one percent of total domestic scheduled passenger revenue) and are required to report mishandled baggage data. These airlines are: Alaska Airlines, American Airlines, Delta Air Lines, Envoy Air, ExpressJet Airlines, Frontier Airlines, Hawaiian Airlines, JetBlue Airways, SkyWest Airlines, Southwest Airlines, Spirit Airlines and United Airlines.

⁴ As section 441 only changes the compliance date of the November 2 final rule, airlines are not required to submit data for any code-share operations, which is a requirement of the November 3, 2016, final rule.

⁵ During the past year, the Enforcement Office has been working with the reporting carriers to ensure that they are able to report new mishandled baggage data for flights on or after January 1, 2019. This notification is not intended to suggest an airline's delay in submitting the new mishandled baggage data for flights occurring on or after January 1, 2019, would lead the Enforcement Office to exercise its enforcement discretion.

2. The Commission has previously explained that the global supply chain affords significant benefits to customers, including low cost, interoperability, rapid innovation, and a variety of product features and choice.⁴ Despite these benefits, the global supply chain creates opportunities for adversaries to directly or indirectly affect the management or operations of companies with potential risks to end users. Supply chain risks include insertion of counterfeits or malicious software, unauthorized production, tampering, or theft, as well as poor manufacturing and development practices. Based on the record in this proceeding, we conclude that the supply chain risk management Reliability Standards largely address these supply chain cybersecurity risks as set out within the scope of Order No. 829. Among other things, the supply chain risk management Reliability Standards are forward-looking and objective-based and require each affected entity to develop and implement a plan that includes security controls for supply chain management for industrial control system hardware, software, and services associated with bulk electric system operations.⁵ Consistent with Order No. 829, the Reliability Standards focus on the following four security objectives: (1) Software integrity and authenticity; (2) vendor remote access protections; (3) information system planning; and (4) vendor risk management and procurement controls.

3. The Commission also approves the supply chain risk management Reliability Standards' associated violation risk factors and violation severity levels. Regarding the Reliability Standards' implementation plan and effective date, we approve NERC's proposed implementation period of 18 months following the effective date of a Commission order. The NOPR proposed to reduce the implementation period to 12 months.⁶ However, as discussed below, the NOPR comments provide sufficient justification for adopting the 18-month implementation period proposed by NERC. Specifically, the comments clarify that technical upgrades are likely necessary to meet the Reliability Standards' security objectives, which could involve longer

time-horizon capital budgets and planning cycles.

4. While the supply chain risk management Reliability Standards address the Commission's directive in Order No. 829, we determine that there remains a significant cybersecurity risk associated with the supply chain for BES Cyber Systems because the approved Reliability Standards do not address Electronic Access Control and Monitoring Systems (EACMS).⁷ As we observed in the NOPR, it is widely recognized that the types of access and monitoring functions that are included within NERC's definition of EACMS, such as firewalls, are integral to protecting industrial control systems.⁸ Moreover, as stated in Order No. 848, EACMS, which include, for example, firewalls, authentication servers, security event monitoring systems, intrusion detection systems and alerting systems, control electronic access into Electronic Security Perimeters (ESP), play a significant role in the protection of high and medium impact BES Cyber Systems.⁹ Once an EACMS is compromised, an attacker could more easily enter the ESP and effectively control the BES Cyber System or Protected Cyber Asset.¹⁰ For example, the Department of Homeland Security's Industrial Control Systems Cyber Emergency Response Team (ICS-CERT) identifies firewalls as "the first line of defense within an ICS network environment" that "keep the intruder out while allowing the authorized passage of data necessary to run the organization."¹¹ ICS-CERT further explains that firewalls "act as sentinels, or gatekeepers, between zones . . . [and] [w]hen properly configured, they

will only let essential traffic cross security boundaries[,] . . . [i]f they are not properly configured, they could easily pass unauthorized or malicious users or content."¹² Accordingly, if EACMS are compromised, that could adversely affect the reliable operation of associated BES Cyber Systems.¹³ Given the significant role that EACMS play in the protection scheme for medium and high impact BES Cyber Systems, we determine that EACMS should be within the scope of the supply chain risk management Reliability Standards to provide minimum protection against supply chain attack vectors.

5. To address this gap, pursuant to section 215(d)(5) of the FPA,¹⁴ the Commission directs NERC to develop modifications to include EACMS associated with medium and high impact BES Cyber Systems within the scope of the supply chain risk management Reliability Standards.¹⁵ We direct NERC to submit the directed modifications within 24 months of the effective date of this final rule.

6. Further, the NERC proposal does not address Physical Access Control Systems (PACS)¹⁶ and Protected Cyber Assets (PCA),¹⁷ with the exception of the modifications in Reliability Standard CIP-005-6, which apply to PCAs. We remain concerned that the exclusion of these components may leave a gap in the supply chain risk management Reliability Standards. Nevertheless, in contrast to EACMS, we believe that more study is necessary to determine the impact of PACS and PCAs in the context of the supply chain risk management Reliability Standards.

¹² *Id.*

¹³ NOPR, 162 FERC ¶ 61,044 at P 37.

¹⁴ 16 U.S.C. 824o(d)(5).

¹⁵ Reliability Standard CIP-002-5.1a (Cyber Security System Categorization) provides a "tiered" approach to cybersecurity requirements, based on classifications of high, medium and low impact BES Cyber Systems.

¹⁶ PACS are defined as "Cyber Assets that control, alert, or log access to the Physical Security Perimeter(s), exclusive of locally mounted hardware or devices at the Physical Security Perimeter such as motion sensors, electronic lock control mechanisms, and badge readers." NERC Glossary. Reliability Standard CIP-002-5.1a states that examples include "authentication servers, card systems, and badge control systems." *Id.*

¹⁷ PCAs are defined as "[o]ne or more Cyber Assets connected using a routable protocol within or on an Electronic Security Perimeter that is not part of the highest impact BES Cyber System within the same Electronic Security Perimeter. The impact rating of Protected Cyber Assets is equal to the highest rated BES Cyber System in the same [Electronic Security Perimeter]." NERC Glossary. Reliability Standard CIP-002-5.1a states that examples include, to the extent they are within the Electronic Security Perimeter, "file servers, ftp servers, time servers, LAN switches, networked printers, digital fault recorders, and emission monitoring systems." *Id.*

⁷ EACMS are defined as "Cyber Assets that perform electronic access control or electronic access monitoring of the Electronic Security Perimeter(s) or BES Cyber Systems. This includes Intermediate Systems." NERC Glossary. Reliability Standard CIP-002-5.1a (Cyber Security — BES Cyber System Categorization) states that examples of EACMS include "Electronic Access Points, Intermediate Systems, authentication servers (e.g., RADIUS servers, Active Directory servers, Certificate Authorities), security event monitoring systems, and intrusion detection systems." Reliability Standard CIP-002-5.1a (Cyber Security — BES Cyber System Categorization) Section A.6 at 6.

⁸ NOPR, 162 FERC ¶ 61,044 at P 37.

⁹ *Cyber Security Incident Reporting Reliability Standards*, Order No. 848, 164 FERC ¶ 61,033, at P 10 (2018). ESP is defined as "[t]he logical border surrounding a network to which BES Cyber Systems are connected using a routable protocol." NERC Glossary.

¹⁰ Order No. 848, 164 FERC ¶ 61,033 at P 10.

¹¹ ICS-CERT, *Recommended Practice: Improving Industrial Control System Cybersecurity with Defense-in-Depth Strategies* at 23, https://ics-cert.us-cert.gov/sites/default/files/recommended_practices/NCCIC_ICSCERT_Defense_in_Depth_2016_S508C.pdf.

⁴ *Revised Critical Infrastructure Protection Reliability Standards*, Notice of Proposed Rulemaking, 152 FERC ¶ 61,054, at PP 61-62 (2015).

⁵ Order No. 829, 156 FERC ¶ 61,050 at P 2.

⁶ *Supply Chain Risk Management Reliability Standards*, Notice of Proposed Rulemaking, 83 FR 3433 (January 25, 2018), 162 FERC ¶ 61,044 (2018) (NOPR).

We distinguish among EACMS and the other Cyber Assets because compromise of PACS and PCAs are less likely. For example, a compromise of a PACS, which would potentially grant an attacker physical access to a BES Cyber System or PCA, is less likely since physical access is also required. In addition, PCAs typically become vulnerable to remote compromise only once EACMS have been compromised. Thus, we accept NERC's commitment to evaluate the cybersecurity supply chain risks presented by PACS and PCAs in the study of cybersecurity supply chain risks directed by the NERC Board of Trustees (BOT) in its resolutions of August 10, 2017.¹⁸ The Commission further directs NERC to file the BOT-directed final report with the Commission upon its completion.¹⁹

I. Background

A. Section 215 and Mandatory Reliability Standards

7. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.²⁰ Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,²¹ and subsequently certified NERC.²²

B. Order No. 829

8. In Order No. 829, the Commission directed NERC to develop a new or modified Reliability Standard that addresses supply chain risk management for industrial control system hardware, software and computing and networking services associated with bulk electric system operations.²³ Specifically, the

Commission directed NERC to develop a forward-looking, objective-based Reliability Standard that would require responsible entities to develop and implement a plan with supply chain management security controls focused on four security objectives: (1) Software integrity and authenticity; (2) vendor remote access; (3) information system planning; and (4) vendor risk management and procurement controls.²⁴

9. The Commission explained that verification of software integrity and authenticity is intended to reduce the likelihood that an attacker could exploit legitimate vendor patch management processes to deliver compromised software updates or patches to a BES Cyber System.²⁵ For vendor remote access, the Commission stated that the objective is intended to address the threat that vendor credentials could be stolen and used to access a BES Cyber System without the responsible entity's knowledge, as well as the threat that a compromise at a trusted vendor could traverse over an unmonitored connection into a responsible entity's BES Cyber System.²⁶ As to information system planning, Order No. 829 indicated that the objective is intended to address the risk that responsible entities could unintentionally plan to procure and install unsecure equipment or software within their information systems, or could unintentionally fail to anticipate security issues that may arise due to their network architecture or during technology and vendor transitions.²⁷ For vendor risk management and procurement controls, the Commission explained that this objective is intended to address the risk that responsible entities could enter into contracts with vendors that pose significant risks to the responsible entities' information systems, as well as the risk that products procured by a responsible entity fail to meet minimum security criteria. This objective also addresses the risk that a compromised vendor would not provide adequate notice and related incident response to responsible entities with whom that vendor is connected.²⁸

10. Order No. 829 stated that while responsible entities should be required to develop and implement a plan, NERC need not impose any specific controls or "one-size-fits-all" requirements.²⁹ In addition, the Commission stated that

NERC's response to the Order No. 829 directive should respect the Commission's jurisdiction under FPA section 215 by only addressing the obligations of responsible entities and not by directly imposing any obligations on non-jurisdictional suppliers, vendors or other entities that provide products or services to responsible entities.³⁰

C. NERC Petition and Proposed Reliability Standards

11. On September 26, 2017, NERC submitted for Commission approval proposed Reliability Standards CIP-013-1, CIP-005-6, and CIP-010-3 and their associated violation risk factors and violation severity levels, implementation plan, and effective date.³¹ NERC states that the purpose of the Reliability Standards is to enhance the cybersecurity posture of the electric industry by requiring responsible entities to take additional actions to address cybersecurity risks associated with the supply chain for BES Cyber Systems. NERC explains that the Reliability Standards are designed to augment the existing controls required in the currently-effective CIP Reliability Standards that help mitigate supply chain risks, providing increased attention on minimizing the attack surfaces of information and communications technology products and services procured to support reliable bulk electric system operations, consistent with Order No. 829.

12. NERC states that the supply chain risk management Reliability Standards apply only to medium and high impact BES Cyber Systems. NERC explains that the goal of the CIP Reliability Standards is to "focus[] industry resources on protecting those BES Cyber Systems with heightened risks to the [bulk electric system] . . . [and] that the requirements applicable to low impact BES Cyber Systems, given their lower risk profile, should not be overly burdensome to divert resources from the protection of medium and high impact BES Cyber Systems."³² NERC further maintains that the standard drafting team chose to limit the applicability of the Reliability Standards to medium and high impact BES Cyber Systems because the supply chain risk management Reliability Standards are "consistent with the type of existing CIP cybersecurity requirements applicable

¹⁸ NERC Board of Trustees, Proposed Additional Resolutions for Agenda Item 9.a: Cyber Security—Supply Chain Risk Management—CIP-005-6, CIP-010-3, and CIP-013-1 (August 10, 2017).

¹⁹ As discussed later in this final rule, the NOPR proposed to direct NERC to file the BOT-directed interim report, due 12 months from the date of the BOT resolutions, as well as the final report, which is due 18 months from the date of the BOT resolutions. On September 7, 2018, NERC filed the BOT-directed interim report in this docket.

²⁰ 16 U.S.C. 824o(e).

²¹ *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

²² *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

²³ Order No. 829, 156 FERC ¶ 61,050 at P 43.

²⁴ *Id.* P 45.

²⁵ *Id.* P 49.

²⁶ *Id.* P 52.

²⁷ *Id.* P 57.

²⁸ *Id.* P 60.

²⁹ *Id.* P 13.

³⁰ *Id.* P 21.

³¹ Reliability Standards CIP-013-1, CIP-005-6, and CIP-010-3 are not attached to this final rule. The Reliability Standards are available on the Commission's eLibrary document retrieval system in Docket No. RM17-13-000 and on the NERC website, www.nerc.com.

³² NERC Petition at 16-17.

to high and medium impact BES Cyber Systems as opposed to those applicable to low impact BES Cyber Systems.”³³

13. NERC states that the standard drafting team also excluded EACMS, PACS, and PCAs from the scope of the supply chain risk management Reliability Standards, with the exception of the modifications in Reliability Standard CIP-005-6, which apply to PCAs. NERC explains that although certain requirements in the existing CIP Reliability Standards apply to EACMS, PACS, and PCAs due to their association with BES Cyber Systems (either by function or location), the standard drafting team determined that the supply chain risk management Reliability Standards should focus on high and medium impact BES Cyber Systems only. NERC states that this determination was based on the conclusion that applying the proposed Reliability Standards to EACMS, PACS, and PCAs “would divert resources from protecting medium and high BES Cyber Systems.”³⁴

14. NERC asserts that with respect to low impact BES Cyber Systems and EACMS, PACS, and PCAs, while not mandatory, NERC expects that these assets will likely be subject to responsible entity supply chain risk management plans required by Reliability Standard CIP-013-1. Specifically, NERC explains that “[r]esponsible [e]ntities may implement a single process for procuring products and services associated with their operational environments.”³⁵ NERC contends that “by requiring that entities implement supply chain cybersecurity risk management plans for high and medium impact BES Cyber Systems, those plans would likely also cover their low impact BES Cyber Systems.”³⁶ NERC also claims that responsible entities “may also use the same vendors for procuring PACS, EACMS, and PCAs as they do for their high and medium impact BES Cyber Systems such that the same security considerations may be addressed for those Cyber Assets.”³⁷

Proposed Reliability Standard CIP-013-1

15. NERC states that the focus of proposed Reliability Standard CIP-013-1 is on the steps that responsible entities must take “to consider and address cybersecurity risks from vendor products and services during BES Cyber

System planning and procurement.”³⁸ NERC explains that proposed Reliability Standard CIP-013-1 does not require any specific controls or mandate “one-size-fits-all” requirements due to the differences in needs and characteristics of responsible entities and the diversity of bulk electric system environments, technologies, and risks. NERC states that the goal of the proposed Reliability Standard is “to help ensure that responsible entities establish organizationally-defined processes that integrate a cybersecurity risk management framework into the system development lifecycle.”³⁹ NERC observes that, among other things, proposed Reliability Standard CIP-013-1 addresses the risk associated with information system planning, as well as vendor risk management and procurement controls, the third and fourth objectives outlined in Order No. 829.

16. NERC maintains that, consistent with Order No. 829, responsible entities need not apply their supply chain risk management plans to the acquisition of vendor products or services under contracts executed prior to the effective date of Reliability Standard CIP-013-1, nor would such contracts need to be renegotiated or abrogated to comply with the Reliability Standard. In addition, NERC indicates that, consistent with the development of a forward looking Reliability Standard, it would not expect entities in the middle of procurement activities for an applicable product or service at the time of the effective date of Reliability Standard CIP-013-1 to begin those activities anew to implement their supply chain cybersecurity risk management plan.

17. With regard to assessing compliance with Reliability Standard CIP-013-1, NERC states that NERC and Regional Entities would focus on whether responsible entities: (1) Developed processes reasonably designed to (i) identify and assess risks associated with vendor products and services in accordance with Part 1.1 and (ii) ensure that the security items listed in Part 1.2 are an integrated part of procurement activities; and (2) implemented those processes in good faith. NERC explains that NERC and Regional Entities will evaluate the steps a responsible entity took to assess risks posed by a vendor and associated products or services and, based on that risk assessment, the steps the entity took to mitigate those risks, including the

negotiation of security provisions in its agreements with the vendor.

Proposed Modifications in Reliability Standard CIP-005-6

18. Proposed Reliability Standard CIP-005-6 includes two new parts, Parts 2.4 and 2.5, to address vendor remote access, which is the second objective discussed in Order No. 829. NERC explains that the new parts work in tandem with proposed Reliability Standard CIP-013-1, Requirement R1.2.6, which requires responsible entities to address Interactive Remote Access and system-to-system remote access when procuring industrial control system hardware, software, and computing and networking services associated with bulk electric system operations. NERC states that proposed Reliability Standard CIP-005-6, Requirement R2.4 requires one or more methods for determining active vendor remote access sessions, including Interactive Remote Access and system-to-system remote access. NERC explains that the security objective of Requirement R2.4 is to provide awareness of all active vendor remote access sessions, both Interactive Remote Access and system-to-system remote access, that are taking place on a responsible entity’s system.

Proposed Modifications in Reliability Standard CIP-010-3

19. Proposed Reliability Standard CIP-010-3 includes a new part, Part 1.6, to address software integrity and authenticity, the first objective addressed in Order No. 829, by requiring that the publisher is identified and the integrity of all software and patches are confirmed. NERC explains that proposed Reliability Standard CIP-010-3, Requirement R1.6 requires responsible entities to verify software integrity and authenticity prior to a change from the existing baseline configuration, if the software source provides a method to do so. Specifically, NERC states that proposed Reliability Standard CIP-010-3, Requirement R1.6 requires that responsible entities verify the identity of the software source and the integrity of the software obtained by the software sources prior to installing software that changes established baseline configurations, when methods are available to do so. NERC asserts that the security objective of proposed Requirement R1.6 is to ensure that the software being installed in the BES Cyber System was not modified without the awareness of the software supplier and is not counterfeit. NERC contends that these steps help reduce the

³³ *Id.* at 18.

³⁴ *Id.* at 20.

³⁵ *Id.*

³⁶ *Id.* at 19.

³⁷ *Id.* at 20.

³⁸ *Id.* at 22.

³⁹ *Id.* at 23.

likelihood that an attacker could exploit legitimate vendor patch management processes to deliver compromised software updates or patches to a BES Cyber System.

BOT Resolutions

20. In the petition, NERC states that in conjunction with the adoption of the supply chain risk management Reliability Standards, on August 10, 2017, the BOT adopted resolutions regarding supply chain risk management. In particular, the BOT directed NERC management, in collaboration with appropriate NERC technical committees, industry representatives, and appropriate experts, including representatives of industry vendors, to further study the nature and complexity of cybersecurity supply chain risks, including risks associated with low impact assets not currently subject to the supply chain risk management Reliability Standards. The BOT further directed NERC to develop recommendations for follow-up actions that will best address any issues identified. Finally, the BOT directed that NERC management provide an interim progress report no later than 12 months after the adoption of these resolutions (*i.e.*, by August 10, 2018) and a final report no later than 18 months after the adoption of the resolutions (*i.e.*, by February 10, 2019). In its petition, NERC states that “over the next 18 months, NERC, working with various stakeholders, will continue to assess whether supply chain risks related to low impact BES Cyber Systems, PACS, EACMS and PCA necessitate further consideration for inclusion in a mandatory Reliability Standard.”⁴⁰

Implementation Plan

21. NERC’s proposed implementation plan provides that the supply chain risk management Reliability Standards become effective on the first day of the first calendar quarter that is 18 months after the effective date of a Commission order approving them. NERC states that the proposed implementation period is designed to afford responsible entities sufficient time to develop and implement their supply chain cybersecurity risk management plans required under proposed Reliability Standard CIP–013–1 and implement the new controls required in proposed Reliability Standards CIP–005–6 and CIP–010–3.

D. Notice of Proposed Rulemaking

22. On January 18, 2018, the Commission issued a NOPR proposing to approve supply chain risk management Reliability Standards CIP–013–1, CIP–005–6, and CIP–010–3 (83 FR 3422, January 25, 2018). The NOPR stated that the supply chain risk management Reliability Standards “will enhance existing protections for bulk electric system reliability by addressing the four objectives set forth in Order No. 829: (1) Software integrity and authenticity; (2) vendor remote access; (3) information system planning; and (4) vendor risk management and procurement controls.”⁴¹ Accordingly, the NOPR proposed to determine that the supply chain risk management Reliability Standards constitute substantial progress in addressing the supply chain cybersecurity risks identified by the Commission in Order No. 829.⁴²

23. The NOPR proposed to approve the supply chain risk management Reliability Standards’ associated violation risk factors and violation severity levels. However, with respect to the implementation plan and effective date, the NOPR proposed to reduce the implementation period from the first day of the first calendar quarter that is 18 months following the effective date of a Commission order approving the proposed Reliability Standards, as proposed by NERC, to the first day of the first calendar quarter that is 12 months following the effective date of a Commission order.⁴³

24. The NOPR proposed to determine that a significant cybersecurity risk associated with the supply chain for BES Cyber Systems persists because the proposed supply chain risk management Reliability Standards exclude EACMS, PACS, and PCAs, with the exception of the modifications in Reliability Standard CIP–005–6, which apply to PCAs. To address this gap, pursuant to section 215(d)(5) of the FPA, the NOPR proposed to direct NERC to develop modifications to the CIP Reliability Standards to include EACMS associated with medium and high impact BES Cyber Systems within the scope of the supply chain risk management Reliability Standards. In addition, the Commission proposed to direct that NERC evaluate the cybersecurity supply chain risks presented by PACS and PCAs in the study of cybersecurity supply chain risks directed by the NERC BOT in its resolutions of August 10, 2017.

25. The Commission received fifteen comments on the NOPR.

E. Interim BOT-Directed Report

26. On September 7, 2018, NERC submitted to the Commission an informational filing containing the BOT-directed interim report prepared by the Electric Power Research Institute (EPRI).⁴⁴ The interim report explains that EPRI analyzed:

(1) Information regarding bulk electric system products and manufacturers; (2) emerging vendor practices and industry standards; and (3) the applicability of the CIP Reliability Standards to supply chain risks. The interim report concludes with three categories of identified next steps for further analysis and investigation.

27. First, EPRI identifies four noteworthy industry practices, not already required by the CIP Reliability Standards, which may potentially reduce future supply chain risks if implemented correctly: (1) Third-party accreditation processes; (2) secure hardware delivery; (3) threat-informed procurement language; and (4) processes related to unsupported or open-source technology. Second, EPRI recommends further study in modeling and assessing the potential impact of common-mode vulnerabilities, especially those targeting low-impact BES Cyber Systems. EPRI states that “risks of common-mode vulnerabilities . . . can be mitigated if supply chain security practices are applied uniformly across cyber asset types.”⁴⁵ Finally, EPRI recommends various methods to obtain additional data on industry practices. These methods included issuing pre-audit surveys and questionnaires; targeting outreach to bulk electric system vendors; developing standard vendor data sheets related to the CIP Reliability Standards; and independently testing legacy assets. In its accompanying filing, NERC states its intention to continue to study supply chain risks over the coming months, develop recommendations for follow-up actions, and present a final report to the NERC BOT at its February 2019 meeting.

II. Discussion

28. Pursuant to section 215(d)(2) of the FPA, the Commission approves supply chain risk management Reliability Standards CIP–013–1, CIP–005–6, and CIP–010–3 as just, reasonable, not unduly discriminatory

⁴⁴ NERC, Informational Filing regarding Proposed Supply Chain Risk Management Reliability Standards, Docket No. RM17–13–000 (September 7, 2018) (NERC Interim Report).

⁴⁵ *Id.* at 5–1.

⁴¹ NOPR, 162 FERC ¶ 61,044 at P 29.

⁴² *Id.* P 30.

⁴³ *Id.* P 44.

⁴⁰ *Id.* at 20–21.

or preferential, and in the public interest. We determine that the supply chain risk management Reliability Standards will enhance existing protections for bulk electric system reliability by addressing the four objectives identified in Order No. 829: (1) Software integrity and authenticity; (2) vendor remote access; (3) information system planning; and (4) vendor risk management and procurement controls.

29. Reliability Standard CIP-013-1 addresses information system planning and vendor risk management and procurement controls by requiring that responsible entities develop and implement one or more documented supply chain cybersecurity risk management plan(s) for high and medium impact BES Cyber Systems. The required plans must address, as applicable, a baseline set of six security concepts: (1) Vendor security event notification; (2) coordinated incident response; (3) vendor personnel termination notification; (4) product/services vulnerability disclosures; (5) verification of software integrity and authenticity; and (6) coordination of vendor remote access controls.

Reliability Standard CIP-005-6 addresses vendor remote access by creating two new requirements for determining active vendor remote access sessions and for having one or more methods to disable active vendor remote access sessions. Reliability Standard CIP-010-3 addresses software authenticity and integrity by creating a new requirement that responsible entities verify the identity of the software source and the integrity of the software obtained from the software source prior to installing software that changes established baseline configurations, when methods are available to do so.

30. While we determine that the approved supply chain risk management Reliability Standards constitute substantial progress in addressing the supply chain cybersecurity risks identified in Order No. 829, as discussed below, we find that the exclusion of EACMS from the scope of the Reliability Standards presents risks to the cybersecurity of the bulk electric system. As explained in Order No. 848, EACMS are defined in the NERC Glossary as “Cyber Assets that perform electronic access control or electronic access monitoring of the Electronic Security Perimeter(s) or BES Cyber Systems. This includes Intermediate Systems.” Among other things, EACMS include firewalls, authentication servers, security event monitoring systems, intrusion detection

systems and alerting systems. The purpose of an ESP, in turn, is to manage electronic access to BES Cyber Systems to support the protection of the BES Cyber Systems against compromise that could lead to misoperation or instability in the bulk electric system.⁴⁶ The record indicates that the vulnerabilities associated with EACMS are well understood and appropriate for mitigation. Thus, pursuant to section 215(d)(5) of the FPA, we direct NERC to develop modifications to the CIP Reliability Standards to include EACMS within the scope of the supply chain risk management Reliability Standards. We direct NERC to submit the directed modifications within 24 months of the effective date of this final rule.

31. In addition, while PACS and PCAs also present concerns, we agree with NERC and others that further study is warranted with regard to the impacts and benefits of directing that the ERO address the risks associated with PACS and PCAs in the supply chain risk management Reliability Standards. Accordingly, we accept NERC’s commitment to evaluate the cybersecurity supply chain risks presented by PACS and PCAs in the cybersecurity supply chain risks study directed by the BOT. The Commission further directs NERC to file the BOT-directed final report with the Commission upon its completion.

32. In the sections below, we discuss the following issues: (A) Inclusion of EACMS in the supply chain risk management Reliability Standards; (B) inclusion of PACS and PCAs in the BOT-directed study on cybersecurity supply chain risks and filing of the BOT-directed final report with the Commission; (C) supply chain risk management Reliability Standards’ implementation plan and effective date; and (D) other issues raised in the NOPR comments.

A. Inclusion of EACMS in CIP Reliability Standards

1. NOPR

33. The NOPR observed that the supply chain risk management Reliability Standards do not apply to low impact BES Cyber Systems or Cyber Assets associated with medium and high impact BES Cyber Systems (*i.e.*, EACMS, PACS, and PCAs). The NOPR, however, recognized that the BOT-directed study on cybersecurity supply chain risks will examine the risks posed by low impact BES Cyber Systems.⁴⁷ While acknowledging NERC’s

commitment to study these issues, as evinced by the BOT-directed study, the NOPR proposed to direct NERC to modify the supply chain risk management Reliability Standards to include within their scope EACMS associated with medium and high impact BES Cyber Systems.⁴⁸

34. Specifically, the NOPR explained that BES Cyber Systems have associated Cyber Assets, which, if compromised, pose a threat to the BES Cyber System by virtue of, *inter alia*, the security control function they perform.⁴⁹ In particular, EACMS support BES Cyber Systems and are part of the network and security architecture that allows BES Cyber Systems to work as intended by performing electronic access control or electronic access monitoring of the ESP or BES Cyber Systems.

35. The NOPR indicated that since EACMS support and enable BES Cyber System operation, misoperation and unavailability of EACMS that support a given BES Cyber System could also contribute to misoperation of a BES Cyber System or render it unavailable, which could adversely affect bulk electric system reliability. The NOPR also explained that EACMS control electronic access, including interactive remote access, into the ESP that protects high and medium impact BES Cyber Systems. As the NOPR further noted, an attacker does not need physical access to the facility housing a BES Cyber System in order to gain access to a BES Cyber System or PCA via an EACMS compromise. The NOPR concluded that EACMS represent the most likely route an attacker would take to access a BES Cyber System or PCA within an ESP.⁵⁰

2. Comments

36. NERC does not support the proposed directive to include EACMS within the scope of the supply chain risk management Reliability Standards at this time. NERC indicates that it is currently analyzing supply chain risks associated with EACMS, among other things, as part of the BOT-directed study of supply chain risks related to low impact BES Cyber Systems. NERC explains that the “study will help identify and differentiate the risks presented by various types of EACMS” to help in any directed standards development process.⁵¹ NERC requests that the Commission refrain from issuing a directive on EACMS until the results of the BOT-directed study to

⁴⁸ *Id.* P 39.

⁴⁹ Reliability Standard CIP-002-5.1a (Cyber Security—BES Cyber System Categorization), Background at 6.

⁵⁰ NOPR, 162 FERC ¶ 61,044 at P 35.

⁵¹ NERC Comments at 6.

⁴⁶ Order No. 848, 164 FERC ¶ 61,033 at PP 39–40.

⁴⁷ NOPR, 162 FERC ¶ 61,044 at P 33.

assess supply chain risks associated with EACMS are received.⁵²

37. Most commenters agree with NERC that the Commission should approve the supply chain risk management Reliability Standards as filed and not direct the inclusion of EACMS at this time. Instead, Trade Associations, EEI, ITC, IRC, and MISO TOs support evaluating in the BOT-directed study the possibility of including EACMS in the supply chain risk management Reliability Standards.⁵³

38. Trade Associations contend that first allowing completion of the BOT-directed study would allow NERC to assess the diversity of EACMS that perform control or monitoring functions with varying risk levels and “is likely to provide more specific information and analysis concerning whether any category of EACMS might be appropriately included within the scope of the supply chain Reliability Standards.”⁵⁴ Trade Associations also maintain that first having the BOT-directed study results will facilitate a more efficient and effective standards development process.

39. While also supportive of awaiting the results of the BOT-directed study, EEI asserts that EACMS are protected under existing CIP Reliability Standards. EEI cites Reliability Standards CIP-005-5, Requirements R1, Part 1.3 and R2, Parts 2.1-2.3, CIP-007-6, Requirements R1, Part 1.1, R2, R3, R4, and R5, and CIP-010-2, Requirement 2, Part 2.1 as protecting EACMS against compromise.⁵⁵ Moreover, EEI states that the likelihood of compromise of an EACMS from potential supply chain-derived threats was not addressed in the NOPR and “should be evaluated before directing a CIP Standard scope expansion.”⁵⁶ Even so, EEI supports further evaluating the feasibility, as well as the benefits, of adding EACMS to the supply chain risk management Reliability Standards. EEI contends that waiting for the BOT-directed study will allow industry time to gain experience implementing the supply chain risk management Reliability Standard requirements as well as help identify potential follow-up actions.⁵⁷

40. MISO TOs likewise aver that EACMS, while important, are “not unprotected” under currently-effective CIP Reliability Standards. MISO TOs,

like EEI, reference Reliability Standard CIP-007-6 (Cyber Security — System Security Management), which requires responsible entities to manage system security by specifying select technical, operational, and procedural requirements in support of protecting BES Cyber Systems. MISO TOs state that this Reliability Standard applies to EACMS. AECC also contends that the existing CIP Reliability Standards already sufficiently cover any risks associated with EACMS.⁵⁸ In particular, AECC states that “CIP-005-6 already addresses vendor-initiated remote access . . . [and] developing technology services for BEC Cyber Systems under CIP-010-3 inherently already requires coverage for EACMS, PACS, and PCAs due to the nature of the technology.”⁵⁹

41. ITC, IRC, and MISO TOs assert that including EACMS within the supply chain risk management Reliability Standards would constitute a substantial expansion of the Reliability Standards and would require significant additional resources for compliance, without a commensurate improvement in bulk electric system reliability. According to ITC, the record does not contradict NERC’s technical assessment that inclusion of EACMS within the supply chain risk management Reliability Standards is not justified. ITC claims that the NOPR, while “descriptively accurate,” misunderstands the purpose and function of EACMS, which, ITC states, are intended to protect the ESP and the BES Cyber Assets contained therein and are not intended to provide a reliability function. ITC concludes that misoperation of an EACMS, while serious, does not rise to the level of a direct threat to the reliability of the bulk electric system.

42. IRC similarly believes that including EACMS within the scope of the supply chain risk management Reliability Standards would require “significant resources and effort” and because EACMS vendors supply such systems to a larger market than just the power sector there would need to be coordination with other industries before implementing a supply chain risk management Reliability Standard for EACMS.⁶⁰ MISO TOs also contend that including EACMS would affect numerous pieces of equipment and assets, with associated costs, system changes, and other burdens, without showing commensurate benefits.⁶¹

43. Idaho Power, for its part, does not believe that EACMS should be included in the scope of the supply chain risk management Reliability Standards based on its view that EACMS are used in other industries and are not specific to critical infrastructure. Instead, Idaho Power states that the focus should be on correctly configuring EACMS devices as opposed to addressing procurement practices.⁶²

44. Appelbaum, Reclamation, Resilient Societies, Isologic, Mabee, and MPUC support the NOPR directive regarding EACMS associated with medium and high impact BES Cyber Systems. In addition, the commenters urge the Commission to extend the scope of the supply chain risk management Reliability Standards to low impact BES Cyber Systems.⁶³ MPUC states, for example, that the supply chain risk management Reliability Standards should apply to all BES Cyber System assets, unless the specific asset can be shown to be completely isolated from the bulk electric system.⁶⁴ Resilient Societies states that the supply chain risk management Reliability Standards should apply to low impact BES Cyber Systems since the compromise of a low impact BES Cyber System could lead to the compromise of medium or high impact BES Cyber Systems.⁶⁵

45. APS states that it supports the NOPR proposal to direct NERC to modify the supply chain risk management Reliability Standards to include EACMS associated with medium and high impact BES Cyber Systems. However, APS contends that the Commission should delay their inclusion until NERC and industry complete their analysis of the potential need to separate the functions reflected in the current EACMS definition (*e.g.*, electronic access control versus electronic access monitoring). APS states that, including EACMS that perform electronic access control functions within the scope of the supply chain risk management Reliability Standards “represents good cybersecurity posture . . . [h]owever, at this time, the definition of EACMS is not sufficiently mature to make the necessary distinction discussed above.”⁶⁶

⁵² *Id.* at 4–6.

⁵³ Trade Associations Comments at 10, EEI Comments at 10, ITC Comments at 5, IRC Comments at 3.

⁵⁴ Trade Associations Comments at 10.

⁵⁵ EEI Comments at 8.

⁵⁶ *Id.*

⁵⁷ *Id.* at 10.

⁵⁸ AECC Comments at 2–3.

⁵⁹ *Id.* at 3.

⁶⁰ IRC Comments at 2–3.

⁶¹ MISO TO Comments at 16.

⁶² Idaho Power Comments at 2.

⁶³ Appelbaum Comments at 6, Reclamation Comments at 7, Resilient Societies Comments at 3–4, Isologic Comments at 3, Mabee Comments at 4, MPUC Comments at 6.

⁶⁴ MPUC Comments at 6.

⁶⁵ Resilient Societies Comments at 3.

⁶⁶ APS Comments at 5.

3. Commission Determination

46. Pursuant to section 215(d)(5) of the FPA, we adopt the NOPR proposal and direct NERC to develop modifications to include EACMS associated with medium and high impact BES Cyber Systems within the scope of the supply chain risk management Reliability Standards. While we are sensitive to the position taken by NERC and other commenters that the Commission should not issue a directive until after completion of the BOT-directed final report, we conclude that the record before us supports directing NERC to include at least some subset of EACMS associated with medium and high impact BES Cyber Systems at this time. We are not persuaded by comments advocating delay in view of the forthcoming BOT-directed final report because the standard drafting team will have the benefit of the BOT-directed final report, which is due in February 2019, when developing the directed Reliability Standard modifications.⁶⁷

47. We continue to believe that EACMS represent the most likely route an attacker would take to access a BES Cyber System or PCA within an ESP based on the functions they perform.⁶⁸ EACMS support BES Cyber Systems and are part of the network and security architecture that allows BES Cyber Systems to work as intended because they perform electronic access control or electronic access monitoring of the ESP or BES Cyber Systems. In particular, EACMS control electronic access, including interactive remote access, into the ESP that protects high and medium impact BES Cyber Systems. One specific function of electronic access control is to prevent malware or malicious actors from gaining access to the BES Cyber Systems and PCAs within the ESP.⁶⁹ Given the significant role that EACMS play in the protection scheme for medium and high impact BES Cyber Systems, we determine that EACMS should be within the scope of the supply chain risk management Reliability Standards to provide minimum protection against supply chain attack vectors.

48. No commenter disagreed with the NOPR that misoperation or unavailability of EACMS that support a given BES Cyber System could contribute to the misoperation of the

BES Cyber System or render it unavailable, which could pose a significant risk to reliable operation. Instead, commenters generally agree that EACMS perform important security-related functions.⁷⁰ For example, NERC states that a compromised firewall “may allow unfettered access to the ESP.”⁷¹ EEI also agrees that the compromise of certain EACMS that control access could adversely affect the reliable operation of an associated BES Cyber System, although EEI asserts that other CIP Reliability Standards adequately protect those EACMS.⁷² Although some commenters, as discussed below, maintain that the reliability benefit of including EACMS in the supply chain risk management Reliability Standards is outweighed by the perceived costs, these commenters do not challenge the proposition that misoperation or unavailability of EACMS has negative reliability ramifications. For example, ITC, while opposing the NOPR directive, recognizes that misoperation of an EACMS is “serious” and “[w]here CIP resources infinite, it would no doubt increase BES reliability by some degree to include EACMS within this Standard.”⁷³

49. We disagree with the comments asserting that existing CIP Reliability Standards adequately protect EACMS against supply chain-based threats. While existing CIP Reliability Standards include requirements that address aspects of supply chain risk management, existing Reliability Standards do not adequately protect EACMS based on the four security objectives in Order No. 829.⁷⁴ The CIP Reliability Standards cited by EEI, MISO TOs and AECC address aspects of electronic access control, systems security management, and configuration monitoring, but they do not address protection from supply chain threats such as insertion of counterfeits or malicious software, unauthorized production, tampering, or theft, as well as poor manufacturing and development practices. By contrast, the supply chain risk management Reliability Standards approved in this final rule specifically address the above listed supply chain threats, and, we determine, should be extended to at least some subset of EACMS.

50. Specifically, the goal of the supply chain risk management Reliability Standards is “to help ensure that responsible entities establish organizationally-defined processes that integrate a cybersecurity risk management framework into the system development life cycle.”⁷⁵ The current CIP Reliability Standards identified in the comments, however, do not adequately address supply chain risks. For example, while Reliability Standard CIP-005-5 provides a level of electronic access protection for an ESP through controls applied to an Electronic Access Point associated with an EACMS, those controls would only apply after an asset is procured and deployed on a responsible entity’s system. In this situation, the EACMS at issue could already contain built-in vulnerabilities making it susceptible to compromise or, in the worst-case scenario, could have been compromised before acquisition.

51. Given the documented risks to the cyber posture of the bulk electric system associated with EACMS, we are not persuaded to await the completion of the BOT-directed final report before issuing a directive regarding EACMS.⁷⁶ Instead, it is reasonable to initiate modification of the supply chain risk management Reliability Standards based on the conclusion that at least some categories of EACMS should be included. As discussed above, we are convinced that EACMS in general are a known risk that should be protected under the supply chain risk management Reliability Standards. But we leave it to the standard drafting team to assess the various types of EACMS and their associated levels of risk. We are confident that the standard drafting team will be able to develop modifications that include only those EACMS whose compromise by way of the cybersecurity supply chain can affect the reliable operation of high and medium impact BES Cyber Systems. While it will no doubt inform the standard drafting team’s work, the BOT-directed final report is not, in our view, likely to alter the conclusion that at least some EACMS functions should be included in the supply chain risk management Reliability Standards.⁷⁷

⁶⁷ NERC Comments at 23.

⁶⁸ See NERC Comments at 4–6, EEI Comments at 7–10, IRC Comments at 3, ITC Comments at 5, Trade Associations at 8–12, MISO TOs Comments at 16–18.

⁶⁹ The BOT-directed interim report provides the example of a situation where a firewall used to protect BES Cyber Systems within an ESP was compromised due to supply chain vulnerability, noting that each system within the ESP could be exposed due to its logical proximity to the

⁷⁰ As we have imposed a 24-month deadline for NERC to file the modified supply chain risk management Reliability Standards, the standard drafting team will have ample time to review and incorporate the findings in the BOT-directed final report.

⁷¹ See NOPR, 162 FERC ¶ 61,044 at P 35.

⁷² *Id.*

⁷³ See NERC Comments at 5–6, Appelbaum Comments at 5–6, APS Comments at 5, EEI Comments at 7–8, IRC Comments at 3, Idaho Power Comments at 2, MPUC Comments at 6.

⁷⁴ NERC Comments at 5.

⁷⁵ EEI Comments at 7–8.

⁷⁶ ITC Comments at 5.

⁷⁷ Order No. 829, 156 FERC ¶ 61,050 at P 71.

52. The record does not support delaying a directive to modify the CIP Reliability Standards to include EACMS. While commenters opposing the NOPR proposal contend that the Commission should not act until NERC has the results of the BOT-directed final report, we note that: (1) NERC will have 24 months from the effective date of this final rule to develop and submit the modified Reliability Standards; and (2) the BOT-directed final report is due in the near term (*i.e.*, February 2019). Nothing in our directive prevents the standard drafting team from using the findings in the BOT-directed final report to refine its understanding of which types of EACMS functions present the greatest risk and are worthy of inclusion in the supply chain risk management Reliability Standards. Indeed, as discussed below, in view of the BOT-directed study and the Commission's guidance, the standard drafting team could modify the supply chain risk management Reliability Standards to include an appropriate subset of EACMS functions similar to the approach in Order No. 848.⁷⁸

53. As we have indicated above, including EACMS within the scope of the supply chain risk management Reliability Standards is consistent with the approach in Order No. 848 regarding cybersecurity incident reporting. In Order No. 848, the Commission determined that EACMS that perform certain functions are significant to bulk electric system reliability so as to justify their being within the scope of the cybersecurity incident reporting Reliability Standards. Specifically, Order No. 848 addressed the identification of EACMS that should be subject to mandatory reporting requirements:

With regard to identifying EACMS for reporting purposes, NERC's reporting threshold should encompass the functions that various electronic access control and monitoring technologies provide. Those functions must include, at a minimum: (1) Authentication; (2) monitoring and logging; (3) access control; (4) interactive remote access; and (5) alerting.⁷⁹

54. As with cybersecurity incident reporting, in the context of this proceeding, if, for example, a vulnerability in the supply chain for EACMS is found, we determine that responsible entities should have processes in place to be notified of such vulnerabilities by the vendor, as

compromised firewalls. NERC Interim Report at 4-4.

⁷⁸ Order No. 848, 164 FERC ¶ 61,033 at PP 53-54.

⁷⁹ *Id.* P 54.

required by Reliability Standard CIP-013-1, Requirement R1.2.4. We recognize that including EACMS within the scope of the supply chain risk management Reliability Standards will impose a burden on responsible entities. Nonetheless, the burden of possible procurement inefficiencies or resource constraints must be weighed against the significant risk of a cyber incident resulting from unmitigated supply chain vulnerabilities.⁸⁰

55. It is also important to consider that in Order No. 848 the Commission determined that the modified reporting Reliability Standard need not include all EACMS as currently defined and, instead, the standard drafting team may analyze the matter to determine an appropriate subset of EACMS for reporting purposes.⁸¹ Likewise, the standard drafting team that is formed in response to our present directive may determine, based on the work done in response to Order No. 848 as well as the results of the BOT-directed study, what EACMS functions are most important to the reliable operation of the Bulk-Power System and therefore should be included in the supply chain risk management Reliability Standards.

56. We find the remaining objections to our directive unpersuasive. BES Cyber Systems rely on EACMS to enable and secure the communications capability that these systems depend on to control their assigned portion of the bulk electric system. Commenters opposing the NOPR directive fail to provide convincing examples of why EACMS should not receive the same level of protection as the BES Cyber Systems with which they are associated. In addition, contrary to EEI's assertion that the "likelihood of compromise" is unclear, ample evidence exists that supply chain vulnerabilities are an active issue for vendors, whom malicious parties have intentionally targeted.⁸² By contrast, commenters supporting the NOPR directive provided examples where notable vendors of EACMS functions announced vulnerabilities, specifically in firewall firmware.⁸³ Reliability Standard CIP-013-1, Requirement R1, Part 1.2.1, when applied to certain EACMS

⁸⁰ EEI Comments at 9, MISO TOs Comments at 16-17, ITC Comments at 5.

⁸¹ Order No. 848, 164 FERC ¶ 61,033 at P 53.

⁸² EEI Comments at 8-9.

⁸³ Resilient Societies Comments at 3 (noting a February 2016 Cisco "critical" security advisory on a vulnerability that could allow an unauthenticated, remote attacker to obtain full control of its Industrial Security Appliance line of firewalls, and a December 2015 Juniper "out-of-cycle security advisory" on unauthorized code identified in a specific operating system that could allow an attacker to access some firewalls).

functions, will require that responsible entities have processes to require notification by the vendor of the discovery of such vulnerabilities, representing a clear enhancement of the protections provided by the CIP Reliability Standards.

57. Although some commenters question the importance of the EACMS monitoring function, we note that these systems work in concert with access control systems to alert of possible intrusion.⁸⁴ Standard monitoring systems such as intrusion detection systems are an essential component designed to recognize suspicious activity and collect data used for incident reporting. A compromised intrusion detection system may provide false information and generate false alarms. Indeed, a compromised intrusion detection system may not only negate the value of the reported information, but could also potentially provide misleading information. Various intrusion detection system modules collect user logs, provide audit trails and indicate whether suspicious activity is malicious or normal. An attacker could change the various settings, removing or inserting false information. A compromised intrusion detection system may also allow the attacker to manipulate the system continuously without generating an alarm. In addition, an attacker may alter the compromised system such that it will deny legitimate activity and accept malicious activity.⁸⁵

58. For the reasons discussed above, we adopt the NOPR proposal and, pursuant to section 215(d)(5) of the FPA, direct NERC to develop modifications to the CIP Reliability Standards to include EACMS associated with medium and high impact BES Cyber Systems within the scope of the supply chain risk management Reliability Standards. We direct NERC to submit the directed modifications within 24 months of the effective date of this final rule.

B. Study of PACS and PCAs in the BOT-Directed Cybersecurity Supply Chain Risk Study

1. NOPR

59. The NOPR stated that it would be appropriate to await the findings from the BOT-directed study on cybersecurity supply chain risks before considering

⁸⁴ EEI Comments at 7, APS Comments at 3-5, MISO TOs Comments 17-18.

⁸⁵ International Journal of Information Sciences and Techniques (IJIST) Vol.6, No.1/2, March 2016, Cyber Attacks on Intrusion Detection Systems at P 195, <http://airccconline.com/ijist/V6N2/6216ijist20.pdf>.

whether low impact BES Cyber Systems should be addressed in the supply chain risk management Reliability Standards. The NOPR explained that the BOT resolutions stated that the BOT-directed study should examine the risks posed by low impact BES Cyber Systems, but the BOT resolutions did not identify PACS and PCAs as subjects of the study. The NOPR noted, however, that NERC's petition suggests that NERC will evaluate PACS and PCAs as part of the BOT-directed study.⁸⁶

60. The NOPR proposed to direct that NERC, consistent with the representation made in NERC's petition, include PACS and PCAs in the BOT-directed study and to await the findings of the study's final report before considering further action. The NOPR indicated that the risks posed by EACMS also apply to varying degrees to PACS and PCAs. However, the NOPR explained the distinction between EACMS and the other Cyber Assets: For example, a compromise of a PACS through the supply chain, which would potentially grant an attacker physical access to a BES Cyber System or PCA, is more difficult since it would also require physical access. Physical access is not required to take advantage of a compromised EACMS. Accordingly, the NOPR proposed immediate action to provide for the protection of EACMS, because they represent the most likely route an attacker would take to access a BES Cyber System or PCA within an ESP, while possible action on other Cyber Assets can await completion of the BOT-directed study's final report.⁸⁷

61. In addition to proposing to direct NERC to include PACS and PCAs in the BOT-directed study, the NOPR proposed to direct that NERC file the study's interim and final reports with the Commission upon their completion.⁸⁸

2. Comments

62. NERC concurs with the NOPR proposal and states that the Commission should "await the results of the Board-requested study before considering whether low impact BES Cyber Systems, PACS, and PCAs should be addressed in the proposed Reliability Standards."⁸⁹ NERC maintains that the BOT-directed report will help determine whether the

supply chain risk management Reliability Standards are appropriately scoped to mitigate the risks identified by the Commission.⁹⁰

63. EEI and Trade Associations support the supply chain risk management Reliability Standards' exclusion of low impact BES Cyber Systems. EEI agrees with the NOPR proposal to wait for NERC to study the supply chain risks posed by low impact BES Cyber Systems as well as PACS and PCAs before directing further modifications.⁹¹ Trade Associations also "strongly support" limiting the supply chain risk management Reliability Standards' applicability to medium and high impact BES Cyber Systems.⁹²

64. Other commenters contend that low impact BES Cyber Systems pose a significant risk and disagree with the view that excluding such assets will focus industry resources on protecting systems with heightened risk, while not being overly burdensome. For example, Resilient Societies maintains that cyber attackers could use low impact BES Cyber Systems as network entry points to attack high and medium impact BES Cyber Systems, with a potential coordinated cyberattack on multiple low impact facilities causing a cascading collapse.⁹³ Similarly, Appelbaum asserts that "if a large number of [low impact BES Cyber Systems] are compromised, then the effort to correct or replace the compromised assets could be significant."⁹⁴ Reclamation also recommends including low impact BES Cyber Systems in the proposed Reliability Standards in order to avoid gaps that could compromise bulk electric system security.⁹⁵

65. MPUC states that many of the concerns identified in the NOPR apply to all classifications of BES Cyber Systems and that responsible entities should be required to apply the supply chain risk management Reliability Standards to all BES Cyber System assets, unless the entities can show the assets in question to be completely isolated.⁹⁶ Reclamation has similar concerns and states that the supply chain risk management Reliability Standards should apply to all BES Cyber System impact ratings, including low impact.⁹⁷ Mabee cautions against giving industry the discretion to determine which cyber systems are "easy" to

protect and which are "burdensome" to protect.⁹⁸ Isologic also disagrees with the exclusion of low impact BES Cyber Systems and contends that awaiting the BOT-directed final report would unduly delay an examination by the Commission of risks involving the "massive array of unprotected [low impact] transmission substations."⁹⁹

3. Commission Determination

66. We accept NERC's commitment to evaluate the cybersecurity supply chain risks presented by low impact BES Cyber Systems, PACS, and PCAs in the study of cybersecurity supply chain risks directed by the NERC BOT. In light of that commitment, we conclude it is not necessary to separately direct that NERC expand the scope of the BOT-directed study. However, we adopt the NOPR proposal to direct NERC to file the BOT-directed study's final report with the Commission upon its completion.

67. We continue to believe that it is appropriate to await the findings from the BOT-directed final report on cybersecurity risks before considering whether low impact BES Cyber Systems, PACS and PCAs should be included in modified supply chain risk management Reliability Standards.¹⁰⁰ While we do not prejudge the findings from the forthcoming final report, at this time we find that NERC is taking adequate and timely steps to study whether low impact BES Cyber Systems, PACS and PCAs should be included in the supply chain risk management Reliability Standards. Given that the BOT-directed final report is scheduled to be completed in February 2019, we do not view our determination as unduly delaying consideration of this important issue. Once NERC submits the BOT-directed final report, the Commission will be in a better position to consider what further steps, if any, should be taken to provide for the reliability of the bulk electric system.

C. Implementation Plan

1. NOPR

68. The NOPR stated that the 18-month implementation period proposed by NERC may not be justified based on the anticipated effort required to develop and implement a supply chain risk management plan. The NOPR explained that while, according to NERC, the proposed implementation period is "designed to afford responsible entities sufficient time to develop and implement their supply

⁸⁶ NOPR, 162 FERC ¶ 61,044 at P 27 (citing NERC Petition at 21 ("over the next 18 months, NERC, working with various stakeholders, will continue to assess whether supply chain risks related to low impact BES Cyber Systems, PACS, EACMS, and PCA necessitate further consideration for inclusion in a mandatory Reliability Standard").

⁸⁷ NOPR, 162 FERC ¶ 61,044 at P 42.

⁸⁸ *Id.* P 43.

⁸⁹ NERC Comments at 4.

⁹⁰ *Id.* at 5.

⁹¹ EEI Comments at 3.

⁹² Trade Associations Comments at 7.

⁹³ Resilient Societies Comments at 3–4.

⁹⁴ Appelbaum Comments at 6.

⁹⁵ Reclamation Comments at 1.

⁹⁶ MPUC Comments at 6.

⁹⁷ Reclamation Comments at 1.

⁹⁸ Mabee Comments at 4.

⁹⁹ Isologic Comments at 5.

¹⁰⁰ NOPR, 162 FERC ¶ 61,044 at P 40.

chain cybersecurity risk management plans required under proposed Reliability Standard CIP-013-1 and implement the new controls required in proposed Reliability Standards CIP-005-6 and CIP-010-3,” the security objectives of the proposed Reliability Standards are process-based and do not prescribe technology that might justify an extended implementation period.¹⁰¹ Accordingly, the NOPR proposed to reduce the time for implementation such that the supply chain risk management Reliability Standards would become effective the first day of the first calendar quarter that is 12 months, as opposed to NERC’s 18 months, following the effective date of a Commission order approving the Reliability Standards.

2. Comments

69. NERC does not support the NOPR proposal to reduce the implementation period for the supply chain risk management Reliability Standards to 12 months. NERC states that the proposed 18-month implementation period is intended to give responsible entities adequate time to develop and implement a supply chain risk management plan required under proposed Reliability Standard CIP-013-1, as well as to implement new controls required under proposed Reliability Standards CIP-005-6 and CIP-010-3. NERC explains that although proposed Reliability Standard CIP-013-1 is process-based, the development and implementation of the underlying Reliability Standard requirements “involves performing a complex risk assessment process for planning and procuring BES Cyber Systems.”¹⁰²

70. Other commenters support NERC’s proposed 18-month implementation period and contend that 12 months is not enough time for responsible entities to develop and implement the plan and controls required under the supply chain risk management Reliability Standards. EEI, Idaho Power, IRSC, MISO TOs, and Trade Associations contend that while the Commission is correct that the requirements in the Reliability Standards are process-based, certain requirements will require technology enhancements, as well as coordination with vendors.¹⁰³ For example, Trade Associations state that Reliability Standard CIP-005-6 will require work with vendors to facilitate the ability to

disable vendor remote access, while Reliability Standard CIP-010-3 will also require technology upgrades.¹⁰⁴ APS does not agree with the NOPR’s assessment that a 12-month implementation period is reasonable, noting the potential need for new technology and the limitations imposed by capital budget and planning cycles.¹⁰⁵ ITC and MISO TOs argue that the Commission does not have the legal authority to modify the implementation period unilaterally for a proposed Reliability Standard.

71. Appelbaum supports a shortened implementation period for proposed Reliability Standards CIP-010-3 and CIP-005-6, for the reasons stated in the NOPR, but contends that an 18-month implementation period for proposed Reliability Standard CIP-013-1 is more appropriate. Specifically, Appelbaum notes that the proposed Reliability Standard includes new risk planning and documentation requirements that will take time to implement. Appelbaum also contends that the risk assessment will likely involve multiple vendors and various different assets. Appelbaum states that an 18-month implementation period would provide the time to develop a supply chain risk management policy and associated processes, and then apply the processes to current and future procurement activities.¹⁰⁶

3. Commission Determination

72. We do not adopt the NOPR proposal to reduce the implementation period and instead approve the implementation plan and effective date as proposed by NERC. The NOPR proposal was largely based on the premise that the security objectives of the supply chain risk management Reliability Standards are process-based and do not prescribe technology that might justify a longer implementation period. However, based on the comments, we are persuaded that technical upgrades are likely necessary to meet the security objectives of the supply chain risk management Reliability Standards, which could involve longer time-horizon capital budgets and planning cycles.

73. While the Commission could, as Appelbaum suggests, direct an 18-month implementation period for Reliability Standard CIP-013-1 and a 12-month period for Reliability Standards CIP-005-6 and CIP-010-3, we conclude that different timelines

could complicate implementation and potentially increase the administrative burden of implementation without a commensurate improvement in security.

74. Based on the discussion above, we do not adopt the NOPR proposal and approve NERC’s proposed implementation plan whereby the supply chain risk management Reliability Standards will be effective on the first day of the first calendar quarter that is 18 months following the effective date of this final rule.

D. Other Issues

1. Comments

75. Certain commenters raised additional issues not addressed in the NOPR. MISO TOs, APS, and Trade Associations request clarification regarding the term “vendor.” Specifically, APS seeks clarification of the definition of “vendor” and on the applicability of Reliability Standard CIP-013-1 to those vendors that would only provide services associated with a BES Cyber System that is already procured and in service.¹⁰⁷ APS also seeks clarification on whether responsible entities are required to perform individualized vendor assessments for every in-scope procurement activity.¹⁰⁸

76. MISO TOs contend that the Commission should clarify that the supply chain risk management Reliability Standards do not apply to vendors and that responsible entities will not be responsible for vendor noncompliance. MISO TOs also request that the Commission clarify that responsible entities do not have any obligation to work only with compliant vendors.¹⁰⁹

77. APS also seeks clarification regarding the scope of access intended within the term “system-to-system access.”¹¹⁰ As an example, APS asserts that, although there is a connection, User Datagram Protocol would not qualify as “system-to-system access” and seeks clarification regarding the scope of connections that would qualify as “system-to-system access.”¹¹¹

2. Commission Determination

78. The Supplemental Materials for Reliability Standard CIP-013-1 explain the meaning of the term “vendor.” Specifically, the Supplemental Materials state that a vendor “is limited to those persons, companies, or other organizations with whom the

¹⁰¹ NOPR, 162 FERC ¶ 61,044 at P 44 (citing NERC Petition at 35).

¹⁰² NERC Comments at 7.

¹⁰³ See EEI Comments at 3-4, Idaho Power Comments at 3-4, IRC Comments at 4, Trade Associations Comments at 12-13.

¹⁰⁴ Trade Associations Comments at 12-13 (citing NOPR, 152 FERC ¶ 61,054 at P 44).

¹⁰⁵ APS Comments at 5-7.

¹⁰⁶ Appelbaum Comments at 4.

¹⁰⁷ APS Comments at 9-11.

¹⁰⁸ *Id.*

¹⁰⁹ MISO TOs Comments at 7-9.

¹¹⁰ APS Comments at 9-11.

¹¹¹ *Id.*

[r]esponsible [e]ntity, or its affiliates, contracts with to supply BES Cyber Systems and related services.”¹¹² The Supplemental Materials also note that a vendor, for purposes of the supply chain risk management Reliability Standards, may include: (i) Developers or manufacturers of information systems, system components, or information system services; (ii) product resellers; or (iii) system integrators.¹¹³

79. With regard to vendor-related compliance concerns, vendors are not subject to the supply chain risk management Reliability Standards. As NERC explains, “the proposed Reliability Standards apply only to registered entities and do not directly impose obligations on suppliers, vendors or other entities that provide products or services to registered entities.”¹¹⁴ This is consistent with the Commission’s guidance in Order No. 829 that “any action taken by NERC in response to the Commission’s directive to address the supply chain-related reliability gap should respect ‘section 215 jurisdiction by only addressing the obligations of responsible entities’ and ‘not directly impose obligations on suppliers, vendors or other entities that provide products or services to responsible entities.’”¹¹⁵

80. As to the question of responsible entity liability for vendor noncompliance, NERC explains that “any resulting obligation that a supplier, vendor or other entity accepts in providing products or services to the registered entity is a contractual matter between the registered entity and the third party outside the scope of the proposed Reliability Standard[.]”¹¹⁶ The security objective of the supply chain risk management Reliability Standards is to “ensure that [r]esponsible [e]ntities consider the security, integrity, quality, and resilience of the supply chain, and take appropriate mitigating action when procuring BES Cyber Systems to address threats and vulnerabilities in the supply chain.”¹¹⁷ Therefore, while a responsible entity is not directly liable for vendor actions, the responsible entity is required to mitigate any resulting risks. Finally, the supply chain

risk management Reliability Standards do not dictate a responsible entity’s contracting decision.

81. As to the term “system-to-system,” NERC explains that the objective of Reliability Standard CIP–005–6, Requirement R2.4 is for entities to have visibility of active vendor remote access sessions, including Interactive Remote Access and system-to-system remote access, taking place on their system.¹¹⁸ Reliability Standard CIP–005–6 requires entities to have a method to determine all active vendor remote access sessions.¹¹⁹

III. Information Collection Statement

82. The FERC–725B information collection requirements contained in this final rule are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.¹²⁰ OMB’s regulations require approval of certain information collection requirements imposed by agency rules.¹²¹ Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. In the NOPR, the Commission solicited comments on the Commission’s need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents’ burden, including the use of automated information techniques. The Commission did not receive any comments on the specific burden estimates discussed below.

83. The Commission bases its paperwork burden estimates on the changes in paperwork burden presented by the approved CIP Reliability Standard CIP–013–1 and the approved revisions to CIP Reliability Standard CIP–005–6 and CIP–010–3 as compared to the current Commission-approved Reliability Standards CIP–005–5 and

CIP–010–2, respectively. As discussed above, the final rule addresses several areas of the CIP Reliability Standards through Reliability Standard CIP–013–1, Requirements R1, R2, and R3. Under Requirement R1, responsible entities would be required to have one or more processes to address the following baseline set of security concepts, as applicable, in their procurement activities for high and medium impact BES Cyber Systems: (1) Vendor security event notification processes (Part 1.2.1); (2) coordinated incident response activities (Part 1.2.2); (3) vendor personnel termination notification for employees with access to remote and onsite systems (Part 1.2.3); (4) product/services vulnerability disclosures (Part 1.2.4); (5) verification of software integrity and authenticity (Part 1.2.5); and (6) coordination of vendor remote access controls (Part 1.2.6). Requirement R2 mandates that each responsible entity implement its supply chain cybersecurity risk management plan. Requirement R3 requires a responsible entity to review and obtain the CIP Senior Manager’s approval of its supply chain risk management plan at least once every 15 calendar months in order to ensure that the plan remains up-to-date.

84. Separately, Reliability Standard CIP–005–6, Requirement R2.4 requires one or more methods for determining active vendor remote access sessions, including Interactive Remote Access and system-to-system remote access. Reliability Standard CIP–005–6, Requirement R2.5 requires one or more methods to disable active vendor remote access, including Interactive Remote Access and system-to-system remote access. Reliability Standard CIP–010–3, Requirement R1.6 requires responsible entities to verify software integrity and authenticity in the operational phase, if the software source provides a method to do so.

85. The NERC Compliance Registry, as of December 2017, identifies approximately 1,250 unique U.S. entities that are subject to mandatory compliance with Reliability Standards. Of this total, we estimate that 288 entities will face an increased paperwork burden under the approved Reliability Standards CIP–013–1, CIP–005–6, and CIP–010–3. Based on these assumptions, we estimate the following reporting burden:

¹¹² Reliability Standard CIP–013–1 at 12.

¹¹³ *Id.*

¹¹⁴ NERC Petition at 14.

¹¹⁵ Order No. 829, 156 FERC ¶ 61,050 at P 21.

¹¹⁶ NERC Petition at 17.

¹¹⁷ *Id.* at 13.

¹¹⁸ *Id.* at 31.

¹¹⁹ See Reliability Standard CIP–005–6 at 28.

¹²⁰ 44 U.S.C. 3507(d).

¹²¹ 5 CFR 1320.11.

RM17-13-000 FINAL RULE

[Mandatory Reliability Standards for Critical Infrastructure Protection Reliability Standards]

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response ¹²²	Total annual burden hours & total annual cost	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Create supply chain risk management plan (one-time) ¹²³ (CIP-013-1 R1).	288	1	288	546 hrs.; \$44,226	157,248 hrs.; \$12,737,088.	\$44,226
Updates and reviews of supply chain risk management plan (ongoing) ¹²⁴ (CIP-013-1 R2).	288	1	288	30 hrs.; 2,430	8,640 hrs.; 699,840.	2,430
Develop Procedures to update remote access requirements (one time) (CIP-005-6 R1-R4).	288	1	288	50 hrs.; 4,050	14,400 hrs.; 1,166,400.	4,050
Develop procedures for software integrity and authenticity requirements (one time) (CIP-010-3 R1-R4).	288	1	288	50 hrs.; 4,050	14,400 hrs.; 1,166,400.	4,050
Total (one-time)			864		186,048 hrs.; 15,069,888.	
Total (ongoing)			288		8,640 hrs.; 699,840.	

The one-time burden of 186,048 hours will be averaged over three years (186,048 hours ÷ 3 = 62,016 hours/year over three years).

The ongoing burden of 8,640 hours applies to only Years 2 and beyond.

The number of responses is also average over three years (864 responses (one-time) + (288 responses (Year 2) + 288 responses (Year 3)) ÷ 3 = 480 responses).

The responses and burden for Years 1-3 will total respectively as follows:

- Year 1: 480 responses; 62,016 hours
- Year 2: 480 responses; 62,016 hours + 8,640 hours = 70,656 hours
- Year 3: 480 responses; 62,016 hours + 8,640 hours = 70,656 hours.

86. The following shows the annual cost burden for each year, based on the burden hours in the table above:

¹²² The loaded hourly wage figure (includes benefits) is based on the average of the occupational categories for 2017 found on the Bureau of Labor Statistics website (http://www.bls.gov/oes/current/naics2_22.htm):

Legal (Occupation Code: 23-0000): \$143.68.
 Information Security Analysts (Occupation Code 15-1122): \$61.55.
 Computer and Information Systems Managers (Occupation Code: 11-3021): \$96.51.
 Management (Occupation Code: 11-0000): \$94.28.
 Electrical Engineer (Occupation Code: 17-2071): \$66.90.
 Management Analyst (Code: 43-0000): \$63.32.

These various occupational categories are weighted as follows: [(\$94.28)(.10) + (\$61.55)(.315) + (\$66.90)(.02) + (\$143.68)(.15) + (\$96.51)(.10) + (\$63.32)(.315)] = \$81.30. The figure is rounded to \$81.00 for use in calculating wage figures in this final rule.

¹²³ One-time burdens apply in Year One only.

¹²⁴ Ongoing burdens apply in Year 2 and beyond.

- Year 1: \$15,069,888
- Years 2 and beyond: \$699,840
- The paperwork burden estimate includes costs associated with the initial development of a policy to address requirements relating to: (1) Developing the supply chain risk management plan; (2) updating the procedures related to remote access requirements (3) developing the procedures related to software integrity and authenticity. Further, the estimate reflects the assumption that costs incurred in year 1 will pertain to plan and procedure development, while costs in years 2 and 3 will reflect the burden associated with maintaining the supply chain risk management plan and modifying it as necessary on a 15-month basis.

87. *Title:* FERC-725B (Mandatory Reliability Standards, Revised Critical Infrastructure Protection Reliability Standards).

Action: Information Collection, FERC-725B (Supply Chain Risk Management Reliability Standards).

OMB Control No.: 1902-0248.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

Necessity of the Information: This final rule approves the requested modifications to Reliability Standards pertaining to critical infrastructure protection. As discussed above, the Commission approves NERC's CIP Reliability Standards CIP-013-1, CIP-005-6, and CIP-010-3 pursuant to section 215(d)(2) of the FPA because they improve upon the currently-

effective suite of cybersecurity CIP Reliability Standards.

Internal Review: The Commission has reviewed the approved Reliability Standards and made a determination that its action is necessary to implement section 215 of the FPA.

88. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: DataClearance@ferc.gov, phone: (202) 502-8663, fax: (202) 273-0873].

89. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the Commission, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395-4638, fax: (202) 395-7285]. For security reasons, comments to OMB should be submitted by email to: oir_submission@omb.eop.gov. Comments submitted to OMB should include Docket Number RM17-13-000 and OMB Control Number 1902-0248.

IV. Environmental Analysis

90. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human

environment.¹²⁵ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.¹²⁶ The actions taken herein fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act Analysis

91. The Regulatory Flexibility Act of 1980 (RFA) generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities.¹²⁷ The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.¹²⁸ The SBA revised its size standard for electric utilities (effective January 22, 2014) to a standard based on the number of employees, including affiliates (from the prior standard based on megawatt hour sales).¹²⁹

92. Reliability Standards CIP-013-1, CIP-005-6, CIP-010-3 are expected to impose an additional burden on 288 entities¹³⁰ (reliability coordinators, generator operators, generator owners, interchange coordinators or authorities, transmission operators, balancing authorities, and transmission owners).

93. Of the 288 affected entities discussed above, we estimate that approximately 248 or 86.2 percent of the affected entities are small entities. We

estimate that each of the 248 small entities to whom the approved modifications to Reliability Standards CIP-013-1, CIP-005-6, and CIP-010-3 apply will incur one-time costs of approximately \$52,326 per entity to implement the approved Reliability Standards, as well as the ongoing paperwork burden reflected in the Information Collection Statement (approximately \$2,430 per year per entity). We do not consider the estimated costs for these 248 small entities to be a significant economic impact. Accordingly, we certify that Reliability Standards CIP-013-1, CIP-005-6, and CIP-010-3 will not have a significant economic impact on a substantial number of small entities.

VI. Document Availability

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

95. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number of this

document, excluding the last three digits, in the docket number field. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

VII. Effective Date and Congressional Notification

96. The final rule is effective December 26, 2018. The Commission has determined that this final rule imposes no substantial effect upon either NERC or NERC registered entities¹³¹ and, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule is being submitted to the Senate, House, and Government Accountability Office.

By the Commission. Chairman McIntyre was not present at the Commission Meeting held on October 18, 2018 and did not vote on this item.

Issued: October 18, 2018.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix Commenters

Abbreviation	Commenter
AECC	Arkansas Electric Cooperative Corporation.
Appelbaum	Jonathan Appelbaum.
APS	Arizona Public Service Company.
EEL	Edison Electric Institute.
Idaho Power	Idaho Power Company.
IRC	ISO/RTO Council.
Isologic	Isologic LLC.
ITC	International Transmission Company.
Mabee	Michael Mabee.
MISO TOs	MISO Transmission Owners.
MPUC	Maine Public Utilities Commission.
NERC	North American Electric Reliability Corporation.
Reclamation	U.S. Bureau of Reclamation.
Resilient Societies	Foundation for Resilient Societies.
Trade Associations	American Public Power Association, Electricity Consumers Resource Council, Large Public Power Council, National Rural Electric Cooperative Association, and Transmission Access Policy Study Group.

[FR Doc. 2018-23201 Filed 10-25-18; 8:45 am]

BILLING CODE 6717-01-P

¹²⁵ *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

¹²⁶ 18 CFR 380.4(a)(2)(ii).

¹²⁷ 5 U.S.C. 601-12.

¹²⁸ 13 CFR 121.101.

¹²⁹ 13 CFR 121.201, Subsector 221.

¹³⁰ Public utilities may fall under one of several different categories, each with a size threshold based on the company's number of employees, including affiliates, the parent company, and

subsidiaries. For the analysis in this NOPR, we are using a 500 employee threshold due to each affected entity falling within the role of Electric Bulk Power Transmission and Control (NAISC Code: 221121).

¹³¹ 5 U.S.C. 804(3)c.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 868

[Docket No. FDA-2018-N-3729]

Medical Devices; Anesthesiology Devices; Classification of the High Flow Humidified Oxygen Delivery Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

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

DATES: This order is effective October 26, 2018. The classification was applicable on April 10, 2018.

FOR FURTHER INFORMATION CONTACT: Derya Coursey, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2563, Silver Spring, MD 20993-0002, 240-402-6130, Derya.Coursey@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the high flow humidified oxygen delivery device as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains

within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as "postamendments devices" because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

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

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

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

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

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

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

II. De Novo Classification

On January 3, 2017, Vapotherm, Inc. submitted a request for De Novo classification of the Precision Flow® HVNI. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on April 10, 2018, FDA issued an order to the requester classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 868.5454. We have named the generic type of device high flow humidified oxygen delivery device, and it is identified as a prescription device that delivers high flow oxygen with humidification for patients who are suffering from respiratory distress and/or hypoxemia.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—HIGH FLOW HUMIDIFIED OXYGEN DELIVERY DEVICE RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Adverse tissue reaction	Biocompatibility evaluation, Non-clinical performance testing, and Labeling.
Interference with other devices	Electromagnetic compatibility testing, Radiofrequency identification testing, and Labeling.
Infection	Cleaning validation and Labeling.
Device software failure leading to delayed initiation of therapy	Software verification, validation, and hazard analysis; and Labeling.
Device failure/malfunction leading to ineffective treatment	Non-clinical performance testing and Labeling.
Electrical shock injury from device failure	Electrical safety, thermal safety, and mechanical safety testing.
Use error/improper device use leading to hypoxia or worsening hypercarbia.	Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, high flow humidified oxygen delivery devices are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met (referring to 21 U.S.C. 352(f)(1)).

III. Analysis of Environmental Impact

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

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the guidance document “De Novo Classification Process (Evaluation of Automatic Class III Designation)” have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control

number 0910–0073; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 868

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 868 is amended as follows:

PART 868—ANESTHESIOLOGY DEVICES

■ 1. The authority citation for part 868 continues to read as follows:

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

■ 2. Add § 868.5454 to subpart F to read as follows:

§ 868.5454 High flow humidified oxygen delivery device.

(a) *Identification.* A high flow humidified oxygen delivery device is a prescription device that delivers high flow oxygen with humidification for patients who are suffering from respiratory distress and/or hypoxemia.

(b) *Classification.* Class II (special controls). The special controls for this device are:

- (1) The patient-contacting components of the device must be demonstrated to be biocompatible.
- (2) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions for use, including the following:
 - (i) Alarm testing must be performed;

- (ii) Continuous use thermal stability testing must be performed;
- (iii) Humidity output testing must be performed; and
- (iv) Blender performance testing must evaluate fraction of inspired oxygen (FiO_2) blending accuracy.

(3) Performance data must validate cleaning instructions for any reusable components of the device.

(4) Electrical safety, thermal safety, mechanical safety, electromagnetic compatibility, and radiofrequency identification testing must be performed.

(5) Software verification, validation, and hazard analysis must be performed.

(6) Labeling must include:

(i) A description of available FiO_2 ranges for different flowrates and inlet gas pressures;

(ii) Instructions for applicable flowrates for all intended populations;

(iii) A warning that patients on high flow oxygen are acute and require appropriate monitoring, to include pulse oximetry;

(iv) A warning regarding the risk of condensation at low set temperatures and certain flows; and

(v) A description of all alarms and their functions.

Dated: October 22, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–23409 Filed 10–25–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 874

[Docket No. FDA–2018–N–3772]

Medical Devices; Ear, Nose, and Throat Devices; Classification of the Active Implantable Bone Conduction Hearing System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

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

DATES: This order is effective October 26, 2018. The classification was applicable on July 20, 2018.

FOR FURTHER INFORMATION CONTACT: Oldooz Hazrati, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2455, Silver Spring, MD 20993-0002, 240-402-9903, Oldooz.HazratiYadkooori@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the active implantable bone conduction hearing system as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

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

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

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

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

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

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

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of

that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining "substantial equivalence"). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On February 16, 2017, MED-EL Elektromedizinische Geraete GmbH submitted a request for De Novo classification of the BONEBRIDGE. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on July 20, 2018, FDA issued an order to the requester classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 874.3340. We have named the generic type of device active implantable bone conduction hearing system, and it is identified as a prescription device consisting of an implanted transducer, implanted electronics components, and an audio processor. The active implantable bone conduction hearing system is intended to compensate for conductive or mixed hearing losses by conveying amplified acoustic signals to the cochlea via mechanical vibrations on the skull bone.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—ACTIVE IMPLANTABLE BONE CONDUCTION HEARING SYSTEM RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Dural erosion or compression resulting from failure to confirm adequate thickness and consistency of bone and related anatomy.	Labeling.
Surgical complications leading to: <ul style="list-style-type: none"> • Bleeding/hematoma. • Seizures. • Cerebrospinal fluid (CSF) leak. • Implant damage or migration leading to revision/explantation 	Clinical performance testing and Labeling.
Device software failure	Software verification, validation, and hazard analysis.
Implant failure due to: <ul style="list-style-type: none"> • Fatigue. • Damage/breakage. • Loss of hermeticity 	Clinical performance testing and Non-clinical performance testing.
Device failure to compensate for hearing loss	Clinical performance testing and Non-clinical performance testing.
Interference with other devices	Electromagnetic compatibility testing, Wireless coexistence testing, Electrical safety testing, and Labeling.
Adverse tissue reaction	Biocompatibility evaluation and Labeling.
Infection	Sterilization validation, Shelf life testing, and Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, active implantable bone conduction hearing systems are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met (referring to 21 U.S.C. 352(f)(1)).

III. Analysis of Environmental Impact

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

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the guidance document “De Novo

Classification Process (Evaluation of Automatic Class III Designation)” have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 874

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 874 is amended as follows:

PART 874—EAR, NOSE, AND THROAT DEVICES

- 1. The authority citation for part 874 is revised to read as follows:

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

- 2. Add § 874.3340 to subpart D to read as follows:

§ 874.3340 Active implantable bone conduction hearing system.

(a) *Identification.* An active implantable bone conduction hearing system is a prescription device consisting of an implanted transducer, implanted electronics components, and

an audio processor. The active implantable bone conduction hearing system is intended to compensate for conductive or mixed hearing losses by conveying amplified acoustic signals to the cochlea via mechanical vibrations on the skull bone.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Clinical performance testing must characterize any adverse events observed during implantation and clinical use, and must also demonstrate that the device performs as intended under anticipated conditions of use.

(2) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use, including the following:

(i) Performance data must validate force output in a clinically relevant model.

(ii) Impact testing in a clinically relevant anatomic model must be performed.

(iii) Mechanical integrity testing must be performed.

(iv) Reliability testing consistent with expected device life must be performed.

(3) The patient-contacting components of the device must be demonstrated to be biocompatible.

(4) Performance data must demonstrate the sterility of the patient-contacting components of the device.

(5) Performance data must support the shelf life of the device by demonstrating continued sterility, package integrity, and device functionality over the identified shelf life.

(6) Performance data must demonstrate the wireless compatibility, electromagnetic compatibility, and electrical safety of the device.

(7) Software verification, validation, and hazard analysis must be performed.

(8) Labeling must include:

(i) A summary of clinical testing conducted with the device that includes a summary of device-related complications and adverse events;

(ii) Instructions for use;

(iii) A surgical guide for implantation, which includes instructions for imaging to assess bone dimensions;

(iv) A shelf life, for device components provided sterile;

(v) A patient identification card; and

(vi) A patient user manual.

Dated: October 22, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018-23412 Filed 10-25-18; 8:45 am]

BILLING CODE 4164-01-P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 201

[Docket No. 2017-10]

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: In this final rule, the Librarian of Congress adopts exemptions to the provision of the Digital Millennium Copyright Act (“DMCA”) that prohibits circumvention of technological measures that control access to copyrighted works, codified in the United States Code. As required under the statute, the Acting Register of Copyrights, following a public proceeding, submitted a Recommendation concerning proposed exemptions to the Librarian of Congress. After careful consideration, the Librarian adopts final regulations based upon the Acting Register’s Recommendation.

DATE: Effective October 28, 2018.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at regans@copyright.gov, Anna Chauvet, Assistant General Counsel, by email at achau@copyright.gov, or Kevin Amer, Senior Counsel for Policy and International Affairs, by email at kamer@copyright.gov. Each can be contacted by telephone by calling (202) 707-8350.

SUPPLEMENTARY INFORMATION: The Librarian of Congress, pursuant to

section 1201(a)(1) of title 17, United States Code, has determined in this seventh triennial rulemaking proceeding that the prohibition against circumvention of technological measures that effectively control access to copyrighted works shall not apply to persons who engage in noninfringing uses of certain classes of such works. This determination is based upon the Recommendation of the Acting Register of Copyrights, which was transmitted to the Librarian on October 5, 2018.¹

The below discussion summarizes the rulemaking proceeding and Register’s Recommendation, announces the Librarian’s determination, and publishes the regulatory text specifying the exempted classes of works. A more complete discussion of the rulemaking process, the evidentiary record, and the Acting Register’s analysis can be found in the Acting Register’s Recommendation, which is posted at www.copyright.gov/1201/2018/.

I. Background

A. Statutory Requirements

Congress enacted the DMCA in 1998 to implement certain provisions of the WIPO Copyright and WIPO Performances and Phonograms Treaties. Among other things, title I of the DMCA, which added a new chapter 12 to title 17 of the U.S. Code, prohibits circumvention of technological measures employed by or on behalf of copyright owners to protect access to their works. In enacting this aspect of the law, Congress observed that technological protection measures (“TPMs”) can “support new ways of disseminating copyrighted materials to users, and . . . safeguard the availability of legitimate uses of those materials by individuals.”²

Section 1201(a)(1) provides in pertinent part that “[n]o person shall circumvent a technological measure that effectively controls access to a work protected under [title 17].” Under the statute, to “circumvent a technological measure” means “to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner.”³ A

¹ Acting Register of Copyrights, Section 1201 Rulemaking: Seventh Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Acting Register of Copyrights (Oct. 2018) (“Acting Register’s Recommendation”).

² Staff of H. Comm. on the Judiciary, 105th Cong., Section-by-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4, 1998, at 7 (Comm. Print 1998).

³ 17 U.S.C. 1201(a)(3)(A).

technological measure that “effectively controls access to a work” is one that “in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.”⁴

Section 1201(a)(1) also includes what Congress characterized as a “fail-safe” mechanism,⁵ which requires the Librarian of Congress, following a rulemaking proceeding, to publish any class of copyrighted works as to which the Librarian has determined that noninfringing uses by persons who are users of a copyrighted work are, or are likely to be, adversely affected by the prohibition against circumvention in the succeeding three-year period, thereby exempting that class from the prohibition for that period.⁶ The Librarian’s determination to grant an exemption is based upon the recommendation of the Register of Copyrights, who conducts the rulemaking proceeding.⁷ The Register, in turn, consults with the Assistant Secretary for Communications and Information of the Department of Commerce, who oversees the National Telecommunications and Information Administration (“NTIA”), in the course of formulating her recommendation.⁸

The primary responsibility of the Register and the Librarian in the rulemaking proceeding is to assess whether the implementation of access controls impairs the ability of individuals to make noninfringing uses of copyrighted works within the meaning of section 1201(a)(1). To do this, the Register develops a comprehensive administrative record using information submitted by interested members of the public, and makes recommendations to the Librarian concerning whether exemptions are warranted based on that record.

Under the statutory framework, the Librarian, and thus the Register, must consider “(i) the availability for use of copyrighted works; (ii) the availability for use of works for nonprofit archival, preservation, and educational purposes; (iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research; (iv) the effect of circumvention of technological measures on the market

⁴ *Id.* at 1201(a)(3)(B).

⁵ See H.R. Rep. No. 105-551, pt. 2, at 36 (1998) (“Commerce Comm. Report”).

⁶ See 17 U.S.C. 1201(a)(1).

⁷ *Id.* at 1201(a)(1)(C).

⁸ *Id.*

for or value of copyrighted works; and (v) such other factors as the Librarian considers appropriate.”⁹

Significantly, exemptions adopted by rule under section 1201(a)(1) apply only to the conduct of circumventing a technological measure that controls access to a copyrighted work. Other parts of section 1201, by contrast, address the manufacture and provision of—or “trafficking” in—products and services designed for purposes of circumvention. Section 1201(a)(2) bars trafficking in products and services that are used to circumvent technological measures that control access to copyrighted works (for example, a password needed to open a media file),¹⁰ while section 1201(b) bars trafficking in products and services used to circumvent technological measures that protect the exclusive rights of the copyright owner in their works (for example, technology that prevents the work from being reproduced).¹¹ The Librarian of Congress has no authority to adopt exemptions for the anti-trafficking prohibitions contained in section 1201(a)(2) or (b).¹² More broadly, activities conducted under the regulatory exemptions must still comply with other applicable laws, including non-copyright provisions.

Also significant is the fact that the statute contains certain permanent exemptions to permit specified uses. These include: Section 1201(d), which exempts certain activities of nonprofit libraries, archives, and educational institutions; section 1201(e), which exempts “lawfully authorized investigative, protective, information security, or intelligence activity” of a state or the federal government; section 1201(f), which exempts certain “[r]everse engineering” activities to facilitate interoperability; section 1201(g), which exempts certain types of research into encryption technologies; section 1201(h), which exempts certain activities to prevent the “access of minors to material on the internet”; section 1201(i), which exempts certain activities “solely for the purpose of preventing the collection or dissemination of personally identifying information”; and section 1201(j), which exempts certain acts of “security

testing” of computers and computer systems.

C. Rulemaking Standards

In adopting the DMCA, Congress imposed legal and evidentiary requirements for the section 1201 rulemaking proceeding, as discussed in greater detail in the Acting Register’s Recommendation and the Copyright Office’s recent policy study on section 1201.¹³ The Register will recommend granting an exemption only “when the preponderance of the evidence in the record shows that the conditions for granting an exemption have been met.”¹⁴ “[I]t is the totality of the rulemaking record (*i.e.*, the evidence provided by commenters or administratively noticed by the Office) that must, on balance, reflect the need for an exemption by a preponderance of the evidence. Such evidence must, on the whole, show that it is more likely than not that users of a copyrighted work will, in the succeeding three-year period, be adversely affected by the prohibition on circumvention in their ability to make noninfringing uses of a particular class of copyrighted works.”¹⁵

To establish a case for an exemption, proponents must show at a minimum (1) that uses affected by the prohibition on circumvention are or are likely to be noninfringing; and (2) that as a result of a technological measure controlling access to a copyrighted work, the prohibition is causing, or in the next three years is likely to cause, an adverse impact on those uses. In addition, the Librarian must also examine the statutory factors listed in section 1201(a)(1)(C): “(i) The availability for use of copyrighted works; (ii) the availability for use of works for nonprofit archival, preservation, and educational purposes; (iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or

research; (iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and (v) such other factors as the Librarian considers appropriate.” In some cases, weighing these factors requires the consideration of the benefits that the technological measure brings with respect to the overall creation and dissemination of works in the marketplace, in addition to any negative impact.

Finally, when granting an exemption, section 1201(a)(1) specifies that the exemption adopted as part of this rulemaking must be defined based on “a particular class of works.”¹⁶ Among other things, the determination of the appropriate scope of a “class of works” recommended for exemption may also take into account the adverse effects an exemption may have on the market for or value of copyrighted works. Accordingly, “it can be appropriate to refine a class by reference to the use or user in order to remedy the adverse effect of the prohibition and to limit the adverse consequences of an exemption.”¹⁷

D. Streamlined Renewal Process

Following a comprehensive policy study, and in response to stakeholder feedback, for this seventh triennial proceeding, the Office introduced a streamlined process to renew section 1201 exemptions adopted during the 2015 rulemaking.¹⁸ Previously, in recognition of legislative history stating that the basis of an exemption should be established *de novo* in each triennial proceeding,¹⁹ the Office had required the factual record be developed anew in each rulemaking.²⁰ In its Section 1201 Report, the Office evaluated the possibility of a renewal process, noting a “broad consensus in favor of streamlining the process for renewing exemptions to which there is no meaningful opposition.”²¹ As described in further detail in that report, the Office ultimately concluded that “the statutory language appears to be broad enough to permit determinations to be based upon evidence drawn from prior proceedings, but only upon a conclusion that this evidence remains reliable to support granting an exemption in the current

¹³ Acting Register’s Recommendation at 9–19; U.S. Copyright Office, Section 1201 of Title 17 105–15 (2017), <https://www.copyright.gov/policy/1201/section-1201-full-report.pdf> (“Section 1201 Report”).

¹⁴ Section 1201 Report at 111; *accord* Register of Copyrights, Section 1201 Rulemaking: Sixth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights 14 (Oct. 2015). References to the Register’s Recommendations in prior rulemakings are cited by the year of publication followed by “Recommendation” (*e.g.*, “2015 Recommendation”). Prior Recommendations are available on the Copyright Office website at <https://www.copyright.gov/1201/>.

¹⁵ Section 1201 Report at 112.

¹⁶ 17 U.S.C. 1201(a)(1)(B).

¹⁷ 2006 Recommendation at 19.

¹⁸ Section 1201 Report at 127–28, 145–46.

¹⁹ *See* Commerce Comm. Report at 37 (explaining that for every rulemaking, “the assessment of adverse impacts on particular categories of works is to be determined *de novo*”).

²⁰ Exemptions to Permit Circumvention of Access Controls on Copyrighted Works, 82 FR 29804, 29805 (June 30, 2017) (“NOI”).

²¹ Section 1201 Report at vi.

⁹ *Id.*

¹⁰ *Id.* at 1201(a)(2).

¹¹ *Id.* at 1201(b).

¹² *See id.* at 1201(a)(1)(E) (“Neither the exception under subparagraph (B) from the applicability of the prohibition contained in subparagraph (A), nor any determination made in a rulemaking conducted under subparagraph (C), may be used as a defense in any action to enforce any provision of this title other than this paragraph.”).

proceeding.”²² The Office concluded that renewal may be sought only for exemptions in their current form, without modification, and that the Register “must apply the same evidentiary standards in recommending the renewal of exemptions as for first-time exemption requests.”²³

The Office detailed the renewal process in its notices for this proceeding.²⁴ Streamlined renewal is based upon a determination that, due to a lack of legal, marketplace, or technological changes, the factors that led the Register to recommend adoption of the exemption in the prior rulemaking are expected to continue into the forthcoming triennial period.²⁵ That is, the same material facts and circumstances underlying the previously-adopted regulatory exemption may be relied on to renew the exemption.²⁶ Because the statute itself requires that exemptions must be adopted upon a fresh determination concerning the next three-year period, the fact that the Librarian previously adopted an exemption creates no presumption that re-adoption is appropriate. Instead, the Office first solicited petitions summarizing the continuing need and justification for the exemption, and petitioners signed a declaration stating that, “to the best of their personal knowledge, there has not been any material change in the facts, law, or other circumstances set forth in the prior rulemaking record such that renewal of the exemption would not be justified.”²⁷ Next, the Office solicited comments from participants opposing the re-adoption of the exemption. Opponents were required to provide evidence that would allow the Acting Register to reasonably conclude that the prior rulemaking record and any further information provided in the petitions are insufficient for her to recommend renewal without the benefit of a further developed record. For example, “a change in case law might affect whether a particular use is noninfringing, new technological developments might affect the availability for use of copyrighted works, or new business models might affect the market for or value of copyrighted works.”²⁸ If the

appropriateness of renewing an exemption is meaningfully contested, that exemption would be fully noticed for written comment and public hearing to generate an updated administrative record for the Register to evaluate whether to recommend re-adoption, modification, or elimination of that exemption to the Librarian.²⁹

The streamlined renewal process elicited favorable responses during the 2018 rulemaking hearings. As detailed below, as a result of this new process, the Acting Register was able to recommend renewal of all exemptions adopted in the 2015 rulemaking, and subsequently consider whether some of them should be modified to accommodate additional new uses through the development of an expanded administrative record.

II. History of the Seventh Triennial Proceeding

In this rulemaking, the Copyright Office used the phased comment structure introduced in the last proceeding, to best facilitate a clear and thorough record. As promised in its Section 1201 Report,³⁰ the Office also created video tutorials explaining the rulemaking process, issued the Notice of Proposed Rulemaking (“NPRM”) earlier to give parties more time to participate, and offered increased opportunities for participant input, including through an established procedure for transparent *ex parte* meetings.

The Office initiated the seventh triennial rulemaking proceeding through a Notice of Inquiry (“NOI”) on June 30, 2017.³¹ The NOI requested petitions for renewals, petitions in opposition to renewal, and any petitions for new exemptions. In response, the Office received thirty-nine renewal petitions, five comments regarding the scope of the renewal petitions, and one comment in opposition to renewal of a current exemption.³² The Office also received twenty-three petitions for new exemptions, including seventeen seeking to expand certain current exemptions, and six petitions for new exemptions.

Next, on October 26, 2017, the Office issued its NPRM identifying the existing exemptions for which the Acting Register intended to recommend

renewal, and outlined the proposed classes for new exemptions (including proposed expansions of previously-adopted exemptions) for which three rounds of public comments were initiated.³³ Those classes were organized into twelve classes of works. Seven of the twelve proposed exemptions seek expansions of existing exemptions, while five propose new exemptions. The Office received 181 total submissions in response to the NPRM, substantially less than the approximately 40,000 submissions received in the last rulemaking.

After analyzing the written comments, the Office held seven days of hearings in Washington, DC (April 10–13) and Los Angeles, California (April 23–25). For the first time, the roundtables at both locations held audience participation panels and were live streamed online. Video recordings for these roundtables are available through the Office’s website and YouTube pages.³⁴ In total, the Office heard testimony from seventy-seven individuals. After the hearings, the Office issued questions to hearing participants in four proposed classes and received eighteen responses.³⁵ Subsequently, the Office received an unsolicited letter from the Computer Crime and Intellectual Property Section of the Criminal Division of the United States Department of Justice (“CCIPS”) regarding Proposed Class 10, and the Office solicited comment from Class 10 participants in response.³⁶

As noted in its NPRM, the Office determined that further informal communications with non-governmental participants might be beneficial in limited circumstances.³⁷ The Office thus established guidelines for *ex parte* meetings, noting that the Office will not consider or accept any new documentary materials at these

³³ NPRM, 82 FR at 49550, 49553–63.

³⁴ Video recordings of the roundtables are available at <https://www.copyright.gov/1201/2018/> and <https://www.youtube.com/uscopyrightoffice/>.

³⁵ Participant’s post-hearing letter responses are available on the Office’s website. Responses to Post-Hearing Questions, U.S. Copyright Office, (last visited Oct 2, 2018), <https://www.copyright.gov/1201/2018/post-hearing/answers/>.

³⁶ Letter from John T. Lynch, Jr., Chief, Comput. Crime & Intellectual Prop. Section, Criminal Div., U.S. Dep’t of Justice, to Regan A. Smith, Gen. Counsel & Assoc. Register of Copyrights, U.S. Copyright Office (June 28, 2018), https://www.copyright.gov/1201/2018/USCO-letters/USDOJ_Letter_to_USCO.pdf; Letter from Regan A. Smith, Gen. Counsel & Assoc. Register of Copyrights, U.S. Copyright Office, to Class 10 Participants (June 29, 2018), https://www.copyright.gov/1201/2018/additional-correspondence/Proposed_Class_10_Letter.pdf.

³⁷ NPRM, 82 FR at 49563; see Section 1201 Report at 150–51 (documenting stakeholder desire for such further communication).

²² *Id.* at 143.

²³ *Id.* at 142, 145.

²⁴ NOI, 82 FR at 29805–07; Exemptions to Permit Circumvention of Access Controls on Copyrighted Works, 82 FR 49550, 49552 (Oct. 26, 2017) (“NPRM”).

²⁵ NOI, 82 FR at 29805–06; NPRM, 82 FR at 49552.

²⁶ Section 1201 Report at 143–44; NOI, 82 FR at 29806; NPRM, 82 FR at 49552.

²⁷ NPRM, 82 FR at 49552.

²⁸ Section 1201 Report at 145.

²⁹ See NPRM, 82 FR at 49554 (stating that if a renewal petition is meaningfully opposed, “the exemption would be considered pursuant to the more comprehensive rulemaking process (*i.e.*, three rounds of written comment, followed by public hearings”).

³⁰ Section 1201 Report at 149–51.

³¹ NOI, 82 FR at 29804.

³² Comments received in this rulemaking are available at <http://copyright.gov/1201/2018>.

meetings, and requiring participants to provide a letter summarizing the meeting for the Office to include in the rulemaking record.³⁸ The Office held nine *ex parte* meetings with participants concerning five proposed classes.³⁹

As required by section 1201(a)(1), the Acting Register consulted with NTIA during this rulemaking. NTIA provided input at various stages and participated in the public hearings held in Washington, DC and Los Angeles. NTIA formally communicated its views on each of the proposed exemptions to the Acting Register on September 25, 2018.⁴⁰

III. Summary of Register's Recommendation

A. Renewal Recommendations

As set forth in the NPRM, the Acting Register received petitions to renew every one of the exemptions adopted pursuant to the sixth triennial rulemaking. To the extent any renewal petition proposed uses beyond the current exemption, the Office disregarded those portions of the petition for purposes of considering the renewal of the exemption, and instead focused on whether it provided sufficient information to warrant re-adoption of the exemption in its current form.⁴¹ While a single party filed an opposition to renewal, the Acting Register concluded that its opposition was not sufficiently material to undermine the conclusion that the record and legal reasoning from the prior rulemaking supported renewal.⁴² Finding the renewal petitions sufficient under the guidelines outlined above, the Acting Register thus recommended renewal of each of the existing exemptions.⁴³ The existing exemptions, and the bases for the recommendation to re-adopt each exemption in accordance with the streamlined renewal process, are summarized below. Where noted, these exemptions served as a baseline for the Acting Register in considering subsequent requests for expansion.

³⁸ NPRM, 82 FR at 49563; Ex Parte Communications, U.S. Copyright Office (last visited Oct. 2, 2018), <https://www.copyright.gov/1201/2018/ex-parte-communications.html>.

³⁹ See Ex Parte Communications, U.S. Copyright Office, <https://www.copyright.gov/1201/2018/ex-parte-communications.html> (last visited Oct. 2, 2018).

⁴⁰ NTIA's recommendations can be viewed at https://www.copyright.gov/1201/2018/2018_NTIA_Letter.pdf.

⁴¹ See, e.g., NPRM, 82 FR at 49554.

⁴² *Id.*

⁴³ The Acting Register's analysis and conclusions regarding streamlined renewals can be found in the NPRM. See *id.* at 49552–58.

1. Literary Works Distributed Electronically—Assistive Technologies

Multiple organizations petitioned to renew the exemption for literary works distributed electronically (*i.e.*, e-books), for use with assistive technologies for persons who are blind, visually impaired, or have print disabilities. No oppositions were filed against re-adoption of this exemption. The petitions demonstrated the continuing need and justification for the exemption, stating that individuals who are blind, visually impaired, or print disabled are significantly disadvantaged with respect to obtaining accessible e-book content because TPMs interfere with the use of assistive technologies such as screen readers and refreshable Braille displays. In addition, the petitioners demonstrated personal knowledge and experience with regard to the assistive technology exemption; they are all organizations that advocate for the blind, visually impaired, and print disabled.

Accordingly, the Acting Register recommends renewal of the following exemption:

Literary works, distributed electronically, that are protected by technological measures that either prevent the enabling of read-aloud functionality or interfere with screen readers or other applications or assistive technologies:

(i) When a copy of such a work is lawfully obtained by a blind or other person with a disability, as such a person is defined in 17 U.S.C. 121; provided, however, that the rights owner is remunerated, as appropriate, for the price of the mainstream copy of the work as made available to the general public through customary channels; or

(ii) When such work is a nondramatic literary work, lawfully obtained and used by an authorized entity pursuant to 17 U.S.C. 121.

2. Literary Works—Compilations of Data Generated by Implanted Medical Devices—To Access Personal Data

Hugo Campos, member of the Coalition of Medical Device Patients and Researchers, and represented by the Harvard Law School Cyberlaw Clinic, petitioned to renew the exemption covering access to patient data on networked medical devices. No oppositions were filed against the petition to renew this exemption. Mr. Campos's petition demonstrated the continuing need and justification for the exemption, stating that patients continue to need access to data output from their medical devices to manage their health. Mr. Campos himself is a patient needing access to the data output from his medical device.

Accordingly, the Acting Register recommends renewal of the following exemption:

Literary works consisting of compilations of data generated by medical devices that are wholly or partially implanted in the body or by their corresponding personal monitoring systems, where such circumvention is undertaken by a patient for the sole purpose of lawfully accessing the data generated by his or her own device or monitoring system and does not constitute a violation of applicable law, including without limitation the Health Insurance Portability and Accountability Act of 1996, the Computer Fraud and Abuse Act of 1986 or regulations of the Food and Drug Administration, and is accomplished through the passive monitoring of wireless transmissions that are already being produced by such device or monitoring system.

3. Computer Programs—“Unlocking” of Cellphones, Tablets, Mobile Hotspots, or Wearable Devices

Multiple organizations petitioned to renew the exemption for computer programs that operate cellphones, tablets, mobile hotspots, or wearable devices (*e.g.*, smartwatches), to allow connection of a used device to an alternative wireless network (“unlocking”). No oppositions were filed against the petitions seeking to renew this exemption. The petitions demonstrated the continuing need and justification for the exemption, stating that consumers of the enumerated products continue to need to be able to unlock the devices so they can switch network providers. For example, the Institute of Scrap Recycling Industries, Inc. (“ISRI”) stated that its members continue to purchase or acquire donated cell phones and tablets, and try to reuse them, but that wireless carriers still lock devices to prevent them from being used on other carriers. In addition, the petitioners demonstrated personal knowledge and experience with regard to this exemption: Competitive Regiers Association, Owners' Rights Initiative (“ORI”), and ISRI represent companies that rely on the ability to unlock cellphones.

Accordingly, the Acting Register recommends renewal of this exemption and will consider proposed expansions below in the discussion on Proposed Class 5.

4. Computer Programs—“Jailbreaking” of Smartphones, Smart TVs, Tablets, or Other All-Purpose Mobile Computing Devices

Multiple organizations petitioned to renew the exemptions for computer programs that operate smartphones, smart TVs, tablets, or other all-purpose mobile computing devices, to allow the

device to interoperate with or to remove software applications (“jailbreaking”). The petitions demonstrate the continuing need and justification for the exemptions, and that petitioners had personal knowledge and experience with regard to these exemptions. Specifically, the petitions state that, absent the exemptions, TPMs applied to the enumerated products would have an adverse effect on noninfringing uses, such as being able to install third-party applications on a smartphone or to download third-party software on a smart TV to enable interoperability. For example, the Electronic Frontier Foundation’s (“EFF’s”) petition outlined its declarant’s experience searching current mobile computing device markets and technologies, working as a software engineer, and participating in four prior 1201 rulemakings. Similarly, the Libiquity petition was submitted by a person who “work[s] with the operating system and many of the system libraries that lie at the core of the firmware systems of a large majority of smartphones, portable all-purpose mobile computing devices, and smart televisions.” In a brief two-page comment, BSA v The Software Alliance (“BSA”) opposed the readoption of this exemption, asserting that “alternatives to circumvention exist,” and that “jailbreaking can undermine the integrity and security of a platform’s operating system in a manner that facilitates copyright infringement and exposes users to heightened risks of privacy violations.”

In the NPRM, the Office concluded that BSA’s opposition was not sufficient to draw the conclusion that the past rulemaking record is no longer reliable, or that the reasoning adopted in the Register’s 2015 Recommendation cannot be relied upon for the next three-year period. Specifically, the Office stated that BSA’s comment largely re-articulated a general opposition to a jailbreaking exemption, and noted that the past three rulemakings have adopted some form of an exemption for jailbreaking certain types of mobile computing devices. The Office also noted that BSA had failed to identify any specific circumvention alternatives, changes in case law, new technological developments, or new issues that had not already been considered and evaluated in granting the exemption previously.

Accordingly, the Acting Register recommends renewal of this exemption and will consider proposed expansions below in the discussion on Proposed Class 6.

5. Computer Programs—Diagnosis, Repair, and Lawful Modification of Motorized Land Vehicles

Multiple organizations petitioned to renew the exemption for computer programs that control motorized land vehicles, including farm equipment, for purposes of diagnosis, repair, and modification of the vehicle. The petitions demonstrated the continuing need and justification for the exemption to prevent owners of motorized land vehicles from being adversely impacted in their ability to diagnose, repair, and modify their vehicles as a result of TPMs that protect the copyrighted computer programs on the electronic control units (“ECUs”) that control the functioning of the vehicles. Indeed, the Motor & Equipment Manufacturers Association, which during the sixth triennial rulemaking initially opposed any exemption that would impact the software and TPMs in vehicles, now supports the exemption as striking an appropriate balance between encouraging marketplace competition and innovation while mitigating the impact on safety, regulatory, and environmental compliance. The petitioners demonstrated personal knowledge and experience with regard to this exemption; each either represents or gathered information from individuals conducting repairs or businesses that manufacture, distribute, and sell motor vehicle parts, and perform vehicle service and repair.

Accordingly, the Acting Register recommends renewal of this exemption and will consider proposed expansions below in the discussion on Proposed Class 7.

6. Computer Programs—Security Research

Multiple organizations and security researchers petitioned to renew the exemption for purposes of good-faith security research. The petitioners demonstrated the continuing need and justification for the exemption, and personal knowledge and experience with regard to this exemption. For example, Professors Bellovin, Blaze, and Heningler stated that they have conducted their own security research in reliance on the existing exemption, and that they “regularly engage” with other security researchers who have similarly relied on the exemption. They provided an example of a recent computer security conference in which thousands of participants relied on the existing exemption to examine and test electronic voting devices—the results of which were reported to election officials

to improve the security of their voting systems.

Accordingly, the Acting Register recommends renewal of this exemption and will consider proposed expansions below in the discussion on Proposed Class 10.

7. Computer Programs—3D Printers

Michael Weinberg and ORI jointly petitioned to renew the exemption for computer programs that operate 3D printers to allow use of alternative feedstock. No oppositions were filed against readoption of this exemption. The petition demonstrated the continuing need and justification for the exemption, and the petitioners demonstrated personal knowledge and experience, in particular, through Mr. Weinberg’s experience petitioning for the exemption adopted in 2015. In addition, the petition states that printers continue to restrict the use of third-party feedstock, thereby requiring renewal of the exemption.

Accordingly, the Acting Register recommends renewal of this exemption and will consider proposed expansions below in the discussion on Proposed Class 12.

8. Video Games Requiring Server Communication—for Continued Individual Play and Preservation of Games by Libraries, Archives, and Museums

Multiple organizations petitioned to renew the exemption for video games for which outside server support has been discontinued. The petitions stated that individuals still need the exemption to engage in continued play and libraries and museums continue to need the exemption to preserve and curate video games in playable form. In addition, the petitioners demonstrated personal knowledge and experience with regard to this exemption through past participation in the 1201 triennial rulemaking relating to access controls on video games and consoles, and/or representing major library associations with members that have relied on this exemption.

Accordingly, the Acting Register recommends renewal of this exemption and will consider proposed expansions below in the discussion on Proposed Class 8.

9. Audiovisual Uses—Educational and Derivative Uses

Multiple individuals and organizations petitioned to renew the exemption consisting of multiple subparts covering use of short portions of motion pictures for various educational and derivative uses. No

oppositions were filed. Petitions to renew the various subparts of the exemption are discussed below.

9a. Audiovisual Uses—Educational Uses—Colleges and Universities

Multiple individuals and organizations petitioned to renew the exemption's subpart covering use of motion picture clips for educational uses by college and university instructors and students (codified at 37 CFR 201.40(b)(1)(iv) (2016)). No oppositions were filed against re adoption. The petitions demonstrated the continuing need and justification for the exemption, and personal knowledge and experience with regard to the exempted use. For example, Professors Decherney, Sender, and Carpini, the Department of Communications at the University of Michigan ("DCSUM"), the International Communication Association ("ICA"), the Society for Cinema and Media Studies ("SCMS"), the American Association of University Professors ("AAUP"), and the Library Copyright Alliance ("LCA") stated that courses on video essays (or multimedia or videographer criticism), now taught at many universities, would not be able to exist without relying on this exemption. Similarly, Professor Hobbs, who represents more than 17,000 digital and media literacy educators, and the National Association for Media Literacy Education ("NAMLE"), an organization devoted to media literacy with more than 3,500 members, stated that teachers must sometimes circumvent a DVD protected by the Content Scramble System ("CSS") when screen-capture software or other non-circumventing alternatives are unable to produce the required level of high-quality content.

9b. Audiovisual Uses—Educational Uses—Primary and Secondary Schools (K–12)

Multiple organizations petitioned to renew the exemption's subparts covering use of motion picture clips for educational uses by K–12 instructors and students. No oppositions were filed against re adoption. The petitions demonstrated the continuing need and justification for the exemption, stating that K–12 instructors and students continue to rely on excerpts from digital media for class presentations and coursework, and must sometimes use screen-capture technology. In addition, the petitioners demonstrated personal knowledge and experience with regard to this exemption through representation of thousands of digital and literacy educators and/or members supporting K–12 instructors and students, combined with past

participation in the section 1201 triennial rulemaking.

9c. Audiovisual Uses—Educational Uses—Massive Open Online Courses ("MOOCs")

Professors Decherney, Sender, and Carpini, DCSUM, ICA, SCMS, and LCA petitioned to renew the exemption's subpart covering use of motion picture clips for educational uses in MOOCs. No oppositions were filed against re adoption. The petition demonstrated the continuing need and justification for the exemption, stating that instructors continue to rely on the exemption to develop, provide, and improve MOOCs, as well as increase the number of (and therefore access to) MOOCs in the field of film and media studies. For example, the declarant, Professor Decherney, demonstrated personal knowledge by describing his reliance on the exemption to teach MOOCs on film and media studies.

9d. Audiovisual Uses—Educational Uses—Educational Programs Operated by Libraries, Museums, and Other Nonprofits

Multiple organizations petitioned to renew the subpart of the exemption covering use of motion picture clips for educational uses in digital and literacy programs offered by libraries, museums, and other nonprofits. No oppositions were filed against re adoption. The petitions demonstrated the continuing need and justification for the exemption, and demonstrated personal knowledge and experience with regard to the exempted use. For example, LCA stated that librarians across the country have relied on the current exemption and will continue to do so for their digital and literacy programs. In addition, Professor Hobbs and NAMLE stated that librarians will continue to rely on the exemption for their digital and literacy programs, and to advance the digital media knowledge of their patrons.

9e. Audiovisual Uses—Derivative Uses—Multimedia E-Books Offering Film Analysis

A professor and two organizations collectively petitioned to renew the subpart of the exemption covering the use of motion picture clips for multimedia e-books offering film analysis. No oppositions were filed against re adoption. The petition demonstrated the continuing need and justification for the exemption, attesting that the availability of video necessary for authors to undertake film analysis in e-books continues to be limited to formats encumbered by technological

protection measures. In addition, the petitioners demonstrated personal knowledge through Professor Buster's continued work on an e-book series based on her lecture series, "Deconstructing Master Filmmakers: The Uses of Cinematic Enchantment," and Authors Alliance's feedback that its members continue to desire authoring e-books that incorporate film for the purpose of analysis.

9f. Audiovisual Uses—Derivative Uses—Documentary Filmmaking

Multiple organizations petitioned to renew the subpart of the exemption covering the use of motion picture clips for uses in documentary films. No oppositions were filed against re adoption. The petitions summarized the continuing need and justification for the exemption, and the petitioners demonstrated personal knowledge and experience with regard to the exempted use. For example, Film Independent ("FI"), the International Documentary Association ("IDA"), Kartemquin Educational Films, Inc. ("KEF"), the Center for Independent Documentary ("CID"), and Women in Film and Video ("WIFV") stated that TPMs such as encryption continue to prevent filmmakers from accessing needed material in a sufficiently high quality to satisfy demands of distributors and viewers. Petitioners state that they personally know many filmmakers who have found it necessary to rely on this exemption, and will continue to do so.

9g. Audiovisual Uses—Derivative Uses—Noncommercial Remix Videos

Two organizations petitioned to renew the subpart of the exemption covering the use of motion picture clips for uses in noncommercial videos. No oppositions were filed against re adoption. The petitions demonstrated the continuing need and justification for the exemption, and the petitioners demonstrated personal knowledge and experience with regard to the exempted use. For example, the Organization for Transformative Works ("OTW") has advocated for the noncommercial video exemption in past triennial rulemakings, and has heard from a number of noncommercial remix artists who have used the exemption and anticipate needing to use it in the future. Similarly, New Media Rights ("NMR") stated that it has spoken to a number of noncommercial video creators who have relied on this exemption, and intend to do so in the future.

Accordingly, the Acting Register recommends renewal of this exemption, including all of its subparts, and will

consider proposed expansions below in the discussion on Proposed Class 1.

B. New or Expanded Designations of Classes

Based upon the record in this proceeding regarding proposed expansions to existing exemptions or newly proposed exemptions, the Acting Register recommends that the Librarian determine that the following classes of works be exempt from the prohibition against circumvention of technological measures set forth in section 1201(a)(1):

1. Proposed Class 1: Audiovisual Works—Criticism and Comment⁴⁴

Several petitions sought expansion of the existing exemption for circumvention of access controls protecting “short portions” of motion pictures on DVDs, Blu-Ray discs, and digitally transmitted video for purposes of criticism and comment by various users, including creators of noncommercial videos, college and university faculty and students, faculty of MOOCs, documentary filmmakers, and for nonfiction multimedia e-books offering film analysis. With the exception of one petition, proponents sought to keep the limitation to circumvention for uses of “short portions” of motion pictures, which the Register has previously found to be “integral” in recommending the current exemption. The proposed expansions implicate the same types of TPMs regardless of proposed noninfringing use, namely CSS-protected DVDs, AACS-protected Blu-ray discs, and various TPMs applicable to online distribution services. Because the new proposals raised some shared concerns, including the impact of TPMs on the alleged noninfringing uses of motion pictures and whether alternative methods of accessing the content could alleviate potential adverse impacts, the Office grouped these petitions into one class. This approach also accounted for a petition which proposed an “overarching exemption that would embrace multiple audiovisual classes” and collapse (essentially) all of the subparts in the existing exemption to eliminate limitations on the types of user or use—and instead allow circumvention so long as the purpose is for criticism and comment.

Screen-Capture Technology

For several of the activities it covers, the current exemption expressly permits the use of screen-capture technology

and also allows circumvention only where the user “reasonably believes that screen-capture software or other non-circumventing alternatives are unable to produce the required level of high-quality content.” Here, proponents sought to remove references to screen-capture technology, arguing that it is not a viable alternative because it does not permit the proposed uses, or else results in degraded-quality (and thus unusable) content. Others contended that the dual references to screen-capture technology are confusing. In response, opponents argued that screen-capture technology remains an adequate alternative to circumvention.

In the 2015 rulemaking, the Register concluded that certain uses of motion picture clips for criticism and comment do not require access to higher-quality content, and that screen-capture technology may be an alternative to circumvention—but that it can be unclear to users as to whether screen-capture technology may in fact involve circumvention. Accordingly, in this rulemaking the Acting Register recommended retaining a screen-capture provision for these categories to address the possibility of circumvention when using this technology. In addition, the Acting Register found it appropriate to continue to distinguish between purposes requiring high-quality motion picture clips and more general purposes that do not.

AACS2 Technology

Opponents argued that the exemption should not be expanded to include AACS2 technology, which is employed to protect ultra-high-definition or “4K” content distributed on Ultra HD Blu-ray discs. Opponents maintained that none of the petitions expressly sought extension to AACS2, and that the current exemption does not extend to AACS2 on Ultra HD Blu-ray discs, as that technology did not exist at the time of the 2015 rulemaking. In response, proponents asserted that the Acting Register should extend the proposed exemption to AACS2 technology because although AACS2 is different in form, it is fundamentally the same in function.

The Acting Register found the record insufficient to support extending the proposed class to AACS2. Her analysis of this proposed exemption thus addressed only TPMs employed on DVDs and Blu-ray discs, and by various online streaming services to protect motion pictures.

a. Single Overarching Exemption for Purposes of Comment and Criticism

EFF, NMR, and OTW proposed permitting circumvention to make use of motion picture excerpts so long as the purpose is for criticism and comment. They did not provide specific examples of proposed noninfringing uses or analyze such proposed uses under the 1201 statutory factors, but rather focused on “the value of adopting a simple overarching exemption that would embrace multiple audiovisual classes” for purposes of criticism and comment. EFF, NMR, and OTW asserted that the existing language is “practically unreadable” due to their complexities, and “a challenge for clients and attorneys alike to apply in practice.”

Opponents contended that the petition to create a single overarching exemption overstates the complexity of the existing exemption, and that the proposed expansion would eliminate carefully drawn distinctions among potential users of motion picture content. Opponents also asserted that to be appropriately narrow, exemptions should identify the specific persons who will be adversely affected in their abilities to make noninfringing uses by the section 1201 prohibition.

NTIA opposed the removal of all limitations on the types of user or use, concluding that “eliminating all of the categories of specific users . . . would stray too far from the statutory requirement of specificity.”

The Acting Register declined to recommend adopting EFF, NMR, and OTW’s proposed language, finding it overly broad for purposes of section 1201, and inconsistent with the rulemaking record upon which the current exemption has been adopted. She noted that courts evaluate fair use claims on a case-by-case basis, and the context in which use of the work is being made is part of that inquiry (*e.g.*, commercial versus noncommercial use). She found that the proposed language would eliminate these legally important distinctions.

b. Universities and K–12 Educational Institutions

BYU filed a petition to create a single consolidated exemption that would permit circumvention for nonprofit educational purposes in accordance with sections 110(1) and 110(2) of the Copyright Act. BYU proposed eliminating the “criticism and comment” limitation, references to screen-capture technology, and distinctions based on education level and type of educational course.

Opponents argued that although section 110(1) allows certain public

⁴⁴ The Acting Register’s analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Recommendation at 31–89.

performances of complete motion pictures in classrooms without obtaining licenses, it does not allow those performances to be made from unauthorized copies. Opponents also noted that sections 110(1) and 110(2) provide exceptions only to the public performance and display rights, not to the rights of reproduction or distribution, and that therefore they would not fully cover the proposed uses, which involve making and “librarying” copies of full-length films.

NTIA recommended allowing circumvention for colleges and universities to make use of entire motion pictures. In its view, the storage of a copy “in a central secured server available only for transmission to the institution’s classrooms” is “not fundamentally different from the uses allowed by the existing exemption” for purposes of analyzing whether the activity is a fair use.

The Acting Register concluded that section 110 cannot, by itself, establish that BYU’s proposed activities are noninfringing because any performances of motion pictures under sections 110(1) and 110(2) must originate from lawfully acquired copies. The Acting Register thus evaluated whether the copies made and used to facilitate the proposed motion picture performances were themselves noninfringing under section 112(f) and/or the fair use doctrine. The Acting Register determined that on its face, section 112(f) does not permit nonprofit educational institutions to make copies to facilitate performances under section 110(1). She found, however, that section 112(f) does support a conclusion that making and temporarily storing digital copies of motion pictures to perform “reasonable and limited portions” in distance teaching would be noninfringing, assuming the other requirements of section 110(2) are met. But she determined that such activity appears to be already covered by the existing exemption.

Regarding the use of short motion picture clips in face-to-face teaching, the Acting Register concluded that the record demonstrates that a significant number of the proposed uses are likely to be fair, such as using short film clips to create compilations from foreign language films with and without subtitles. By contrast, based on the relevant case law, the Acting Register could not conclude as a general matter that the contemplated uses of full-length motion pictures are likely to be fair. She found that DVD and Blu-ray players are still widely available on the market and that extending the exemption to such uses could undermine the value of the

market for works in those formats. She noted that, although institutions may incur a cost in re-purchasing digital versions of audiovisual works, the section 1201 exemption process is not meant to guarantee consumers the ability to access content through their preferred method or format.

Ultimately, the Acting Register recommended an expansion that allows K–12 and university faculty and students to engage with motion picture excerpts of high quality in contexts other than courses requiring close analysis of film excerpts, as well as for teaching or scholarship more generally. Based upon additional examples provided in this rulemaking cycle, the Acting Register recommended that the exemption retain the requirement that a person must reasonably believe that non-circumventing alternatives are unworkable, but remove the references to “film studies or other courses requiring close analysis” and eliminate distinctions between K–12 and universities and colleges, as well as between faculty and students. The Acting Register recommended, however, that the exemption require K–12 students to act under the direct supervision of K–12 educators.

c. Massively Open Online Courses (“MOOCs”)

Professors Decherney, Sender, Carpini, and DCSUM requested an expansion to allow faculty of MOOCs to circumvent for “all online courses” (*i.e.*, remove the limitation to “film studies or other courses requiring close analysis of film and media excerpts”), and for MOOCs offered by unaccredited and for-profit educational institutions. They maintained that without expanding the exempted use of MOOCs, there would be no ability for unaccredited, for-profit, or for-credit online educational offerings to use motion picture clips in MOOCs without licensing. They also argued that because the motion picture clips in this context would be used exclusively for educational purposes, such use would be unlikely to harm the market for motion pictures.

Opponents argued that proponents failed to support their assertion that including for-profit and unaccredited educational institutions likely constitutes fair use, and that the record lacked any examples of for-profit or unaccredited educational institutions wanting, but unable, to offer MOOCs, suggesting the expansion would cover only speculative uses.

Based on its review of the record, NTIA recommended expansion to for-profit educational institutions, but not to unaccredited educational institutions.

The Acting Register concluded that the record lacked examples sufficient to evaluate or recommend expansion to for-profit or unaccredited educational institutions, and did not demonstrate that section 1201 is inhibiting the use of motion pictures in online education offered by for-profit and/or unaccredited educational institutions. The Acting Register also found that proponents’ broadly framed proposal seeking to encompass “all online courses” would seemingly encompass any online video that could be characterized as an educational experience. The Register therefore recommended that the MOOCs language from the existing exemption be readopted without substantive changes.

d. Filmmaking

FI, IDA, and KEF sought expansion of the current exemption to permit circumvention for use of motion picture clips in all types of films (*i.e.*, remove the “documentary” limitation), a request rejected by the Register in 2015. Proponents argued that the exemption should be expanded because defining a “documentary” film is difficult, as many films that are not traditionally classified as a “documentary” use motion picture excerpts to engage in educational and social commentary. Proponents also asserted that many filmmakers do not know whether they are permitted to use the exemption.

The 2015 rulemaking identified fair use as the noninfringing basis for this exemption, and the Acting Register evaluated the proposed expansion on the same grounds. Proponents provided multiple examples of non-documentary films using short motion picture clips for parody or for the clip’s biographical or historical significance, ostensibly to provide criticism or commentary. Proponents also disputed that either clips created using non-circumventing screen capture technology, or clips obtained via licensing are viable alternatives for the proposed uses, and argued that expansion of the exemption to non-documentaries would not affect the market for motion pictures.

Opponents maintained that proponents failed to develop a record of likely noninfringing uses to support extension of the exemption to non-documentary films. Opponents also argued that the proposed uses would negatively impact the clip licensing market for motion pictures, and that licenses are readily available for using short portions of motion pictures. Opponents further contended that screen-capture technologies serve as valid alternatives to circumvention.

NTIA concluded that the existing exemption should be expanded to all

films. It maintained that the record supports a finding that in many instances the use of short portions of motion pictures is likely a noninfringing fair use and that opponents failed to demonstrate the expansion to non-documentaries would cause market harm.

Based on the extensive record, the Acting Register recommended that the existing exemption for documentary films be expanded to include a subset of fictional (*e.g.*, narrative) films for purposes of criticism and comment, where the clip is used for parody or its biographical or historically significant nature. She concluded this limitation would best reflect the examples in the record, many of which appear to involve the use of clips for purposes of criticism and comment, while preserving the requirement that filmmakers continue to seek authorization before using excerpts for general storytelling uses. The Acting Register found that the use of small portions of films for these purposes is consistent with principles of fair use and is unlikely to supplant the market for motion pictures, but cautioned that filmmakers would continue to need to obtain authorization for uses of clips outside of these uses.

e. Multimedia E-Books

The Authors Alliance, AAUP, OTW, the Interactive Fiction Technology Foundation, and Professor Buster (collectively, “Authors Alliance et al.”) sought expansion of the current exemption to permit circumvention for use of motion picture clips in all nonfiction multimedia e-books by removing the “offering film analysis” limitation. Authors Alliance et al. also sought expansion to fictional multimedia e-books and removal of references to screen-capture technology.

The 2015 rulemaking identified fair use as the noninfringing basis for this exemption, and the proposed expansion was evaluated on the same grounds. Proponents asserted that the uses of clips for comment or criticism in nonfiction multimedia e-books beyond those offering film analysis, as well as fictional multimedia e-books, are transformative and thus fair. Proponents also argued that expansion will not negatively impact the market for or value of copyrighted works. Proponents asserted that screen capture is an inadequate alternative to circumvention and that licensing remains an unworkable alternative due to high fees, difficulties in locating the rightsholders, and the delays caused by protracted negotiations.

In response, opponents argued that the record lacked evidence of actual use

of a motion picture clip in a fictional e-book or in an “other nonfiction” e-book, and that in the absence of actual use, evaluating the proposal is all but impossible. Regarding nonfictional uses, opponents asserted that many of the alleged additional uses would qualify under the current “film analysis” limitation. As to fictional uses, opponents maintained that the creation of fan fiction multimedia e-books would frequently infringe the right to prepare derivative works. Opponents also asserted that as with the proposed filmmaking expansion, there will be harm to the clip licensing market if the proposed e-books uses are exempted.

NTIA recommended expanding the exempted use to include all nonfiction multimedia e-books (*i.e.*, eliminating the “offering film analysis” limitation), but did not recommend expansion to fictional multimedia e-books.

The Acting Register found that the record failed to establish that the proposed uses in fictional e-books would likely be noninfringing, and thus she did not recommend expanding the exemption to such works. She did find, however, that the record supported expansion to all nonfiction multimedia e-books. Such an expansion, she concluded, is unlikely to harm, and may increase, the availability of copyrighted works. In addition, the Acting Register found that the proposed uses will facilitate criticism, comment, teaching and/or scholarship, and that they are unlikely to substitute for the original work in the marketplace.

f. Conclusion for Class 1

Accordingly, the Acting Register recommends that the Librarian adopt the following exemption:

Motion pictures (including television shows and videos), as defined in 17 U.S.C. 101, where the motion picture is lawfully made and acquired on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Content System, or via a digital transmission protected by a technological measure, and the person engaging in circumvention under paragraph (b)(1)(i) and (b)(1)(ii)(A) and (B) of this section reasonably believes that non-circumventing alternatives are unable to produce the required level of high-quality content, or the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted, where circumvention is undertaken solely in order to make use of short portions of the motion pictures in the following instances:

(i) For the purpose of criticism or comment:

(A) For use in documentary filmmaking, or other films where the motion picture clip is

used in parody or for its biographical or historically significant nature;

(B) For use in noncommercial videos (including videos produced for a paid commission if the commissioning entity’s use is noncommercial); or

(C) For use in nonfiction multimedia e-books.

(ii) For educational purposes:

(A) By college and university faculty and students or kindergarten through twelfth-grade (K–12) educators and students (where the K–12 student is circumventing under the direct supervision of an educator), including of accredited general educational development (GED) programs, for the purpose of criticism, comment, teaching, or scholarship;

(B) By faculty of massive open online courses (MOOCs) offered by accredited nonprofit educational institutions to officially enrolled students through online platforms (which platforms themselves may be operated for profit), in film studies or other courses requiring close analysis of film and media excerpts, for the purpose of criticism or comment, where the MOOC provider through the online platform limits transmissions to the extent technologically feasible to such officially enrolled students, institutes copyright policies and provides copyright informational materials to faculty, students, and relevant staff members, and applies technological measures that reasonably prevent unauthorized further dissemination of a work in accessible form to others or retention of the work for longer than the course session by recipients of a transmission through the platform, as contemplated by 17 U.S.C. 110(2); or

(C) By educators and participants in nonprofit digital and media literacy programs offered by libraries, museums, and other nonprofit entities with an educational mission, in the course of face-to-face instructional activities, for the purpose of criticism or comment, except that such users may only circumvent using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted.

2. Proposed Class 2: Audiovisual Works—Accessibility⁴⁵

Proposed Class 2 would allow circumvention of technological measures protecting motion pictures (including television shows and videos) on DVDs, Blu-ray discs, and via digital transmissions, for disability services professionals at educational institutions to create accessible versions for students with disabilities by adding captions and/or audio description.⁴⁶ Proponents

⁴⁵ The Acting Register’s analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Recommendation at 89–111.

⁴⁶ “Captioning” is “the process of converting the audio content” of audiovisual material, such as a motion picture, “into text and displaying the text on a screen, monitor, or other visual display system.” Nat’l Ass’n of the Deaf, *What is*

explained that nearly all educational institutions are subject to disability laws such as the Americans With Disabilities Act (“ADA”), section 504 of the Rehabilitation Act (“Section 504”), and the Individuals With Disabilities Education Act (“IDEA”), which require accommodations for students with disabilities. Proponents maintained that creating accessible versions by adding captions and/or audio description is necessary because inaccessible motion pictures remain prevalent in the video industry, and copyright owners fail to retroactively make motion pictures accessible or grant permission to disability services offices to make those works accessible, even when contacted directly.

Proponents asserted that adding captions and/or audio description to motion pictures for the purpose of making them accessible to students with disabilities constitutes fair use based on the legislative history of section 107. Proponents also argued that viable alternatives to circumvention do not exist, and that not allowing circumvention will negatively affect the market for the copyrighted motion pictures because educational institutions will not use content that they cannot easily convert into an accessible format.

In response, opponents noted that while accessibility is an important issue, the proposed class was too broad because it did not take into account the extent to which DVDs and Blu-ray discs already include closed captions and audio description. They argued that the result of altering a motion picture—such as by adding captioning and/or audio description—is likely a derivative work that involves a creative interpretation of the underlying work. Opponents generally contended that the wide availability of versions with captioning and/or audio description already in the market constitutes a viable alternative to circumvention.

NTIA recommended that the proposed exemption allow “disability services offices and equivalent units” to “circumvent TPMs on audiovisual works in educational settings to add accessibility features” to motion

pictures, including “through the provision of closed and open captions and audio description.” In agreement with the Acting Register, NTIA believes that the exemption should apply “regardless of grade level” of the student, and apply to both nonprofit and for-profit educational institutions required to make motion pictures accessible to students under disability laws.

The Acting Register concluded that an exemption should be granted, with a few adjustments to the language outlined in the petition. She recommended that the exemption permit circumvention where the accessible version is created as a necessary accommodation for a student or students with disabilities under a federal or state disability law, such as the ADA, IDEA, or Section 504. In addition, the Acting Register recommended that the exemption apply to for-profit and nonprofit educational institutions, as well as to K–12 institutions, colleges, and universities, because they are subject to such disability laws. The Acting Register also recommended that the exemption allow circumvention only after the educational institution has conducted a reasonable market check and determined that an accessible version is not available, not available at a fair price, or not available in a timely way. The record suggested that these searches are already occurring, and that regardless of whether a decision is made to create an accessible version, outsource the creation of an accessible version, or purchase an accessible version, the educational institution would incur a cost. In this way, the market check requirement seeks to prevent copies being made of works already available in accessible formats, while encouraging the motion picture industry to further expand the availability of accessible versions in the marketplace. Finally, the recommended exemption requires the accessible versions to be provided to students and stored by the educational institution in a manner that reasonably prevents unauthorized further dissemination of the work.

Accordingly, the Acting Register recommends that the Librarian adopt the following exemption:

(i) Motion pictures (including television shows and videos), as defined in 17 U.S.C. 101, where the motion picture is lawfully acquired on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Content System, or via a digital transmission protected by a technological measure, where:

(A) Circumvention is undertaken by a disability services office or other unit of a kindergarten through twelfth-grade educational institution, college, or university engaged in and/or responsible for the provision of accessibility services to students, for the purpose of adding captions and/or audio description to a motion picture to create an accessible version as a necessary accommodation for a student or students with disabilities under an applicable disability law, such as the Americans With Disabilities Act, the Individuals with Disabilities Education Act, or Section 504 of the Rehabilitation Act;

(B) The educational institution unit in paragraph (b)(2)(i)(A) of this section has, after a reasonable effort, determined that an accessible version cannot be obtained at a fair price or in a timely manner; and

(C) The accessible versions are provided to students or educators and stored by the educational institution in a manner intended to reasonably prevent unauthorized further dissemination of a work.

(ii) For purposes of this paragraph (b)(2), “audio description” means an oral narration that provides an accurate rendering of the motion picture.

3. Proposed Class 5: Computer Programs—Unlocking⁴⁷

Proposed Class 5 would expand an existing exemption for activity known as “unlocking,” that is, circumvention of access controls on computer programs for the purpose of enabling a wireless device to connect to a different mobile network provider. The Copyright Office has received petitions to permit the unlocking of cellphones since 2006. In 2015, as directed by the Unlocking Consumer Choice and Wireless Competition Act (“Unlocking Act”),⁴⁸ the Register considered whether to expand the exemption to additional categories of wireless devices. Based on the record in that proceeding, the Register recommended, and the Librarian granted, an exemption covering cellphones, all-purpose tablet computers, portable mobile connectivity devices such as mobile hotspots, and wearable devices such as smartwatches or fitness devices.

The current exemption also is limited to used devices, *i.e.* those previously activated on a wireless carrier. First adopted in 2010, this limitation was implemented in response to concerns raised by wireless carriers engaged in the business of selling cellphones at substantially discounted prices and recouping that investment through the sale of prepaid wireless service. These companies feared that including new

Captioning?, NAD.ORG, <https://www.nad.org/resources/technology/captioning-for-access/what-is-captioning/> (last visited Oct. 2, 2018). By contrast, “audio description” is a narration added to the soundtrack of audiovisual material, such as a motion picture, to describe significant visual details (*e.g.*, descriptions of new scenes, settings, costumes, body language) for individuals with sight impairments. Am. Council of the Blind, *The Audio Description Project*, ACB.ORG, <http://www.acb.org/adp/ad.html> (last visited Oct. 2, 2018). Audio description may also be referred to as “video description” or “descriptive narration.” *Id.*

⁴⁷ The Register’s analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Recommendation at 145–63.

⁴⁸ Public Law 113–144, 128 Stat. 1751 (2014).

phones in the class could foster illegal trafficking activity, which involves “the bulk purchase of unused handsets that have been offered for sale at subsidized prices . . . and then unlocking and reselling those unlocked handsets for a profit.”⁴⁹

In this proceeding, ISRI petitioned for expansions that would (1) remove the enumerated device categories and instead permit circumvention to unlock “any wireless device”; and (2) eliminate the requirement that a wireless device be “used.” As to the limitation on devices, proponents argued that the owner of any connected device should be able to transfer it to the carrier of his or her choice. Proponents warned that the rapid pace of innovation within the Internet of Things industry makes it impossible to predict the specific categories of wireless devices that consumers may need to unlock. Regarding the “used” limitation, proponents argued that illegal trafficking does not implicate copyright interests and that concerns about such activity therefore are outside the proper scope of this rulemaking. Proponents further suggested that, in contrast to 2015, there now exists a need to unlock unused devices, offering examples of corporations acquiring excess devices that are never activated but that they later seek to recycle. The Office received no comments opposing either of these requested expansions.

NTIA recommended granting both aspects of the petition. As it did in 2015, NTIA concluded that “proponents have provided sufficient evidence to demonstrate that circumvention of TPMs on all lawfully acquired wireless devices is a noninfringing use.” In its view, the statutory prohibition “limits consumer choice of wireless network providers, limits recyclers’ ability to recycle or resell wireless devices, and limits competition between wireless network providers.” NTIA also concluded that proponents met their burden with respect to unused devices, pointing to evidence that since 2015, “business practices have changed, resulting in a need for bulk and individual unlocking of new wireless devices.” NTIA proposes replacing the term “used” in the exemption with the phrase “lawfully acquired.”

The Acting Register recommended expanding the exemption to unused devices falling within the categories listed in the current exemption. She concluded that unlocking such devices is likely noninfringing under section 117(a) of the Copyright Act for the same reasons noted in the 2015

Recommendation with respect to used devices. She further found that unlocking such devices is likely a fair use, regardless of whether the devices are new or used. With respect to potential cellphone trafficking, the Acting Register found that although such activity limits the network provider’s ability to sell devices at a discount, there were no allegations relating to trafficking raised in this proceeding, and it is not clear that the economic harm caused by that activity affects the value of the computer programs allowing devices to connect to wireless networks. She further noted that other causes of action, such as unfair competition or unjust enrichment, may be available to address injury to non-copyright interests. In addition, the Acting Register concluded that absent an exemption, users are likely to be adversely affected in their ability to unlock unused devices of these types. She found that extending the exemption to such devices will increase the availability of the software within them and that the record lacked evidence that doing so would harm the market for copyrighted works.

The Acting Register therefore recommended removal of the provision in the current exemption requiring that a covered device be “used.” Consistent with NTIA’s recommendation, she proposed adding language requiring that such a device be “lawfully acquired.” Because the regulations implementing the Unlocking Act already require that circumvention under this exemption be initiated by the “owner” of the relevant device or by a person or service provider at the direction of the owner, the Acting Register views this as a technical, rather than a substantive, change.⁵⁰

The Acting Register determined, however, that the record was insufficient to support expanding the exemption to additional types of wireless devices. As in 2015, she found the record too sparse to support a finding that unlocking wireless devices of all types is likely to be a fair use. Proponents did provide evidence regarding three specific categories of devices: Home security devices, agricultural equipment, and vehicle GPS trackers. Based on the record, the Acting Register concluded that these devices are similar to those covered by the current exemption in relevant respects, and that unlocking them therefore is likely to be a fair use. But she concluded that proponents failed to establish that they are, or are likely to be, adversely affected by section 1201 in their ability

to unlock these types of devices. Proponents did not demonstrate that it would be possible to connect these devices to an alternate wireless network even if an exemption were granted. The Acting Register thus found that they failed to carry their burden to show actual or likely adverse effects resulting from the bar on circumvention. She therefore declined to recommend removal of the exemption’s enumerated device categories.

Accordingly, the Acting Register recommends that the Librarian adopt the following exemption:

Computer programs that enable the following types of lawfully acquired wireless devices to connect to a wireless telecommunications network, when circumvention is undertaken solely in order to connect to a wireless telecommunications network and such connection is authorized by the operator of such network:

- (i) Wireless telephone handsets (*i.e.*, cellphones);
- (ii) All-purpose tablet computers;
- (iii) Portable mobile connectivity devices, such as mobile hotspots, removable wireless broadband modems, and similar devices; and
- (iv) Wearable wireless devices designed to be worn on the body, such as smartwatches or fitness devices.

4. Proposed Class 6: Computer Programs—Jailbreaking⁵¹

Proposed Class 6 would expand an existing exemption for activity known as “jailbreaking”—that is, the process of gaining access to the operating system of a computing device to install and execute software that could not otherwise be installed or run on that device, or to remove pre-installed software that could not otherwise be uninstalled. An existing exemption permits the jailbreaking of smartphones and portable all-purpose mobile computing devices. In this proceeding, EFF filed a petition seeking to expand the current exemption by: (1) Adding voice assistant devices, such as the Amazon Echo and Google Home, to the categories of devices covered by the exemption; and (2) allowing jailbreaking not only to install, run, or remove software, but also for the purpose of enabling or disabling hardware features of the relevant device.

In proponents’ view, the fair use analysis relied upon by the Register in recommending the previous jailbreaking exemptions is equally applicable in the context of voice assistant devices. Moreover, regarding the 1201 statutory factors, proponents argued that a

⁵¹ The Acting Register’s analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Recommendation at 163–85.

⁴⁹ 2015 Recommendation at 145.

⁵⁰ 37 CFR 201.40(c) (2016).

jailbreaking exemption will have either no effect or a positive effect on the availability of copyrighted firmware and application software.

Opponents principally argued that jailbreaking is likely to enable voice assistant devices to access pirated content. Opponents asserted that piracy concerns are greater in the context of voice assistant devices than in that of other devices, as the former are relatively simple devices that do not incorporate the same “hardware and software complexity” that exists in personal computers, and therefore they provide more limited security options. Opponents further suggested that jailbreaking would facilitate the installation of counterfeit apps and apps that enable unauthorized access to copyrighted content. Opponents challenged the contention that jailbreaking is necessary to promote the development of new applications.

NTIA recommended granting the exemption in the form requested by proponents.

It agreed that jailbreaking voice assistant devices is unlikely to harm the market for copyrighted works, noting that there is no evidence of market harm for the devices covered by the current exemption. NTIA rejected opponents’ argument about unauthorized access to entertainment content on the ground that it “fail[s] to explain why infringement is more likely on voice assistant platforms than on smartphones, tablets, and other devices already subject to the exemption.” NTIA further concluded that proponents had demonstrated that users in this class are adversely affected by the statutory prohibition.

The Acting Register found that proponents met their burden of showing that jailbreaking voice assistant devices within the meaning of the current exemption is likely to be a fair use. She concluded that the record failed to show that the prior jailbreaking exemptions have harmed the market for firmware in smartphones or all-purpose mobile devices, and that nothing in the record suggests that a different conclusion is warranted for voice assistant devices. Additionally, the Acting Register found the record insufficient to establish that an expanded exemption is likely to harm the market for copyrighted works streamed to voice assistant devices. While acknowledging that piracy of streamed content is a highly significant concern, the evidence was insufficient to conclude that allowing jailbreaking of voice assistant devices created a greater risk of unauthorized access to streaming content than exists with respect to other devices, and suggested that subscription

streaming services typically control access to their content with TPMs separate from those protecting the firmware. The Acting Register thus recommended adoption of an exemption authorizing the jailbreaking of voice assistant devices, which must be “designed to take user input primarily by voice.” The recommended exemption excludes video game consoles, set-top boxes, DVD and Blu-Ray players, and similar devices that typically are operated using buttons. To address opponents’ serious concerns over the potential use of jailbroken devices as platforms for unauthorized content, the Acting Register recommended including language expressly excluding circumvention undertaken for purpose of accessing such material.

Accordingly, the Acting Register recommends that the Librarian adopt the following exemption:

Computer programs that enable voice assistant devices to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the device, or to permit removal of software from the device, and is not accomplished for the purpose of gaining unauthorized access to other copyrighted works. For purposes of this paragraph (b)(8), a “voice assistant device” is a device that is primarily designed to run a wide variety of programs rather than for consumption of a particular type of media content, is designed to take user input primarily by voice, and is designed to be installed in a home or office.

5. Proposed Class 7: Computer Programs—Repair⁵²

Several organizations petitioned to expand the current exemption allowing for circumvention of access controls controlling the functioning of motorized land vehicles for purposes of diagnosis, repair, or lawful modification of a vehicle function to allow an additional range of activities. The Office synthesized these suggestions into Proposed Class 7. Although the commenters’ proposals varied in scope, and there was no singular unified proposed exemption, the Acting Register grouped them into the following four categories:

(1) Removing the current limitation prohibiting circumvention of TPMs to access computer programs primarily designed for the control of vehicle telematics and entertainment systems;

(2) expanding the exemption to apply to other types of software-enabled devices,

⁵² The Acting Register’s analysis and conclusions for these classes, including citations to the record and relevant legal authority, can be found in the Recommendation at 185–231.

including appliances, computers, toys, and other Internet of Things devices;

(3) extending the exemption to allow circumvention by third-party service providers, and in particular, independent vehicle repair shops, for purposes of diagnosis, repair, and lawful modification; and

(4) allowing the acquisition, use, and dissemination of circumvention tools in furtherance of diagnosis, repair, and modification.

The Acting Register first considered proposed expansions within the context of motorized land vehicles, and then addressed expansion of the exemption to other types of devices.

Regarding motorized land vehicles, proponents asserted that diagnosis, repair, and lawful modification of vehicle telematics and entertainment systems are fair uses and noninfringing under section 117. Proponents contended that, because these systems are increasingly integrated with functional vehicle firmware, access is necessary to engage in diagnosis, repair, and lawful modification of vehicle functions—activities the Register found to be likely noninfringing in recommending the existing exemption. Proponents sought access to telematics systems in order to obtain diagnostic data for the same purposes. Proponents asserted that vehicle firmware is “effectively useless” outside of the vehicle, with essentially no separate market for the software apart from the vehicles. In addition, proponents suggested users should be permitted to access “storage capacity” in vehicle entertainment systems, and to repair infotainment/entertainment modules.

In response, opponents contended that the proposed activities are not favored under fair use because access to entertainment and telematics systems could allow unauthorized access to expressive content. Opponents asserted that telematics and entertainment firmware have value apart from a vehicle, and may be paid for on a continuing basis separate from the vehicle purchase. Opponents also argued that circumvention of telematics is unnecessary because diagnostic data is still available through the onboard diagnostics port and, further, a nationwide Memorandum of Understanding requires manufacturers to make this data available to vehicle owners and independent repair shops.

Commenters seeking to expand the exemption to allow diagnosis, repair, and modification of other software-enabled devices likewise asserted that these activities are noninfringing under the fair use doctrine and section 117. The Acting Register considered these

arguments for those types of devices cognizably reflected in the record, namely home appliances, smartphones, video game consoles, computers and ancillary or peripheral computing devices, and consumables, plus a few examples of specific additional devices.

Opponents maintained that repair of these devices is not a transformative use because it merely causes a device to be used for the same purpose for which it was originally intended. In some cases, opponents also suggested that once the firmware on some devices is accessed, even for repair, it is compromised such that it can no longer prevent piracy; and consequently, these uses diminish the value of and market for the devices and other creative works. Regarding repair of video game consoles specifically, opponents expressed concern that circumvention of TPMs creates the risk of unauthorized access to content and piracy.

Concerning third-party assistance, several proponents requested that the exemption specifically permit third parties, such as repair services, to assist owners in carrying out the authorized activities. Alternatively, proponents suggested removing the current exemption language requiring that circumvention be “undertaken by the authorized owner” of the vehicle. Regarding circumvention tools, proponents asked the Office to recommend language that would allow exemption beneficiaries, including third parties, to not only make, use, and acquire tools, but also to distribute them. Opponents contended that the proposals concerning third-party assistance and circumvention tools would impermissibly expand the exemption to activity that would constitute unlawful trafficking in violation of sections 1201(a)(2) and (b).

NTIA supported expanding the exemption to a “new definable subclass” of home appliances and mobile handsets (such as cell phones) “when circumvention is a necessary step to allow the diagnosis, repair, or lawful modification of a device function.” NTIA concluded that these are noninfringing fair uses, in part because “diagnosis is a critical component of repairing a device” and subsequent modification of devices is transformative. With respect to vehicles, NTIA supported expanding the existing exemption to allow “use of telematics data for diagnostic purposes.” It recommended, however, “limiting use to obtaining the *diagnostic* data from the telematics module for purposes of repair and modification of the vehicle, and not repair or modification to the module itself.” As to vehicle entertainment

systems, NTIA “continue[d] to have reservations about the strength of [the] record and the potential for infringement” and did not recommend an expansion to permit access for the proposed uses, including “storage capacity.”

NTIA further recommended removing the current exemption’s reference to “the authorized owner of the vehicle”—a change that it characterizes as “extending the current exemption to allow third-party service providers to diagnose, repair and modify software-enabled vehicles on behalf of owners.” But NTIA recommended denying the proposals to “permit third-party commercialization of software repair tools for vehicles in this class,” concluding that such activity is “likely to constitute trafficking.”

The Acting Register recommended expanding the current exemption in areas where there was sufficient record support for such a change, while retaining language to ensure that both the class of works and the permitted uses are appropriately defined. As a result, the Acting Register recommended two separate exemptions, one relating to motorized land vehicles, and one related to the repair and maintenance of additional categories of devices.

Regarding motor vehicles, the recommended exemption removes the requirement that circumvention be “undertaken by the authorized owner” of the vehicle, instead providing that it apply where such items are “lawfully acquired.” This change responds to proponents’ concerns that the language of the existing exemption improperly excludes other users with a legitimate interest in engaging in noninfringing diagnosis, repair, or modification activities. The Acting Register expressed no view on whether particular types of third-party assistance may or may not implicate the anti-trafficking provisions. Those provisions, found in section 1201(a)(2) and (b), are unchanged and must be separately analyzed to determine whether third-party assistance would be permissible.

The Acting Register also recommended removing the language excluding access to computer programs designed for the control of telematics or entertainment systems. The Acting Register was persuaded that, due to increasing integration of vehicle computer systems since the 2015 rulemaking, retaining this limitation may impede noninfringing uses that can only be accomplished by incidentally accessing these systems. Nonetheless, the Acting Register credited opponents’ concerns about unauthorized access to

expressive works through subscription services unrelated to vehicle functioning, and accordingly the recommended exemption specifically excludes access to “programs accessed through a separate subscription service.” While the broadened exemption permits incidental access to a vehicle infotainment system, it provides that such access is allowed only to the extent it is “a necessary step to allow the diagnosis, repair or lawful modification of a vehicle function” and includes the additional requirement that circumvention may not be “accomplished for the purpose of gaining unauthorized access to other copyrighted works.” Because the Acting Register found the record insufficient to support expanding the exemption to permit diagnosis, repair, or lawful modification of the telematics and infotainment systems themselves, the regulatory language does not extend to those activities.

In addition, the Acting Register recommended a new exemption allowing for the circumvention of TPMs restricting access to firmware that controls smartphones and home appliances and home systems for the purposes of diagnosis, maintenance, or repair. In doing so, the Acting Register adopted the definitions of “maintenance” and “repair” in section 117(d). Here again, the recommended text includes the condition that circumvention not be “accomplished for the purpose of gaining unauthorized access to other copyrighted works.” The Acting Register did not recommend extending this exemption to circumvention for purposes of modifying a device function, concluding that “modification” was not defined with sufficient precision to conclude as a general category it is likely to be noninfringing.

Accordingly, the Acting Register recommends that the Librarian adopt the following exemptions:

(1) Computer programs that are contained in and control the functioning of a lawfully acquired motorized land vehicle such as a personal automobile, commercial vehicle or mechanized agricultural vehicle, except for programs accessed through a separate subscription service, when circumvention is a necessary step to allow the diagnosis, repair or lawful modification of a vehicle function, where such circumvention does not constitute a violation of applicable law, including without limitation regulations promulgated by the Department of Transportation or the Environmental Protection Agency, and is not accomplished for the purpose of gaining unauthorized access to other copyrighted works.

(2) Computer programs that are contained in and control the functioning of a lawfully

acquired smartphone or home appliance or home system, such as a refrigerator, thermostat, HVAC or electrical system, when circumvention is a necessary step to allow the diagnosis, maintenance or repair of such a device or system, and is not accomplished for the purpose of gaining access to other copyrighted works. For purposes of this paragraph (b)(10):

(i) The “maintenance” of a device or system is the servicing of the device or system in order to make it work in accordance with its original specifications and any changes to those specifications authorized for that device or system; and

(ii) The “repair” of a device or system is the restoring of the device or system to the state of working in accordance with its original specifications and any changes to those specifications authorized for that device or system.

6. Proposed Class 9: Computer Programs—Software Preservation⁵³

Proposed Class 9 seeks to address concerns that TPMs applied to computer programs can interfere with legitimate preservation activities. The Software Preservation Network (“SPN”) and the LCA filed a petition that would allow “libraries, archives, museums, and other cultural heritage institutions” to circumvent TPMs on “lawfully acquired software for the purposes of preserving software and software-dependent materials.” SPN and LCA explained that the proposed exemption is intended to enable cultural heritage institutions to preserve both TPM-protected computer programs, as well as “dependent” materials—“writings, calculations, software programs, etc.” stored in digital formats that are inaccessible without running the underlying program. Although proposed Class 9 constitutes a new exemption, proponents noted that the Register recommended, and the Librarian granted, exemptions for software preservation in 2003 and 2006, which allowed circumvention of access controls on computer programs and video games distributed in formats that have become obsolete and that require the original media or hardware as a condition of access. Proponents advanced three bases for finding their proposed activities to be noninfringing: (1) The fair use doctrine, (2) the section 108(c) exception for library and archival replacement copies, and (3) the section 117(a) exception for archival copies of computer programs.

⁵³ Because the issues in this class are relevant to the analysis in Proposed Class 8, which pertains specifically to video games, the Acting Register addresses this class first. The Acting Register’s analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Recommendation at 231–56.

Opponents contended that the proposal is overbroad because (1) the exemption would improperly allow circumvention for activities beyond those provided for in the section 108 exceptions for libraries and archives; (2) the term “computer program-dependent materials” might be read to sweep in any category of copyrightable work; and (3) the term “other cultural heritage institutions” within the class of beneficiaries is undefined. Although opponents did not directly contest proponents’ fair use arguments, they did assert that section 117(a)(2) does not protect proponents’ activities.

NTIA supported adopting the proposed exemption. In its view, the class was appropriately defined because it was limited to “computer programs, to preservation uses, and to preservation-oriented institutional users.” It agreed with proponents that the exemption should expressly refer to preservation of “computer program-dependent materials,” concluding that “a user would not be able to access those materials without preserving the software protected by a TPM.” It also agreed that the exemption should include video games, noting that proponents provided specific examples of games that may not be covered by the current preservation exemption. In addition, it found that there were no reasonable alternatives to circumvention, as the use of software with backwards compatibility “is inadequate and can distort the original work.”

The Acting Register recommended granting an exemption that incorporates most of the substance of proponents’ request, with certain changes to address opponents’ concerns. First, the recommended language limits the eligible users to libraries, archives, and museums, as defined according to the criteria proposed in the Office’s recent Section 108 Discussion Document.⁵⁴ The Acting Register declined to recommend including “other cultural heritage institutions” within the class of beneficiaries, finding that term to be undefined and potentially far-reaching. In addition, the Acting Register recommended that the exemption incorporate proponents’ suggestion that the class be defined as computer programs “that have been lawfully acquired and that are no longer reasonably available in the commercial marketplace.” The Acting Register also recommended that in lieu of including the phrase “computer program-

⁵⁴ See U.S. Copyright Office, Section 108 of Title 17 51 (2017), <https://www.copyright.gov/policy/section108/discussion-document.pdf>.

dependent materials” as a defined term, the recommended exemption simply provide that circumvention is permitted for the purpose of “lawful preservation . . . of digital materials dependent upon a computer program as a condition of access.” Finally, in response to concerns over having video game preservation governed by two separate exemptions, the Acting Register recommended that the portion of this class pertaining to video games be codified in the existing video game preservation exemption. Thus, the recommended exemption for Class 9 will cover computer programs other than video games, while in addition to the prior exemption for video games will provide for preservation of the video games addressed by this class (*i.e.*, those that do not require an external server for gameplay). Preservation of server-based games will continue to be governed by the recommended exemption for Class 8.

Accordingly, the Acting Register recommends that the Librarian adopt the following exemption:

(i) Computer programs, except video games, that have been lawfully acquired and that are no longer reasonably available in the commercial marketplace, solely for the purpose of lawful preservation of a computer program, or of digital materials dependent upon a computer program as a condition of access, by an eligible library, archives, or museum, where such activities are carried out without any purpose of direct or indirect commercial advantage and the program is not distributed or made available outside of the physical premises of the eligible library, archives, or museum.

(ii) For purposes of the exemption in paragraph (b)(13)(i) of this section, a library, archives, or museum is considered “eligible” if—

(A) The collections of the library, archives, or museum are open to the public and/or are routinely made available to researchers who are not affiliated with the library, archives or museum;

(B) The library, archives, or museum has a public service mission;

(C) The library, archives, or museum’s trained staff or volunteers provide professional services normally associated with libraries, archives, or museums;

(D) The collections of the library, archives, or museum are composed of lawfully acquired and/or licensed materials; and

(E) The library, archives, or museum implements reasonable digital security measures as appropriate for the activities permitted by this paragraph (b)(13).

8. Proposed Class 8: Computer Programs—Video Game Preservation⁵⁵

Class 8 proponents sought expansion of the provisions in the existing

⁵⁵ The Acting Register’s analysis and conclusions for this class, including citations to the record and

exemption that allows eligible institutions to circumvent access controls to preserve video games for which external server support has been discontinued. As explained in the 2015 rulemaking, some video games require a network connection to a remote server operated by the game's developer before the video game can be accessed and played. When the developer takes such a server offline, a game can be rendered unplayable or limited to certain functions, such as single-player play or multiplayer play on a local network. The current exemption allows an eligible library, archives, or museum to circumvent this type of authentication mechanism to preserve lawfully acquired games in "complete" form, *i.e.*, those that can be played without accessing or reproducing copyrightable content stored or previously stored on an external computer server. The exemption requires that such games not be distributed or made available outside of the physical premises of the eligible institution.

The Museum of Art and Digital Entertainment ("MADE") filed a petition seeking to expand the exemption to allow for circumvention of access controls on video games that need to access creative content stored on a remote server, which MADE refers to as "online" games. MADE contended that the current exemption, while helpful, does not allow it to preserve the growing number of online video games for future generations to study. Proponents explained that libraries, archives, and museums cannot engage in certain preservation activities involving online games without either copying the game's server code or reconstructing that server's functionality, which would also require an exemption to circumvent TPMs on these works. MADE also sought to broaden the class of users of the exemption to include volunteer "affiliate archivists," who wish to circumvent access controls off-premises, but under the supervision of preservation entities.

Opponents objected to the proposed expansions, arguing that proponents' intended use of the video games is not a true preservation use. Instead, opponents contended that proponents wish to engage in recreational play that could function as a market substitute. In addition, the Entertainment Software Association expressed concern that the server copy proponents wish to recreate is an unpublished work that has never been distributed to the public. Overall,

opponents contend that the proposed uses are infringing. Opponents also objected to the use of affiliate archivists, contending that there is a heightened risk of market harm if the public can circumvent access controls on video games in their own homes.

NTIA supported the adoption of an expanded exemption, but one narrower than that requested by proponents. It proposed an expansion to allow preservation "where the user uses the server component—while still not providing any substantial expressive content—for administrative tasks beyond authentication, including command and control functions such as tracking player progress, facilitating communications between players, or storing high scores." To accommodate these uses, it recommended regulatory language that would apply in situations where "all or nearly all of the audiovisual content and gameplay mechanics reside on the player or institution's lawfully acquired local copy of the game." NTIA did not, however, support adding an "affiliate archivist" user class, concluding that adding such a provision risks "introducing confusing language or suggesting that any such preservationists may not need to be answerable to the institutions for which they are volunteering."

The Acting Register found that the record supported granting an expansion in the relatively discrete circumstances where a preservation institution legally possesses a copy of a video game's server code and the game's local code. She concluded that in such circumstances, the preservation activities described by proponents are likely to be fair uses. She further found that proponents demonstrated that such uses would be adversely affected by the statutory prohibition absent an exemption. The record indicated that an exemption would enable future scholarship by enabling researchers to experience games as they were originally played and thereby better understand their design or construction. The Acting Register additionally found such activity unlikely to harm the market for video games.

The Acting Register did not, however, recommend an exemption to allow for instances where the preservation institution lacks lawful possession of the server software. She found the record insufficient to support a finding that the recreation of video game server software as described by proponents is likely to be a fair use. A number of scenarios described by proponents do not involve preserving server software that is already in an institution's

collections, but instead appear to involve something more akin to *reconstructing* the remote server. She found that this activity distinguishes proponents' request from the preservation activity at issue in the case law upon which they relied. Moreover, she noted, the reconstruction of a work implicates copyright owners' exclusive right to prepare derivative works.

Additionally, the Acting Register concluded that the record did not support the addition of an "affiliate archivist" user class to the exemption, finding such activity unlikely to constitute fair use. She noted that both the proposed exemption language and the proponents' institutions' practices seemed to lack appropriate protective guidelines to govern such volunteers' use of copyrighted materials.

In light of the foregoing, the Acting Register recommended an exemption for "server-dependent games," defined as video games that can be played by users who lawfully possess both a copy of a game intended for a personal computer or video game console and a copy of the game's code that is stored or was previously stored on an external computer server. The Acting Register continues to recommend an exemption for "complete games," but proposed revising the exemption language to reflect that the exemption for "complete games" applies to both gamers and preservation uses, but the exemption for "server dependent games" applies only to preservation uses. In addition, for the reasons explained above in the discussion of Proposed Class 9, the Acting Register recommended adding a paragraph to the exemption in this class to accommodate preservation of non-server-based video games.

Accordingly, the Acting Register recommends that the Librarian adopt the following exemption:

(i) Video games in the form of computer programs embodied in physical or downloaded formats that have been lawfully acquired as complete games, when the copyright owner or its authorized representative has ceased to provide access to an external computer server necessary to facilitate an authentication process to enable gameplay, solely for the purpose of:

(A) Permitting access to the video game to allow copying and modification of the computer program to restore access to the game for personal, local gameplay on a personal computer or video game console; or

(B) Permitting access to the video game to allow copying and modification of the computer program to restore access to the game on a personal computer or video game console when necessary to allow preservation of the game in a playable form by an eligible library, archives, or museum, where such activities are carried out without

any purpose of direct or indirect commercial advantage and the video game is not distributed or made available outside of the physical premises of the eligible library, archives, or museum.

(ii) Video games in the form of computer programs embodied in physical or downloaded formats that have been lawfully acquired as complete games, that do not require access to an external computer server for gameplay, and that are no longer reasonably available in the commercial marketplace, solely for the purpose of preservation of the game in a playable form by an eligible library, archives, or museum, where such activities are carried out without any purpose of direct or indirect commercial advantage and the video game is not distributed or made available outside of the physical premises of the eligible library, archives, or museum.

(iii) Computer programs used to operate video game consoles solely to the extent necessary for an eligible library, archives, or museum to engage in the preservation activities described in paragraph (b)(12)(i)(B) or (b)(12)(ii) of this section.

(iv) For purposes of this paragraph (b)(12), the following definitions shall apply:

(A) For purposes of paragraph (b)(12)(i)(A) and (b)(12)(ii) of this section, “complete games” means video games that can be played by users without accessing or reproducing copyrightable content stored or previously stored on an external computer server.

(B) For purposes of paragraph (b)(12)(i)(B) of this section, “complete games” means video games that meet the definition in paragraph (b)(12)(iv)(A) of this section, or that consist of both a copy of a game intended for a personal computer or video game console and a copy of the game’s code that was stored or previously stored on an external computer server.

(C) “Ceased to provide access” means that the copyright owner or its authorized representative has either issued an affirmative statement indicating that external server support for the video game has ended and such support is in fact no longer available or, alternatively, server support has been discontinued for a period of at least six months; provided, however, that server support has not since been restored.

(D) “Local gameplay” means gameplay conducted on a personal computer or video game console, or locally connected personal computers or consoles, and not through an online service or facility.

(E) A library, archives, or museum is considered “eligible” when the collections of the library, archives, or museum are open to the public and/or are routinely made available to researchers who are not affiliated with the library, archives, or museum.

7. Proposed Class 10: Computer Programs—Security Research⁵⁶

The Office received multiple petitions to expand the existing exemption

allowing circumvention for the purpose of conducting good-faith security research on certain types of software-enabled devices and machines.

Proponents argued that the current language contains limitations that unnecessarily restrict its scope, as well as ambiguities that chill legitimate research. These include: (1) A provision limiting the exemption to specified categories of devices (“Device Limitation”); (2) a requirement that a device be “lawfully acquired” (“Lawfully Acquired Limitation”); (3) a requirement that circumvention be “solely” for the purpose of good-faith security research, and the definition of such research as accessing a program “solely” for purposes of good-faith testing, investigation, and/or correction (“Access Limitation”); (4) a requirement that the research be “carried out in a controlled environment designed to avoid any harm to individuals or the public” (“Controlled Environment Limitation”); (5) a requirement that “the information derived from the activity [be] used primarily to promote the security or safety of the class of devices or machines . . . or those who use such devices or machines, and is not used or maintained in a manner that facilitates copyright infringement” (“Use Limitation”); and (6) a requirement that the circumvention “not violate any applicable law” (“Other Laws Limitation”). Proponents maintained that the proposed activity is noninfringing on one or both grounds relied upon by the Register in 2015—section 117 and fair use.

Opponents objected to removal of each of these provisions, arguing that the current language appropriately balances the interests of security researchers, copyright owners, and the general public. In their view, the adverse effects asserted by proponents are unsupported by the record and are based on unreasonable readings of the relevant text. Opponents also variously argued that removing the limitations would render the class impermissibly broad, give rise to infringing uses, and jeopardize public safety and national security.

Following the close of the public comment period and the completion of the public hearings, the Office received a letter concerning this class from CCIPS. The CCIPS letter stated that “[m]any of the changes sought in the petition appear likely to promote productive cybersecurity research, and CCIPS supports them,” subject to certain limitations. With respect to the Device Limitation, CCIPS advised that it would support eliminating the language confining the exemption to devices

“primarily designed for use by individual consumers.” It recommended clarification of the Controlled Environment Limitation and said that it “would not object to its removal.” As to the Lawfully Acquired Limitation, CCIPS stated concluded that the current language is preferable to conditioning the exemption on ownership of a particular copy of software. CCIPS also addressed the Other Laws Limitation, stating that it would not object to removal of the phrase “any applicable law” were it standing alone, but recommending retaining the express reference to the Computer Fraud and Abuse Act of 1986.

NTIA recommended granting the proposed expansion and proposed the same regulatory text it offered in 2015. That language would allow circumvention “in order to conduct good faith security research” on computer programs, “regardless of the device on which they are run.” NTIA further recommended that the Other Laws Limitation be replaced with a statement that the exemption “does not obviate the need to comply with all other applicable laws and regulations.” In addition, NTIA recommended removal of the Controlled Environment, Access, and Use Limitations, largely agreeing with proponents that those provisions may chill legitimate research.

The Acting Register found that good-faith security research involving devices beyond those covered by the current exemption is likely to be a fair use. As the Register found in 2015, the Acting Register concluded that good-faith security research promotes several of the activities identified in section 107 as examples of favored purposes, including criticism, comment, teaching, scholarship, and research. In contrast to 2015, the current rulemaking record contained many additional examples of activities security researchers wished to engage in but for the Device Limitation. But the Acting Register did not find that section 117 provides an additional basis for finding such activity to be noninfringing. She found the record insufficient to support the conclusion that security researchers as a general matter are likely to own the copies of the device software, as is required under section 117.

Ultimately, the Acting Register recommended that the exemption remove the Device Limitation, and include a provision allowing circumvention to be undertaken on a “computer, computer system, or computer network on which the computer program operates.” The latter provision is intended to address situations in which a researcher seeks

⁵⁶ The Acting Register’s analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Recommendation at 284–315.

access to a structure, such as a building automation system, that cannot be “acquired” in the sense of obtaining physical possession of it, in contrast to instances where the researcher can lawfully acquire a device or machine. The exemption requires that circumvention in these circumstances be undertaken “with the authorization of the owner or operator of such computer, computer system, or computer network.” In addition, to address proponents’ concerns over potential ambiguity in the Controlled Environment Limitation, the exemption removes the term “controlled,” so that it simply would require the research to be “carried out in an environment designed to avoid any harm to individuals or the public.” The Acting Register did not recommend removal of the other limitations challenged by proponents, finding that proponents had failed to demonstrate that those provisions are causing, or are likely to cause, any adverse effect on noninfringing security research.

Accordingly, the Acting Register recommends that the Librarian adopt the following exemption:

(i) Computer programs, where the circumvention is undertaken on a lawfully acquired device or machine on which the computer program operates, or is undertaken on a computer, computer system, or computer network on which the computer program operates with the authorization of the owner or operator of such computer, computer system, or computer network, solely for the purpose of good-faith security research and does not violate any applicable law, including without limitation the Computer Fraud and Abuse Act of 1986.

(ii) For purposes of this paragraph (b)(11), “good-faith security research” means accessing a computer program solely for purposes of good-faith testing, investigation, and/or correction of a security flaw or vulnerability, where such activity is carried out in an environment designed to avoid any harm to individuals or the public, and where the information derived from the activity is used primarily to promote the security or safety of the class of devices or machines on which the computer program operates, or those who use such devices or machines, and is not used or maintained in a manner that facilitates copyright infringement.

8. Proposed Class 12: Computer Programs—3D Printing⁵⁷

3D printing—also known as “additive” manufacturing—is a technology that translates digital files into physical objects by adding successive layers of material. Some 3D printer manufacturers use TPMs to limit

the types of material—or “feedstock”—that can be used in their 3D printers to manufacturer-approved feedstock.

Proponents sought to expand a current exemption that permits the circumvention of access controls on computer programs in 3D printers to enable the use of non-manufacturer-approved feedstock. Michael Weinberg filed a petition to eliminate the following language at the end of the exemption: “provided, however, that the exemption shall not extend to any computer program on a 3D printer that produces goods or materials for use in commerce the physical production of which is subject to legal or regulatory oversight or a related certification process, or where the circumvention is otherwise unlawful.”

Proponents put forth two arguments as to why the Acting Register should broaden the exemption by dropping this language: (1) The clause creates ambiguity such that the exemption itself cannot be applied or used in the majority of circumstances, and (2) the concerns that the clause seeks to address are more suitably addressed by other agencies. Stratasys, an opponent to the exemption, contended that this expanded range of activities is less likely to constitute fair use and should remain prohibited for reasons of public policy.

NTIA supported renewing the exemption as well as expanding the exemption by removing the relevant limiting language. NTIA’s proposed language differed from the current regulatory language in additional ways. For example, NTIA proposed incorporating the restriction that “circumvention is undertaken for the purpose of enabling interoperability of feedstock or filament with the device.” NTIA, however, did not provide specific support for altering the regulatory text beyond removing the qualifying language.

The 2015 rulemaking identified fair use as the noninfringing basis for this exemption, and the proposed expansion was evaluated on the same grounds. Because the record indicated that the state of the 3D printing market appears to be substantially the same as in 2015, and case law has not significantly altered the relevant fair use issues, the Acting Register concluded that the copying or modifying of printer software to accept non-manufacturer-approved feedstock is likely to be a fair use.

Because the first four statutory factors do not fit neatly onto this situation, the Acting Register focused most of her analysis on the fifth factor to consider these related concerns. The Acting Register determined that the expanded

record now shows that there are situations in which an individual may be complying with relevant law or regulations but still be at risk of violating section 1201 due to the exemption’s qualifying language (e.g., individual sellers of homemade wares). The Acting Register concluded that the record established that the qualifying language in the existing exemption may be inhibiting otherwise beneficial or innovative uses of alternate feedstock, which is contrary to the intention of that exemption—and moreover, that there are safeguards outside of the current exemption addressing health and safety concerns associated with 3D printing.

Accordingly, the Acting Register recommends that the Librarian adopt the following exemption:

Computer programs that operate 3D printers that employ microchip-reliant technological measures to limit the use of feedstock, when circumvention is accomplished solely for the purpose of using alternative feedstock and not for the purpose of accessing design software, design files, or proprietary data.

C. Classes Considered but Not Recommended

Based upon the record in this proceeding, the Acting Register of Copyrights recommended that the Librarian determine that the following classes of works shall not be exempt from the prohibition against circumvention of technological measures set forth in section 1201(a)(1):

1. Proposed Class 3: Audiovisual Works—Space-Shifting⁵⁸

Proposed Class 3 would allow circumvention of technical measures protecting motion pictures and other audiovisual works to engage in “space-shifting.” As the 2015 rulemaking described, the Copyright Office’s understanding is that space-shifting occurs when a work is transferred from one storage medium to another, such as from a DVD to a computer hard drive. Chris De Pretis petitioned for an exemption to allow circumvention by individuals to create a personal digital backup of content for private use, a proposal similar to those sought and rejected in previous rulemakings. The Office also received a petition from OmniQ, a corporate entity, proposing an exemption to allow so-called “non-reproductive” space-shifting, including for commercial uses. A third proponent, SolaByte Corporation, filed a one-page

⁵⁷ The Acting Register’s analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Recommendation at 319–31.

⁵⁸ The Acting Register’s analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Recommendation at 111–28.

comment in support of OmniQ and testified at the public hearing.

OmniQ primarily argued that its proposed technology did not result in a reproduction of a copyrighted work, and thus fair use analysis was unnecessary. Proponents also argued that the overall availability of works for public use is shrinking because the hardware and software needed to play disc media are becoming less available in the marketplace. They argued that online content distribution platforms, taken in the aggregate, only offer a small and always-changing fraction of the titles historically available on DVD and Blu-ray disc, and that the costs of these services are unacceptable, especially when users already own the content in disc form.

In response, opponents argued that OmniQ's technology would reproduce works because they would constitute entirely new things (*i.e.*, a copy). Opponents also contended that recent case law developments further demonstrate that space-shifting is not a fair use. In addition, opponents provided evidence of alternatives to circumvention in the form of a substantial number of online distribution platforms for accessing copyrighted audiovisual works, the vast majority of which they claim exist as viable business models only because of the ability to employ TPMs to protect the content from unauthorized uses.

Unlike in prior rulemakings where NTIA "supported limited versions of a noncommercial space-shifting exemption . . . mainly in the interest of consumer protection," NTIA did not support an exemption for this class in the present rulemaking. NTIA acknowledged that the "legal status of the concept of space-shifting remains a matter of dispute among copyright experts" and that it "has not been explicitly established as non-infringing on the basis of the fair use doctrine." NTIA added that "proponents ha[d] not established in this proceeding that their specific proposal would be non-infringing." Moreover, NTIA recognized that "[p]roponents failed to demonstrate that the 'prevalence of [encrypted digital content] is diminishing the ability of individuals to use these works in ways that are otherwise lawful.'"

The Acting Register found that under current law, OmniQ's self-described process is likely to result in an unauthorized reproduction in violation of section 106(1), and that, as in 2015, the case law maintains that transferring digital files from one location to another implicates the reproduction right and is therefore infringing, even where the original copy is contemporaneously or

subsequently deleted. With regard to personal space-shifting, in light of the lack of record and in the absence of clear supporting precedent, the Acting Register found no basis to depart from the fair use analysis and ultimate conclusion reached in the 2015 proceeding, where the Register was unable to determine that the proposed uses were noninfringing. She noted that the commercial nature and potential market effects of the OmniQ and SolaByte business models complicate the fair use analysis, and not in their favor. For example, the record included substantial evidence of extensive markets for internet-based distribution services for copyrighted audiovisual works, including digital rentals, online streaming and over-the-top services, on-demand cable and satellite television offerings, disc-to-digital services, and digital locker services, which could be negatively impacted by the proposed exemption. These markets also served as sufficient alternatives to circumvention, as they demonstrated a wide availability of easily accessible copyrighted works that could potentially be negatively affected by an exemption that allowed unauthorized copies to compete with these authorized access models. Based on the record in this proceeding, the Acting Register did not find that the statutory factors supported the proposed exemption.

2. Proposed Class 4: Audiovisual Works—HDCP/HDMI⁵⁹

Proposed Class 4 would allow circumvention "to make noninfringing uses of audiovisual works that are subjected to High-bandwidth Digital Content Protection (HDCP)." Petitioner Andrew "bunnie" Huang described HDCP as "a protocol used to restrict content sent over High-Definition Multimedia Interface (HDMI) cables," or "a standard for video transport from one device to another." He explained that many devices that play video discs and video game software encode their output using HDCP, and that this interferes with capturing the output for subsequent noninfringing uses.

Multiple participants opposed this exemption, arguing that section 1201 does not permit such a broad exemption, noting that HDCP is the industry standard for protecting audiovisual works in transit to a display device and that past Registers have rejected exemptions for "all noninfringing uses." They characterized

Huang's discussion of the proposed uses as "cursory," and suggested it was not possible to evaluate the proposed uses under the exemption without further detail. Opponents also suggested that multiple proposed uses would actually be infringing, and highlighted what they see as a significant online infringement risk if the exemption permitted in-the-clear copies of entire works. In addition, opponents set forth a large number of concrete examples of potential alternatives to circumvention that the petitioner failed to meaningfully challenge. Finally, they asserted that "HDCP is a critically important component of the secure ecosystem through which content is delivered for home entertainment" and noted that section 1201 was intended to encourage copyright owners to make their works available digitally and foster new means of distribution by providing reasonable assurances against fears of piracy.

NTIA recommended against this exemption, stating that "[p]roponents did not provide sufficient evidence on the record about the alleged non-infringing uses," and that "[w]hile there are several examples of potential non-infringing uses that could serve as the basis for an exemption, the proponents [had] not developed the argument in the record . . ." NTIA also observed that the proposed exemption "appear[ed] to be for the HDCP TPM itself, which is not appropriate for this rulemaking process."

The Acting Register also recommended against the exemption, largely agreeing with many of the bases advanced by opponents. Specifically, the Acting Register concluded that the proposed exemption was overly broad, as HDCP is the industry standard for protecting audiovisual works in transit to a display device, and thus limiting the proposal this way did not very meaningfully focus the scope beyond the starting point of all audiovisual works. The Acting Register also determined that some of the proposed uses may potentially be fair use depending upon factual circumstances, but that the record lacked the requisite detail and legal support for the Acting Register to conclude that the proposed uses are or are not likely to be noninfringing. Based upon the record, the Acting Register could not conclude that the overall availability for use of copyrighted works has been diminished or is likely to be in the next three years absent an exemption, noting that the proposed activities may well have a negative effect on the market for or value of copyrighted works. Finally, she concluded that the request was an individual case of *de minimis* impact, as

⁵⁹ The Acting Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Recommendation at 128–45.

it was largely made upon a single request of an individual who resides in Singapore for which there appeared to be myriad alternative ways to achieve the proposed uses.

3. Proposed Class 11: Computer Programs—Avionics⁶⁰

Proposed Class 11 would permit circumvention of access controls on electronic systems used in aircraft, *i.e.*, avionics, to enable access to aircraft flight, operations, maintenance and security bulk data collected by third parties upon authorization of the aircraft owner or operator in the course of complying with Federal Aviation Administration (“FAA”) standards, rules, and regulations. Due to reliance upon these electronic systems, proponents asserted that aircraft “operators have faced a . . . rise in the complexity and scope of work needed to keep their fleet secure and operating efficiently,” and that the FAA “has mandated the review of the data, information, logs[,] and other information [by aircraft owners or operators] as a means to ensure safety, security[,] and regulatory compliance.”

In NTIA’s view, “[p]roponents failed to demonstrate that the proposed class includes copyrighted works protected by TPMs.” Moreover, NTIA continued, “Air Informatics failed to identify clearly the proposed users of the exemption,” suggesting that “the prohibition on circumvention does not adversely affect and is not likely to adversely affect users.” Lastly, NTIA maintained that “[r]easonable alternatives to circumvention seem to exist,” noting that “the two relevant parties can come to an agreement for access to and use of the data.”

The Acting Register found that the record suggested that the data collected by aircrafts at issue consist of facts, which are not copyrightable. According to the petitioner, the information represents objective details about aircraft, such as flight operations and fuel economy. As Public Knowledge explained, the data inputs and outputs “are not classifiable as a ‘work’ protected under Title 17” and such “access does not implicate any colorable copyright concerns.” The Acting Register also concluded that the collected information would not qualify as a copyrightable compilation, because it is formatted and compiled in accordance with an industry-wide standard. The Acting Register

accordingly concluded that proponents have not alleged that the data or data compilations they are seeking to access are copyrightable, and thus subject to the prohibition on circumvention. Although petitioner raised some concerns regarding attempts by airplane manufacturers to control the aftermarket for the data in security research and analytics, the Acting Register determined that it was not clear that section 1201 is facilitating those actions, and noted that the security research exemption may potentially be utilized to cover such activities, to the extent applicable.

C. Conclusion

Having considered the evidence in the record, the contentions of the commenting parties, and the statutory objectives, the Acting Register of Copyrights has recommended that the Librarian of Congress publish certain classes of works, as designated above, so that the prohibition against circumvention of technological measures that effectively control access to copyrighted works shall not apply to persons who engage in noninfringing uses of those particular classes of works.

Dated: October 19, 2018.

Karyn A. Temple,

Acting Register of Copyrights and Director of the U.S. Copyright Office.

Determination of the Librarian of Congress

Having duly considered and accepted the Recommendation of the Acting Register of Copyrights, which Recommendation is hereby incorporated by reference, the Librarian of Congress, pursuant to 17 U.S.C. 1201(a)(1)(C) and (D), hereby publishes as a new rule the classes of copyrighted works that shall for a three-year period be subject to the exemption provided in 17 U.S.C. 1201(a)(1)(B) from the prohibition against circumvention of technological measures that effectively control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A).

List of Subjects in 37 CFR Part 201

Copyright, Exemptions to prohibition against circumvention.

Final Regulations

For the reasons set forth in the preamble, 37 CFR part 201 is amended as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Section 201.40 is amended by revising paragraphs (b) and (c) to read as follows:

§ 201.40 Exemptions to prohibition against circumvention.

* * * * *

(b) *Classes of copyrighted works.* Pursuant to the authority set forth in 17 U.S.C. 1201(a)(1)(C) and (D), and upon the recommendation of the Register of Copyrights, the Librarian has determined that the prohibition against circumvention of technological measures that effectively control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A) shall not apply to persons who engage in noninfringing uses of the following classes of copyrighted works:

(1) Motion pictures (including television shows and videos), as defined in 17 U.S.C. 101, where the motion picture is lawfully made and acquired on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Content System, or via a digital transmission protected by a technological measure, and the person engaging in circumvention under paragraph (b)(1)(i) and (b)(1)(ii)(A) and (B) of this section reasonably believes that non-circumventing alternatives are unable to produce the required level of high-quality content, or the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted, where circumvention is undertaken solely in order to make use of short portions of the motion pictures in the following instances:

(i) For the purpose of criticism or comment:

(A) For use in documentary filmmaking, or other films where the motion picture clip is used in parody or for its biographical or historically significant nature;

(B) For use in noncommercial videos (including videos produced for a paid commission if the commissioning entity’s use is noncommercial); or

(C) For use in nonfiction multimedia e-books.

(ii) For educational purposes:

(A) By college and university faculty and students or kindergarten through twelfth-grade (K–12) educators and students (where the K–12 student is circumventing under the direct supervision of an educator), including of accredited general educational development (GED) programs, for the purpose of criticism, comment, teaching, or scholarship;

⁶⁰The Acting Register’s analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Recommendation at 315–19.

(B) By faculty of massive open online courses (MOOCs) offered by accredited nonprofit educational institutions to officially enrolled students through online platforms (which platforms themselves may be operated for profit), in film studies or other courses requiring close analysis of film and media excerpts, for the purpose of criticism or comment, where the MOOC provider through the online platform limits transmissions to the extent technologically feasible to such officially enrolled students, institutes copyright policies and provides copyright informational materials to faculty, students, and relevant staff members, and applies technological measures that reasonably prevent unauthorized further dissemination of a work in accessible form to others or retention of the work for longer than the course session by recipients of a transmission through the platform, as contemplated by 17 U.S.C. 110(2); or

(C) By educators and participants in nonprofit digital and media literacy programs offered by libraries, museums, and other nonprofit entities with an educational mission, in the course of face-to-face instructional activities, for the purpose of criticism or comment, except that such users may only circumvent using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted.

(2)(i) Motion pictures (including television shows and videos), as defined in 17 U.S.C. 101, where the motion picture is lawfully acquired on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Content System, or via a digital transmission protected by a technological measure, where:

(A) Circumvention is undertaken by a disability services office or other unit of a kindergarten through twelfth-grade educational institution, college, or university engaged in and/or responsible for the provision of accessibility services to students, for the purpose of adding captions and/or audio description to a motion picture to create an accessible version as a necessary accommodation for a student or students with disabilities under an applicable disability law, such as the Americans With Disabilities Act, the Individuals with Disabilities Education Act, or Section 504 of the Rehabilitation Act;

(B) The educational institution unit in paragraph (b)(2)(i)(A) of this section has, after a reasonable effort, determined that an accessible version cannot be obtained at a fair price or in a timely manner; and

(C) The accessible versions are provided to students or educators and stored by the educational institution in a manner intended to reasonably prevent unauthorized further dissemination of a work.

(ii) For purposes of this paragraph (b)(2), “audio description” means an oral narration that provides an accurate rendering of the motion picture.

(3) Literary works, distributed electronically, that are protected by technological measures that either prevent the enabling of read-aloud functionality or interfere with screen readers or other applications or assistive technologies:

(i) When a copy of such a work is lawfully obtained by a blind or other person with a disability, as such a person is defined in 17 U.S.C. 121; provided, however, that the rights owner is remunerated, as appropriate, for the price of the mainstream copy of the work as made available to the general public through customary channels; or

(ii) When such work is a nondramatic literary work, lawfully obtained and used by an authorized entity pursuant to 17 U.S.C. 121.

(4) Literary works consisting of compilations of data generated by medical devices that are wholly or partially implanted in the body or by their corresponding personal monitoring systems, where such circumvention is undertaken by a patient for the sole purpose of lawfully accessing the data generated by his or her own device or monitoring system and does not constitute a violation of applicable law, including without limitation the Health Insurance Portability and Accountability Act of 1996, the Computer Fraud and Abuse Act of 1986 or regulations of the Food and Drug Administration, and is accomplished through the passive monitoring of wireless transmissions that are already being produced by such device or monitoring system.

(5) Computer programs that enable the following types of lawfully acquired wireless devices to connect to a wireless telecommunications network, when circumvention is undertaken solely in order to connect to a wireless telecommunications network and such connection is authorized by the operator of such network:

(i) Wireless telephone handsets (*i.e.*, cellphones);

(ii) All-purpose tablet computers;

(iii) Portable mobile connectivity devices, such as mobile hotspots, removable wireless broadband modems, and similar devices; and

(iv) Wearable wireless devices designed to be worn on the body, such as smartwatches or fitness devices.

(6) Computer programs that enable smartphones and portable all-purpose mobile computing devices to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the smartphone or device, or to permit removal of software from the smartphone or device. For purposes of this paragraph (b)(6), a “portable all-purpose mobile computing device” is a device that is primarily designed to run a wide variety of programs rather than for consumption of a particular type of media content, is equipped with an operating system primarily designed for mobile use, and is intended to be carried or worn by an individual.

(7) Computer programs that enable smart televisions to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the smart television.

(8) Computer programs that enable voice assistant devices to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the device, or to permit removal of software from the device, and is not accomplished for the purpose of gaining unauthorized access to other copyrighted works. For purposes of this paragraph (b)(8), a “voice assistant device” is a device that is primarily designed to run a wide variety of programs rather than for consumption of a particular type of media content, is designed to take user input primarily by voice, and is designed to be installed in a home or office.

(9) Computer programs that are contained in and control the functioning of a lawfully acquired motorized land vehicle such as a personal automobile, commercial vehicle, or mechanized agricultural vehicle, except for programs accessed through a separate subscription service, when circumvention is a necessary step to allow the diagnosis, repair, or lawful modification of a vehicle function, where such circumvention does not constitute a violation of applicable law, including without limitation regulations promulgated by the Department of Transportation or the Environmental Protection Agency, and is not accomplished for the purpose of gaining

unauthorized access to other copyrighted works.

(10) Computer programs that are contained in and control the functioning of a lawfully acquired smartphone or home appliance or home system, such as a refrigerator, thermostat, HVAC, or electrical system, when circumvention is a necessary step to allow the diagnosis, maintenance, or repair of such a device or system, and is not accomplished for the purpose of gaining access to other copyrighted works. For purposes of this paragraph (b)(10):

(i) The “maintenance” of a device or system is the servicing of the device or system in order to make it work in accordance with its original specifications and any changes to those specifications authorized for that device or system; and

(ii) The “repair” of a device or system is the restoring of the device or system to the state of working in accordance with its original specifications and any changes to those specifications authorized for that device or system.

(11)(i) Computer programs, where the circumvention is undertaken on a lawfully acquired device or machine on which the computer program operates, or is undertaken on a computer, computer system, or computer network on which the computer program operates with the authorization of the owner or operator of such computer, computer system, or computer network, solely for the purpose of good-faith security research and does not violate any applicable law, including without limitation the Computer Fraud and Abuse Act of 1986.

(ii) For purposes of this paragraph (b)(11), “good-faith security research” means accessing a computer program solely for purposes of good-faith testing, investigation, and/or correction of a security flaw or vulnerability, where such activity is carried out in an environment designed to avoid any harm to individuals or the public, and where the information derived from the activity is used primarily to promote the security or safety of the class of devices or machines on which the computer program operates, or those who use such devices or machines, and is not used or maintained in a manner that facilitates copyright infringement.

(12)(i) Video games in the form of computer programs embodied in physical or downloaded formats that have been lawfully acquired as complete games, when the copyright owner or its authorized representative has ceased to provide access to an external computer server necessary to facilitate an authentication process to

enable gameplay, solely for the purpose of:

(A) Permitting access to the video game to allow copying and modification of the computer program to restore access to the game for personal, local gameplay on a personal computer or video game console; or

(B) Permitting access to the video game to allow copying and modification of the computer program to restore access to the game on a personal computer or video game console when necessary to allow preservation of the game in a playable form by an eligible library, archives, or museum, where such activities are carried out without any purpose of direct or indirect commercial advantage and the video game is not distributed or made available outside of the physical premises of the eligible library, archives, or museum.

(ii) Video games in the form of computer programs embodied in physical or downloaded formats that have been lawfully acquired as complete games, that do not require access to an external computer server for gameplay, and that are no longer reasonably available in the commercial marketplace, solely for the purpose of preservation of the game in a playable form by an eligible library, archives, or museum, where such activities are carried out without any purpose of direct or indirect commercial advantage and the video game is not distributed or made available outside of the physical premises of the eligible library, archives, or museum.

(iii) Computer programs used to operate video game consoles solely to the extent necessary for an eligible library, archives, or museum to engage in the preservation activities described in paragraph (b)(12)(i)(B) or (b)(12)(ii) of this section.

(iv) For purposes of this paragraph (b)(12), the following definitions shall apply:

(A) For purposes of paragraph (b)(12)(i)(A) and (b)(12)(ii) of this section, “complete games” means video games that can be played by users without accessing or reproducing copyrightable content stored or previously stored on an external computer server.

(B) For purposes of paragraph (b)(12)(i)(B) of this section, “complete games” means video games that meet the definition in paragraph (b)(12)(iv)(A) of this section, or that consist of both a copy of a game intended for a personal computer or video game console and a copy of the game’s code that was stored or previously stored on an external computer server.

(C) “Ceased to provide access” means that the copyright owner or its authorized representative has either issued an affirmative statement indicating that external server support for the video game has ended and such support is in fact no longer available or, alternatively, server support has been discontinued for a period of at least six months; provided, however, that server support has not since been restored.

(D) “Local gameplay” means gameplay conducted on a personal computer or video game console, or locally connected personal computers or consoles, and not through an online service or facility.

(E) A library, archives, or museum is considered “eligible” when the collections of the library, archives, or museum are open to the public and/or are routinely made available to researchers who are not affiliated with the library, archives, or museum.

(13)(i) Computer programs, except video games, that have been lawfully acquired and that are no longer reasonably available in the commercial marketplace, solely for the purpose of lawful preservation of a computer program, or of digital materials dependent upon a computer program as a condition of access, by an eligible library, archives, or museum, where such activities are carried out without any purpose of direct or indirect commercial advantage and the program is not distributed or made available outside of the physical premises of the eligible library, archives, or museum.

(ii) For purposes of the exemption in paragraph (b)(13)(i) of this section, a library, archives, or museum is considered “eligible” if—

(A) The collections of the library, archives, or museum are open to the public and/or are routinely made available to researchers who are not affiliated with the library, archives, or museum;

(B) The library, archives, or museum has a public service mission;

(C) The library, archives, or museum’s trained staff or volunteers provide professional services normally associated with libraries, archives, or museums;

(D) The collections of the library, archives, or museum are composed of lawfully acquired and/or licensed materials; and

(E) The library, archives, or museum implements reasonable digital security measures as appropriate for the activities permitted by this paragraph (b)(13).

(14) Computer programs that operate 3D printers that employ microchip-reliant technological measures to limit

the use of feedstock, when circumvention is accomplished solely for the purpose of using alternative feedstock and not for the purpose of accessing design software, design files, or proprietary data.

(c) *Persons who may initiate circumvention.* To the extent authorized under paragraph (b) of this section, the circumvention of a technological measure that restricts wireless telephone handsets or other wireless devices from connecting to a wireless telecommunications network may be initiated by the owner of any such handset or other device, by another person at the direction of the owner, or by a provider of a commercial mobile radio service or a commercial mobile data service at the direction of such owner or other person, solely in order to enable such owner or a family member of such owner to connect to a wireless telecommunications network, when such connection is authorized by the operator of such network.

Dated: October 19, 2018.

Carla D. Hayden,

Librarian of Congress

[FR Doc. 2018-23241 Filed 10-25-18; 8:45 am]

BILLING CODE 1410-30-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA-HQ-OPPT-2017-0464; FRL-9985-55]

RIN 2070-AB27

Significant New Use Rules on Certain Chemical Substances; Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: EPA is withdrawing significant new use rules (SNURs) promulgated under the Toxic Substances Control Act (TSCA) for 19 chemical substances, which were the subject of premanufacture notices (PMNs). EPA published these SNURs using direct final rulemaking procedures, which requires EPA to take certain actions if an adverse comment is received. EPA received adverse comments and a request to extend the comment period regarding the SNURs identified in the direct final rule. Therefore, the Agency is withdrawing the direct final rule SNURs identified in this document, as required under the direct final rulemaking procedures.

DATES: The direct final rule published at 83 FR 43538 on August 27, 2018, is withdrawn effective October 26, 2018.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2017-0464 is available at <http://www.regulations.gov> or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. 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 OPPT Docket is (202) 566-0280. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-9232; email address: moss.kenneth@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. Does this action apply to me?

A list of potentially affected entities is provided in the **Federal Register** of August 27, 2018 (83 FR 43538) (FRL-9982-24). If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What direct final SNURs are being withdrawn?

In the **Federal Register** of August 27, 2018 (83 FR 43538) (FRL-9982-24), EPA issued direct final SNURs for 19 chemical substances that are identified in that document. Because the Agency received adverse comments and a request to extend the comment period regarding the SNURs identified in the document, EPA is withdrawing the direct final SNURs issued for these 19 chemical substances, which were the subject of PMNs. In addition to the Direct Final SNURs, elsewhere in the same issue of the **Federal Register** of August 27, 2018 (83 FR 43538) (FRL-9982-24), EPA issued proposed SNURs

covering these 19 chemical substances. EPA will address all adverse public comments in a subsequent final rule, based on the proposed rule.

III. Good Cause Finding

EPA determined that this document is not subject to the 30-day delay of effective date generally required by the Administrative Procedure Act (APA) (5 U.S.C. 553(d)) because of the time limitations for publication in the **Federal Register**. This document must publish on or before the effective date of the direct final rule containing the direct final SNURs being withdrawn.

IV. Statutory and Executive Order Reviews

This action withdraws regulatory requirements that have not gone into effect and which contain no new or amended requirements and reopens a comment period. As such, the Agency has determined that this action will not have any adverse impacts, economic or otherwise. The statutory and Executive Order review requirements applicable to the direct final rules were discussed in the August 27, 2018 **Federal Register** (83 FR 43538). Those review requirements do not apply to this action because it is a withdrawal and does not contain any new or amended requirements.

V. Congressional Review Act (CRA)

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). Section 808 of the CRA allows the issuing agency to make a rule effective sooner than otherwise provided by CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. As required by 5 U.S.C. 808(2), this determination is supported by a brief statement in Unit III.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 17, 2018.

Lance Wormell,

*Acting Director, Chemical Control Division,
Office of Pollution Prevention and Toxics.*

■ Accordingly, the amendments to 40 CFR parts 9 and 721 published on August 27, 2018 (83 FR 43538), are withdrawn effective October 26, 2018.

[FR Doc. 2018–23574 Filed 10–25–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2017–0560; FRL–9985–56]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances; Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: EPA is withdrawing significant new use rules (SNURs) promulgated under the Toxic Substances Control Act (TSCA) for 10 chemical substances, which were the subject of premanufacture notices (PMNs). EPA published these SNURs using direct final rulemaking procedures, which requires EPA to take certain actions if an adverse comment is received. EPA received adverse comments and a request to extend the comment period regarding the SNURs identified in the direct final rule. Therefore, the Agency is withdrawing the direct final rule SNURs identified in this document, as required under the direct final rulemaking procedures.

DATES: The direct final rule published at 83 FR 43527 on August 27, 2018, is withdrawn effective October 26, 2018.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2017–0560, is available at <http://www.regulations.gov> or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. 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 OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: moss.kenneth@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. Does this action apply to me?

A list of potentially affected entities is provided in the **Federal Register** of August 27, 2018 (83 FR 43527) (FRL–9982–77). If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What direct final SNURs are being withdrawn?

In the **Federal Register** of August 27, 2018 (83 FR 43527) (FRL–9982–77), EPA issued direct final SNURs for 10 chemical substances that are identified in that document. Because the Agency received adverse comments and a request to extend the comment period regarding the SNURs identified in the document, EPA is withdrawing the direct final SNURs issued for these 10 chemical substances, which were the subject of PMNs. In addition to the Direct Final SNURs, elsewhere in the same issue of the **Federal Register** of August 27, 2018 (83 FR 43527) (FRL–9982–77), EPA issued proposed SNURs covering these 10 chemical substances. EPA will address all adverse public comments in a subsequent final rule, based on the proposed rule.

III. Good Cause Finding

EPA determined that this document is not subject to the 30-day delay of effective date generally required by the Administrative Procedure Act (APA) (5 U.S.C. 553(d)) because of the time limitations for publication in the **Federal Register**. This document must publish on or before the effective date of the direct final rule containing the direct final SNURs being withdrawn.

IV. Statutory and Executive Order Reviews

This action withdraws regulatory requirements that have not gone into effect and which contain no new or amended requirements and reopens a comment period. As such, the Agency

has determined that this action will not have any adverse impacts, economic or otherwise. The statutory and Executive Order review requirements applicable to the direct final rules were discussed in the August 27, 2018 **Federal Register** (83 FR 43527). Those review requirements do not apply to this action because it is a withdrawal and does not contain any new or amended requirements.

V. Congressional Review Act (CRA)

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). Section 808 of the CRA allows the issuing agency to make a rule effective sooner than otherwise provided by CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. As required by 5 U.S.C. 808(2), this determination is supported by a brief statement in Unit III.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 17, 2018.

Lance Wormell,

*Acting Director, Chemical Control Division,
Office of Pollution Prevention and Toxics.*

■ Accordingly, the amendments to 40 CFR parts 9 and 721 published on August 27, 2018 (83 FR 43527), are withdrawn effective October 26, 2018.

[FR Doc. 2018–23582 Filed 10–25–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–2018; FRL–9974–83–Region 4]

Air Plan Approval; North Carolina; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notification of administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the North Carolina state implementation plan (SIP). EPA is also revising the format for materials submitted by the local agency “Western North Carolina” that have been incorporated by reference into the SIP. The regulations affected by this update have been previously submitted by North Carolina and the local agencies, and have been previously approved by EPA. This update affects the materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office.

DATES: This action is effective October 26, 2018.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, GA 30303; and the National Archives and Records Administration. For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>. To view the materials at the Region 4 Office, EPA requests that you email the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. Mr. Lakeman can be reached via telephone at (404) 562-9043 or via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them and then submit the proposed SIP revisions

to EPA. Once these control measures and strategies are approved by EPA, and after notice and comment, they are incorporated into the federally-approved SIP and are identified in part 52 “Approval and Promulgation of Implementation Plans.” Title 40 of the Code of Federal Regulations (40 CFR part 52). The full text of the state regulation approved by EPA is not reproduced in its entirety in 40 CFR part 52, but is “incorporated by reference.” This means that EPA has approved a given state regulation or specified changes to the given regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in a given SIP. The information provided allows EPA and the public to monitor the extent to which a state implements a SIP to attain and maintain the NAAQS and to take enforcement action if necessary.

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on proposed revisions containing new and/or revised state regulations. A submission from a state can revise one or more rules in their entirety or portions of rules, even change a single word. The state indicates the changes in the submission (such as, by using redline/strikethrough) and EPA then takes action on the requested changes. EPA establishes a docket for its actions using a unique Docket Identification Number which is listed in each action. These dockets and the complete submission are available for viewing on www.regulations.gov.

On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference, into the Code of Federal Regulations, materials approved by EPA into each state SIP. These changes revised the format for the identification of the SIP in 40 CFR part 52, streamlined the mechanisms for announcing EPA approval of revisions to a SIP, and streamlined the mechanisms for EPA’s updating of the IBR information contained for each SIP in 40 CFR part 52. The revised procedures also called for EPA to maintain “SIP Compilations” that contain the federally-approved regulations and source specific permits submitted by each state agency. These SIP Compilations are updated primarily on an annual basis. Under the revised procedures, EPA must periodically publish an informational document in the rules section of the **Federal Register** notifying the public that updates have

been made to a SIP Compilation for a particular state. EPA applied the 1997 revised procedures to: North Carolina on May 20, 1999 (64 FR 27465); Forsyth County on August 9, 2002 (67 FR 51763); and Mecklenburg County on October 22, 2002 (67 FR 64999).

II. EPA Action

This action represents EPA’s publication of the North Carolina, Forsyth County, Mecklenburg County and Western North Carolina SIP Compilation update, appearing in 40 CFR part 52: specifically, the materials in paragraph (c) at 40 CFR 52.1770. This notice changes the format of paragraph (c) by: (1) Converting Tables 1, 2 and 3 to Volumes (1), (2) and (3); (2) adding Volume 4 “Western North Carolina”; (3) correcting typographical errors and; (4) provides notice of the following corrections to Volumes (1), (2) and (3) (previously Tables 1, 2 and 3) of paragraph (c) in section 52.1770, as described below:

Changes Applicable to Volume (1), (2) and (3) (Previously Tables 1, 2 and 3)

A. Under the “State Citation” column, “Sect” is changed to “Section” before all rules in table.

B. Under the “State effective date” and “EPA approval date” columns: The 2-digit year is changed to reflect a 4-digit year (for consistency), any leading zeroes have been removed for the month, and numerous **Federal Register** citations are corrected to reflect the first page of the preamble as opposed to the regulatory text page.

C. The last column is changed to read “Explanation” in all Volumes for consistency.

Changes Applicable to Volume 1—EPA Approved North Carolina Regulations (Previously Table 1)

Subchapter 2D—Air Pollution Control Requirements

A. Section .0101 and Section .0103: The State effective date was revised to read “12/1/2005”.

B. Section .0520 and Section .0929: The entries were removed from the table because EPA previously approved removal of these provisions from the SIP. See 62 FR 41277 (August 1, 1997).

C. Section .0530: The EPA approval date was added to read “9/14/2016, 81 FR 63107.”

D. Section .0903: The Title/subject was revised to read “Recordkeeping: Reporting: Monitoring”.

E. Section .0907, Section .0910, and Section .0911: These entries were removed from the table because EPA previously approved removal of these

provisions from the SIP. 64 FR 55831 (October 15, 1999).

F. Section .0909: The Title/subject was revised to read “Compliance Schedules for Sources in Ozone Nonattainment and Maintenance Areas.”

G. Section .0913, Section .0914, Section .0915, Section .0916, Section .0917, Section .0920, Section .0921, Section .0934, Section .0936, Section .0939, Section .0940, Section .0941, Section .0942, Section .1416, Section .1417, Section .1419, Section .1420, Section .1421, and Section .1422: These entries were removed from the table because EPA previously approved removal of these provisions from the SIP. 78 FR 27065 (May 9, 2013).

H. Section .0938: The entry was removed from the table because EPA previously approved removal of this provision from the SIP. 64 FR 61213 (November 10, 1999).

I. Section .0953 and Section .0954: The entries were removed from the table because EPA previously approved removal of these provisions from the SIP. 78 FR 58184 (September 23, 2013).

J. Section .0959: The entry was removed because this provision was not incorporated into the SIP. *See* 68 FR 66350 (November 26, 2003).

K. Section .0963: The Title/subject was revised to read “Fiberglass Boat Manufacturing Materials”.

L. Section .0966: The Title/subject was revised to read “Paper, Film and Foil Coatings.”

M. Section .1004: The entry was removed from the table because EPA previously approved removal of this provision from the SIP. *See* 80 FR 6455 (February 5, 2015).

N. Section .1409: The Title/subject was revised to read “Stationary Internal Combustion Engines.”

O. Section .1418: The Title/subject was revised to read “New Electric Generating Units, Large Boilers, and Large I/C Engines.”

P. Section .1903: The Title/subject was revised to read “Open Burning Without An Air Quality Permit.”

Q. Section .1901, Section .1902, and Section .1903: The State effective date was revised to read “7/1/2007.”

R. Section .2001: The State effective date was revised to read “12/1/2005”.

S. Section .2602: The Title/subject was revised to read “General Provisions on Test Methods and Procedures.”

T. Section .2614: The Title/subject was revised to read “Determination of VOC Emission Control System Efficiency.”

Subchapter 2Q—Air Quality Permits

A. Section .0103, Section .0105, Section .0304, and Section .0305: The

State effective date was revised to read “12/1/2005.”

B. Section .0806: The State effective date was revised to read “6/1/2004.”

Changes Applicable to Volume 2—EPA Approved Forsyth County Regulations (Previously Table 2)

Subchapter 3D—Air Pollution Control Requirements

A. Section .0103: The Title/subject was revised to read “Copies of Referenced Federal Regulations”.

B. Section .0504: The word “Repealed” was removed from the Explanation column (previously Comment column) because the section was approved into the SIP on September 16, 2003 (68 FR 54163).

C. Section .0507: The FR citation was corrected to read “2/17/2000, 65 FR 8053.”

D. Section .0512: The State effective date was revised to read “7/28/1997” and the EPA approval date was revised to read “12/31/1998, 63 FR 72190”.

E. Section .0516: The State effective date was revised to read “11/29/1995” and the EPA approval date was revised to read “5/23/1996, 61 FR 25789”.

F. Section .0517: The State effective date was revised to read “6/14/1990” and the EPA approval date was revised to read “5/2/1991, 56 FR 20140”.

G. Section .0542: A duplicate entry in Section .0500 Emission Control Standards for Section .0542 was removed, and the word “Repealed” was removed from the Explanation column (previously Comment column) because EPA previously approved the section into the SIP.

H. Section .0914: The Title/subject was revised to read “Determination of VOC Emission Control System Efficiency”.

I. Section .0944: The Title/subject was revised to read “Manufacture of Polyethylene, Polypropylene and Polystyrene”.

J. Section .0947: The Title/subject was revised to read “Manufacture of Synthesized Pharmaceutical Products”.

K. Section .0957: The State effective date was revised to read “11/29/1995” and the EPA approval date was revised to read “5/23/1996, 61 FR 25789”.

Subchapter 3Q—Air Quality Permits

A. Section .0311: The Title/subject was revised to read “Permitting of Facilities at Multiple Temporary Sites”.

B. Section .0803: The State effective date was revised to read “7/30/1999” and the EPA approval date was revised to read “10/22/2002, 75 FR 64994”.

Changes Applicable to Volume 3—EPA Approved Mecklenburg County Regulations (Previously Table 3)

Article 1.000 Permitting Provisions for Air Pollution Sources, Rules and Operating Regulations for Acid Rain Sources, Title V and Toxic Air Pollutants

A. Section 1.5231: The Title/subject was revised to read “Air Quality Fees”.

Article 2.0000 Air Pollution Control Regulations and Procedures

A. Section 2.0610: The Title/subject was revised to read “Federal Monitoring Requirements”.

B. Section 2.0925: The State effective date was revised to read “3/1/1991” and the EPA approval date was revised to read “6/23/1994, 59 FR 32362”.

C. Section 2.0926: The State effective date was revised to read “3/1/1991” and the EPA approval date was revised to read “6/23/1994, 59 FR 32362”.

D. Section 2.0928: The State effective date was revised to read “3/1/1991” and the EPA approval date was revised to read “6/23/1994, 59 FR 32362”.

E. Section 2.0929: The State effective date was revised to read “3/1/1991” and the EPA approval date was revised to read “6/23/1994, 59 FR 32362”.

F. Section 2.0930: The State effective date was revised to read “3/1/1991” and the EPA approval date was revised to read “6/23/1994, 59 FR 32362”.

G. Section 2.0934: The State effective date was revised to read “3/1/1991” and the EPA approval date was revised to read “6/23/1994, 59 FR 32362”.

H. Section 2.0943: The State effective date was revised to read “3/1/1991” and the EPA approval date was revised to read “6/23/1994, 59 FR 32362”.

I. Section 2.0944: The State effective date was revised to read “3/1/1991” and the EPA approval date was revised to read “6/23/1994, 59 FR 32362”.

J. Section 2.0951: An entry was added for Section 2.0951 “Miscellaneous Volatile Organic Compound Emissions”, which was approved on 10/22/2002 (67 FR 64999).

K. Section 2.0958: An entry was added for Section 2.0958 “Work Practices for Sources of Volatile Organic Compounds”, which was approved on 10/22/2002 (67 FR 64999).

III. Good Cause Exemption

EPA has determined that this action falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to

make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs and corrects typographical errors appearing in the CFR. Under section 553(b)(3)(B) of the APA, an agency may find good cause where procedures are “impracticable, unnecessary, or contrary to the public interest.” Public comment for this administrative action is “unnecessary” and “contrary to the public interest” since the codification (and typographical corrections) only reflect existing law. Immediate notice of this action in the **Federal Register** benefits the public by providing the public notice of the updated North Carolina SIP Compilation and notice of typographical corrections to the North Carolina “Identification of Plan” portion of the **Federal Register**. Further, pursuant to section 553(d)(3), making this action immediately effective benefits the public by immediately updating both the SIP compilation and the CFR “Identification of plan” section (which includes table entry corrections).

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of previously EPA-approved regulations promulgated by North Carolina, Forsyth County, Mecklenburg County, and Western North Carolina, and federally effective prior to October 1, 2017. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. See 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 notification of administrative change does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office

of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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).

EPA also believes that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. This is because prior EPA rulemaking actions for each individual component of the North Carolina SIP compilations previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA believes judicial review of this action under section 307(b)(1) is not available.

List of Subjects in 40 CFR Part 52

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

Dated: August 28, 2018.

Onis “Trey” Glenn, III,
Regional Administrator, Region 4.

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 II—North Carolina

- 2. In § 52.1770 paragraphs (b) and (c) are revised to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraph (c) of this section with an EPA approval date prior to October 1, 2017, for North Carolina (Volume 1), Forsyth County (Volume 2), Mecklenburg County (Volume 3) and Western North Carolina (Volume 4) was approved for incorporation by reference by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraph (c)(1), (2), (3) and (4) of this section with EPA approval dates after October 1, 2017, for North Carolina (Volume 1), Forsyth County (Volume 2), Mecklenburg County (Volume 3) and Western North

Carolina (Volume 4), will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations

which have been approved as part of the State Implementation Plan as of the dates referenced in paragraph (b)(1).

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street SW, Atlanta, GA 30303. To obtain the material, please call (404) 562-9022. You may inspect

the material with an EPA approval date prior to October 1, 2017, for North Carolina at the National Archives and Records Administration. For information on the availability of this material at NARA go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(c) EPA approved regulations.

(1) EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 2D Air Pollution Control Requirements				
Section .0100 Definitions and References				
Section .0101	Definitions	12/1/2005	7/18/2017, 82 FR 32767	
Section .0103	Copies of Referenced Federal Regulations.	12/1/2005	7/18/2017, 82 FR 32767	
Section .0104	Incorporation by Reference	1/15/1998	11/10/1999, 64 FR 61213	
Section .0105	Mailing List	7/1/2002	9/17/2003, 68 FR 54362	
Section .0200 Air Pollution Sources				
Section .0201	Classification of Air Pollution Sources.	4/12/1984	10/11/1985, 50 FR 41501	
Section .0202	Registration of Air Pollution Sources.	1/15/1998	11/10/1999, 64 FR 61213	
Section .0300 Air Pollution Emergencies				
Section .0301	Purpose	2/1/1976	6/3/1986, 51 FR 19834	
Section .0302	Episode Criteria	1/15/1998	11/10/1999, 64 FR 61213	
Section .0303	Emission Reduction Plans	4/12/1984	10/11/1985, 50 FR 41501	
Section .0304	Preplanned Abatement Program	4/14/1988	12/12/1988, 53 FR 49881	
Section .0305	Emission Reduction Plan—Alert Level.	4/12/1984	10/11/1985, 50 FR 41501	
Section .0306	Emission Reduction Plan—Warning Level.	4/12/1984	10/11/1985, 50 FR 41501	
Section .0307	Emission Reduction Plan—Emergency Level.	4/12/1984	10/11/1985, 50 FR 41501	
Section .0400 Ambient Air Quality Standards				
Section .0401	Purpose	12/1/1992	8/15/1994, 59 FR 41708	
Section .0402	Sulfur Dioxide	9/1/2011	7/20/2015, 80 FR 42733	
Section .0403	Total Suspended Particulates	7/1/1988	1/16/1990, 55 FR 1419	
Section .0404	Carbon Monoxide	10/1/1989	3/12/1990, 55 FR 9125	
Section .0405	Ozone	1/1/2010	5/16/2013, 78 FR 28747	
Section .0407	Nitrogen Dioxide	9/1/2011	7/20/2015, 80 FR 42733	
Section .0408	Lead	1/1/2010	5/16/2013, 78 FR 28747	
Section .0409	Particulate Matter	1/1/2010	6/30/2014, 79 FR 36655	
Section .0410	PM _{2.5} Particulate Matter	9/1/2015	7/14/2016, 81 FR 45421	
Section .0500 Emission Control Standards				
Section .0501	Compliance with Emission Control Standards.	4/1/2001	8/8/2002, 67 FR 51461	
Section .0502	Purpose	3/1/1981	7/26/1982, 47 FR 32118	
Section .0503	Particulates from Fuel Burning Indirect Heat Exchangers.	5/1/1999	10/22/2002, 67 FR 64989	
Section .0504	Particulates from Wood Burning Indirect Heat Exchangers.	7/1/2002	12/27/2002, 67 FR 78980	
Section .0505	Control of Particulates from Incinerators.	7/1/1987	2/29/1988, 53 FR 5974	
Section .0506	Particulates from Hot Mix Asphalt Plants.	3/20/1998	11/10/1999, 64 FR 61213	
Section .0507	Particulates from Chemical Fertilizer Manufacturing Plants.	4/1/2003	9/17/2003, 68 FR 54362	
Section .0508	Particulates from Pulp and Paper Mills.	3/20/1998	11/10/1999, 64 FR 61213	
Section .0509	Particulates from Mica or Feldspar Processing Plants.	4/1/2003	9/17/2003, 68 FR 54362	

(1) EPA APPROVED NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section .0510	Particulates from Sand, Gravel, or Crushed Stone Operations.	3/20/1998	11/10/1999, 64 FR 61213	
Section .0511	Particulates from Lightweight Aggregate.	3/20/1998	11/10/1999, 64 FR 61213	
Section .0512	Particulates from Wood Products Finishing Plants.	11/1/1984	12/19/1986, 51 FR 45468	
Section .0513	Particulates from Portland Cement Plants.	3/20/1998	11/10/1999, 64 FR 61213	
Section .0514	Particulates from Ferrous Jobbing Foundries.	3/20/1998	11/10/1999, 64 FR 61213	
Section .0515	Particulates from Miscellaneous Industrial Processes.	4/1/2003	9/17/2003, 68 FR 54362	
Section .0516	Sulfur Dioxide Emissions from Combustion Sources.	4/1/2003	9/17/2003, 68 FR 54362	
Section .0517	SO ₂ Emissions from Plants Producing Sulfuric Acid.	11/1/1984	12/19/1986, 51 FR 45468	
Section .0519	Control of Nitrogen Dioxide and Nitrogen Oxides.	1/1/2005	8/22/2008, 73 FR 49613	
Section .0521	Control of Visible Emissions	1/1/2005	10/25/2005, 70 FR 61556	Approving changes to Paragraphs (c) and (d) that reference new Paragraph (g). Also, approving Paragraph (g) excluding the following language: "excluding startups, shutdowns, maintenance periods when fuel is not being combusted, and malfunctions approved as such according to procedures approved under Rule .0535 of this Section."
Section .0522	Control and Prohibition of Odorous Emissions.	2/1/1976	6/3/1986, 51 FR 19834	
Section .0523	Control of Conical Incinerators	1/1/1985	9/9/1987, 52 FR 33933	
Section .0527	Emissions from Spodumene Ore Roasting.	11/1/1984	12/19/1986, 51 FR 45468	
Section .0530	Prevention of Significant Deterioration.	9/1/2017	[Use current CFR date and citation]	
Section .0531	Sources in Nonattainment Areas ...	9/1/2013	9/14/2016, 81 FR 63107	
Section .0532	Sources Contributing to an Ambient Violation.	7/1/1994	2/1/1996, 61 FR 3584	
Section .0533	Stack Height	7/1/1994	2/1/1996, 61 FR 3584	
Section .0535	Excess Emissions Reporting and Malfunctions.	7/1/1996	8/1/1997, 62 FR 41277	
Section .0536	Particulate Emissions from Electric Utility Boilers.	8/1/1991	2/14/1996, 61 FR 5689	
Section .0540	Particulates from Fugitive Non-process Dust Emission Sources.	3/20/1998	11/10/1999, 64 FR 61213	
Section .0542	Control of Particulate Emissions from Cotton Ginning Operations.	7/1/2002	12/27/2002, 67 FR 78980	
Section .0543	Best Available Retrofit Technology	9/6/2006	6/27/2012, 77 FR 38185	
Section .0544	Prevention of Significant Deterioration Requirements for Greenhouse Gases.	12/16/2010	10/18/2011, 76 FR 64240	

Section .0600 Air Contaminants; Monitoring, Reporting

Section .0601	Monitoring: Recordkeeping: Reporting.	4/1/1999	8/8/2002, 67 FR 51461	
Section .0602	Definitions	4/1/1999	8/8/2002, 67 FR 51461	
Section .0604	Exceptions to Monitoring and Reporting Requirements.	4/1/1999	8/8/2002, 67 FR 51461	
Section .0605	General Recordkeeping and Reporting Requirements.	11/1/2006	10/31/2007, 72 FR 61531	
Section .0606	Sources Covered by Appendix P of 40 CFR part 51.	1/1/2005	8/22/2008, 73 FR 49613	
Section .0607	Large Wood and Wood-Fossil Fuel Combination Units.	4/1/1999	8/8/2002, 67 FR 51461	
Section .0608	Other Large Coal or Residual Oil Burners.	1/1/2005	8/22/2008, 73 FR 49613	
Section .0609	Monitoring Condition in Permit	4/12/1984	10/4/1985, 50 FR 41501	
Section .0610	Federal Monitoring Requirements ..	4/1/1999	8/8/2002, 67 FR 51461	

(1) EPA APPROVED NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section .0611	Monitoring Emissions from Other Sources.	4/1/1999	8/8/2002, 67 FR 51461	
Section .0612	Alternative Monitoring and Reporting Procedures.	4/1/1999	8/8/2002, 67 FR 51461	
Section .0613	Quality Assurance Program	4/1/1999	8/8/2002, 67 FR 51461	
Section .0614	Compliance Assurance Monitoring	4/1/1999	8/8/2002, 67 FR 51461	
Section .0615	Delegation	4/1/1999	8/8/2002, 67 FR 51461	
Section .0900 Volatile Organic Compounds				
Section .0901	Definitions	1/1/2009	5/9/2013, 78 FR 27065	This approval does not include the start-up shutdown language as described in Section II.A.a. of EPA's 3/13/2013 proposed rule (78 FR 15895).
Section .0902	Applicability	5/1/2013	9/23/2013, 78 FR 58184	
Section .0903	Recordkeeping: Reporting: Monitoring.	5/1/2013	7/25/2013, 78 FR 44892	
Section .0905	Petition for Alternative Controls	11/8/1984	12/19/1986, 51 FR 45468	
Section .0906	Circumvention	11/8/1984	12/19/1986, 51 FR 45468	
Section .0908	Equipment Modification Compliance Schedules.	11/8/1984	12/19/1986, 51 FR 45468	
Section .0909	Compliance Schedules for Sources in Ozone Nonattainment and Maintenance Areas.	5/1/2013	9/23/2013, 78 FR 58186	
Section .0912	General Provisions on Test Methods and Procedures.	3/13/2008	5/9/2013, 78 FR 27065	
Section .0918	Can Coating	7/1/1996	8/1/1997, 62 FR 41277	
Section .0919	Coil Coating	7/1/1996	8/1/1997, 62 FR 41277	
Section .0922	Metal Furniture Coating	9/1/2010	5/9/2013, 78 FR 27065	
Section .0923	Surface Coating of Large Appliance	9/1/2010	5/9/2013, 78 FR 27065	
Section .0924	Magnet Wire Coating	7/1/1996	8/1/1997, 62 FR 41277	
Section .0925	Petroleum Liquid Storage	12/1/1989	6/23/1994, 59 FR 32362	
Section .0926	Bulk Gasoline Plants	7/1/1996	8/1/1997, 62 FR 41277	
Section .0927	Bulk Gasoline Terminals	6/1/2008	5/9/2013, 78 FR 27065	
Section .0928	Gasoline Service Stations Stage I ..	7/1/1996	8/1/1997, 62 FR 41277	
Section .0930	Solvent Metal Cleaning	6/1/2008	5/9/2013, 78 FR 27065	
Section .0931	Cutback Asphalt	12/1/1989	6/23/1994, 59 FR 32362	
Section .0932	Gasoline Truck Tanks and Vapor Collection Systems.	11/7/2007	5/9/2013, 78 FR 27065	
Section .0933	Petroleum Liquid Storage in External Floating Roof Tanks.	8/1/2004	5/9/2013, 78 FR 27065	
Section .0935	Factory Surface Coating of Flat Wood Paneling.	9/1/2010	5/9/2013, 78 FR 27065	
Section .0937	Manufacture of Pneumatic Rubber Tires.	7/1/1996	8/1/1997, 62 FR 41277	
Section .0943	Synthetic Organic Chemical and Polymer Manufacturing.	11/7/2007	5/9/2013, 78 FR 27065	
Section .0944	Manufacture of Polyethylene, Polypropylene, and Polystyrene.	3/14/1985	11/19/1986, 51 FR 41786	
Section .0945	Petroleum Dry Cleaning	11/7/2007	5/9/2013, 78 FR 27065	
Section .0947	Manufacture of Synthesized Pharmaceutical Products.	7/1/1994	5/5/1995, 60 FR 22284	
Section .0948	VOC Emissions from Transfer Operations.	7/1/2000	8/27/2001, 66 FR 34117	
Section .0949	Storage of Miscellaneous Volatile Organic Compounds.	7/1/2000	8/27/2001, 66 FR 34117	
Section .0951	RACT for Sources of Volatile Organic Compounds.	5/1/2013	7/25/2013, 78 FR 44890	
Section .0952	Petitions for Alternative Controls for RACT.	9/18/2009	9/23/2013, 78 FR 58184	
Section .0955	Thread Bonding Manufacturing	4/1/1995	2/1/1996, 61 FR 3588	
Section .0956	Glass Christmas Ornament Manufacturing.	4/1/1995	2/1/1996, 61 FR 3588	
Section .0957	Commercial Bakeries	4/1/1995	2/1/1996, 62 FR 3588	
Section .0958	Work Practices for Sources of Volatile Organic Compounds.	7/1/2000	8/27/2001, 66 FR 34117	
Section .0961	Offset Lithographic Printing and Letterpress Printing.	5/1/2013	7/25/2013, 78 FR 44890	
Section .0962	Industrial Cleaning Solvents	5/1/2013	7/25/2013, 78 FR 44890	

(1) EPA APPROVED NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section .0963	Fiberglass Boat Manufacturing Materials.	9/1/2010	5/9/2013, 78 FR 27065	
Section .0964	Miscellaneous Industrial Adhesives	9/1/2010	5/9/2013, 78 FR 27065	
Section .0965	Flexible Package Printing	9/1/2010	5/9/2013, 78 FR 27065	
Section .0966	Paper, Film and Foil Coatings	9/1/2010	5/9/2013, 78 FR 27065	
Section .0967	Miscellaneous Metal and Plastic Parts Coatings.	9/1/2010	5/9/2013, 78 FR 27065	
Section .0968	Automobile and Light Duty Truck Assembly Coatings.	9/1/2010	5/9/2013, 78 FR 27065	
Section .1000 Motor Vehicle Emissions Control Standards				
Section .1001	Purpose	7/1/2002	10/30/2002, 67 FR 66056	Paragraph (a)(3) of Section .1002 is hereby rescinded as this paragraph is inconsistent with the limits on the waiver of sovereign immunity established in section 118(a) of the CAA.
Section .1002	Applicability	1/1/2014	4/10/2017, 82 FR 17145	
Section .1003	Definitions	2/1/2014	2/5/2015, 80 FR 6455	
Section .1005	On-Board Diagnostic Standards	1/1/2014	2/5/2015, 80 FR 6455	
Section .1300 Oxygenated Gasoline Standard				
Section .1301	Purpose	9/1/1996	6/19/2007, 72 FR 33692	
Section .1302	Applicability	9/1/1996	6/19/2007, 72 FR 33692	
Section .1303	Definitions	9/1/1992	6/30/1994, 59 FR 33683	
Section .1304	Oxygen Content Standard	9/1/1996	06/19/2007, 72 FR 33692	
Section .1305	Measurement and Enforcement	9/1/1992	6/30/1994, 59 FR 33683	
Section .1400 Nitrogen Oxides				
Section .1401	Definitions	7/15/2002	12/27/2002, 67 FR 78987	
Section .1402	Applicability	1/1/2010	5/9/2013, 78 FR 27065	
Section .1403	Compliance Schedules	7/1/2007	5/9/2013, 78 FR 27065	
Section .1404	Recordkeeping: Reporting: Monitoring.	5/1/2004	5/9/2013, 78 FR 27065	
Section .1407	Boilers and Indirect Process Heaters.	7/15/2002	5/9/2013, 78 FR 27065	
Section .1408	Stationary Combustion Turbines	7/15/2002	5/9/2013, 78 FR 27065	
Section .1409	Stationary Internal Combustion Engines.	3/13/2008	5/9/2013, 78 FR 27065	
Section .1410	Emissions Averaging	3/13/2008	5/9/2013, 78 FR 27065	
Section .1411	Seasonal Fuel Switching	3/13/2008	5/9/2013, 78 FR 27065	
Section .1412	Petition for Alternative Limitations	3/13/2008	5/9/2013, 78 FR 27065	
Section .1415	Test Methods and Procedures	3/13/2008	5/9/2013, 78 FR 27065	
Section .1418	New Electric Generating Units, Large Boilers, and Large I/C Engines.	3/13/2008	5/9/2013, 78 FR 27065	
Section .1423	Large Internal Combustion Engines	7/15/2002	12/27/2002, 67 FR 78987	
Section .1900 Open Burning				
Section .1901	Open Burning: Purpose: Scope	7/1/2007	7/18/2017, 82 FR 32767	
Section .1902	Definitions	7/1/2007	7/18/2017, 82 FR 32767	
Section .1903	Open Burning Without an Air Quality Permit.	7/1/2007	7/18/2017, 82 FR 32767	
Section .1904	Air Curtain Burners	7/1/1996	8/1/1997, 62 FR 41277	
Section .2000 Transportation Conformity				
Section .2001	Purpose, Scope and Applicability	12/1/2005	7/18/2017, 82 FR 32767	Except for the incorporation by reference of 40 CFR 93.104(e) of the Transportation Conformity Rule.
Section .2002	Definitions	4/1/1999	12/27/2002, 67 FR 78983	
Section .2003	Transportation Conformity Determination.	4/1/1999	12/27/2002, 67 FR 78983	
Section .2004	Determining Transportation Related Emissions.	4/1/1999	12/27/2002, 67 FR 78983	
Section .2005	Memorandum of Agreement	4/1/1999	12/27/2002, 67 FR 78983	

(1) EPA APPROVED NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section .2400 Clean Air Interstate Rules				
Section .2401	Purpose and Applicability	5/1/2008	11/30/2009, 74 FR 62496	
Section .2402	Definitions	5/1/2008	11/30/2009, 74 FR 62496	
Section .2403	Nitrogen Oxide Emissions	5/1/2008	11/30/2009, 74 FR 62496	
Section .2404	Sulfur Dioxide	5/1/2008	11/30/2009, 74 FR 62496	
Section .2405	Nitrogen Oxide Emissions During Ozone Season.	5/1/2008	11/30/2009, 74 FR 62496	
Section .2406	Permitting	7/1/2006	11/30/2009, 74 FR 62496	
Section .2407	Monitoring, Reporting, and Record-keeping.	5/1/2008	11/30/2009, 74 FR 62496	
Section .2408	Trading Program and Banking	7/1/2006	11/30/2009, 74 FR 62496	
Section .2409	Designated Representative	5/1/2008	11/30/2009, 74 FR 62496	
Section .2410	Computation of Time	7/1/2006	11/30/2009, 74 FR 62496	
Section .2411	Opt-In Provisions	7/1/2006	11/30/2009, 74 FR 62496	
Section .2412	New Unit Growth	5/1/2008	11/30/2009, 74 FR 62496	
Section .2413	Periodic Review and Reallocations	7/1/2006	11/30/2009, 74 FR 62496	
Section .2600 Source Testing				
Section .2601	Purpose and Scope	3/13/2008	5/9/2013, 78 FR 27065	
Section .2602	General Provisions on Test Methods and Procedures.	3/13/2008	5/9/2013, 78 FR 27065	
Section .2603	Testing Protocol	3/13/2008	5/9/2013, 78 FR 27065	
Section .2604	Number of Test Points	3/13/2008	5/9/2013, 78 FR 27065	
Section .2605	Velocity and Volume Flow Rate	3/13/2008	5/9/2013, 78 FR 27065	
Section .2606	Molecular Weight	3/13/2008	5/9/2013, 78 FR 27065	
Section .2607	Determination of Moisture Content	3/13/2008	5/9/2013, 78 FR 27065	
Section .2608	Number of Runs and Compliance Determination.	3/13/2008	5/9/2013, 78 FR 27065	
Section .2612	Nitrogen Oxide Testing Methods	3/13/2008	5/9/2013, 78 FR 27065	
Section .2613	Volatile Organic Compound Testing Methods.	3/13/2008	5/9/2013, 78 FR 27065	
Section .2614	Determination of VOC Emission Control System Efficiency.	3/13/2008	5/9/2013, 78 FR 27065	
Section .2615	Determination of Leak Tightness and Vapor Leaks.	3/13/2008	5/9/2013, 78 FR 27065	
Section .2621	Determination of Fuel Heat Content Using F-Factor.	3/13/2008	5/9/2013, 78 FR 27065	
Subchapter 2Q Air Quality Permits				
Section .0100 General Provisions				
Section .0101	Required Air Quality Permits	3/20/1998	11/10/1999, 64 FR 61213	
Section .0102	Activities Exempted from Permit Requirements.	1/1/2005	8/22/2008, 73 FR 49613	
Section .0103	Definitions	12/1/2005	7/18/2017, 82 FR 32767	
Section .0104	Where to Obtain and File Permit Applications.	7/1/2002	12/27/2002, 67 FR 78980	
Section .0105	Copies of Referenced Documents	12/1/2005	7/18/2017, 82 FR 32767	
Section .0106	Incorporation by Reference	8/15/1994	2/1/1996, 61 FR 3584	
Section .0107	Confidential Information	5/1/1999	10/22/2002, 67 FR 64989	
Section .0108	Delegation of Authority	3/15/1998	11/10/1999, 64 FR 61213	
Section .0109	Compliance Schedule for Previously Exempted Activities.	4/1/2001	8/8/2002, 67 FR 51461	
Section .0110	Retention of Permit at Permitted Facility.	8/15/1994	2/1/1996, 61 FR 3584	
Section .0111	Applicability Determinations	8/15/1994	2/1/1996, 61 FR 3584	
Section .0200 Permit Fees				
Section .0207	Annual Emissions Reporting	7/1/2007	4/24/2012, 77 FR 24382	
Section .0300 Construction and Operating Permits				
Section .0301	Applicability	7/1/1994	7/28/1995, 60 FR 38710	
Section .0303	Definitions	7/1/1994	7/28/1995, 60 FR 38710	
Section .0304	Applications	12/1/2005	7/18/2017, 82 FR 32767	
Section .0305	Application Submittal Content	12/1/2005	7/18/2017, 82 FR 32767	
Section .0306	Permits Requiring Public Participation.	7/1/1999	10/22/2002, 67 FR 64989	

(1) EPA APPROVED NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section .0307	Public Participation Procedures	1/15/1998	11/10/1999, 64 FR 61213	
Section .0308	Final Action on Permit Applications	7/1/1994	7/28/1995, 60 FR 38710	
Section .0309	Termination, Modification and Revocation of Permits.	7/1/1999	10/22/2002, 67 FR 64989	
Section .0310	Permitting of Numerous Similar Facilities.	7/1/1994	7/28/1995, 60 FR 38710	
Section .0311	Permitting of Facilities at Multiple Temporary Sites.	7/1/1996	8/1/1997, 62 FR 41277	
Section .0312	Application Processing Schedule ...	3/20/1998	11/10/1999, 64 FR 61213	
Section .0313	Expedited Application Processing Schedule.	4/17/1997	11/10/1999, 64 FR 61213	
Section .0314	General Permitting Requirements ..	7/1/1999	10/22/2002, 67 FR 64989	
Section .0315	Synthetic Minor Facilities	7/1/1999	10/22/2002, 67 FR 64989	
Section .0316	Administrative Permit Amendments	4/1/2001	8/8/2002, 67 FR 51461	
Section .0317	Avoidance Conditions	4/1/2001	8/8/2002, 67 FR 51461	

Section .0800 Exclusionary Rules

Section .0801	Purpose and Scope	5/1/1999	10/22/2002, 67 FR 64989	
Section .0802	Gasoline Servicing Stations and Dispensing Facilities.	8/1/1995	9/20/1996, 61 FR 49413	
Section .0803	Coating, Solvent Cleaning, Graphic Arts Operations.	5/1/1999	10/22/2002, 67 FR 64989	
Section .0804	Dry Cleaning Facilities	8/1/1995	9/20/1996, 61 FR 49414	
Section .0805	Grain Elevators	4/1/2001	8/8/2002, 67 FR 51461	
Section .0806	Cotton Gins	6/1/2004	7/18/2017, 82 FR 32767	
Section .0807	Emergency Generators	4/1/2002	8/8/2002, 67 FR 51461	
Section .0808	Peak Shaving Generators	7/1/1999	10/22/2002, 67 FR 64989	
Section .0809	Concrete Batch Plants	4/1/2004	9/27/2017, 82 FR 45473	

Section .0900 Permit Exemptions

Section .0901	Purpose and Scope	1/1/2005	9/27/2017, 82 FR 45473	
Section .0902	Portable Crushers	1/1/2005	9/27/2017, 82 FR 45473	

(2) EPA APPROVED FORSYTH COUNTY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
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Subchapter 3A Air Pollution Control Requirements**Section .0100 In General**

Section .0101	Department Established	6/14/1990	5/2/1991, 56 FR 20140	
Section .0102	Enforcement of Chapter	6/14/1990	5/2/1991, 56 FR 20140	
Section .0103	General Powers and Duties of Director.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0104	Authority of Director to Establish Administrative Procedures.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0105	Fees for Inspections, Permits, and Certificates Required by Chapter.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0106	Penalties for Violation of Chapter ...	1/17/1997	2/17/2000, 65 FR 8053	
Section .0107	Civil Relief for Violations of Chapter	6/14/1990	5/2/1991, 56 FR 20140	
Section .0108	Chapter Does Not Prohibit Private Actions For Relief.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0109	Judicial Review of Administrative Decisions Rendered Under Chapter.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0111	Copies of Referenced Federal Regulations.	6/14/1990	5/2/1991, 56 FR 20140	

Section .0200 Advisory Board

Section .0201	Established; Composition; Terms of Members.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0202	Secretary	6/14/1990	5/2/1991, 56 FR 20140	
Section .0203	Meetings	6/14/1990	5/2/1991, 56 FR 20140	
Section .0204	To Serve in Advisory Capacity; General Functions.	6/14/1990	5/2/1991, 56 FR 20140	

(2) EPA APPROVED FORSYTH COUNTY REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section .0205	Appeals to and Other Appearances Before Board.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0206	Opinions Not Binding	6/14/1990	5/2/1991, 56 FR 20140	
Section .0300 Remedies for Enforcement of Standards—Special Orders				
Section .0301	Applicability	6/14/1990	5/2/1991, 56 FR 20140	
Section .0302	Issuance	6/14/1990	5/2/1991, 56 FR 20140	
Section .0303	Definitions	6/14/1990	5/2/1991, 56 FR 20140	
Section .0304	Categories of Sources	6/14/1990	5/2/1991, 56 FR 20140	
Section .0305	Enforcement Procedures	6/14/1990	5/2/1991, 56 FR 20140	
Section .0306	Required Procedures for Issuance of Special Orders by Consent and Special Orders.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0307	Documentation for Special Orders	6/14/1990	5/2/1991, 56 FR 20140	
Section .0308	Public Hearing	6/14/1990	5/2/1991, 56 FR 20140	
Section .0309	Compliance Bonds	6/14/1990	5/2/1991, 56 FR 20140	
Section .0400 Forsyth County Air Quality Technical Code				
Section .0401	Adopted	6/14/1990	5/2/1991, 56 FR 20140	
Subchapter 3B Relationship to State Code				
Section .0101	In General	6/14/1990	5/2/1991, 56 FR 20140	
Section .0102	Air Pollution Control Requirements (Subchapter 3D).	6/14/1990	5/2/1991, 56 FR 20140	
Section .0103	Air Quality Permits (Subchapter 3Q).	6/14/1990	5/2/1991, 56 FR 20140	
Subchapter 3D Air Pollution Control Requirements				
Section .0100 Definitions and References				
Section .0101	Definitions	11/6/1998	2/17/2000, 65 FR 8093	
Section .0103	Copies of Referenced Federal Regulations.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0104	Incorporation by Reference	5/24/1999	10/22/2002, 67 FR 64994	
Section .0200 Air Pollution Sources				
Section .0201	Classification of Air Pollution Sources.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0202	Registration of Air Pollution Sources.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0300 Air Pollution Emergencies				
Section .0301	Purpose	6/14/1990	5/2/1991, 56 FR 20140	
Section .0302	Episode Criteria	6/14/1990	5/2/1991, 56 FR 20140	
Section .0303	Emission Reduction Plans	6/14/1990	5/2/1991, 56 FR 20140	
Section .0304	Preplanned Abatement Program	6/14/1990	5/2/1991, 56 FR 20140	
Section .0305	Emission Reduction Plan: Alert Level.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0306	Emission Reduction Plan: Warning Level.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0307	Emission Reduction Plan: Emergency Level.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0400 Ambient Air Quality Standards				
Section .0401	Purpose	6/14/1990	5/2/1991, 56 FR 20140	
Section .0402	Sulfur Oxides	6/14/1990	5/2/1991, 56 FR 20140	
Section .0403	Total Suspended Particulates	6/14/1990	5/2/1991, 56 FR 20140	
Section .0404	Carbon Monoxide	6/14/1990	5/2/1991, 56 FR 20140	
Section .0405	Ozone	5/24/1999	10/22/2002, 67 FR 64994	
Section .0407	Nitrogen Dioxide	6/14/1990	5/2/1991, 56 FR 20140	
Section .0408	Lead	6/14/1990	5/2/1991, 56 FR 20140	
Section .0409	PM 10 Particulate Matter	6/14/1990	5/2/1991, 56 FR 20140	
Section .0410	PM 2.5 Particulate Matter	5/24/1999	10/22/2002, 67 FR 64994	

(2) EPA APPROVED FORSYTH COUNTY REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section .0500 Emission Control Standards				
Section .0501	Compliance With Emission Control Standards.	5/24/1999	10/22/2002, 67 FR 64994	
Section .0502	Purpose	6/14/1990	5/2/1991, 56 FR 20140	
Section .0503	Particulates from Fuel Burning Indirect Heat Exchangers.	5/24/1999	10/22/2002, 67 FR 64994	
Section .0504	Particulates from Wood Burning Indirect Heat Exchangers.	7/22/2002	9/16/2003, 68 FR 54166	
Section .0506	Particulates from Hot Mix Asphalt Plants.	11/6/1998	2/17/2000, 65 FR 8053	
Section .0507	Particulates from Chemical Fertilizer Manufacturing Plants.	11/6/1998	2/17/2000, 65 FR 8053	
Section .0508	Particulates from Pulp and Paper Mills.	11/6/1998	2/17/2000, 65 FR 8053	
Section .0509	Particulates from MICA or FELDSPAR Processing Plants.	11/6/1998	2/17/2000, 65 FR 8053	
Section .0510	Particulates from Sand, Gravel, or Crushed Stone Operations.	11/6/1998	2/17/2000, 65 FR 8053	
Section .0511	Particulates from Lightweight Aggregate Processes.	11/6/1998	2/17/2000, 65 FR 8053	
Section .0512	Particulates from Wood Products Finishing Plants.	7/28/1997	12/31/1998, 63 FR 72190	
Section .0513	Particulates from Portland Cement Plants.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0514	Particulates from Ferrous Jobbing Foundries.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0515	Particulates from Miscellaneous Industrial Processes.	11/6/1998	2/17/2000, 65 FR 8053	
Section .0516	Sulfur Dioxide Emissions from Combustion Sources.	11/29/1995	5/26/1996, 61 FR 25789	
Section .0517	Emissions from Plants Producing Sulfuric Acid.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0519	Control of Nitrogen Dioxide and Nitrogen Oxides Emissions.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0521	Control of Visible Emissions	11/6/1998	2/17/2000, 65 FR 8053	
Section .0522	Control and Prohibition of Odorous Emissions.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0524	New Source Performance Standards.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0527	Emissions from Spodumene Ore Roasting.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0528	Total Reduced Sulfur from Kraft Pulp Mills.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0529	Fluoride Emissions from Primary Aluminum 24 Reduction Plants.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0530	Prevention of Significant Deterioration.	10/10/1997	12/31/1998, 63 FR 72190	
Section .0531	Sources in Nonattainment Areas	11/6/1998	2/17/2000, 65 FR 8053	
Section .0532	Sources Contributing to an Ambient Violation.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0533	Stack Heights	6/14/1990	5/2/1991, 56 FR 20140	
Section .0534	Fluoride Emissions from Phosphate Fertilizer Industry.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0535	Excess Emissions Reporting and Malfunctions.	11/6/1998	2/17/2000, 65 FR 8053	
Section .0536	Particulate Emissions from Electric Utility Boilers.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0537	Control of Mercury Emissions	6/14/1990	5/2/1991, 56 FR 20140	
Section .0538	Control of Ethylene Oxide Emissions.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0539	Odor Control of Feed Ingredient Manufacturing Plants.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0540	Particulates from Fugitive Non-Process Dust Emission Sources.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0541	Control of Emissions from Abrasive Blasting.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0542	Control of Particulate Emissions from Cotton Ginning Operations.	7/22/2002	9/16/2003, 68 FR 54163	

(2) EPA APPROVED FORSYTH COUNTY REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section .0600 Monitoring: Recordkeeping: Reporting				
Section .0601	Purpose and Scope	5/24/1999	10/22/2002, 67 FR 64994	
Section .0602	Definitions	5/24/1999	10/22/2002, 67 FR 64994	
Section .0604	Exceptions to Monitoring and Reporting Requirements.	5/24/1999	10/22/2002, 67 FR 64994	
Section .0605	General Recordkeeping and Reporting Requirements.	5/24/1999	10/22/2002, 67 FR 64994	
Section .0606	Sources Covered By Appendix P of 40 CFR Part 51.	5/24/1999	10/22/2002, 67 FR 64994	
Section .0607	Large Wood and Wood-fossil Fuel Combination Units.	5/24/1999	10/22/2002, 67 FR 64994	
Section .0611	Monitoring Emissions from Other Sources.	5/24/1999	10/22/2002, 67 FR 64994	
Section .0612	Alternative Monitoring and Reporting Procedures.	5/24/1999	10/22/2002, 67 FR 64994	
Section .0613	Quality Assurance Program	5/24/1999	10/22/2002, 67 FR 64994	
Section .0614	Compliance Assurance Monitoring	5/24/1999	10/22/2002, 67 FR 64994	
Section .0615	Delegation	6/14/1990	5/2/1991, 56 FR 20140	
Section .0800 Transportation Facilities				
Section .0801	Purpose and Scope	6/14/1990	5/2/1991, 56 FR 20140	
Section .0802	Definitions	6/14/2000	5/2/1991, 56 FR 20140	
Section .0803	Highway Projects	6/14/1990	5/2/1991, 56 FR 20140	
Section .0804	Airport Facilities	6/14/1990	5/2/1991, 56 FR 20140	
Section .0805	Parking Facilities	6/14/1990	5/2/1991, 56 FR 20140	
Section .0806	Ambient Monitoring and Modeling Analysis.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0900 Volatile Organic Compounds				
Section .0901	Definitions	6/14/1990	5/2/1991, 56 FR 20140	
Section .0902	Applicability	10/10/1997	12/31/1998, 63 FR 72190	
Section .0903	Recordkeeping: Reporting: Monitoring.	5/24/1999	10/22/2002, 67 FR 64994	
Section .0906	Circumvention	6/14/1990	5/2/1991, 56 FR 20140	
Section .0909	Compliance Schedules for Sources in New Nonattainment Areas.	11/6/1998	2/17/2000, 65 FR 8053	
Section .0912	General Provisions on Test Methods and Procedures.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0913	Determination of Volatile Content of Surface Coatings.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0914	Determination of VOC Emission Control System Efficiency.	11/6/1998	2/17/2000, 65 FR 8053	
Section .0915	Determination of Solvent Metal Cleaning VOC Emissions.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0916	Determination: VOC Emissions from Bulk Gasoline Terminals.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0917	Automobile and Light-Duty Truck Manufacturing.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0918	Can Coating	6/14/1990	5/2/1991, 56 FR 20140	
Section .0919	Coil Coating	6/14/1990	5/2/1991, 56 FR 20140	
Section .0920	Paper Coating	6/14/1990	5/2/1991, 56 FR 20140	
Section .0921	Fabric and Vinyl Coating	6/14/1990	5/2/1991, 56 FR 20140	
Section .0922	Metal Furniture Coating	6/14/1990	5/2/1991, 56 FR 20140	
Section .0923	Surface Coating of Large Appliances.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0924	Magnet Wire Coating	6/14/1990	5/2/1991, 56 FR 20140	
Section .0925	Petroleum Liquid Storage in Fixed Roof Tanks.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0926	Bulk Gasoline Plants	6/14/1990	5/2/1991, 56 FR 20140	
Section .0927	Bulk Gasoline Terminals	7/22/2002	9/16/2003, 68 FR 54166	
Section .0928	Gasoline Service Stations Stage I ..	6/14/1990	5/2/1991, 56 FR 20140	
Section .0930	Solvent Metal Cleaning	6/14/1990	5/2/1991, 56 FR 20140	
Section .0931	Cutback Asphalt	6/14/1990	5/2/1991, 56 FR 20140	
Section .0932	Gasoline Truck Tanks and Vapor Collection Systems.	7/22/2002	9/16/2003, 68 FR 54166	
Section .0933	Petroleum Liquid Storage in External Floating Roof Tanks.	6/14/1990	5/2/1991, 56 FR 20140	

(2) EPA APPROVED FORSYTH COUNTY REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section .0934	Coating of Miscellaneous Metal Parts and Products.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0935	Factory Surface Coating of Flat Wood Paneling.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0936	Graphic Arts	6/14/1990	5/2/1991, 56 FR 20140	
Section .0937	Manufacture of Pneumatic Rubber Tires.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0939	Determination of Volatile Organic Compound Emissions.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0940	Determination of Leak Tightness and Vapor Leaks.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0941	Alternative Method for Leak Tightness.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0942	Determination of Solvent in Filter Waste.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0943	Synthetic Organic Chemical and Polymer Manufacturing.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0944	Manufacture of Polyethylene, Polypropylene and Polystyrene.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0945	Petroleum Dry Cleaning	6/14/1990	5/2/1991, 56 FR 20140	
Section .0947	Manufacture of Synthesized Pharmaceutical Products.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0948	VOC Emissions from Transfer Operations.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0949	Storage of Miscellaneous Volatile Organic Compounds.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0951	Miscellaneous Volatile Organic Compound Emissions.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0952	Petition for Alternative Controls	11/29/1995	5/23/1996, 61 FR 25789	
Section .0953	Vapor Return Piping for Stage II Vapor Recovery.	11/6/1998	2/17/2000, 65 FR 8053	
Section .0954	Stage II Vapor Recovery	10/10/1997	12/31/1998, 63 FR 72190	
Section .0955	Thread Bonding Manufacturing	11/29/1995	5/23/1996, 61 FR 25789	
Section .0956	Glass Christmas Ornament Manufacturing.	11/29/1995	5/23/1996, 61 FR 25789	
Section .0957	Commercial Bakeries	11/29/1995	5/23/1996, 61 FR 25789	
Section .0958	Work Practices for Sources of Volatile Organic Compounds.	6/14/1990	5/2/1991, 56 FR 20140	
Section .1200 Control of Emissions from Incinerators 111(a)				
Section .1201	Purpose and Scope	6/14/1990	5/2/1991, 56 FR 20140	
Section .1202	Definitions	6/14/1990	5/2/1991, 56 FR 20140	
Section .1900 Open Burning				
Section .1901	Purpose, Scope, and Impermissible Open Burning.	7/1/1996	8/1/1997, 62 FR 41277	
Section .1902	Definitions	6/14/1990	5/2/1991, 56 FR 20140	
Section .1903	Permissible Open Burning	10/25/1999	8/8/2002, 67 FR 51763	
Section .1904	Air Curtain Burners	6/14/1990	5/2/1991, 56 FR 20140	
Section .1905	Office Location	6/14/1990	5/2/1991, 56 FR 20140	
Subchapter 3Q Air Quality Permits				
Section .0100 General Provisions				
Section .0101	Required Air Quality Permits	11/6/1998	2/17/2000, 65 FR 8053	
Section .0102	Activities Exempted from Permit Requirements.	7/22/2002	9/16/2003, 68 FR 54166	
Section .0103	Definitions	5/24/1999	10/22/2002, 67 FR 64994	
Section .0104	Where to Obtain and File Permit Applications.	10/10/1997	12/31/1998, 63 FR 72190	
Section .0107	Confidential Information	5/24/1999	10/22/2002, 67 FR 64994	
Section .0200 Permit Fees				
Section .0207	Annual Emissions Reporting	11/6/1998	2/17/2000, 65 FR 8053	
Section .0300 Construction and Operation Permit				
Section .0301	Applicability	11/6/1998	2/17/2000, 65 FR 8053	

(2) EPA APPROVED FORSYTH COUNTY REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section .0302	Facilities Not Likely to Contravene Demonstration.	11/6/1998	2/17/2000, 65 FR 8053	
Section .0303	Definitions	6/14/1990	5/2/1991, 56 FR 20140	
Section .0304	Applications	07/1/1999	10/22/2002, 67 FR 64994	
Section .0305	Application Submittal Content	6/14/1990	5/2/1991, 56 FR 20140	
Section .0306	Permits Requiring Public Participation.	7/1/1999	10/22/2002, 67 FR 64994	
Section .0307	Public Participation Procedures	10/10/1997	12/31/1998, 63 FR 72190	
Section .0308	Final Action on Permit Applications	3/14/1995	2/1/1996, 61 FR 3586	
Section .0309	Termination, Modification and Revocation of Permits.	7/1/1999	10/22/2002, 67 FR 64994	
Section .0310	Permitting of Numerous Similar Facilities.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0311	Permitting of Facilities at Multiple Temporary Sites.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0312	Application Processing Schedule ...	11/6/1998	2/17/2000, 65 FR 8053	
Section .0314	General Permit Requirements	5/24/1999	10/22/2002, 67 FR 64994	
Section .0315	Synthetic Minor Facilities	7/1/1999	10/22/2002, 67 FR 64994	

Section .0800 Exclusionary Rules

Section .0801	Purpose and Scope	5/24/1999	10/22/2002, 67 FR 64994	
Section .0802	Gasoline Service Stations and Dispensing Facilities.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0803	Coating, Solvent Cleaning, Graphic Arts Operations.	7/30/1999	10/22/2002, 75 FR 64994	
Section .0804	Dry Cleaning Facilities	6/14/1990	5/2/1991, 56 FR 20140	
Section .0805	Grain Elevators	11/6/1998	2/17/2000, 65 FR 8093	
Section .0806	Cotton Gins	11/6/1998	2/17/2000, 65 FR 8093	
Section .0807	Emergency Generators	11/6/1998	2/17/2000, 65 FR 8093	
Section .0808	Peak Shaving Generators	7/1/1999	10/22/2002, 67 FR 64990	

(3) EPA APPROVED MECKLENBURG COUNTY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
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Article 1.000 Permitting Provisions for Air Pollution Sources, Rules and Operating Regulations for Acid Rain Sources, Title V and Toxic Air Pollutants**Section 1.5100 General Provisions and Administrations**

Section 1.5101	Declaration of Policy	6/14/1990	5/2/1991, 56 FR 20140	
Section 1.5102	Definition of Terms	11/21/2000	10/22/2002, 67 FR 64999	
Section 1.5103	Enforcement Agency	6/14/1990	5/2/1991, 56 FR 20140	
Section 1.5104	General Duties and Powers of the Director, With the Approval of the Board.	6/14/1990	5/2/1991, 56 FR 20140	
Section 1.5111	General Recordkeeping, Reporting and Monitoring Requirements.	7/1/1996	6/30/2003, 68 FR 38632	

Section 1.5200 Air Quality Permits

Section 1.5210	Purpose and Scope	6/14/1990	5/2/1991, 56 FR 20140	
Section 1.5211	Applicability	11/21/2000	10/22/2002, 67 FR 64999	
Section 1.5212	Applications	7/1/1996	6/30/2003, 68 FR 38632	
Section 1.5213	Action on Application; Issuance of Permit.	7/1/1996	6/30/2003, 68 FR 38632	
Section 1.5214	Commencement of Operation	7/1/1996	6/30/2003, 68 FR 38632	
Section 1.5215	Application Processing Schedule ...	7/1/1996	6/30/2003, 68 FR 38632	
Section 1.5216	Incorporated By Reference	6/6/1994	7/28/1995, 60 FR 38715	
Section 1.5217	Confidential Information	6/14/1990	5/2/1991, 56 FR 20140	
Section 1.5218	Compliance Schedule for Previously Exempted Activities.	6/14/1990	5/2/1991, 56 FR 20140	
Section 1.5219	Retention of Permit at Permitted Facility.	6/6/1994	7/28/1995, 60 FR 38715	
Section 1.5220	Applicability Determinations	6/14/1990	5/2/1991, 56 FR 20140	
Section 1.5221	Permitting of Numerous Similar Facilities.	6/6/1994	7/28/1995, 60 FR 38715	
Section 1.5222	Permitting of Facilities at Multiple Temporary Sites.	6/6/1994	7/28/1995, 60 FR 38715	

(3) EPA APPROVED MECKLENBURG COUNTY REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 1.5230	Permitting Rules and Procedures ...	6/14/1990	5/2/1991, 56 FR 20140	
Section 1.5231	Air Quality Fees	7/1/1996	6/30/2003, 68 FR 38632	
Section 1.5232	Issuance, Revocation, and Enforcement of Permits.	7/1/1996	6/30/2003, 68 FR 38632	
Section 1.5234	Hearings	6/6/1994	7/28/1995, 60 FR 38715	
Section 1.5235	Expedited Application Processing Schedule.	6/14/1990	5/2/1991, 56 FR 20140	
Section 1.5300 Enforcement; Variances; Judicial Review				
Section 1.5301	Special Enforcement Procedures ...	6/14/1990	5/2/1991, 56 FR 20140	
Section 1.5302	Criminal Penalties	6/14/1990	5/2/1991, 56 FR 20140	
Section 1.5303	Civil Injunction	6/14/1990	5/2/1991, 56 FR 20140	
Section 1.5304	Civil Penalties	6/14/1990	5/2/1991, 56 FR 20140	
Section 1.5305	Variances	7/1/1996	6/30/2003, 68 FR 38632	
Section 1.5306	Hearings	7/1/1996	6/30/2003, 68 FR 38632	
Section 1.5307	Judicial Review	6/14/1990	5/2/1991, 56 FR 20140	
Section 1.5600 Transportation Facility Procedures				
Section 1.5604	Public Participation	7/1/1996	6/30/2003, 68 FR 38632	
Section 1.5607	Application Processing Schedule ...	7/1/1996	6/30/2003, 68 FR 38632	
Article 2.0000 Air Pollution Control Regulations and Procedures				
Section 2.0100 Definitions and References				
Section 2.0101	Definitions	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0104	Incorporated By Reference	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0200 Air Pollution Sources				
Section 2.0201	Classification of Air Pollution Sources.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0202	Registration of Air Pollution Sources.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0300 Air Pollution Emergencies				
Section 2.0301	Purpose	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0302	Episode Criteria	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0303	Emission Reduction Plans	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0304	Preplanned Abatement Program ...	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0305	Emission Reduction Plan: Alert Level.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0306	Emission Reduction Plan: Warning Level.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0307	Emission Reduction Plan: Emergency Level.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0400 Ambient Air Quality Standards				
Section 2.0401	Purpose	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0402	Sulfur Oxides	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0403	Total Suspended Particulates	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0404	Carbon Monoxide	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0405	Ozone	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0407	Nitrogen Dioxide	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0408	Lead	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0409	PM ₁₀ Particulate Matter	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0500 Emission Control Standards				
Section 2.0501	Compliance With Emission Control Standards.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0502	Purpose	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0503	Particulates from Fuel Burning Indirect Heat Exchangers.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0504	Particulates from Wood Burning Indirect Heat Exchangers.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0506	Particulates from Hot Mix Asphalt Plants.	6/14/1990	5/2/1991, 56 FR 20140	

(3) EPA APPROVED MECKLENBURG COUNTY REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 2.0507	Particulates from Chemical Fertilizer Manufacturing Plants.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0508	Particulates from Pulp and Paper Mills.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0509	Particulates from MICA or FELD-SPAR Processing Plants.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0510	Particulates from Sand, Gravel, or Crushed Stone Operations.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0511	Particulates from Lightweight Aggregate Processes.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0512	Particulates from Wood Products Finishing Plants.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0513	Particulates from Portland Cement Plants.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0514	Particulates from Ferrous Jobbing Foundries.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0515	Particulates from Miscellaneous Industrial Processes.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0516	Sulfur Dioxide Emissions from Combustion Sources.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0517	Emissions From Plants Producing Sulfuric Acid.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0518	Miscellaneous Volatile Organic Compound Emissions.	11/21/2000	10/22/2002, 67 FR 64999	
Section 2.0519	Control of Nitrogen Dioxide and Nitrogen Oxides Emissions.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0523	Control of Conical Incinerators	11/21/2000	10/22/2002, 67 FR 64999	
Section 2.0527	Emissions from Spodumene Ore Roasting.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0530	Prevention of Significant Deterioration.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0531	Sources in Nonattainment Areas	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0532	Sources Contributing to an Ambient Violation.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0533	Stack Height	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0535	Excess Emissions Reporting and Malfunctions.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0538	Control of Ethylene Oxide Emissions.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0539	Odor Control of Feed Ingredient Manufacturing Plants.	6/14/1990	5/2/1991, 56 FR 20140	

Section 2.0600 Monitoring: Recordkeeping: Reporting

Section 2.0601	Purpose and Scope	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0602	Definitions	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0604	Exceptions to Monitoring and Reporting Requirements.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0605	General Recordkeeping and Reporting Requirements.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0606	Sources Covered by Appendix P of 40 CFR Part 51.	06/14/1991	5/2/1991, 56 FR 20140	
Section 2.0607	Large Wood and Wood-Fossil Fuel Combination Units.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0608	Other Large Coal or Residual Oil Burners.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0610	Federal Monitoring Requirements ..	11/21/2000	10/22/2002, 67 FR 64999	
Section 2.0611	Monitoring Emissions From Other Sources.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0612	Alternative Monitoring and Reporting Procedures.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0613	Quality Assurance Program	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0614	Compliance Assurance Monitoring	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0615	Delegation	6/14/1990	5/2/1991, 56 FR 20140	

Section 2.0800 Transportation Facilities

Section 2.0801	Purpose and Scope	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0802	Definitions	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0803	Highway Projects	6/14/1990	5/2/1991, 56 FR 20140	

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State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 2.0804	Airport Facilities	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0900 Volatile Organic Compounds				
Section 2.0901	Definitions	3/1/1991	6/23/1994, 59 FR 32362	
Section 2.0902	Applicability	10/16/2004	9/12/07, 72 FR 52012	
Section 2.0903	Recordkeeping: Reporting: Monitoring.	7/1/1991	6/23/1994, 59 FR 32362	
Section 2.0906	Circumvention	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0907	Equipment Installation Compliance Schedule.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0909	Compliance Schedules for Sources In New Nonattainment Areas.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0910	Alternate Compliance Schedule	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0912	General Provisions on Test Methods and Procedures.	7/1/1991	6/23/1994, 59 FR 32362	
Section 2.0913	Determination of Volatile Content of Surface Coatings.	3/1/1991	6/23/1994, 59 FR 32362	
Section 2.0914	Determination of VOC Emission Control System Efficiency.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0915	Determination of Solvent Metal Cleaning VOC Emissions.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0916	Determination: VOC Emissions From Bulk Gasoline Terminals.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0917	Automobile and Light-Duty Truck Manufacturing.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0918	Can Coating	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0919	Coil Coating	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0920	Paper Coating	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0921	Fabric and Vinyl Coating	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0922	Metal Furniture Coating	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0923	Surface Coating of Large Appliances.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0924	Magnet Wire Coating	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0925	Petroleum Liquid Storage in Fixed Roof Tanks.	3/1/1991	6/23/1994, 59 FR 32362	
Section 2.0926	Bulk Gasoline Plants	3/1/1991	6/23/1994, 59 FR 32362	
Section 2.0927	Bulk Gasoline Terminals	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0928	Gasoline Service Stations Stage I ..	3/1/1991	6/23/1994, 59 FR 32362	
Section 2.0929	Petroleum Refinery	3/1/1991	6/23/1994, 59 FR 32362	
Section 2.0930	Solvent Metal Cleaning	3/1/1991	6/23/1994, 59 FR 32362	
Section 2.0931	Cutback Asphalt	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0932	Gasoline Truck Tanks and Vapor Collection Systems.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0933	Petroleum Liquid Storage In External Floating Roof Tanks.	10/16/2004	9/12/07, 72 FR 52012	
Section 2.0934	Coating of Miscellaneous Metal Parts and Products.	3/1/1991	6/23/1994, 59 FR 32362	
Section 2.0935	Factory Surface Coating of Flat Wood Paneling.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0936	Graphic Arts	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0937	Manufacture of Pneumatic Rubber Tires.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0939	Determination of Volatile Organic Compound Emissions.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0940	Determination of Leak Tightness and Vapor Leaks.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0941	Alternative Method for Leak Tightness.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0942	Determination of Solvent in Filter Waste.	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0943	Synthetic Organic Chemical and Polymer Manufacturing.	3/1/1991	6/23/1994, 59 FR 32362	
Section 2.0944	Manufacture of Polyethylene, Polypropylene and Polystyrene.	3/1/1991	6/23/1994, 59 FR 32362	
Section 2.0945	Petroleum Dry Cleaning	6/14/1990	5/2/1991, 56 FR 20140	
Section 2.0951	Miscellaneous Volatile Organic Compound Emissions.	7/1/2000	10/22/2002, 67 FR 64999	
Section 2.0958	Work Practices for Sources of Volatile Organic Compounds.	7/1/2000	10/22/2002, 67 FR 64999	

(4) EPA APPROVED WESTERN NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Chapter 1 Resolution, Organization, Administration				
Section .0101	Resolution	6/14/1990	5/2/1991, 56 FR 20140	
Section .0102	Ordinance	6/14/1990	5/2/1991, 56 FR 20140	
Section .0103	Authority	6/14/1990	5/2/1991, 56 FR 20140	
Section .0104	Organization	6/14/1990	5/2/1991, 56 FR 20140	
Section .0105	General Powers and Duties of Director.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0106	Authority of Director to Establish Administrative Procedures.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0107	Administrative Procedures	6/14/1990	5/2/1991, 56 FR 20140	
Section .0108	Appeals to and Other Appearances Before Board.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0109	Penalties for Violation	6/14/1990	5/2/1991, 56 FR 20140	
Section .0110	Civil Relief for Violation	6/14/1990	5/2/1991, 56 FR 20140	
Section .0111	Fees for Inspection, Permits, and Certificates.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0112	Chapter does not Prohibit Private Actions for Relief.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0113	Judicial Review of Administration, Decisions Rendered Under Chapter.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0114	Opinions Not Binding	6/14/1990	5/2/1991, 56 FR 20140	
Chapter 4 Air Pollution Control Requirements				
Section .0100 Definitions and References				
Section .0101	Definitions	9/15/1994	7/28/1998, 60 FR 38707	
Section .0103	Copies of Referenced Federal Regs.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0104	Incorporation by Reference	6/14/1990	5/2/1991, 56 FR 20140	
Section .0200 Air Pollution Sources				
Section .0201	Classification of Air Pollution Sources.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0202	Registration of Air Pollution Sources.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0300 Air Pollution Emergencies				
Section .0301	Purpose	6/14/1990	5/2/1991, 56 FR 20140	
Section .0302	Episode Criteria	6/14/1990	5/2/1991, 56 FR 20140	
Section .0303	Emission Reduction Plans	6/14/1990	5/2/1991, 56 FR 20140	
Section .0304	Preplanned Abatement Program	6/14/1990	5/2/1991, 56 FR 20140	
Section .0305	Emission Reduction Plan—Alert Level.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0306	Emission Reduction Plan—Warning Level.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0307	Emission Reduction Plan—Emergency Level.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0400 Ambient Air Quality Standards				
Section .0401	Purpose	6/14/1990	5/2/1991, 56 FR 20140	
Section .0402	Sulfur Oxides	6/14/1990	5/2/1991, 56 FR 20140	
Section .0403	Total Suspended Particulate	6/14/1990	5/2/1991, 56 FR 20140	
Section .0404	Carbon Monoxide	6/14/1990	5/2/1991, 56 FR 20140	
Section .0405	Ozone	6/14/1990	5/2/1991, 56 FR 20140	
Section .0407	Nitrogen Dioxide	6/14/1990	5/2/1991, 56 FR 20140	
Section .0408	Lead	6/14/1990	5/2/1991, 56 FR 20140	
Section .0409	Particulate Matter	6/14/1990	5/2/1991, 56 FR 20140	
Section .0500 Emission Control Standards				
Section .0501	Compliance with Emissions Control Standards.	9/15/1994	7/28/1998, 60 FR 38707	
Section .0502	Purpose	6/14/1990	5/2/1991, 56 FR 20140	
Section .0503	Particulates from Fuel Burning Indirect Heat Exchangers.	9/15/1994	7/28/1998, 60 FR 38707	

(4) EPA APPROVED WESTERN NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section .0504	Particulates from Wood Burning Indirect Heat Exchangers.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0506	Control of Particulates from Hot Mix Asphalt Plants.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0507	Particulates from Chemical Fertilizer Manufacturing Plants.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0508	Control of Particulates from Pulp and Paper Mills.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0509	Particulates from Mica or Feld Spar Processing Plants.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0510	Particulates-Sand, Gravel, or Crushed Stone Operations.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0511	Particulates from Lightweight Aggregate Processes.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0512	Particulates from Wood Products Finishing Plants.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0513	Control of Particulates from Portland Cement Plants.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0514	Control of Particulates from Ferrous Jobbing Foundries.	9/15/1994	7/28/1998, 60 FR 38707	
Section .0515	Particulates from Miscellaneous Industrial Processes.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0516	Sulfur Dioxide from Combustion Sources.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0517	Emissions from Plants Producing Sulfuric Acid.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0518	Miscellaneous Volatile Organic Compound Emissions.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0519	Control of Nitrogen Dioxide and Nitrogen Oxides Emissions.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0521	Control of Visible Emissions	6/14/1990	5/2/1991, 56 FR 20140	
Section .0523	Control of Conical Incinerators	6/14/1990	5/2/1991, 56 FR 20140	
Section .0527	Emissions from Spodumene Ore Roasting.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0528	Total Reduced Sulfur from Kraft Pulp Mills.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0530	Prevention of Significant Deterioration.	9/15/1994	7/28/1998, 60 FR 38707	
Section .0532	Sources Contributing to an Ambient Violation.	9/15/1994	7/28/1998, 60 FR 38707	
Section .0533	Stack Height	6/14/1990	5/2/1991, 56 FR 20140	
Section .0535	Excess Emissions Reporting and Malfunctions.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0536	Particulate Emissions from Electric Utility Boilers.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0540	Particulates from Fugitive Non-process Dust Emission Sources.	6/14/1990	5/2/1991, 56 FR 20140	

Section .0600 Air Pollutants: Monitoring, Reporting

Section .0601	Purpose and Scope			
Section .0602	Definitions	6/14/1990	5/2/1991, 56 FR 20140	
Section .0604	Sources Covered by Implementation Plan Requirements.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0605	Wood and Wood-Fossil Fuel Combination Units.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0606	Other Coal or Residual Oil Burners	6/14/1990	5/2/1991, 56 FR 20140	
Section .0607	Exceptions to Monitoring and Reporting Requirements.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0608	Program	6/14/1990	5/2/1991, 56 FR 20140	
Schedule .0610	Delegation	6/14/1990	5/2/1991, 56 FR 20140	

Section .0800 Transportation Facilities

Section .0801	Purpose and Scope	6/14/1990	5/2/1991, 56 FR 20140	
Section .0802	Definitions	6/14/1990	5/2/1991, 56 FR 20140	
Section .0803	Highway Projects	6/14/1990	5/2/1991, 56 FR 20140	
Section .0804	Airport Facilities	6/14/1990	5/2/1991, 56 FR 20140	
Section .0805	Parking Facilities	6/14/1990	5/2/1991, 56 FR 20140	

(4) EPA APPROVED WESTERN NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section .0806	Ambient Monitoring and Modeling Analysis.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0900 Volatile Organic Compounds				
Section .0901	Definitions	6/14/1990	5/2/1991, 56 FR 20140	
Section .0902	Applicability	6/14/1990	5/2/1991, 56 FR 20140	
Section .0903	Recordkeeping: Reporting, Monitoring.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0906	Circumvention	6/14/1990	5/2/1991, 56 FR 20140	
Section .0912	General Provisions on Test Methods and Procedures.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0913	Determination of Volatile Content of Surface Coatings.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0914	Determination of VOC Emission Control System Efficiency.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0915	Determination of Solvent Metal Cleaning VOC Emissions.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0925	Petroleum Liquid in Fixed Roof Tank.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0926	Bulk Gasoline Plants	6/14/1990	5/2/1991, 56 FR 20140	
Section .0927	Bulk Gasoline Terminals	6/14/1990	5/2/1991, 56 FR 20140	
Section .0928	Gasoline Service Stations Stage I ..	6/14/1990	5/2/1991, 56 FR 20140	
Section .0932	Gasoline Truck Tanks and Vapor Collection Systems.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0933	Petroleum Liquid Storage in External Roof Tanks.	6/14/1990	5/2/1991, 56 FR 20140	
Section .1900 Control of Open Burning				
Section .1901	Purpose, Scope, and Impermissible Open Burning.	6/14/1990	5/2/1991, 56 FR 20140	
Section .1902	Definitions	6/14/1990	5/2/1991, 56 FR 20140	
Section .1903	Permissible Open Burning Without a Permit.	6/14/1990	5/2/1991, 56 FR 20140	
Section .1904	Air Curtain Burners	6/14/1990	5/2/1991, 56 FR 20140	
Section .1906	Delegation To County Governments.	6/14/1990	5/2/1991, 56 FR 20140	
Chapter 17 Air Quality Permits Procedures				
Section .0100 General Provisions				
Section .0101	Required Air Quality Permits	6/14/1990	5/2/1991, 56 FR 20140	
Section .0102	Activities Exempted from Permit Requirements.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0103	Definitions	6/14/1990	5/2/1991, 56 FR 20140	
Section .0104	Where to Obtain and File Permit Applications.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0105	Copies of Referenced Documents ..	6/14/1990	5/2/1991, 56 FR 20140	
Section .0106	Incorporation by Reference	6/14/1990	5/2/1991, 56 FR 20140	
Section .0107	Confidential Information	6/14/1990	5/2/1991, 56 FR 20140	
Section .0109	Compliance Schedule for Previously Exempted Activities.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0110	Retention of Permit at Permitted Facility.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0111	Applicability Determinations	6/14/1990	5/2/1991, 56 FR 20140	
Section .0112	Applications Requiring Professional Engineer Seal.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0300 Construction and Operating Permit				
Section .0301	Applicability	6/14/1990	5/2/1991, 56 FR 20140	
Section .0302	Facilities not Likely to Contravene Demonstration.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0303	Definitions	6/14/1990	5/2/1991, 56 FR 20140	
Section .0304	Applications	6/14/1990	5/2/1991, 56 FR 20140	
Section .0305	Application Submittal Content	6/14/1990	5/2/1991, 56 FR 20140	
Section .0306	Permits Requiring Public Participation.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0307	Public Participation Procedures	6/14/1990	5/2/1991, 56 FR 20140	
Section .0308	Final Action On Permit Applications	6/14/1990	5/2/1991, 56 FR 20140	

(4) EPA APPROVED WESTERN NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section .0309	Termination, Modification and Revocation of Permits.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0310	Permitting of Numerous Similar Facilities.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0311	Permitting of Facilities at Multiple Temporary Sites.	6/14/1990	5/2/1991, 56 FR 20140	
Section .0312	Application Processing Schedule ...	6/14/1990	5/2/1991, 56 FR 20140	

* * * * *

[FR Doc. 2018–23246 Filed 10–25–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA–R09–OAR–2018–0221, FRL–9985–84–Region 9]

Approval and Promulgation of Air Quality Implementation Plans; Nevada; Rescission of Regional Haze Federal Implementation Plan for the Reid Gardner Generating Station**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Nevada Division of Environmental Protection's (NDEP) request to rescind a Regional Haze Federal Implementation Plan (RH FIP) that regulates air pollutant emissions from Reid Gardner Generating Station (RGGGS) Units 1, 2, and 3. The EPA is approving NDEP's request because RGGGS Units 1–3 have been permanently decommissioned and are being dismantled and demolished.

DATES: This rule is effective November 26, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2018–0221. 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:

Krishna Viswanathan, EPA, Region IX, Air Division, Air Planning Office, (520) 999–7880 or viswanathan.krishna@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us,” and “our” refer to the EPA.

Table of Contents

- I. Proposed Action and Public Comment Period
- II. Final Action
- III. Statutory and Executive Order Reviews

I. Proposed Action and Public Comment Period

On May 31, 2018, the EPA proposed to rescind the RH FIP for RGGGS Units 1–3 because RGGGS Units 1–3 have been permanently decommissioned and are being dismantled and demolished, as demonstrated by the supporting documentation provided by NDEP.¹ The EPA's proposed action provided a 45-day public comment period. The EPA did not receive any timely or germane comments on the proposal to rescind the RGGGS RH FIP.

II. Final Action

For the reasons explained in our proposal, we are approving the NDEP's request to rescind the RH FIP for RGGGS Units 1–3.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

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

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

¹ For details on the EPA's RH FIP and additional background, see proposal at 83 FR 24952 (May 31, 2018).

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action removes existing Federal Implementation Plan and associated requirements covering a single electric power generating station and therefore is a rule of particular applicability. Rules of particular applicability are exempted under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. As detailed in the proposal to this action, small entities are not subject to the requirements of this rule.²

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

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

² For details on the EPA's RH FIP and additional background, see proposal at 83 FR 24952 (May 31, 2018).

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

This action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on any 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. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely rescinds a Federal Implementation Plan (FIP) covering a generating station that has been permanently decommissioned and is being dismantled and demolished.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards. The EPA is not revising any technical standards or imposing any new technical standards in this action.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994), because it does not affect the level of protection to human health or the environment. This rule will not cause any emissions increases because this rule merely rescinds a FIP covering a generating station that has been permanently decommissioned and is being dismantled and demolished.

L. Determination Under Section 307(d)

Pursuant to CAA section 307(d)(1)(B), the EPA has determined that this action is subject to the provisions of section 307(d). Section 307(d) establishes procedural requirements specific to certain rulemaking actions under the CAA. Pursuant to CAA section 307(d)(1)(B), the rescission of the RGGs RH FIP is subject to the requirements of CAA section 307(d), as it constitutes a revision to a FIP under CAA section 110(c). Furthermore, CAA section 307(d)(1)(V) provides that the provisions of section 307(d) apply to “such other actions as the Administrator may determine.” The EPA determines that the provisions of 307(d) apply to the EPA’s action on the RGGs RH FIP rescission.

M. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability. The EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability that only applies to a single facility.

N. Petitions for Judicial Review

Under CAA section 307(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 26, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Incorporation by reference.

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

Dated: October 19, 2018.

Andrew R. Wheeler,
Acting Administrator.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart DD—Nevada

■ 2. Section 52.1488 is amended by removing and reserving paragraph (f).

[FR Doc. 2018–23470 Filed 10–25–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Part 870

RIN 2900–AP81

VA Acquisition Regulation: Describing Agency Needs; Contract Financing; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correction.

SUMMARY: The Department of Veterans Affairs is correcting a final rule that published in the **Federal Register** on October 1, 2018 amending and updating its VA Acquisition Regulation (VAAR). Two instructions in the rule are unneeded and are being removed.

DATES: The correction is effective October 31, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Rafael N. Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street NW, Washington, DC 20001, (202) 382–2787. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 24, 2018, at 83 FR 48257, VA published a final rule (AQ04) that removes part 870 as the guidance included therein was either moved to other parts, out of date, or duplicative of the FAR. That rule (AQ04) is effective on October 24, 2018, however on October 1, 2018 at 83 FR 49302 VA published a final rule (AP81) with instructions to revise the authority citation for part 870 and remove §§ 870.112 and 870.113 with an effective date of October 31, 2018.

With this document, VA is removing the unneeded instructions amending part 870 in the final rule (AP81) published on October 1, 2018 (83 FR 49302).

Correction

In FR Doc. 2018–18984, appearing on page 49302 in the **Federal Register** of October 1, 2018, the following correction is made:

PART 870—[CORRECTED]

■ 1. On page 49311, in the third column, under part 870, remove instructions 37 and 38.

Dated: October 23, 2018.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2018-23420 Filed 10-25-18; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180808738-8738-01]

RIN 0648-XG417

Fisheries of the Northeastern United States; Golden Tilefish Fishery; 2019 Specifications

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

ACTION: Temporary final rule.

SUMMARY: We are finalizing specifications for the 2019 commercial

golden tilefish fishery, including the annual catch and total allowable landings limits. This action establishes allowable harvest levels and other management measures to prevent overfishing while allowing optimum yield, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Tilefish Fishery Management Plan.

DATES: Effective November 1, 2018, through October 31, 2019.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978-281-9341.

SUPPLEMENTARY INFORMATION:

Background

The golden tilefish fishery is managed by the Mid-Atlantic Fishery Management Council under the Tilefish Fishery Management Plan (FMP), which outlines the Council’s process for establishing annual specifications. Regulations implementing the Tilefish FMP appear at 50 CFR part 648, subparts A and N, which require the Council to recommend acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), total allowable landings (TAL), and

other management measures, for up to three years at a time. On September 7, 2017, NMFS proposed 2018 specifications for the golden tilefish fishery and announced projected specifications for 2019 and 2020 based on Council recommendations (82 FR 42266). Public comment was accepted through September 22, 2017. We published a final rule implementing the 2018 specifications on November 7, 2017 (82 FR 51578).

On October 23, 2017, we published a proposed rule (82 FR 48967) to implement Framework Adjustment 2 to the Tilefish FMP, and accepted public comment through November 7, 2017. A final rule implementing Framework 2 was published on March 13, 2018 (83 FR 10803). One provision of Framework 2 changed how assumed discards are accounted for in the specifications setting process. As a result, the Framework 2 final rule adjusted the previously published 2018 specifications and projected specifications for 2019 and 2020 (Table 1). Additional background information regarding the development of these specifications was provided in these rules and is not repeated here.

TABLE 1—SUMMARY OF GOLDEN TILEFISH SPECIFICATIONS

	2018		Final 2019		Projected 2020	
	mt	million lb	mt	million lb	mt	million lb
Overfishing Limit	1,058	2.332	1,098	2.421	1,039	2.291
ABC	742	1.636	742	1.636	742	1.636
ACL	742	1.636	742	1.636	742	1.636
IFQ ACT	705	1.554	705	1.554	705	1.554
Incidental ACT	37	0.082	37	0.082	37	0.082
IFQ TAL	705	1.554	705	1.554	705	1.554
Incidental TAL	33	0.072	33	0.072	33	0.072

At the end of each fishing year, we evaluate catch information and determine if the ACL has been exceeded. If the ACL is exceeded, the regulations at 50 CFR 648.293 require a pound-for-pound reduction in a subsequent fishing year. During fishing year 2018, there were no annual catch limit or total allowable landings overages. Also, there is no new biological information that would require altering the projected 2019 specifications. Because no overages have occurred, we are announcing the final specifications for fishing year 2019, as projected in the Framework 2 rule, and outlined above in Table 1.

As in previous years, no golden tilefish quota has been allocated for research set-aside. All other management measures in the golden tilefish fishery will remain unchanged

for the 2018–2020 fishing years. The incidental trip limit will stay at 500 lb (226.8 kg), or 50 percent, by weight, of all species being landed, including tilefish; whichever is less. The recreational catch limit will remain eight fish per-angler, per-trip. Annual IFQ allocations will be issued to individual quota shareholders in mid-October, before the November 1 start of the fishing year.

The fishery management plan allows for the previous year’s specifications to remain in place until replaced by a subsequent specifications action (rollover provision). As a result, the 2018 specifications remain in effect until replaced by the 2019 specifications included in this rule.

We will publish notice in the **Federal Register** of any revisions to these specifications if an overage occurs in

2019 that would require adjusting the 2020 projected specifications. We will provide notice of the final 2020 specifications prior to the November 1, 2019, start of the 2020 fishing year.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rule is consistent with the Tilefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries, NOAA (AA), finds it is impracticable, unnecessary, and contrary to the public interest to provide for prior notice and an opportunity for public comment, pursuant to authority set forth at U.S.C. 553(b)(B). The proposed rules for the 2018–2020

specifications and Framework 2 provided the public with the opportunity to comment on the projected specifications for 2019 and 2020, and the specifications for fishing year 2019 remain the same as projected in the Framework 2 rulemaking. All comments received were addressed in the respective final rules for the 2018–2020 specifications and Framework 2. Similarly, the need to implement these measures in a timely manner for the start of the golden tilefish fishing year, constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to establish an effective date less than 30 days after date of publication. The public and fishing industry participants expect this action because we previously alerted the public in the proposed and final rules that we would

conduct this review in interim years of the status quo multi-year specifications and announce the final quota prior to the start of the fishing year on November 1.

This rule is exempt from review under Executive Order 12866 because this action contains no implementing regulations.

This rule does not duplicate, conflict, or overlap with any existing Federal rules.

A final regulatory flexibility analysis (FRFA) was prepared for the 2018–2020 specifications final rule. That analysis included the potential impacts of the projected specifications for 2019 and 2020, and no new information has arisen that would change the conclusions drawn in that previous analysis. Because advance notice and the opportunity for public comment are

not required for this action under the Administrative Procedure Act, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply to this rule. Therefore, no new regulatory flexibility analysis is required and none has been prepared.

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

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

Dated: October 23, 2018.

Samuel D. Rauch, III,

*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

[FR Doc. 2018–23431 Filed 10–25–18; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 83, No. 208

Friday, October 26, 2018

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA-2018-0918; Notice No. 23-18-03-SC]

Special Conditions: Innovative Solutions & Support, Inc.; Textron Aviation, Inc. Model B200-Series Airplanes; Autothrust Functions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for Textron Aviation, Inc. B200-series airplanes. These airplanes as modified by Innovative Solutions & Support, Inc., will have a novel or unusual design feature associated with an autothrust system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before December 10, 2018.

ADDRESSES: Send comments identified by docket number FAA-2018-0918 using any of the following methods:

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

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

- *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9

a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

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: Jeff Pretz, AIR-691, Regulations & Policy Section, Small Airplane Standards Branch, Policy & Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 901 Locust; Kansas City, Missouri 64106; telephone (816) 329-3239; facsimile (816) 329-4090; email Jeff.Pretz@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

Background

On December 14, 2017, Innovative Solutions & Support, Inc. (Innovative

Solutions), applied for a supplemental type certificate for installation of an autothrust system (ATS)—also known as an autothrottle system—in Textron Aviation, Inc., (Textron) B200-series airplanes. The B200-series airplanes are powered by two Pratt & Whitney PT6A turbo-propeller engines—depending on airplane model—that can carry thirteen passengers, including two-flightcrew members. These airplanes have a service ceiling up to 35,000-feet and a maximum takeoff weight of up to 12,500 pounds in the normal category. These airplanes are approved for single-pilot operation.

The installation of an ATS in Textron B200-series airplanes is intended to reduce pilot workload. The ATS is useable in all phases of flight except below decision height on approach. The system includes a torque and airspeed mode along with monitors to prevent the system from exceeding critical engine or airspeed limits. Throttle movement is provided by a stepper motor acting through a linear actuator, which acts as a link between the stepper motor and throttle. The liner actuator can be overridden by pilot movement of the throttle and automatically disengages upon disagreement in the expected throttle position versus its actual position.

Section 23.1329, amendment 23-49, only contained requirements for automatic pilot systems that act on the airplane flight controls. Autothrust systems are automatic systems that act on the thrust controls. These systems provide enhanced automation and safety, but may also introduce pilot confusion, countering the safety benefit. 14 CFR 25.1329, amendment 25-119, addresses these concerns. Therefore, these proposed special conditions are based on § 25.1329 and provide additional requirements to standardize the pilot interface and system behavior and enhance pilot awareness of system active and armed modes.

Type Certification Basis

Under the provisions of § 21.101, Innovative Solutions must show that B200-series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate (TC) No. A24CE¹ or the

¹ See <http://rgl.faa.gov/>.

applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the “original type certification basis.” The regulations incorporated by reference in TC No. A24CE are as follows: 14 CFR part 23, amendments 23–1 through 23–9, plus various later part 23 amendments—depending on the model and serial number of the airplane—as noted on Type Certification Data Sheet A24CE.

If the Administrator finds the applicable airworthiness regulations (*i.e.*, 14 CFR part 23) do not contain adequate or appropriate safety standards for B200-series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model(s) for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the FAA would apply these special conditions to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, B200-series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Novel or Unusual Design Features

Textron B200-series airplanes will incorporate the following novel or unusual design features:

Autothrust system, which provides commands to two linear actuators, one attached to each throttle lever, that automatically control thrust on each engine. The autothrust system can be operated in either Torque Control Mode or Airspeed Mode.

Discussion

The current part 23 airworthiness regulations do not contain appropriate safety standards for an ATS installation; hence, the need for special conditions. However, part 25 regulations contain appropriate airworthiness standards; therefore, these proposed special conditions are derived from 14 CFR 25.1329, amendment 25–119. Sections 23.143, amendment 23–50, and 23.1309, amendment 23–62, would be used

instead of the corresponding part 25 regulations referenced in § 25.1329.

Applicability

As discussed above, these special conditions are applicable to Textron B200-series airplanes. Should Innovative Solutions apply at a later date for a supplemental type certificate to modify any other model included on TC No. A24CE to incorporate the same novel or unusual design feature, the FAA would apply these special conditions to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702, 44704, Pub. L. 113–53, 127 Stat. 584 (49 U.S.C. 44704) note.

The Proposed Special Conditions

■ Accordingly, the FAA proposes the following special conditions as part of the type certification basis for Textron Aviation, Inc., B200-series airplanes as modified by Innovative Solutions & Support, Inc.

1. Autothrottle System

In addition to the requirements of §§ 23.143, 23.1309, and 23.1329, the following apply:

(a) Quick disengagement controls for the autothrust functions must be provided for each pilot. The autothrust quick disengagement controls must be located on the thrust control levers. Quick disengagement controls must be readily accessible to each pilot while operating the thrust control levers.

(b) The effects of a failure of the system to disengage the autothrust functions when manually commanded by the pilot must be assessed in accordance with the requirements of § 23.1309.

(c) Engagement or switching of the flight guidance system, a mode, or a sensor may not cause the autothrust system to affect a transient response that alters the airplane’s flight path any greater than a minor transient, as defined in paragraph (1)(l)(1) of this section.

(d) Under normal conditions, the disengagement of any automatic control

function of a flight guidance system may not cause a transient response of the airplane’s flight path any greater than a minor transient.

(e) Under rare normal and non-normal conditions, disengagement of any automatic control function of a flight guidance system may not result in a transient any greater than a significant transient, as defined in paragraph (1)(l)(2) of this section.

(f) The function and direction of motion of each command reference control, such as heading select or vertical speed, must be plainly indicated on, or adjacent to, each control if necessary to prevent inappropriate use or confusion.

(g) Under any condition of flight appropriate to its use, the flight guidance system may not produce hazardous loads on the airplane, nor create hazardous deviations in the flight path. This applies to both fault-free operation and in the event of a malfunction, and assumes the pilot begins corrective action within a reasonable period of time.

(h) When the flight guidance system is in use, a means must be provided to avoid excursions beyond an acceptable margin from the speed range of the normal flight envelope. If the airplane experiences an excursion outside this range, a means must be provided to prevent the flight guidance system from providing guidance or control to an unsafe speed.

(i) The flight guidance system functions, controls, indications, and alerts must be designed to minimize flight crew errors and confusion concerning the behavior and operation of the flight guidance system. Means must be provided to indicate the current mode of operation, including any armed modes, transitions, and reversions. Selector switch position is not an acceptable means of indication. The controls and indications must be grouped and presented in a logical and consistent manner. The indications must be visible to each pilot under all expected lighting conditions.

(j) Following disengagement of the autothrust function, a caution (visual and auditory) must be provided to each pilot.

(k) During autothrust operation, it must be possible for the flightcrew to move the thrust levers without requiring excessive force. The autothrust may not create a potential hazard when the flightcrew applies an override force to the thrust levers.

(l) For purposes of this section, a transient is a disturbance in the control or flight path of the airplane that is not

consistent with response to flight crew inputs or environmental conditions.

(1) A minor transient would not significantly reduce safety margins and would involve flightcrew actions that are well within their capabilities. A minor transient may involve a slight increase in flight crew workload or some physical discomfort to passengers or cabin crew.

(2) A significant transient may lead to a significant reduction in safety margins, an increase in flight crew workload, discomfort to the flightcrew, or physical distress to the passengers or cabin crew, possibly including non-fatal injuries. Significant transients do not require, in order to remain within or recover to the normal flight envelope, any of the following:

(i) Exceptional piloting skill, alertness, or strength.

(ii) Forces applied by the pilot that are greater than those specified in § 23.143(c).

(iii) Accelerations or attitudes in the airplane that might result in further hazard to secured or non-secured occupants.

Issued in Kansas City, Missouri, on October 10, 2018.

Jacqueline Jambor,

Acting Manager, Small Airplane Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–22661 Filed 10–25–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

31 CFR Part 1

RIN 1505–AC35

Freedom of Information Act Regulations

AGENCY: Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This rule proposes revisions to the Department's regulations under the Freedom of Information Act (FOIA). The regulations are being revised to update and streamline procedures and incorporate certain changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007 and the FOIA Improvement Act of 2016. Additionally, the regulations are being updated to reflect developments in the case law and to include current cost figures to be used in calculating and charging fees.

DATES: *Comment due date:* December 26, 2018.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.

- *Fax:* (202) 622–3895, ATTN Ryan Law.

- *Mail:* Ryan Law, Deputy Assistant Secretary for Privacy, Transparency and Records, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

Comments received by mail will be considered timely if they are postmarked on or before the comment date. The www.regulations.gov site will accept comments until 11:59 p.m. eastern time on the comment due date. The Department will consolidate all received comments and make them available, without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Received comments, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure. Properly submitted comments will be available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Ryan Law, Deputy Assistant Secretary for Privacy, Transparency and Records, 202–622–0930, extension 2 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Discussion

This rule proposes revisions to the Department's regulations under the FOIA to update and streamline the language of several procedural provisions and to incorporate certain of the changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007, Public Law 110–175, 121 Stat. 2524 and the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538. Additionally, the regulations are being updated to reflect developments in case law and to include current cost figures to be used in calculating and charging fees.

The revisions of the FOIA regulations in 31 CFR subpart A of part 1 incorporate changes to the language and structure of the regulations. Revised provisions include § 1.1 (General Provisions), § 1.2 (Proactive disclosure of Department records), § 1.3 (Requirements for making requests), § 1.4 (Responsibility for responding to requests), § 1.5 (Timing of responses to requests), § 1.6 (Responses to requests), § 1.7 (Confidential commercial information), § 1.8 (Administrative

appeals), § 1.9 (Preservation of records), § 1.10 (Fees), and § 1.11 (Other rights and services).

Sections 1.2, 1.3, 1.5, 1.6, and 1.10 all address the role of the FOIA Public Liaison in assisting requesters with resolving disputes related to their FOIA requests, as required by the OPEN Government Act of 2007.

The 2007 Act also required agencies to assign tracking numbers to requests that will take longer than 10 days to process. This requirement is implemented through § 1.6.

The FOIA Improvement Act of 2016 provides that agencies must allow a minimum of 90 days for requesters to file an administrative appeal. The Act also requires that agencies notify requesters of the availability of dispute resolution services at various times throughout the FOIA process. This proposed rule updates the Department's regulations to reflect those statutory changes (§§ 1.5, 1.6, 1.8).

A number of changes have been made to the section on fees (§ 1.10). The definition of representative of the news media has been updated to reflect amendments to the FOIA under the OPEN Government Act of 2007. Further, § 1.10 has been updated to reflect amendments to the FOIA in 2007 and 2016 that limit the agency's ability to assess fees when certain timelines or conditions are not met. The current regulation also revises § 1.10 to conform to a recent decision of the U.S. Court of Appeals for the District of Columbia Circuit addressing the "educational institution" fee category. *See Sack v. Dept. of Defense*, 823 F.3d 687 (D.C. Cir. 2016). Specifically, the definition of "educational institution" is revised to reflect the holding in *Sack* that students who make FOIA requests in furtherance of their coursework or other school-sponsored activities may qualify under this requester category. Therefore, the requirement that such a requester show that the request is made under the auspices of the educational institution is replaced with a requirement that the requester show that the request is made in connection with the requester's role at the educational institution. Section 1.10 also proposes revisions to the Department's fee schedule. The duplication charge for photocopying will decrease to \$.15 per page, while document search and review charges have been established at \$21.00, \$16.50, and \$13.00 per quarter hour for executive, professional, and administrative time, respectively. Treasury components will be given flexibility to publish their own fee schedules that deviate from the Department's fee schedule as

circumstances may warrant. Treasury components differ in the grades of employees that process FOIA requests, whether executive, professional, or administrative, and in the nature of records regularly produced for requesters. Therefore, Treasury has determined that as long as a component follows the OMB fee guidelines, it should have the discretion to establish its own fee structure.

Finally, the Appendices to the current regulation have been revised to reflect changes in organizational structure. Appendices pertaining to the United States Customs Service, United States Secret Service, Bureau of Alcohol, Tobacco and Firearms, Federal Law Enforcement Training Center, and the Office of Thrift Supervision have been deleted as these components are no longer part of the Department of the Treasury. The Bureau of the Public Debt and the Financial Management Service were merged in 2012 to form the Bureau of the Fiscal Service (Appendix D in these revised regulations). Appendices for two new components have been added: The Alcohol and Tobacco Tax and Trade Bureau (Appendix H) and the Treasury Inspector General for Tax Administration (Appendix I).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires agencies to prepare an initial regulatory flexibility analysis (IRFA) to determine the economic impact of the rule on small entities. A small entity is defined as either a small business, a small organization, or a small governmental jurisdiction; an individual is not a small entity. Section 605(b) of the RFA allows an agency to prepare a certification in lieu of an IRFA if the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to 5 U.S.C. 605(b), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by the Department are nominal. Further, the “small entities” that make FOIA requests, as compared with individual requesters and other requesters, are relatively few in number. Notwithstanding this certification, the Department invites comments on the impact this rule would have on small entities.

Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess costs and

benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action” under Executive Order 12866.

List of Subjects in 31 CFR Part 1

Disclosure of Records, Freedom of Information Act, Other disclosure provisions, Privacy Act.

For the reasons stated in the preamble, the Department of the Treasury proposes to amend 31 CFR, part 1, as follows:

PART 1—DISCLOSURE OF RECORDS

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

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 301, 321; 31 U.S.C. 3717.

■ 2. Subpart A of part 1 is revised to read as follows:

Subpart A—Freedom of Information Act Sec.

- 1.1 General provisions.
 - 1.2 Proactive disclosures of Department records.
 - 1.3 Requirements for making requests.
 - 1.4 Responsibility for responding to requests.
 - 1.5 Timing of responses to requests.
 - 1.6 Responses to requests.
 - 1.7 Confidential commercial information.
 - 1.8 Administrative appeals.
 - 1.9 Preservation of records.
 - 1.10 Fees.
 - 1.11 Other rights and services.
- Appendix A to Subpart A of Part 1—Departmental Offices
- Appendix B to Subpart A of Part 1—Internal Revenue Service
- Appendix C to Subpart A of Part 1—Bureau of Engraving and Printing
- Appendix D to Subpart A of Part 1—Bureau of the Fiscal Service
- Appendix E to Subpart A of Part 1—United States Mint
- Appendix F to Subpart A of Part 1—Office of the Comptroller of the Currency
- Appendix G to Subpart A of Part 1—Financial Crimes Enforcement Network
- Appendix H to Subpart A of Part 1—Alcohol and Tobacco Tax and Trade Bureau
- Appendix I to Subpart A of Part 1—Treasury Inspector General for Tax Administration

Subpart A—Freedom of Information Act

§ 1.1 General provisions.

(a) This subpart contains the rules that the Department of the Treasury

follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552 as amended. These regulations apply to all components of the Department of the Treasury. Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under subpart C of part 1 as well as under this subpart.

(b) The components of the Department of the Treasury for the purposes of this subpart are the following offices and bureaus:

(1) The Departmental Offices, which include the offices of:

(A) The Secretary of the Treasury, including immediate staff;

(B) The Deputy Secretary of the Treasury, including immediate staff;

(C) The Chief of Staff, including immediate staff;

(D) The Executive Secretary of the Treasury and all offices reporting to such official, including immediate staff;

(E) The Under Secretary (International Affairs) and all offices reporting to such official, including immediate staff;

(F) The Under Secretary (Domestic Finance) and all offices reporting to such official, including immediate staff;

(G) The Director of the Community Development Financial Institution Fund and all offices reporting to such official, including immediate staff;

(H) The Director of the Office of Financial Research and all offices reporting to such official, including immediate staff;

(I) The Under Secretary (Terrorism and Financial Intelligence) and all offices reporting to such official, including immediate staff;

(J) The Director of the Office of Foreign Assets Control and all offices reporting to such official, including immediate staff;

(K) The General Counsel and all offices reporting to such official, including immediate staff, but not including legal counsel to the components listed in paragraphs (b)(2) through (10) of this section;

(L) The Treasurer of the United States, including immediate staff;

(M) The Assistant Secretary (Legislative Affairs) and all offices reporting to such official, including immediate staff;

(N) The Assistant Secretary (Public Affairs) and all offices reporting to such official, including immediate staff;

(O) The Assistant Secretary (Economic Policy) and all offices reporting to such official, including immediate staff;

(P) The Assistant Secretary (Tax Policy) and all offices reporting to such official, including immediate staff;

(Q) The Assistant Secretary (Management) and all offices reporting to such official, including immediate staff; and

(R) The Inspector General and all offices reporting to such official, including immediate staff;

(2) The Alcohol and Tobacco Tax and Trade Bureau;

(3) The Bureau of Engraving and Printing;

(4) The Bureau of the Fiscal Service;

(5) The Financial Crimes Enforcement Network;

(6) The Internal Revenue Service;

(7) The Office of the Comptroller of the Currency;

(8) The United States Mint;

(9) The Treasury Inspector General for Tax Administration;

(10) The Special Inspector General for the Troubled Asset Relief Program.

(c) Any Treasury office which is now in existence or may hereafter be established, which is not specifically listed above and is not a subsidiary unit of a component of those listed above, shall be deemed a part of the Departmental Offices for the purpose of these regulations.

(d) The head of each component is hereby authorized to substitute the official designated and change the address specified in the appendix to this subpart applicable to that component. Components may issue supplementary regulations applicable only to the component in question, which (except with respect to fee schedules) shall be consistent with these regulations. Persons interested in the records of a particular component should, therefore, also consult the Code of Federal Regulations for any rules or regulations promulgated specifically with respect to that component (see Appendices to this subpart for cross references). In the event of any actual or apparent inconsistency, these Departmental regulations shall govern.

§ 1.2 Proactive disclosure of Department records.

(a) Records that are required by the FOIA to be made available for public inspection in an electronic format may be accessed through the Department's website, <http://www.treasury.gov>, and/or on the website of the component that maintains such records. The FOIA office of each component is responsible for determining which of the component's records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting such records. Each component has a FOIA Public Liaison who can assist individuals in

locating records particular to that component. A list of the Department's FOIA Public Liaisons is available at: <https://home.treasury.gov/footer/freedom-of-information-act>.

(b) When a component receives three or more requests for the same records, it shall make available for public inspection in an electronic format, any records released in response to those requests.

§ 1.3 Requirements for making requests.

(a) General information.

(1) Requests should be addressed to the FOIA office of the component that maintains the requested records. The appendices to this subpart list the addresses of each FOIA office and the methods for submitting requests to each component. Requesters are encouraged to submit requests online (through FOIA.gov, component web pages or by completing the "Submit an Online Request" form located at <https://home.treasury.gov/footer/freedom-of-information-act>).

(2) When a requester is unable to determine the appropriate Departmental component to which to direct a request, the requester may send the request to Freedom of Information Act Request, Department of the Treasury, Departmental Offices (DO), Director, FOIA and Transparency, 1500 Pennsylvania Avenue NW, Washington, DC 20220. The FOIA and Transparency team will forward the request to the component(s) that it determines to be most likely to maintain the records that are sought.

(3) A requester who is making a request for records about himself or herself must comply with the verification of identity provision set forth in section 1.26 of subpart C of this part.

(4) Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration by that individual made in compliance with the requirements set forth in 28 U.S.C. 1746, authorizing disclosure of the records to the requester, or submitting proof that the individual is deceased (e.g., a copy of a death certificate). As an exercise of its administrative discretion, each component can require a requester to supply additional information, if necessary, in order to verify that a particular individual has consented to disclosure.

(b) *Description of records sought.* Requesters must describe the records sought in sufficient detail to enable Department personnel to locate them

with a reasonable amount of effort. To the extent possible, requesters should include specific information that may assist a component in identifying the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. Requesters should refer to the Appendices of this subpart for additional component-specific requirements. In general, requesters should include as much detail as possible about the specific records or the types of records that they are seeking. If the requester fails to reasonably describe the records sought, the component shall inform the requester what additional information is needed or why the request is deficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the component's designated FOIA contact or the FOIA Public Liaison. When a requester fails to provide sufficient detail after having been asked to clarify a request, the component shall notify the requester that the request has not been properly made and that the request will be administratively closed.

§ 1.4 Responsibility for responding to requests.

(a) *In general.* The component that first receives a request for a record and maintains that record is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the component shall inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), shall not be considered responsive to a request.

(b) *Authority to grant or deny requests.* The head of a component, or designee, is authorized to grant or to deny any requests for records that are maintained by that component.

(c) *Re-routing of misdirected requests.* When a component's FOIA office determines that a request was misdirected within the agency, the receiving component's FOIA office must route the request to the FOIA office of the proper component(s) within the agency.

(d) *Consultation, referral, and coordination.* When reviewing records located by a component in response to a request, the component will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from

disclosure under the FOIA. As to any such record, the agency must proceed in one of the following ways:

(1) *Consultation.* When records originated with the component processing the request, but contain within them information of interest to another agency or other Federal Government office, the agency processing the request should typically consult with that other entity prior to making a release determination.

(2) *Referral.* (i) When the component processing the request believes that a different agency is best able to determine whether to disclose the record, the component typically should refer the responsibility for responding to the request regarding that record to that agency. Ordinarily, the agency that originated the record is presumed to be the best agency to make the disclosure determination. However, if the component processing the request is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever a component refers any part of the responsibility for responding to a request to another agency, it must document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA contact information.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if an agency locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the agency that received the request should coordinate with the

originating agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by the agency that originally received the request.

(4) *Timing of responses to consultations and referrals.* All consultations and referrals will be handled according to the date that the FOIA request was initially received by the component or other agency of the Federal government.

(5) *Agreements regarding consultations and referrals.* Components may establish agreements with other Treasury components or agencies of the Federal government to eliminate the need for consultations or referrals with respect to particular types of records.

(e) *Classified information.* On receipt of any request involving classified information, the component shall take appropriate action to ensure compliance with part 2 of this title and with all other laws and regulations relating to proper handling of classified information. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another component or agency under any applicable executive order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the information, or that should consider the information for classification. Whenever a component's record contains information that has been derivatively classified, *i.e.*, it contains information classified by another component or agency of the Federal government, the component shall refer the responsibility for responding to that portion of the request to the component or agency that classified the underlying information.

§ 1.5 Timing of responses to requests.

(a) *In general.* Components ordinarily will respond to requests according to their order of receipt. The Appendices to this subpart contain the list of the Departmental components that are designated to accept requests. In instances involving misdirected requests, *i.e.*, where a request is sent to one of the components designated in the Appendices but is actually seeking records maintained by another component, the response time will commence on the date that the request is received by the appropriate component, but in any event not later than ten working days after the request is first received.

(b) *Multitrack processing.* All components must designate a specific track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (e) of this section. A component may also designate additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. A component can consider factors such as the number of pages involved in processing the request or the need for consultations or referrals. Components shall advise requesters of the track into which their request falls and, when appropriate, shall offer the requesters an opportunity to narrow their request so that it can be placed in a different processing track.

(c) *Unusual circumstances.* Whenever the statutory time limits for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, and the component extends the time limits on that basis, the component shall, before expiration of the twenty-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. Where the extension exceeds ten working days, the component shall, as described by the FOIA, provide the requester with an opportunity to modify the request or agree to an alternative time period for processing. The component shall make available its designated FOIA contact or its FOIA Public Liaison for this purpose. The component must also alert requesters to the availability of the Office of Government Information Services to provide dispute resolution services.

(d) *Aggregating requests.* For the purposes of identifying unusual circumstances under the FOIA, components may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. Components will not aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* (1) Requests and appeals will be processed on an expedited basis only upon request and when it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person who is primarily engaged in disseminating information. The standard of “urgency to inform” requires that the records requested pertain to a matter of current exigency to the public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the general public; or

(iii) The loss of substantial due process rights.

(2) A request for expedited processing may be made at any time. Requests must be submitted to the component that maintains the records requested. The time period for making the determination on the request for expedited processing under this section shall commence on the date that the component receives the request.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. As a matter of administrative discretion, a component may waive the formal certification requirement.

(4) A requester seeking expedited processing under paragraph (e)(1)(ii) of this section, who is not a full-time member of the news media must establish that he or she is a person whose primary professional activity or occupation is information dissemination. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public’s right to know about government activity generally.

(5) A component shall notify the requester within ten calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and shall be processed as soon as practicable. If a component denies expedited processing, any appeal of that decision that complies with the procedures set forth in § 1.8 of this subpart shall be acted on expeditiously.

§ 1.6 Responses to requests.

(a) *Acknowledgments of requests.* Upon receipt of a request that will take longer than ten business days to process, a component shall send the requester an acknowledgment letter that assigns the request an individualized tracking number. The component shall

also include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

(b) *Grants of requests.* Once a component makes a determination to grant a request in full or in part, it shall notify the requester in writing. The component also shall inform the requester of any fees charged under § 1.10 of this subpart and shall disclose the requested records to the requester promptly upon payment of any applicable fees. The component must also inform the requester of the availability of the FOIA Public Liaison to offer assistance.

(c) *Adverse determinations of requests.* A component making an adverse determination denying a request in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters, and denials of requests for expedited processing.

(d) *Content of denial letter.* The denial letter shall be signed by the head of the component, or FOIA designee, and shall include, when applicable:

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

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied by the component in denying the request; and

(3) An estimate of the volume of any records or information withheld, for example, by providing the number of pages or some other reasonable form of estimation. This estimation is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part, or if the estimate would cause a harm protected by one of the exemptions.

(4) A statement that the denial may be appealed under § 1.8(a) of this subpart, and a description of the requirements set forth therein.

(5) A statement notifying the requester of the assistance available from the component’s FOIA Public Liaison and the dispute resolution services offered by the Office of Government Information Services.

(e) *Markings on released documents.* Records disclosed in part must be

marked clearly to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if technically feasible.

(f) *Use of record exclusions.*

(1) In the event a component identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the component shall consult with the Department of Justice, Office of Information Policy (OIP), before applying the exclusion.

(2) A component invoking an exclusion must maintain an administrative record of the process of invocation and of the consultation with OIP.

§ 1.7 Confidential commercial information.

(a) *Definitions.*

(1) *Confidential commercial information* means trade secrets and commercial or financial information obtained by the Department from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) *Submitter* means any person or entity from whom the Department obtains confidential commercial information, directly or indirectly.

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

(b) *When notice to submitters is required.*

(1) A component shall promptly provide written notice to a submitter whenever:

(i) The requested confidential commercial information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The component has a reason to believe that the requested confidential commercial information may be protected from disclosure under Exemption 4 of the FOIA.

(2) The notice shall either describe the confidential commercial information requested or include a copy of the

requested records or portions of records containing the information. In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.

(c) *Exceptions to submitter notice requirements.* The notice requirements of this section shall not apply if:

(1) The component determines that the confidential commercial information is exempt from disclosure under the FOIA;

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

(3) Disclosure of the confidential commercial information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987;

(d) *Opportunity to object to disclosure.* (1) A component will specify a reasonable time period as determined within its administrative discretion within which the submitter must respond to the notice referenced above. If a submitter has any objections to disclosure, it should provide the component a detailed written statement that specifies all grounds for withholding the particular confidential commercial information under any exemption of the FOIA. In order to rely on Exemption 4 as a basis for nondisclosure, the submitter must explain why the information constitutes a trade secret, or commercial or financial information that is privileged or confidential.

(2) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information. An objection to disclosure received by the component after the time period specified in the notice will not be considered by the component. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA and/or protected from disclosure by applicable exemptions or by a statute other than the FOIA.

(e) *Analysis of objections.* A component shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested confidential commercial information.

(f) *Notice of intent to disclose.* Whenever a component decides to disclose confidential commercial information over the objection of a submitter, the component shall provide

the submitter written notice, which shall include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) Copies of the records that the component intends to disclose or, in the alternative, a description of the confidential commercial information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(g) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the component shall promptly notify the submitter.

(h) *Requester notification.* The component shall notify a requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested confidential commercial information; and whenever a submitter files a lawsuit to prevent the disclosure of the confidential commercial information.

§ 1.8 Administrative appeals.

(a) *Requirements for making an appeal.* Before seeking review by a court of a component's adverse determination, a requester generally must first submit a timely administrative appeal. A requester may appeal any adverse determinations denying his or her request to the official specified in the appropriate Appendix to this subpart. Examples of adverse determinations are provided in § 1.6(c) of this subpart. The requester must make the appeal in writing and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the component's final response. The appeal letter should clearly identify the component's determination that is being appealed and the assigned request number. The requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, "Freedom of Information Act Appeal."

(b) *Adjudication of appeals.*

(1) The FOIA appeal official or designee specified in the appropriate Appendix will act on all appeals under this section.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(3) On receipt of any appeal involving classified information, the FOIA appeal official or designee must take appropriate action to ensure compliance with applicable classification rules.

(c) *Decision on appeals.* A decision on an appeal must be made in writing by the component within 20 business days after receipt of the appeal. A decision that upholds a component's determination must contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision must provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by the Office of Government Information Services of the National Archives and Records Administration as a non-exclusive alternative to litigation. If a component's decision is remanded or modified on appeal the requester will be notified of that determination in writing. The component will then further process the request in accordance with that appeal determination and respond directly to the requester. Appeals that have not been postmarked or transmitted within the specified time frame will be considered untimely and will be administratively closed with written notice to the requester.

(d) *Engaging in dispute resolution services provided by Office of Government Information Services (OGIS).* Mediation is a voluntary process. If a component agrees to participate in the mediation services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

§ 1.9 Preservation of records.

Each component shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration. Records that are identified as responsive to a request will not be disposed of or destroyed while they are the subject of a pending request, administrative appeal, or lawsuit under the FOIA.

§ 1.10 Fees.

(a) *In general.* Components may charge for processing requests under the FOIA in accordance with the provisions of this section or may issue their own fee schedules as long as they are consistent with the OMB Guidelines. In order to resolve any fee issues that arise under this section, a component may contact a requester for additional information. A component ordinarily will collect all applicable fees before sending copies of records to a requester.

Requesters must pay fees by check or money order made payable to the Treasury of the United States, or by other means specified at <https://home.treasury.gov/footer/freedom-of-information-act>.

(b) *Definitions.* For purposes of this section:

(1) *Commercial-use request* is a request for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation.

(2) *Direct costs* are those expenses that a component expends in searching for and duplicating (and, in the case of commercial-use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.*, the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility. Components shall ensure that searches, review, and duplication are conducted in the most efficient and the least expensive manner.

(3) *Duplication* is reproducing a copy of a record or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(4) *Educational institution* is any school that operates a program of scholarly research. A requester in this category must show that the request is made in connection with the requester's role at the educational institution. Components may seek assurance from the requester that the request is in furtherance of scholarly research and will advise requesters of their placement in this category.

(5) *Noncommercial scientific institution* is an institution that is not operated on a "commercial" basis, as defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and not for a commercial use.

(6) *Representative of the news media* is any person or entity that actively gathers information of potential interest

to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting news to the public at large and publishers of periodicals that disseminate "news" and make their products available through a variety of means to the general public. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. "Freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, components shall also consider a requester's past publication record in making this determination.

(7) *Other requester* refers to a requester who does not fall within any of the previously described categories.

(8) *Review* is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes time spent processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review time also includes time spent obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under § 1.7 of this subpart, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions. Review costs are properly charged even if a record ultimately is not disclosed.

(9) *Search* is the process of looking for and retrieving records or information responsive to a request. Search time includes time devoted to page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve information from electronic records.

(c) *Charging fees.* Unless a component has issued a separate fee schedule, or a waiver or reduction of fees has been granted under paragraph (k) of this section, components shall charge the following fees. Because the fee amounts provided below already account for the direct costs associated with a given fee

type, components should not add any additional costs to those charges.

(1) *Search.* (i) Search fees shall be charged for all requests, subject to the restrictions of paragraph (d) of this section. Components will charge search fees for all other requesters, subject to the restrictions of paragraph (d) of this section. Components may properly charge for time spent searching even if they do not locate any responsive records or if they determine that the records are entirely exempt from disclosure.

(ii) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees shall be as follows: Executive—\$21; professional—\$16.50; and administrative—\$13.00.

(iii) In addition, requesters will be charged the direct costs associated with the creation of any new computer program required to locate the requested records.

(2) *Duplication.* Duplication fees will be charged to all requesters, subject to the restrictions of paragraph (d) of this section. A component shall honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible by the component in the form or format requested. Where photocopies are supplied, the component will provide one copy per request at a cost of \$0.15 per page. For copies of records produced on tapes, disks, other forms of duplication, or other electronic media, components will charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials, including operator's time. For other forms of duplication, components will charge the direct costs.

(3) *Review.* Review fees will only be charged to requesters who make commercial-use requests. Review fees will be assessed in connection with the initial review of the record, *i.e.*, the review conducted by a component to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, when the appellate authority determines that a particular exemption no longer applies, any costs associated with a component's re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review

costs are properly charged even if a record ultimately is not disclosed. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) *Restrictions on charging fees.* (1) No search fees will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media (unless the records are sought for commercial use).

(2) If a component fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees, except as described in paragraphs (d)(2)(i) through (iii) of this section.

(i) If a component has determined that unusual circumstances as defined by the FOIA apply and the agency provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional ten days.

(ii) If a component has determined that unusual circumstances as defined by the FOIA apply, and more than 5,000 pages are necessary to respond to the request, the component may charge search fees, or, in the case of requesters described in paragraph (d)(1) of this section, may charge duplication fees if the following steps are taken. The component must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and the component must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the component may charge all applicable fees incurred in the processing of the request.

(iii) If a court has determined that exceptional circumstances exist as defined in the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(3) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for requesters seeking records for a commercial use, components will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(5) When, after first deducting the 100 free pages (or its cost equivalent) and the first two hours of search, a total fee calculated under paragraph (c) of this section is \$25.00 or less for any request, no fee will be charged.

(e) *Notice of anticipated fees in excess of \$25.00.* When a component determines or estimates that the fees to be assessed in accordance with this section will exceed \$25.00, the component shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester accordingly. In cases in which a requester has been notified that the actual or estimated fees are in excess of \$25.00, the request shall not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee. Such a commitment must be made by the requester in writing, must indicate a given dollar amount the requester is willing to pay, and must be received by the component within 30 calendar days from the date of notification of the fee estimate. If a commitment is not received within this period, the requester shall be notified, in writing, that the request shall be closed.

Components will inform the requester of their right to seek assistance from the appropriate component FOIA Public Liaison or other FOIA professional to assist the requester in reformulating request in an effort to reduce fees. Components are not required to accept payments in installments. If the requester has indicated a willingness to pay some designated amount of fees, but the component estimates that the total fee will exceed that amount, the component will toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The Component will inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(f) *Charges for other services.* Although not required to provide special services, if a component chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged. Examples of such services include certifying that records are true copies, providing

multiple copies of the same document, or sending records by means other than first class mail.

(g) *Charging interest.* Components may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* When a component reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the component may aggregate those requests and charge accordingly. Components may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, components will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) and (i)(3) of this section, a component shall not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.*, payment before copies are sent to a requester) is not an advance payment.

(2) When a component determines or estimates that a total fee to be charged under this section will exceed \$250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. A component may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any component or agency within 30 calendar days of the billing date, a component may require that the requester pay the full amount due, plus any applicable interest on that prior request and the component may require that the requester make an advance payment of the full amount of any anticipated fee before the component

begins to process a new request or continues to process a pending request, or any pending appeal. Where a component has a reasonable basis to believe that a requester has misrepresented his or her identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which a component requires advance payment, the request shall not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of the component's fee determination letter, the request will be closed.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the component will inform the requester of the contact information for that source.

(k) *Requirements for waiver or reduction of fees.*

(1) Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) A component must furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. In deciding whether this standard is satisfied the component must consider the factors described in paragraphs (k)(2)(i) through (iii) of this section:

(i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested information would be likely to contribute significantly to public understanding of those operations or

activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that is already in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(B) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public must be considered. Components will presume that a representative of the news media will satisfy this consideration.

(iii) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, components will consider the following criteria:

(A) Components must identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters must be given an opportunity to provide explanatory information regarding this consideration.

(B) If there is an identified commercial interest, the component must determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (k)(2)(i) and (ii) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. Components ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (k)(2)(i) and (ii) of this section, the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(4) Requests for a waiver or reduction of fees should be made when the request is first submitted to the component and

should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester shall be required to pay any costs incurred up to the date the fee waiver request was received.

(5) The requester shall be notified in writing of the decision to grant or deny the fee waiver.

§ 1.11 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Appendix A to Subpart A of Part 1— Departmental Offices

1. *In general.* This appendix applies to the Departmental Offices as defined in 31 CFR 1.1(b)(1).

2. *Public Reading Room.* The public reading room for the Departmental Offices is the Treasury Library. The library is located in the Freedman's Bank Building (Treasury Annex), Room 1020, 1500 Pennsylvania Avenue NW, Washington, DC 20220. For building security purposes, visitors are required to make an appointment by calling 202-622-0990. Treasury also maintains an electronic reading room, which may be accessed at <https://home.treasury.gov/footer/freedom-of-information-act>.

3. *Requests for records.*

(a) Initial determinations as to whether to grant requests for records of the Departmental Offices will be made by the Director for FOIA and Transparency, or the designee of such official, with the exception of initial determinations by the Office of the Inspector General and the Special Inspector General for the Troubled Asset Relief Program, which will be made by the designee of the respective Inspector General.

(b) Requests for records should be sent to: Freedom of Information Request, Departmental Offices, Director, FOIA and Transparency, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Requests may also be submitted via email at FOIA@treasury.gov.

4. *Administrative appeal of initial determination to deny records.*

(a) Appellate determinations with respect to records of the Departmental Offices or requests for expedited processing will be made by the Deputy Assistant Secretary for Privacy, Transparency, and Records, or the designee of such official, with the exception of appellate determinations by the Office of the Inspector General and the Special Inspector General for the Troubled Asset Relief Program, which will be made by the respective Inspector General or his or her designee.

(b) Appeals should be addressed to: Freedom of Information Appeal, Departmental Offices, FOIA and

Transparency, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Appeals may also be submitted via email at FOIA@treasury.gov.

Appendix B to Subpart A of Part 1— Internal Revenue Service

1. *In general.* This appendix applies to the Internal Revenue Service (IRS). See also 26 CFR 601.702.

2. *Public reading room.* The IRS no longer maintains physical reading rooms. Documents for the public are found on various websites at irs.gov including the electronic FOIA Reading Room located at <https://www.irs.gov/uac/electronic-reading-room>.

3. *Requests for records.* Initial determinations as to whether to grant requests for records of the IRS, grant

expedited processing, grant a fee waiver, or determine requester category will be made by those officials specified in 26 CFR 601.702.

Requests for records should be submitted to the IRS using the information below:

IRS ACCEPTS FOIA REQUESTS BY FAX OR BY MAIL

If your request is for IRS Headquarters Office records concerning matters of nationwide applicability, such as published guidance (regulations and revenue rulings), program management, operations, or policies, including National or Headquarters Offices of Chief Counsel records that are not available at the Electronic FOIA Reading Room site:

Fax: 877-807-9215
Mail: IRS FOIA Request, Stop 211, P.O. Box 621506, Atlanta, GA 30362-3006.

If your request is for your own records or other records controlled at IRS field locations including Division Counsel offices that are not available at the Electronic FOIA Reading Room site:

Fax: 877-891-6035.
Mail: IRS FOIA Request, Stop 93A, Post Office Box 621506, Atlanta GA 30362-3006.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to records of the Internal Revenue Service will be made by the Commissioner of Internal Revenue or the delegate of such officer. Appeals must be in writing and addressed to: IRS Appeals Attention: FOIA Appeals, M/Stop 55202, 5045 E. Butler Ave., Fresno, CA 93727-5136.

Appendix C to Subpart A of Part 1— Bureau of Engraving and Printing

1. *In general.* This appendix applies to the Bureau of Engraving and Printing (BEP).

2. *Public reading room.* BEP's public reading room is located at 14th and C Streets SW, Washington, DC 20228. Individuals wishing to visit the public reading room must request an appointment by telephoning (202) 874-2500. The reading room is open on official business days from 10:00 a.m. to 4:00 p.m. eastern standard time. Visitors shall comply with 31 CFR part 605, governing the conduct of persons within the buildings and grounds of the BEP. In addition, BEP also maintains an electronic reading room, which may be accessed at <http://www.bep.gov/bepfoialibrary.html>.

3. *Requests for records.* Initial determinations as to whether to grant or deny requests for records of the BEP or applicable fees will be made by the BEP Director delegate, *i.e.*, Disclosure Officer. Requests may be mailed or faxed to: FOIA/PA Request, Disclosure Officer, Bureau of Engraving and Printing, Office of the Chief Counsel—FOIA and Transparency Services, Washington, DC 20228-0001, Fax Number: (202) 874-2951.

4. *Administrative Appeal of initial determination to deny records.* Appellate determinations with respect to records of the BEP will be made by the Director of the BEP or the delegate of the Director for purposes of this section. Appeals may be mailed or delivered in person to: FOIA/PA APPEAL, Director, Bureau of Engraving and Printing, Office of the Director, 14th and C Streets SW, Washington, DC 20228-0001.

Appendix D to Subpart A of Part 1— Bureau of the Fiscal Service

1. *In general.* This appendix applies to the Bureau of the Fiscal Service.

2. *Public reading room.* The public reading room for the Bureau of the Fiscal Service is the Treasury Library. The library is located in the Freedman's Bank Building (Treasury Annex), Room 1020, 1500 Pennsylvania Avenue NW, Washington, DC 20220. For building security reasons, visitors are required to make an appointment by calling 202-622-0990. Fiscal Service also maintains an electronic reading room, which may be accessed at https://www.fiscal.treasury.gov/foia/foia_readingroom.htm.

3. *Requests for records.* Initial determinations whether to grant requests for records will be made by the Disclosure Officer, Bureau of the Fiscal Service. Requests may be mailed or delivered in person to: Freedom of Information Request, Disclosure Officer, Bureau of the Fiscal Service, 401 14th Street SW, Washington, DC 20227.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations will be made by the Commissioner, Bureau of the Fiscal Service, or that official's delegate. Appeals may be mailed to: Freedom of Information Appeal (FOIA), Commissioner, Bureau of the Fiscal Service 401 14th Street SW, Washington, DC 20227.

Appeals may be delivered personally to the Office of the Commissioner, Bureau of the Fiscal Service, 401 14th Street SW, Washington, DC.

Appendix E to Subpart A of Part 1— United States Mint

1. *In general.* This appendix applies to the United States Mint.

2. *Public reading room.* The U.S. Mint will provide a room on an ad hoc basis when necessary. Contact the Freedom of Information/Privacy Act Officer, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street NW, Washington, DC 20220.

3. *Requests for records.* Initial determinations as to whether to grant requests for records of the United States Mint will be made by the Freedom of Information/Privacy Act Officer, United States Mint. Requests may be mailed or delivered in person to: Freedom of Information Act Request, Freedom of Information/Privacy Act Officer, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street NW, Washington, DC 20220.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to records of the United States Mint will be made by the Director of the Mint. Appeals made by mail should be addressed to: Freedom of Information Appeal, Director, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street NW, Washington, DC 20220.

Appendix F to Subpart A of Part 1— Office of the Comptroller of the Currency

1. *In general.* This appendix applies to the Office of the Comptroller of the Currency.

2. *Public reading room.* The Office of the Comptroller of the Currency will make materials available through its Public Information Room at 250 E Street SW, Washington, DC 20219.

3. *Requests for records.* Initial determinations as to whether to grant requests for records of the Office of the Comptroller of the Currency will be made by the Disclosure Officer or the official so designated. Requests may be mailed or delivered in person to: Freedom of Information Act Request, Disclosure Officer, Communications Division, 3rd Floor, Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to records of the Comptroller of the Currency will be made by the Chief Counsel or delegates of such official. Appeals made by mail shall be addressed to: Communications Division, Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

Appeals may be delivered personally to the Communications Division, Comptroller of the Currency, 250 E Street SW, Washington, DC.

Appendix G to Subpart A of Part 1— Financial Crimes Enforcement Network

1. *In general.* This appendix applies to the Financial Crimes Enforcement Network (FinCEN).

2. *Public reading room.* FinCEN will provide records on the online reading room located on the FinCEN FOIA page or in the Code of Federal Regulations.

3. *Requests for records.* Initial determinations as to whether to grant requests for records of FinCEN will be made by the Freedom of Information Act/Privacy Act Officer, FinCEN. Requests for records may be mailed to: Freedom of Information Act/Privacy Act Request, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to the records of FinCEN will be made by the Director of FinCEN or the delegate of the Director. Appeals should be mailed to: Freedom of Information Act Appeal, Post Office Box 39, Vienna, VA 22183, or emailed to: FinCENFOIA@fincen.gov.

Appendix H to Subpart A of Part 1— Alcohol and Tobacco Tax and Trade Bureau

1. *In general.* This appendix applies to the Alcohol and Tobacco Tax and Trade Bureau (TTB).

2. *Public reading room.* The public reading room for TTB is maintained at 1310 G Street NW, Washington, DC 20005. For building security purposes, visitors are required to make an appointment by calling 202-882-9904.

3. *Requests for records.* Initial determinations as to whether to grant requests for records of TTB will be made by the Director, Regulations and Rulings Division. Requests for records may be mailed to: TTB FOIA Requester Service Center, 1310 G Street NW, Box 12, Washington, DC 20005. Requests may also be faxed to: 202-453-2331.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to the records of TTB will be made by the Assistant Administrator (Headquarters Operations), Alcohol and Tobacco Tax and Trade Bureau or the delegate of such official. Appeals may be mailed or delivered in person to: FOIA Appeal, Assistant Administrator (Headquarters Operations), Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

Appendix I to Subpart A of Part 1— Treasury Inspector General for Tax Administration

1. *In general.* This appendix applies to the Treasury Inspector General for Tax Administration (TIGTA).

2. *Public reading room.* TIGTA will provide a room upon request when necessary. Contact the Disclosure Branch,

Office of Chief Counsel, TIGTA, at 202-622-4068.

3. *Requests for records.* Initial determinations as to whether to grant requests for records of TIGTA will be made by the Disclosure Officer, TIGTA. Requests for records may be mailed to: Freedom of Information Act/Privacy Act Request, Treasury Inspector General for Tax Administration, Office of Chief Counsel, Disclosure Branch, 1401 H Street NW, Room 469, Washington, DC 20005. You may also view the How to Make a FOIA Request for TIGTA Records at https://www.treasury.gov/tigta/important_foia_majfr.shtml. TIGTA's FOIA email address is FOIA.Reading.Room@tigta.treas.gov.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to the records of TIGTA will be made by the Chief Counsel, TIGTA, or the delegate of the Chief Counsel. Appeals should be mailed to: Freedom of Information Act/Privacy Act Appeal, Treasury Inspector General for Tax Administration, Office of Chief Counsel, 1401 H Street NW, Room 469, Washington, DC 20005.

David F. Eisner,

Assistant Secretary for Management.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 180212157-8897-01]

RIN 0648-BH72

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Electronic Reporting for Federally Permitted Charter Vessels and Headboats in Gulf of Mexico Fisheries

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in the Gulf For-hire Electronic Reporting Amendment, as prepared and submitted by the Gulf of Mexico (Gulf) Fishery Management Council (Gulf Council) and the South Atlantic Fishery Management Council (South Atlantic Council). The Gulf For-hire Reporting Amendment includes amendments to the Fishery Management Plan (FMP) for Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) and the Coastal Migratory Pelagic (CMP) Resources of the Gulf of

Mexico and Atlantic Region (CMP FMP). If implemented, this proposed rule would revise reporting requirements for federally permitted charter vessels and headboats (for-hire vessels). This proposed rule would require an owner or operator of a for-hire vessel with a Federal charter vessel/headboat permit for Gulf Reef Fish or Gulf CMP to submit an electronic fishing report for each fishing trip before offloading fish from the vessel, using NMFS-approved hardware and software. The proposed rule would also require that a for-hire vessel owner or operator use NMFS-approved hardware and software with global positioning system (GPS) capabilities that, at a minimum, archive vessel position data during a trip. Lastly, prior to departing for any trip, this proposed rule would require the owner or operator of a federally permitted charter vessel or headboat to notify NMFS and declare whether they are departing on a for-hire trip, or on another trip type. The purpose of this proposed rule is to increase and improve fisheries information collected from federally permitted for-hire vessels in the Gulf. The information is expected to improve recreational fisheries management of the for-hire component in the Gulf.

DATES: Written comments on the proposed rule must be received by November 26, 2018.

ADDRESSES: You may submit comments on the proposed rule, identified by “NOAA-NMFS-2018-0111,” by either of the following methods:

- *Electronic submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/docket?D=NOAA-NMFS-2018-0111>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Rich Malinowski, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/

A" in required fields if you wish to remain anonymous).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Adam Bailey, NMFS Southeast Regional Office, adam.bailey@noaa.gov, or by email to OIRA_Submission@omb.eop.gov, or fax to 202-395-5806.

Electronic copies of the Gulf For-hire Reporting Amendment may be obtained from www.regulations.gov or the Southeast Regional Office website at http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/For-HireElectronicReporting/index.html.

The Gulf For-hire Reporting Amendment includes an environmental assessment, regulatory impact review, Regulatory Flexibility Act (RFA) analysis, and fishery impact statement.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: rich.malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION: The CMP fishery in the Gulf is managed jointly under the CMP FMP by the Gulf Council and South Atlantic Council. The Gulf Council manages the reef fish fishery under the Reef Fish FMP. These FMPs are implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires that NMFS and regional fishery management councils prevent overfishing and achieve, on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act states that the collection of reliable data is essential to the effective conservation, management, and scientific understanding of the nation's fishery resources.

On February 3, 2014, NMFS implemented management measures contained in a framework action to the Reef Fish FMP and the CMP FMP (Headboat Reporting Framework), which modified recordkeeping and reporting provisions for an owner or operator of a headboat with a Federal charter vessel/headboat permit for Gulf reef fish or Gulf CMP, who is selected

to participate in the Southeast Region Headboat Survey (SRHS) (79 FR 6097, February 3, 2014). That final rule required a headboat owner or operator to submit a weekly electronic fishing report, or at shorter intervals if notified by the Science and Research Director (SRD) of NMFS' Southeast Fisheries Science Center (SEFSC). Additionally, the final rule for the Headboat Reporting Framework prohibited headboats from continuing to fish until any delinquent electronic fishing reports are submitted to NMFS. The purpose of the Headboat Reporting Framework was to obtain more timely fishing information from headboats to better monitor recreational annual catch limits (ACLs), improve stock assessments, and improve compliance with reporting in Gulf recreational fisheries.

The SEFSC manages and operates the SRHS. Currently, headboats in the southeast region submit an electronic fishing report to NMFS via the internet by the Sunday following the end of each reporting week, which runs from Monday through Sunday; in other words, reports are due within 7 days after a reporting week ends. This final rule for the Gulf For-hire Reporting Amendment would shorten the time after a trip that federally permitted headboats in the Gulf have to submit electronic fishing reports to NMFS. These reports would be required after each trip before offloading fish from the vessel. If no fish were retained on a trip, submission of an electronic fishing report would be required within 30 minutes after the trip ends.

Similarly, this proposed rule would require that information from a federally permitted charter vessel be reported after each trip through the submission of electronic fishing reports before offloading fish from the vessel, or if no fish were retained, within 30 minutes after the trip ends. Currently, landings and discards from federally permitted charter vessels in the Gulf reef fish and CMP fisheries are monitored through the survey of charter vessels by the Marine Recreational Information Program (MRIP). Fishing effort is calculated based on a monthly sample of federally permitted charter vessels through a phone survey. Catch rate observations and catch sampling are provided through dockside monitoring, also conducted by MRIP. This MRIP charter vessel information is then available in 2-month increments known as waves, so that there are six waves during the calendar year, e.g., January through February, March through April, etc. If NMFS implements the electronic reporting requirements described in the Gulf For-hire Reporting Amendment,

the MRIP survey of charter vessels would continue until the proposed electronic reporting program described in the amendment is certified by NMFS, and then the electronic reporting program could replace the MRIP survey of federally permitted charter vessels.

Accurate and reliable fisheries information about catch, effort, and discards is important for stock assessments and the evaluation of management measures. In addition, catch from federally permitted for-hire vessels represents a substantial portion of the total recreational catch for some fish species managed by the Gulf Council, such as red snapper, gray triggerfish, greater amberjack, and mutton snapper. The Gulf Council determined that electronic reporting on a per trip basis could provide more timely information than the current MRIP survey and SRHS, and more accurate and reliable information for those species that have low catches, small ACLs, or are rarely encountered by fishery participants. The Gulf Council expects electronic reporting on a per trip basis by all federally permitted for-hire vessels to enhance data collection efforts, providing for better fisheries management, such as through more data-rich stock assessments and improved data accuracy.

Management Measures Contained in This Proposed Rule

This proposed rule would require the owners or operators of vessels with Federal charter vessel/headboat permits for Gulf reef fish or Gulf CMP species to submit electronic reports, via NMFS-approved hardware and software, on a per trip basis before offloading fish. If no fish are landed, the electronic fishing report must be submitted within 30 minutes after the completion of each fishing trip. This proposed rule would also require that a for-hire vessel owner or operator use NMFS-approved hardware and software with GPS capabilities that, at a minimum, archive vessel position data during a trip for subsequent transmission to NMFS. Lastly, this proposed rule would require the owner or operator of a federally permitted charter vessel or headboat to notify NMFS prior to departing for any trip and declare whether they are departing on a for-hire trip, or on another trip type. If the vessel will be operating as a charter vessel or headboat during the specified trip, the vessel owner or operator must also report details of the trip's expected completion.

Electronic Reporting

This proposed rule would require an owner or operator of a charter vessel or headboat with a Federal charter vessel/headboat permit for Gulf reef fish or CMP species, and is operating as a for-hire vessel, to submit an electronic fishing report for each trip before offloading fish from the vessel, or within 30 minutes after the end of each trip if no fish were landed. The electronic fishing report would include any species that were caught or harvested in or from any area, *e.g.*, in state or Federal waters in the Gulf or Atlantic, as well as information about the permit holder, vessel, location fished, fishing effort, discards, and socio-economic data.

If the proposed rule is implemented, the owner or operator of a vessel with a Federal charter vessel/headboat permit for Gulf reef fish or Gulf CMP species would be required to submit an electronic fishing report using NMFS-approved hardware and software, which could include sending data through a cellular or satellite-based service. NMFS-approved hardware could include devices such as computers, tablets, smartphones, and vessel monitoring system units that allow for internet access and are capable of operating approved software. NMFS is currently evaluating potential software applications for the electronic for-hire reporting program and is considering existing software applications used by partners in the region, including eTRIPS online and eTRIPS mobile, which are reporting products developed by the Atlantic Coastal Cooperative Statistics Program. NMFS maintains a list of NMFS type-approved vessel monitoring system (VMS) units for commercial fisheries at this website <https://www.fisheries.noaa.gov/national/enforcement/noaa-fisheries-type-approved-vms-units>. These systems will be evaluated and potentially modified by the vendors to meet the proposed Gulf for-hire reporting requirements. Hardware and software that meet the NMFS type approval would be posted on the NMFS Southeast Region website upon publication of any final rule to implement revisions to the Gulf for-hire electronic reporting program. Public reporting burden for the proposed requirements is estimated to average 10 minutes per electronic fishing report.

This proposed rule also extends other provisions to federally permitted charter vessels that currently apply to headboats to allow for modified reporting during catastrophic conditions, such as after a hurricane, and to address delinquent reporting.

During NMFS-declared catastrophic conditions, NMFS may accept paper reporting forms, and can modify or waive reporting requirements. Also, a delinquent report would result in a prohibition on the harvest or possession of the applicable species by the for-hire vessel permit holder until all required and delinquent reports have been submitted and received by NMFS according to the reporting requirements.

Location Tracking and Reporting

This proposed rule would require that vessels with Federal charter vessel/headboat permits for Gulf reef fish or Gulf CMP species have NMFS-approved hardware and software with GPS capabilities that, at a minimum, archive vessel position data during a trip for subsequent transmission to NMFS, which could include sending data through a cellular or satellite-based service. The location information would be transmitted electronically to NMFS, along with all other required reporting information, prior to offloading fish at the end of each trip, or within 30 minutes after a trip is completed if no fish were landed. To meet these proposed requirements, separate hardware devices may be required to record and submit fishing reports and GPS locations. If it is necessary to submit separate fishing and location reports at the end of each trip, NMFS estimates the reporting burden to submit location information at 2 minutes per trip. The purpose of this proposed requirement is to verify whether a vessel is at the dock.

The GPS portion of the hardware, *i.e.*, the vessel's location tracking device, would have to be permanently affixed to the vessel and must have uninterrupted power, unless the owner or operator applies for and is granted a power-down exemption, *e.g.*, if the vessel is removed from the water for repairs. If a VMS unit approved for the Gulf electronic reporting program is used, the VMS unit would also be required to have uninterrupted power unless a power-down exemption is granted.

In the Gulf, federally permitted commercial reef fish vessels are already required to use a NMFS-approved VMS unit for submitting trip notifications and commercial landings estimates. NMFS has also issued Gulf charter vessel/headboat permits to some of these vessels. However, not all VMS units approved for use on commercial reef fish vessels may be approved for use in the proposed Gulf for-hire reporting program. NMFS-approved VMS units would need software updates by the vendors to meet the proposed for-hire reporting requirements. If a VMS unit

required for the Gulf commercial reef fish fishery is not capable of meeting the proposed Gulf for-hire reporting requirements, the owner or operator would need to purchase a VMS unit that is approved for both commercial reef fish and for-hire vessels or purchase a GPS unit that meets the proposed Gulf for-hire reporting requirements. As stated earlier, NMFS would post approved hardware and software on the NMFS Southeast Region website upon publication of any final rule to implement the proposed Gulf electronic reporting program. NMFS expects to choose an effective date for any final rule that would allow time for affected fishery participants to purchase and install approved hardware and software.

This proposed rule would have similar requirements for powering down the GPS or VMS unit as currently exists for commercial vessels. The current VMS regulations allow for an owner or operator of a commercial vessel to discontinue the use of a VMS unit for a specific period, provided they obtain a VMS power-down exemption letter from NOAA's Southeast Office of Law Enforcement (50 CFR 622.28). To obtain this exemption letter for powering down a GPS unit, the permit holder must fill out the appropriate information on the GPS power down exemption request form, and submit the form by mail or fax to NMFS. NMFS is currently developing an electronic method to submit the GPS power down exemption request form that would need to be completed and approved by NMFS prior to turning off the vessel's GPS unit. NMFS expects this electronic method to be available by the effective date of any final rule. NMFS estimates a GPS or VMS power-down exemption request would require an average of 5 minutes to complete per occurrence.

Trip Notification

This proposed rule would require an owner or operator of a federally permitted charter vessel or headboat to submit a trip notification to NMFS before departing for any trip. The trip notification would indicate whether the vessel is departing on a for-hire trip or another type of trip, such as a commercial trip. If the vessel will be departing on a for-hire trip, the owner or operator must also report the expected trip completion date, time, and landing location. The Gulf Council determined that a trip notification would improve effort estimation for charter vessels and headboats, and improve the ability of port agents and law enforcement to meet a vessel at end of a trip for biological sampling and landings validation. This validation

would improve the data being collected. The trip notification would be accomplished using a NMFS-approved device, such as the GPS or VMS unit, or by other electronic reporting hardware. Public reporting burden to complete the proposed trip notification requirement is estimated to average 2 minutes per trip.

Other Electronic Reporting Programs

In April 2018, NMFS published a proposed rule in the **Federal Register** to implement electronic reporting requirements contained in the South Atlantic For-Hire Reporting Amendment applicable to the for-hire component of recreational fisheries in the South Atlantic Council's jurisdiction (83 FR 14400, April 4, 2018). NMFS approved the South Atlantic For-Hire Reporting Amendment on June 11, 2018. Under the South Atlantic reporting program, an owner or operator of a for-hire vessel issued a Federal charter vessel/headboat permit for species managed under the FMPs for CMP (in the Atlantic), Atlantic Dolphin and Wahoo, or South Atlantic Snapper-Grouper, and is operating as a for-hire vessel, would have to submit an electronic fishing report using NMFS-approved hardware and software on a weekly basis. However, the South Atlantic Council's intent is to prevent multiple reporting by allowing the owner or operator of a vessel with numerous Federal for-hire permits to fulfill the South Atlantic requirements by submitting reports under other programs, if those reporting requirements are more stringent. Therefore, an owner or operator of a for-hire vessel with a Federal charter vessel/headboat permit for an applicable fishery managed by the South Atlantic Council, who would be required to report under the proposed Gulf electronic reporting system, would not also need to report under the South Atlantic's program.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Gulf For-hire Reporting Amendment, the respective FMPs, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis (IRFA) for this proposed rule, as required by section 603 of the RFA (5 U.S.C. 603). The IRFA

describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

This proposed rule would apply to all vessels with a Federal charter vessel/headboat permit for Gulf reef fish or Gulf CMP species. In 2017, there were 1,376 vessels with at least one valid (non-expired) or renewable Federal charter vessel/headboat permit for Gulf reef fish or Gulf CMP species, including historical captain permits. These Gulf charter vessel/headboat permits are limited access permits. More than one type of Federal charter vessel/headboat permit has been issued to most for-hire vessels. Among the 1,376 vessels with at least one Gulf charter vessel/headboat permit, in 2017, 1,259 for-hire vessels had Federal permits for both Gulf reef fish and Gulf CMP species, 52 had only a Gulf reef fish permit, and 65 had only a Gulf CMP permit. Additionally, 172 of these vessels had a Gulf commercial reef fish permit. Finally, 377 of the vessels with at least one Gulf charter vessel/headboat permit had at least one charter vessel/headboat permit for Atlantic CMP species, Atlantic dolphin and wahoo, or South Atlantic snapper-grouper species.

Although the charter vessel/headboat permit application for Gulf reef fish or Gulf CMP species collects information on the primary method of operation, the permit itself does not identify the permitted vessel as either a charter vessel or a headboat, and vessels may operate in both capacities on different trips. However, if a for-hire vessel meets the selection criteria used by the SRHS and is selected to report by the SRD of the SEFSC, it is considered to operate primarily as a headboat and is required to submit catch and effort information to the SRHS. As of February 2017, there were 73 Gulf headboats that participate in the SRHS. As a result, the estimated 1,376 for-hire vessels that may be affected by this proposed rule are expected to consist of approximately 1,303 charter vessels and 73 headboats. The average charter vessel operating in the Gulf is estimated to receive approximately \$86,000 (2017 dollars) in annual revenue. The average headboat is

estimated to receive approximately \$261,000 (2017 dollars) in annual revenue.

The Small Business Association has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$7.5 million (NAICS code 487210, for-hire businesses) for all its affiliated operations worldwide. All for-hire businesses expected to be directly affected by this proposed rule are believed to be small business entities.

NMFS has not identified any other small entities that might be directly affected by this proposed rule.

This proposed rule would require an owner or operator of a federally permitted charter vessel or headboat to submit an electronic fishing report to NMFS for each trip via NMFS-approved hardware and software, prior to offloading fish from the vessel. NMFS does not expect the submission of an electronic fishing report to require special professional skills. The use of computers, the internet, smartphones, or other forms of electronic connections and communication is commonplace in the business environment. All headboat operators have been required to submit electronic reports since January 2014 and are expected to be proficient with electronic reporting. As a result, NMFS expects all affected headboat businesses to already have staff with the appropriate skills to meet the proposed change in the timing of report submissions. However, charter vessel operators have not been subject to mandatory electronic reporting of fishing activity and, therefore, may lack experience reporting such, beyond the collection and compilation of similar information for their own business management purposes. As a result, although NMFS does not expect the information required to be reported to be complex or substantially beyond that necessary to meet the record-keeping needs of normal fishing business operational purposes, these operators may need some time to become proficient in the reporting requirements. The hiring of new employees with specialized skills, however, should not be necessary.

While no conflicting Federal rules have been identified, an estimated 377 vessels have Federal permits to harvest species managed by both the Gulf Council and the South Atlantic Council. Among these 377 vessels, approximately

138 primarily operate as headboats. NMFS has published a proposed rule to require electronic reporting for owners and operators of federally permitted charter vessels in the South Atlantic and modify the reporting deadline for owners and operators of headboats. In order to reduce multiple reporting, the South Atlantic Council would accept, as fulfillment of the requirements of their proposed reporting program, reports submitted under other programs, if the reporting requirements in those other programs are more stringent than those proposed by the South Atlantic Council and meet the core data elements identified by the South Atlantic Council. Because NMFS expects the reporting requirements under this proposed rule to meet these criteria, an owner or operator of a for-hire vessel that has both Gulf and South Atlantic charter vessel/headboat permits and that is required to submit electronic reports under this proposed rule would not be required to also report under the South Atlantic Council's proposed for-hire electronic reporting program. However, owners or operators of for-hire vessels that possess a Gulf reef fish or Gulf CMP permit may also possess one or more Federal for-hire permits to harvest species managed by other regional fishery management councils. It is unknown how many vessels currently fit this description; however, the number is expected to be small. A vessel with Federal for-hire permits in other regions would also have to comply with any applicable reporting requirements under those permits.

NMFS expects this proposed rule, if implemented, to directly affect an estimated 1,376 for-hire vessels that possess a Federal permit necessary to fish for Gulf reef fish or Gulf CMP species. Because all entities expected to be affected by this proposed rule are small entities, NMFS has determined that this proposed rule would affect a substantial number of small entities. Moreover, the issue of disproportionate effects on small versus large entities does not arise in the present case.

This proposed rule would require that the owner or operator of a charter vessel or headboat for which a charter vessel/headboat permit for Gulf reef fish or Gulf CMP species has been issued to submit fishing reports to NMFS for each trip via electronic reporting. These submissions would need to be made prior to offloading fish using NMFS-approved hardware and software. If no fish are retained on a for-hire trip, the report would have to be submitted within 30 minutes of arriving at the dock, following the conclusion of the trip. Because the majority of charter and

headboat trips are half-day trips, this proposed rule could require multiple submissions in a single day. Electronic reporting is estimated to take approximately 10 minutes per trip, which is the time burden that is approximately equivalent to that of the current headboat reporting requirements. However, the proposed rule would provide less flexibility to headboats in terms of how and when to allocate labor resources for reporting. NMFS expects that the time and labor associated with filing these reports would be borne by existing vessel personnel and would not represent the need for additional staff. However, it would necessitate that vessel personnel, as opposed to onshore support staff, complete the reports. There would be an opportunity cost associated with redirecting effort from normal trip operations to the report submission process. Reports could be completed during transit back to port or within normal business activities, once the vessel is tied up to the dock. NMFS expects that each business would adopt the strategy most efficient to its staffing and operational characteristics, thus minimizing any resultant implicit or explicit costs. These costs cannot be estimated with available data.

Because electronic reporting has been a requirement for headboat owners and operators for the past 3 years, the labor and costs associated with reporting have been internalized within each headboat business. For charter vessel owners, if treated as a new and distinct explicit labor cost, the annual reporting burden is estimated to cost approximately \$340,000 to \$1.73 million (2017 dollars) in total, or \$244 to \$1,259 per vessel on average. These are upper bound cost estimates and would be equivalent to 1.5 percent or less of average annual charter vessel revenue. However, as previously stated, the reporting burden would likely be absorbed by existing vessel personnel, and therefore, labor costs would likely be less. Some of the effort to complete the proposed electronic fishing reports may be redirected from current operational activities, such as normal trip record-keeping that a vessel completes for standard business purposes. The information that would be required under electronic reporting would be accessible to the reporting vessel and, therefore, would satisfy reporting obligations and support business operations. In effect, the electronic reporting system may serve as the record repository for this component of a vessel's business records. In addition to the need to maintain records on the

number of trips and passengers a vessel takes, the services for-hire vessels sell require reasonable levels of fishing success. Thus, records of what species a vessel catches, where they are caught, the time of the year they are caught, and how these change over time are vital to managing a successful business. As a result, the information that is expected to be required under the proposed electronic reporting should be substantially duplicative of information already recorded by these businesses and should augment their ability to monitor and adjust their fishing practices, supporting more successful operations.

Additionally, this proposed rule would require that, prior to departing for any trip, the owner or operator of a vessel issued a charter vessel/headboat permit for Gulf reef fish or Gulf CMP species to notify NMFS, report the vessel identification number, and declare the type of trip (e.g., for-hire or other trip). When departing on a for-hire trip they would also need to report the expected return time, date, and landing location. NMFS expects that the technology cost to for-hire businesses associated with the trip notification system would be minimal. For the sake of comparison, the trip notification system designed by NMFS for commercial Gulf Reef Fish permit holders allows for low cost submission of trip notification reports, either utilizing a toll-free number or existing vessel monitoring system (VMS) equipment. Although the trip notification requirement would be an additional burden on for-hire vessel operators' time, the opportunity cost of complying with such would be expected to be low, because of the limited amount of information that would need to be submitted to NMFS. NMFS estimates that a trip notification would require 2 minutes to complete.

Finally, the proposed rule would require that these vessel owners or operators use NMFS-approved hardware and software with GPS capabilities that, at a minimum, archive vessel position data during a trip for subsequent transmission to NMFS. NMFS estimates that if it is necessary to submit separate trip and location reports, estimated at 10 and 2 minutes, respectively, due to hardware or software configurations on a vessel, the time burden could be up to 12 minutes per trip. The GPS portion of the hardware would need to be permanently affixed to the vessel and have uninterrupted power, unless the owner or operator applies for and is granted a power-down exemption.

In addition to the total burden on vessel operators' time, estimated at up

to 14 minutes per trip, as discussed earlier, examples of costs borne by the for-hire fleet may include the purchase and installation costs of the approved hardware units and associated service charges. Cost estimates to the for-hire industry were generated for several general options including a tablet-based system, a handheld GPS, and a smartphone-based system, where the smartphone is hardwired to a vessel's GPS. If a vessel does not already have an approved type of hardware, the estimated startup costs for each affected vessel under the options listed above would range from \$150 to \$450 in the year of implementation. These costs would be equivalent to less than 1 percent of average annual charter vessel or headboat revenue. The recurring annual cost in subsequent years was estimated to be approximately \$20 per vessel. These estimates assume that for-hire vessels already have a basic data plan through a wireless service provider. Some vessels may be more or less affected than others by the proposed rule depending on their existing technology assets and data service plans at the time of implementation, as well as the availability of wireless service coverage at their port of landing. For the affected vessels that currently do not have any wireless carrier contract, the estimated additional cost for an unlimited data plan would range from approximately \$60 to \$100 per month. This is an upper bound estimate based on advertised rates from four major wireless service providers in 2017 and cheaper plans would likely be available. Because details of the NMFS-approved hardware and software have not yet been determined, all cost estimates provided here are subject to change and could go up or down based on the technology that NMFS ultimately approves and the data that are required to be reported.

The following discussion describes the alternatives that were not selected as preferred by the Gulf Council.

Four alternatives were considered for the action to modify the frequency and mechanism of data reporting for charter vessels. The first alternative, the no-action alternative, would retain current reporting requirements for federally permitted charter vessels. This would not be expected to alter for-hire business costs relative to the status quo, so no direct economic effects to small entities would be expected to occur. This alternative was not selected by the Gulf Council because it would forgo important biological, economic, and social benefits from improved management as afforded by more timely

and accurate estimates of effort, landings, and discards.

The second alternative would require that the owner or operator of a charter vessel for which a charter vessel/headboat permit for Gulf reef fish or Gulf CMP species has been issued to submit fishing reports to the SRD weekly, or at intervals shorter than a week if notified by the SRD, via electronic reporting using NMFS-approved hardware and software. Under this alternative, reports would need to be filed by Tuesday following each reporting week. Although this alternative could result in additional implicit or explicit costs to affected vessels relative to the status quo, it would be less burdensome than this proposed rule, because charter vessels would have a longer period of time to report and more flexibility in terms of when and how to report. This alternative would be less likely than the proposed rule to interfere with normal operations during charter trips and would allow for onshore support staff assistance, as well potentially cheaper data transmission methods (e.g., via a personal computer or laptop connected to the internet). This alternative was not selected by the Gulf Council because it would result in less timely data, as well as potentially less accurate data, due to a lack of dockside validation and greater potential for recall bias.

The third alternative would require that the owner or operator of a charter vessel for which a charter vessel/headboat permit for Gulf reef fish or Gulf CMP species has been issued to submit fishing reports to the SRD daily via electronic reporting using NMFS-approved hardware and software. Under this alternative, reports would need to be filed by noon (local time) of the following day. The costs of this alternative to affected small entities, in terms of magnitude, would likely fall between those of the second alternative and those of this proposed rule. There would be less flexibility than under the second alternative in terms of when reports are filed; however, it would still be possible to utilize onshore support staff and technology resources to meet the requirements. Even though the data would be timelier under daily reporting than weekly reporting, and recall bias would likely be lower, the Gulf Council did not select this alternative because the lack of dockside validation would still be a major drawback in ensuring high quality and accurate data.

Four alternatives were considered for the action to modify the frequency and mechanism of data reporting for headboats. The first alternative, the no-action alternative, would retain current

reporting requirements for federally permitted headboats. This would not be expected to alter for-hire business costs relative to the status quo, so no direct economic effects to small entities would be expected to occur. This alternative was not selected by the Gulf Council because it would forgo important biological, economic, and social benefits from improved management as afforded by more timely and accurate estimates of effort, landings, and discards.

The second alternative would require that the owner or operator of a headboat for which a charter vessel/headboat permit for Gulf reef fish or Gulf CMP species has been issued submit fishing reports to the SRD weekly, or at intervals shorter than a week if notified by the SRD, via electronic reporting using NMFS-approved hardware and software. Under this alternative, reports would need to be filed by Tuesday following each reporting week, which is 5 days sooner than under the status quo. Although this alternative could result in additional implicit or explicit costs to affected vessels relative to the status quo, it would be less burdensome than this proposed rule, because headboats would have a longer period of time to report and more flexibility in terms of when and how to report. This alternative would be less likely to interfere with normal operations during headboat trips and would allow for onshore support staff assistance, as well potentially cheaper data transmission methods (e.g., via a personal computer or laptop connected to the internet). This alternative was not selected by the Council because it would result in less timely data, as well as potentially less accurate data, due to a lack of dockside validation and greater potential for recall bias.

The third alternative would require that the owner or operator of a headboat for which a charter vessel/headboat permit for Gulf reef fish or Gulf CMP species has been issued submit fishing reports to the SRD daily via electronic reporting using NMFS-approved hardware and software. Under this alternative, reports would need to be filed by noon (local time) of the following day. The costs of this alternative to affected small entities, in terms of magnitude, would likely fall between those of the second alternative and those of this proposed rule. There would be less flexibility than under the second alternative in terms of when reports are filed; however, it would still be possible to utilize onshore support staff and technology resources to meet the requirements. Even though the data would be timelier under daily reporting than weekly reporting and recall bias

would likely be lower, the Council did not select this alternative because the lack of dockside validation would still be a major drawback in ensuring high quality and accurate data.

Three alternatives were considered for the action to implement trip notification requirements for federally permitted charter vessels and headboats. The first alternative, the no-action alternative, would maintain current reporting requirements for for-hire vessels and would not require trip declarations or landing notifications. Therefore, it would not be expected to result in any direct economic effects on any small entities. The Gulf Council did not select the first alternative because it would not satisfy the data needs required for dockside validation and would not aid in enforcement. The second alternative and two options were selected as preferred, and would require that both federally permitted charter vessels and headboats submit trip declarations to NMFS prior to departing on any trip. The third alternative would require that prior to arriving at the dock at the end of each for-hire trip, the owner or operator of a vessel for which a Federal charter vessel/headboat permit for Gulf reef fish or Gulf CMP species has been issued to provide a landing notification and submit fishing reports via NMFS-approved hardware and software. The third alternative contained two options. The first and second options would require federally permitted charter vessels and headboats, respectively, to comply with the landing notification requirement. The Gulf Council did not select the third alternative because requiring vessels to provide a landing notification and submit fishing reports prior to arriving at the dock is not necessary with the preferred reporting alternatives, which require fishing reports be submitted at the end of each trip.

Four alternatives were considered for the action to implement hardware and software requirements for reporting. The first alternative, the no-action alternative, would not change current reporting requirements for for-hire vessels. Therefore, it would not be expected to result in any direct economic effects on any small entities. This alternative was not selected by the Gulf Council because there is currently no reporting platform for charter vessels, and therefore, no means by which charter vessels would be able to submit electronic reports. Additionally, this alternative would not allow for the same level of trip validation, because it would not require GPS unit hardware to be permanently affixed to the vessel.

The second alternative and two options were selected as preferred and would require charter vessel and headboat owners or operators to submit fishing reports via NMFS-approved hardware and software. Under this preferred alternative and options, a for-hire vessel owner or operator would also be required to use NMFS-approved hardware and software with GPS capabilities that, at a minimum, archive vessel position data during a trip. The GPS portion of the hardware would need to be permanently affixed to the vessel.

The third alternative would require for-hire vessel owners or operators to submit fishing reports via NMFS-approved hardware and software with GPS capabilities that, at a minimum, provide real-time vessel position data to NMFS. The GPS portion of the hardware would need to be permanently affixed to the vessel. The third alternative contained two options. The first and second options would require federally permitted charter vessels and headboats, respectively, to comply with the hardware and software requirements of the third alternative. The estimated startup costs for each affected for-hire vessel under the third alternative and two options would total approximately \$300 in the year of implementation, which falls within the estimated startup cost range for this proposed rule. The recurring annual service cost associated with the transmission of real-time location data in subsequent years would be approximately \$200 per vessel, which is greater than the recurring cost associated with this proposed rule. As discussed earlier, these estimates assume for-hire vessels have existing wireless service contracts and sufficient data plans for submitting electronic fishing reports to NMFS. If that is not the case, for-hire vessels may incur additional expenses in the range of \$60 to \$100 per month. The third alternative was not selected by the Gulf Council because of the higher estimated recurring costs to industry.

The fourth alternative would require for-hire vessel owners or operators to submit fishing reports via NMFS-approved hardware and software that provide vessel position data to NMFS via VMS. The antenna and junction box would need to be permanently affixed to the vessel. The fourth alternative contained two options. The first and second options would require federally permitted charter vessels and headboats, respectively, to comply with the hardware and software requirements of the fourth alternative. The estimated startup costs for each affected vessel to purchase, install, and operate a VMS

unit would range from \$2,500 to \$4,400 in the year of implementation. This would be equivalent to approximately 3 to 5 percent of average annual charter vessel revenue and 1 to 2 percent of average annual headboat revenue. The recurring annual cost associated with maintaining and operating VMS hardware and software in subsequent years was estimated to be approximately \$750 per vessel. The fourth alternative was not selected by the Council, because the estimated startup and recurring costs to the industry were much higher than those of the preferred alternative.

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These proposed requirements have been submitted to OMB for approval. NMFS is proposing to revise the collection-of-information requirements under OMB Control Number 0648-0016, Southeast Region Logbook Family of Forms. The proposed rule would require owners or operators of vessels with Federal charter vessel/headboat permits for Gulf reef fish or Gulf CMP species, and when operating as such, to submit an electronic fishing report to NMFS for each trip via NMFS-approved hardware and software, prior to offloading fish from the vessel. Public reporting burden for the proposed requirements are estimated to average 2 minutes to complete the trip notification, 10 minutes per electronic fishing report, and, if separate from the fishing report, 2 minutes to report location information. NMFS estimates a GPS or VMS power-down exemption request would require an average of 5 minutes to complete per occurrence. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the necessary data, and compiling, reviewing, and submitting the information to be collected.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Southeast Regional Office at the

ADDRESSES above, and by email to OIRA_Submission@omb.eop.gov or fax to 202–395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, and no person will be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved collections of information may be viewed at http://www.cio.noaa.gov/services_programs/prasubs.html.

List of Subjects in 50 CFR Part 622

Atlantic, Charter vessel, Cobia, Fisheries, Fishing, Gulf of Mexico, Headboat, King mackerel, Recordkeeping and reporting, Reef fish, South Atlantic, Spanish mackerel.

Dated: October 22, 2018.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.20, revise paragraph (b)(1)(ii)(A)(2) to read as follows:

§ 622.20 Permits and endorsements.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) * * *

(2) Charter vessel and headboat recordkeeping and reporting requirements specified in § 622.26(b);

* * * * *

■ 3. In § 622.26, revise paragraph (b) to read as follows:

§ 622.26 Recordkeeping and reporting.

* * * * *

(b) *Charter vessel/headboat owners and operators*—(1) *General reporting requirement*—The owner or operator of a charter vessel or headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued, as required under § 622.20(b), and whose vessel is operating as a charter vessel or headboat, regardless of fishing location, must submit an electronic fishing report of all fish harvested and discarded, and any other information requested by the

SRD for each trip within the time period specified in paragraph (b)(2) of this section. The electronic fishing report must be submitted to the SRD via NMFS approved hardware and software, as specified in paragraph (b)(5) of this section.

(2) *Reporting deadlines.* Completed electronic fishing reports required by paragraph (b)(1) of this section must be submitted to the SRD prior to removing any fish from the vessel. If no fish were retained by any person on the vessel during a trip, the completed electronic fishing report must be submitted to the SRD within 30 minutes of the completion of the trip, *e.g.*, arrival at the dock.

(3) *Catastrophic conditions.* During catastrophic conditions only, NMFS provides for use of paper forms for basic required functions as a backup to the electronic reports required by paragraph (b) of this section. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, and other appropriate means, such as fishery bulletins or NOAA weather radio, and will authorize the affected participants' use of paper forms for the duration of the catastrophic conditions. The paper forms will be available from NMFS. During catastrophic conditions, the RA has the authority to waive or modify reporting time requirements.

(4) *Compliance requirement.* Electronic reports required by paragraph (b)(1) of this section must be submitted and received by NMFS according to the reporting requirements under this section. A report not received within the applicable time specified in paragraph (b)(2) of this section is delinquent. A delinquent report automatically results in the owner and operator of a charter vessel or headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued being prohibited from harvesting or possessing such species, regardless of any additional notification to the delinquent owner and operator by NMFS. The owner and operator who are prohibited from harvesting or possessing such species due to delinquent reports are authorized to harvest or possess such species only after all required and delinquent reports have been submitted and received by NMFS according to the reporting requirements under this section.

(5) *Hardware and software requirements for electronic reporting.* The owner or operator of a vessel for

which a charter vessel/headboat permit for Gulf reef fish has been issued must submit electronic reports using NMFS-approved hardware and software with a minimum capability of archiving GPS locations. The GPS portion of the hardware must be permanently affixed to the vessel and have uninterrupted operation.

(i) *Use of a NMFS-approved VMS.* An owner or operator of a vessel for which a charter vessel/headboat permit for Gulf reef fish has been issued, and who uses a NMFS-approved VMS to comply with the reporting and recordkeeping requirements of this section, must adhere to the VMS requirements specified in § 622.28, except for the trip notification requirements specified in § 622.28(e). For trip notification requirements, see paragraph (b)(6) of this section.

(ii) *Use of other NMFS-approved hardware and software.* An owner or operator of a vessel for which a charter vessel/headboat permit for Gulf reef fish has been issued, and who uses NMFS-approved hardware and software other than a VMS to comply with the reporting and recordkeeping requirements of this section must comply with the following—

(A) Ensure that such vessel has an operating GPS unit approved by NMFS on board at all times whether or not the vessel is underway, unless exempted by NMFS under the power-down exemptions specified in paragraph (b)(5)(iii)(D) of this section. An operating GPS unit includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider. NMFS maintains a current list of approved GPS units and communication providers, which is available at <https://www.fisheries.noaa.gov/southeast/about-us/sustainable-fisheries-division-gulf-mexico-branch>. If NMFS removes a GPS unit from the approved list, a vessel owner who purchased and installed such a GPS unit prior to its removal from the approved list will still comply with the requirement to have an approved unit, unless otherwise notified by NMFS. At the end of a GPS unit's service life, it must be replaced with a currently approved unit.

(B) *Hourly position reporting requirement.* An owner or operator of a vessel using a NMFS-approved GPS unit as specified in paragraph (b)(5)(iii)(A) of this section must ensure that the required GPS unit archives the vessel's accurate position at least once per hour, 24 hours a day, every day of the year,

unless exempted from this requirement under paragraphs (b)(5)(iii)(C) or (D) of this section.

(C) *In-port exemption.* While in port, an owner or operator of a vessel with a type-approved GPS unit configured with the 4-hour position reporting feature may utilize the 4-hour reporting feature rather than comply with the hourly position reporting requirement specified in paragraph (b)(5)(iii)(B) of this section. Once the vessel is no longer in port, the hourly position reporting requirement specified in paragraph (b)(5)(ii)(B) of this section applies. For the purposes of this section, "in port" means secured at a land-based facility, or moored or anchored after the return to a dock, berth, beach, seawall, or ramp.

(D) *Power-down exemptions.* An owner or operator of a vessel subject to the requirement to have a GPS unit operating at all times as specified in paragraph (b)(5)(ii)(A) of this section can be exempted from that requirement and may power down the required GPS unit if—

(1) The vessel will be continuously out of the water or in port, as defined in paragraph (b)(5)(ii)(C) of this section, for more than 72 consecutive hours;

(2) The owner or operator of the vessel applies for and obtains a valid letter of exemption from NMFS. The letter of exemption must be maintained on board the vessel and remains valid for the period specified in the letter for all subsequent power-down requests conducted for the vessel consistent with the provisions of paragraphs (b)(5)(ii)(D)(3) and (4) of this section.

(3) Prior to each power down, the owner or operator of the vessel files a report using a NMFS-approved form that includes the name of the person filing the report, vessel name, U.S. Coast Guard vessel documentation number or state vessel registration number, charter vessel/headboat reef fish permit number, vessel port location during GPS power down, estimated duration of the power-down exemption, and reason for power down; and

(4) Prior to powering down the GPS unit, the owner or operator of the vessel receives a confirmation from NMFS that the information was successfully delivered.

(E) *Installation and activation of a GPS unit.* Only a GPS unit that has been approved by NMFS for the Gulf reef fish fishery may be used, and the GPS unit must be installed by a qualified marine electrician. When installing and activating or when reinstalling and reactivating the NMFS-approved GPS unit, the vessel owner or operator must—

(1) Follow procedures indicated on the GPS installation and activation form, which is available from NMFS; and

(2) Submit a completed and signed GPS installation and activation form to NMFS as specified on the form.

(F) *Interference with the GPS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the GPS, or attempt any of the same.

(G) *Interruption of operation of the GPS.* When a vessel's GPS is not operating properly or if notified by NMFS that a vessel's GPS is not operating properly, the vessel owner or operator must immediately contact NMFS and follow NMFS' instructions. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by NMFS the vessel's positions, or returning to port until the GPS is operable.

(iii) *Access to position data.* As a condition of authorized fishing for or possession of Gulf reef fish subject to the reporting and recordkeeping requirements in this section, a vessel owner or operator subject to the hardware and software requirements in this section must allow NMFS, the U.S. Coast Guard, and their authorized officers and designees access to the vessel's position data obtained from the VMS or GPS.

(6) *Trip notification requirements.* Prior to departure for each trip, the owner or operator of a vessel for which a charter vessel/headboat permit for Gulf reef fish has been issued must notify NMFS and report the type of trip, the U.S. Coast Guard vessel documentation number or state vessel registration number, and whether the vessel will be operating as a charter vessel or headboat, or is departing on another type of trip, such as a commercial trip. If the vessel will be operating as a charter vessel or headboat during the trip, the owner or operator must also report the expected trip completion date, time, and landing location.

* * * * *

■ 4. In § 622.373, revise paragraph (c)(1) to read as follows:

§ 622.373 Limited access system for charter vessel/headboat permits for Gulf coastal migratory pelagic fish.

* * * * *

(c) * * * (1) Renewal of a charter vessel/headboat permit for Gulf coastal migratory pelagic fish is contingent upon compliance with the

recordkeeping and reporting requirements specified in § 622.374(b).

* * * * *

■ 5. In § 622.374, revise paragraph (b) to read as follows:

§ 622.374 Recordkeeping and reporting.

* * * * *

(b) *Charter vessel/headboat owners and operators*—(1) *General reporting requirement*—(i) *Gulf of Mexico.* The owner or operator of a charter vessel or headboat for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued, as required under § 622.370(b)(1), and whose vessel is operating as a charter vessel or headboat, regardless of fishing location, must submit an electronic fishing report of all fish harvested and discarded, and any other information requested by the SRD for each trip within the time period specified in paragraph (b)(2)(i) of this section. An electronic fishing report must be submitted to the SRD via NMFS approved hardware and software, as specified in paragraph (b)(5) of this section.

(ii) *Atlantic headboats.* The owner or operator of a headboat for which a charter vessel/headboat permit for Atlantic coastal migratory pelagic fish has been issued, as required under § 622.370(b)(1), or whose vessel fishes for or lands Atlantic coastal migratory pelagic fish in or from state waters adjoining the South Atlantic or Mid-Atlantic EEZ, who is selected to report by the SRD must submit an electronic fishing record for each trip of all fish harvested within the time period specified in paragraph (b)(2)(ii) of this section, via the Southeast Region Headboat Survey.

(2) *Reporting deadlines*—(i) *Gulf of Mexico.* Completed electronic fishing reports required by paragraph (b)(1)(i) of this section must be submitted to the SRD prior to removing any fish from the vessel. If no fish were retained by any person on the vessel during a trip, the completed electronic fishing report must be submitted to the SRD within 30 minutes of the completion of the trip, e.g., arrival at the dock.

(ii) *Atlantic headboats.* Electronic fishing records required by paragraph (b)(1)(ii) of this section for headboats must be submitted at weekly intervals (or intervals shorter than a week if notified by the SRD) by 11:59 p.m., local time, the Sunday following a reporting week. If no fishing activity occurred during a reporting week, an electronic report so stating must be submitted for that reporting week by 11:59 p.m., local time, the Sunday following a reporting week.

(3) *Catastrophic conditions.* During catastrophic conditions only, NMFS provides for use of paper forms for basic required functions as a backup to the electronic reports required by paragraphs (b)(1)(i) and (ii) of this section. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, and other appropriate means, such as fishery bulletins or NOAA weather radio, and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. The paper forms will be available from NMFS. During catastrophic conditions, the RA has the authority to waive or modify reporting time requirements.

(4) *Compliance requirement.* Electronic reports required by paragraphs (b)(1)(i) and (ii) of this section must be submitted and received by NMFS according to the reporting requirements under this section. A report not received within the applicable time specified in paragraphs (b)(2)(i) or (ii) is delinquent. A delinquent report automatically results in the owner and operator of a charter vessel or headboat for which a charter vessel/headboat permit for Gulf or Atlantic coastal migratory pelagic fish has been issued, as required under § 622.370(b)(1), being prohibited from harvesting or possessing such species, regardless of any additional notification to the delinquent owner and operator by NMFS. The owner and operator who are prohibited from harvesting or possessing such species due to delinquent reports are authorized to harvest or possess such species only after all required and delinquent reports have been submitted and received by NMFS according to the reporting requirements under this section.

(5) *Hardware and software requirements for electronic reporting.* (i) An owner or operator of a vessel for which a charter vessel/headboat permit for Gulf or Atlantic coastal migratory pelagic fish has been issued must submit electronic reports using NMFS-approved hardware and software.

(ii) For a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued, the NMFS-approved hardware and software must have a minimum capability of archiving GPS locations, and the GPS portion of the hardware must be permanently affixed to the

vessel and have uninterrupted operation.

(iii) *Use of a NMFS-approved VMS.* An owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued, and who uses a NMFS-approved VMS to comply with the reporting and recordkeeping requirements of this section, must adhere to the VMS requirements for the Gulf reef fish fishery specified in § 622.28 of this part, except for the trip notification requirements specified in § 622.28(e) of this part. For trip notification requirements, see paragraph (b)(6) of this section.

(iv) *Use of other NMFS-approved hardware and software.* An owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued, and who uses NMFS-approved hardware and software other than a VMS to comply with reporting and recordkeeping requirements of this section must comply with the following—

(A) Ensure that such vessel has an operating GPS unit approved by NMFS on board at all times whether or not the vessel is underway, unless exempted by NMFS under the power-down exemptions specified in paragraph (b)(5)(iv)(D) of this section. An operating GPS unit includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider. NMFS maintains a current list of approved GPS units and communication providers, which is available at <https://www.fisheries.noaa.gov/southeast/about-us/sustainable-fisheries-division-gulf-mexico-branch>. If NMFS removes a GPS unit from the approved list, a vessel owner who purchased and installed such a GPS unit prior to its removal from the approved list will still comply with the requirement to have an approved unit, unless otherwise notified by NMFS. At the end of a GPS unit's service life, it must be replaced with a currently approved unit.

(B) *Hourly position reporting requirement.* An owner or operator of a vessel using a NMFS-approved GPS unit as specified in paragraph (b)(5)(iv)(A) of this section must ensure that the required GPS unit archives the vessel's accurate position at least once per hour, 24 hours a day, every day of the year, unless exempted from this requirement under paragraphs (b)(5)(iv)(C) or (D) of this section.

(C) *In-port exemption.* While in port, an owner or operator of a vessel with a

type-approved GPS unit configured with the 4-hour position reporting feature may utilize the 4-hour reporting feature rather than comply with the hourly position reporting requirement specified in paragraph (b)(5)(iv)(B) of this section. Once the vessel is no longer in port, the hourly position reporting requirement specified in paragraph (b)(5)(iv)(B) of this section applies. For the purposes of this section, "in port" means secured at a land-based facility, or moored or anchored after the return to a dock, berth, beach, seawall, or ramp.

(D) *Power-down exemptions.* An owner or operator of a vessel subject to the requirement to have a GPS unit operating at all times as specified in paragraph (b)(5)(iv)(A) of this section can be exempted from that requirement and may power down the required GPS unit if—

(1) The vessel will be continuously out of the water or in port, as defined in paragraph (b)(5)(iv)(C) of this section, for more than 72 consecutive hours; and

(2) The owner or operator of the vessel applies for and obtains a valid letter of exemption from NMFS. The letter of exemption must be maintained on board the vessel and remains valid for the period specified in the letter for all subsequent power-down requests conducted for the vessel consistent with the provisions of paragraphs (b)(5)(iv)(D)(3) and (4) of this section.

(3) Prior to each power down, the owner or operator of the vessel files a report using a NMFS-approved form that includes the name of the person filing the report, vessel name, U.S. Coast Guard vessel documentation number or state vessel registration number, permit number of the Gulf coastal migratory pelagic charter vessel/headboat permit, vessel port location during GPS power down, estimated duration of the power-down exemption, and reason for power down; and

(4) Prior to powering down the GPS unit, the owner or operator of the vessel receives a confirmation from NMFS that the information was successfully delivered.

(E) *Installation and activation of a GPS unit.* Only a GPS unit that has been approved by NMFS for the Gulf coastal migratory pelagic fishery may be used, and the GPS unit must be installed by a qualified marine electrician. When installing and activating or when reinstalling and reactivating the NMFS-approved GPS unit, the vessel owner or operator must—

(1) Follow procedures indicated on the GPS installation and activation form, which is available from NMFS; and

(2) Submit a completed and signed GPS installation and activation form to NMFS as specified on the form.

(F) *Interference with the GPS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the GPS, or attempt any of the same.

(G) *Interruption of operation of the GPS.* When a vessel's GPS is not operating properly or if notified by NMFS that a vessel's GPS is not operating properly, the vessel owner or operator must immediately contact NMFS and follow NMFS' instructions. In either event, such instructions may include, but are not limited to, manually communicating to a location designated

by NMFS the vessel's positions or returning to port until the GPS is operable.

(v) *Access to position data.* As a condition of authorized fishing for or possession of Gulf coastal migratory pelagic fish subject to the reporting and recordkeeping requirements in this section, a vessel owner or operator subject to the hardware and software requirements in this section must allow NMFS, the U.S. Coast Guard, and their authorized officers and designees access to the vessel's position data obtained from the VMS or GPS.

(6) *Trip notification requirements in the Gulf.* Prior to departure for each trip, the owner or operator of a vessel for

which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued must notify NMFS and report the type of trip, the U.S. Coast Guard vessel documentation number or state vessel registration number, and whether the vessel will be operating as a charter vessel or headboat, or is departing on another type of trip, such as a commercial trip. If the vessel will be operating as a charter vessel or headboat during the trip, the owner or operator must also report the expected trip completion date, time, and landing location.

* * * * *

[FR Doc. 2018-23348 Filed 10-25-18; 8:45 am]

BILLING CODE 3510-22-P

Notices

Federal Register

Vol. 83, No. 208

Friday, October 26, 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

Submission for OMB Review; Comment Request

October 23, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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.

Comments regarding this information collection received by November 26, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: 7 CFR part 220, School Breakfast Program.

OMB Control Number: 0584-0012.

Summary of Collection: Section 4 of the Child Nutrition Act (CNA) of 1966 (42 U.S.C. 1773) authorizes the School Breakfast Program as a nutrition assistance program and authorizes payments to States to assist them to initiate, maintain, or expand nonprofit breakfast programs in schools. The provision requires that "Breakfasts served by schools participating in the School Breakfast Program under this section shall consist of a combination of foods and shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research." The School Breakfast Program is administered and operated in accordance with the National School Lunch Act (NSLA). The Program is administered at the State and school food authority (SFA) levels and the operations include the submission and approval of applications, execution of agreements, submission of claims, payment of claims, monitoring, and providing technical assistance.

Need and Use of the Information: States, SFAs, and schools are required to keep accounts and records as may be necessary to enable FNS to determine whether the program is in compliance. SFAs collect breakfast counts from the schools so that they can submit claims and related information to the State agencies. The State agencies then report this information to FNS. The State agencies, the SFAs, and the schools also maintain records related to the School Breakfast Program. FNS uses the information to monitor State agency and SFA compliance, determine the amount of funds to be reimbursed, evaluate and adjust program operations, and to monitor program funding and program trends.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 110,268.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Monthly.

Total Burden Hours: 3,857,770.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018-23462 Filed 10-25-18; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2018-0064]

Environmental Assessment; Southwestern Willow Flycatcher Conservation Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to conduct a scoping process and prepare an environmental assessment.

SUMMARY: We are advising the public that the U.S. Department of Agriculture (USDA) and its sub-agency, the Animal and Plant Health Inspection Service (APHIS), are considering developing a conservation program pursuant to the Endangered Species Act for the southwestern willow flycatcher, a small, neotropical migrant bird found in Arizona, California, Colorado, Nevada, New Mexico, Texas, and Utah. We are also planning to prepare an environmental assessment to analyze the effects of the proposed conservation program. This notice identifies potential issues, alternatives, and conservation measures that USDA and APHIS propose to review, and requests public comments to determine the relevant scope of issues and range of alternatives to be addressed in the environmental process from individuals, organizations, Tribes, and government agencies on this topic.

DATES: We will consider all comments that we receive on or before November 26, 2018.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov#!docketDetail;D=APHIS-2018-0064>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2018-0064, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0064> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Kai Caraher, Biological Scientist, PPQ, APHIS, 4700 River Road, Unit 150, Riverdale, MD 20737-1231; (301) 851-2345; Kai.Caraher@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Saltcedar, also known as tamarisk (*Tamarix* spp.), is an invasive plant widely established in riparian areas in the western United States. This non-native weed, which can take the form of a shrub or small tree, was introduced into the United States in the latter 19th century. Although saltcedar is an invasive plant, native animals have adapted to its presence.

In 2000, the Animal and Plant Health Inspection Service (APHIS) began issuing permits for the release of the tamarisk leaf beetle (*Diorhabda* species) for research and biological control of saltcedar. During May 2001, the United States Department of Agriculture's (USDA) Agricultural Research Service (ARS) released tamarisk leaf beetles from field cages into the open environment at 10 sites. The beetles overwintered and defoliated saltcedar at Lovelock, NV, during 2002 to 2004. Further redistribution without permit was prohibited by APHIS.

In February 2004, Congress passed the Salt Cedar and Russian Olive Control Demonstration Act directing the Secretary of the Interior, working with other Federal agencies, to undertake saltcedar eradication demonstration projects. In 2005, APHIS initiated a biological control program for saltcedar defoliation in the northern United States using the tamarisk leaf beetle as the biological control agent. Although the beetle was released in limited locations outside of the habitat of the southwestern willow flycatcher (SWFL, *Empidonax traillii extimus*, a small, neotropical migrant bird found in Arizona, California, Colorado, Nevada, New Mexico, Texas, and Utah), greater than anticipated natural and intentional human-assisted movement of the beetle resulted in the presence of tamarisk leaf

beetles in SWFL habitat. The beetle defoliates saltcedar trees as intended as a biological control agent; however, in SWFL habitat, nesting success can be adversely affected because the SWFL nests in the saltcedar.

After tamarisk beetles were discovered in SWFL habitat, APHIS terminated its saltcedar biological control program in 2010 and canceled release permits owing to the potential adverse effects to SWFL. APHIS reinitiated consultation with the U.S. Fish and Wildlife Service (FWS) on these actions, in compliance with section 7(a)(2) of the Endangered Species Act (ESA) and 16 U.S.C. 1536(a)(2), and FWS concurred with APHIS' determination that these actions were not likely to adversely affect the SWFL.

On September 30, 2013, the Center for Biological Diversity filed a lawsuit against USDA, APHIS, ARS, the Department of the Interior (DOI), and FWS alleging that the APHIS saltcedar biological control program violated the National Environmental Policy Act (NEPA) and the ESA. On May 3, 2016, the Court granted the plaintiff's second of five claims, finding that APHIS did not comply with the ESA section 7(a)(1), which requires Federal agencies to consult with DOI and "utilize their authorities in furtherance of the purposes of [the ESA] by carrying out programs for the conservation of endangered species and threatened species listed pursuant to [16 U.S.C. 1533]" 16 U.S.C. 1536(a)(1). On June 19, 2018, the Court ordered USDA and APHIS to publish proposed conservation program alternatives in compliance with ESA section 7(a)(1) and solicit public comments on the proposed alternatives. USDA and APHIS ultimately intend to prepare an environmental assessment (EA) for the conservation program, or an environmental impact statement (EIS) should it be appropriate.

The EA will examine the environmental effects of possible program alternatives including conservation measures available to USDA and APHIS, as well as a no action alternative. The EA will be used for planning and decision-making and to inform the public about the environmental effects of the various conservation actions.

Proposed Programmatic Alternatives

We are requesting public comment on the listed conservation program alternatives that may help us identify additional potential alternatives and environmental issues the EA should examine. Based on the comments that

we receive, we may determine that we should prepare an EIS instead of an EA. In that case, we would notify the public of our intent to prepare an EIS in a notice published in the **Federal Register**.

The EA will be prepared in accordance with: (1) NEPA, (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA's regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' regulations implementing NEPA (7 CFR part 372). APHIS requests that Federal, State, Tribal or local government entities who manage areas, or have jurisdictional control over sites or actions under consideration as part of this conservation program, participate as cooperating agencies in this environmental risk analysis and development of the NEPA documents.

We have identified two alternatives for further examination in the EA:

No action. Under this alternative, USDA and APHIS would evaluate the current USDA and APHIS programs benefitting the SWFL and would not develop any new conservation programs for SWFL. For example, the USDA Natural Resource Conservation Service has restored 2,623 acres of SWFL habitat since 2012. This alternative represents the baseline against which a proposed action may be compared.

Conservation Program. Under this alternative, APHIS would develop a new conservation program that would have a beneficial impact on the SWFL. USDA and APHIS are considering a number of measures, listed below, that could comprise or be part of a new conservation program.

1. *Riparian Restoration.* Funding intensive third-party riparian restoration efforts or otherwise facilitating the mass planting of native vegetation at high-risk and medium-risk sites within the SWFL's occupied habitat to ensure that suitable habitat exists to mitigate the potential adverse effects of the beetles' defoliation of saltcedar in these areas, including but not limited to:

- Middle Rio Grande River, including sites at the Elephant Buttes Reservoir and the Bosque del Apache National Wildlife Refuge;
- Gila River (entire reach);
- San Pedro River, including sites from the Narrows to the Gila River confluence;
- Bill Williams River, including sites at the Alamo Lake margin, the Big Sandy confluence, and the Santa Maria confluence;
- Burnt Springs/Colorado River confluence within Grand Canyon

National Park managed by the National Park Service;

- Colorado River Mile 274 within Grand Canyon National Park managed by the National Park Service;
- Pearce Ferry within the Lake Mead National Recreation Area managed by the National Park Service;
- Cottonwood Cove on the western shore of Lake Mohave within the Lake Mead National Recreation Area managed by the National Park Service;
- Lands within the Fort Mohave Indian Reservation along the Colorado River above and adjoining Topock Marsh and the Havasu Wildlife Refuge;
- Colorado River, including sites at the Chemehuevi Indian Reservation below Lake Havasu;
- Virgin River, including sites at Mesquite, Mormon Mesa, Littlefield, and St. George;
- Muddy River, including sites at Overton Wildlife Management Area to Lake Mead;
- Lower Colorado River, including sites from Glen Canyon Dam to Lake Mead, Davis Dam to Parker Dam, and Parker Dam to Imperial Dam;
- Verde River, including sites from Horseshoe Lake to Salt River;
- Roosevelt Lake;
- Santa Maria River, including sites upstream from U.S. Highway 93 and from Date Creek to Alamo Lake;
- Big Sandy, including sites from the USGS gage to Alamo Lake; and
- Lower Tonto Creek.

2. *Tamarisk Leaf Beetle Surveying and Data Collection.* Compiling and synthesizing the results of survey and data collection efforts to better understand the tamarisk leaf beetle's past and projected movements into SWFL habitat.

3. *Geographic Information System (GIS) Habitat Mapping.* Fund and assist with GIS mapping of saltcedar and native riparian cover across the southwestern United States—and specifically throughout the SWFL's occupied range. APHIS may collaborate with the U.S. Geological Survey to improve a SWFL habitat assessment model that uses satellite imagery and create an online mapping platform for conservation groups and land management agencies to access the model results.

4. *Educational Campaign.* Continue current public outreach efforts and collaborate with Federal, State, Tribal, and local authorities to prohibit or strongly discourage any further intrastate movement, distribution, or release of tamarisk leaf beetles, as a means of slowing the beetle's spread into farther reaches of SWFL habitat.

5. *Streamlined Permitting Process.* Collaborate with FWS and other

relevant agencies to streamline the ESA permitting process for third parties engaged in restoration work to benefit SWFLs and their habitat.

6. *Watershed Partnership Collaboration.* Work cooperatively with, and provide restoration funding for, established watershed partnerships that have already developed detailed restoration plans, some of which are listed below.

7. *Streamlined Funding Sources.* Ensure that funding streams for restoration projects are in easily accessible structures such as block grants administered by the National Fish and Wildlife Foundation or a similar entity, rather than through cost share programs.

8. *Information Repository.* Fund and facilitate a long-term centralized and standardized information repository concerning the tamarisk leaf beetle, its spread, vegetative resources in the southwestern United States, and the SWFL's status.

9. *Invasive Weed Control.* Conduct invasive weed control and monitoring in riparian areas where habitat restoration with native vegetation is planned or has been conducted. USDA and APHIS are currently considering the following areas, but are soliciting other potential restoration sites:

- Escalante River watershed in southern Utah restored by the Grand Staircase Escalante Partners;
- Areas of the Verde River from Paulden to Sheep's Crossing, AZ, restored by the Friends of the Verde River;
- Gila River in Graham and Greenlee Counties in New Mexico, restored by the Gila Watershed Partnership;
- Rio Grande in the Bosque del Apache National Wildlife Refuge in New Mexico; and
- Rio Grande in the Orilla Verde Recreation Area in New Mexico.

10. *SWFL Data Collection Surveying.* Fund data collection surveys throughout the range of the SWFL. Data collected by researchers may include but is not limited to: SWFL presence or absence surveys, determining breeding status for each bird, site evaluations and descriptions, SWFL nest searches, SWFL nest monitoring at breeding sites in order to calculate parasitism and predation rates, impact of habitat restoration efforts, and the amount of saltcedar defoliation caused by the tamarisk leaf beetle.

Potential Environmental Impacts

We have identified the following potential environmental impacts for further examination in the EA:

- Effects on wildlife, including consideration of migratory bird species and changes in native wildlife habitat and populations, and federally listed endangered and threatened species.
- Effects on soil, air, and water quality.
- Effects on human health and safety.
- Effects on cultural and historic resources.
- Effects on economic resources.

We welcome comments on the alternatives and environmental impacts or issues that should be considered for further examination in the EA. In addition, we welcome suggestions for conservation measures for APHIS to include in its conservation plan. Upon completion of the draft EA, we will publish a notice in the **Federal Register** announcing its availability and an invitation to comment.

Done in Washington, DC, this 22nd day of October 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2018–23384 Filed 10–25–18; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Washington Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the meeting of the Washington Advisory Committee (Committee) to the Commission will be held at 1 p.m. (Pacific Time) Friday, November 16, 2018. The purpose of this meeting is for the Committee to discuss their project proposals.

DATES: These meetings will be held on Friday, November 16, 2018 at 1 p.m. PT.

Public Call Information:

Dial: 877–260–1479.

Conference ID: 1445248.

FOR FURTHER INFORMATION CONTACT: Alejandro Ventura (DFO) at aventura@usccr.gov or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 877–260–1479, conference ID number: 1445248. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for

calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894-0508, or emailed Alejandro Ventura at aventura@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit at (213) 894-3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at <https://facadatabase.gov/committee/meetings.aspx?cid=280>. Please click on the "Meeting Details" and "Documents" links. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, <https://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

- I. Welcome and Roll Call
- II. Adoption of Minutes
- III. Discussion Regarding Project Proposals
- IV. Public Comment
- V. Next Steps
- VI. Adjournment

Dated: October 22, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018-23413 Filed 10-25-18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S-103-2018]

Approval of Subzone Status; MAS US Holdings, Inc.; Siler City and Asheboro, North Carolina

On July 23, 2018, the Acting Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Triangle J Council of Governments, grantee of FTZ 93, requesting subzone status subject to the existing activation limit of FTZ 93, on behalf of MAS US Holdings, Inc. in Siler City and Asheboro, North Carolina.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (83 FR 35611, July 27, 2018). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 93J was approved on October 22, 2018, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 93's 2,000-acre activation limit.

Dated: October 22, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018-23455 Filed 10-25-18; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S-106-2018]

Approval of Subzone Status; Liquilux Gas Corporation; Ponce, Puerto Rico

On July 27, 2018, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by CODEZOL, C.D., grantee of FTZ 163, requesting subzone status subject to the existing activation limit of FTZ 163, on behalf of Liquilux Gas Corporation, in Ponce, Puerto Rico.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (83 FR 37462-37463, August 1, 2018). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15

CFR Sec. 400.36(f)), the application to establish Subzone 163K was approved on October 22, 2018, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 163's 917.36-acre activation limit.

Dated: October 22, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018-23456 Filed 10-25-18; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on November 14, 2018, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Status reports by working group chairs.
3. Public comments and Proposals.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at Yvette.Springer@bis.doc.gov no later than November 7, 2018.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the

public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on August 24, 2018, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482-2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2018-23435 Filed 10-25-18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-805]

Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Rescission of Antidumping Duty Administrative Review; 2016-2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding its administrative review of the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico for the period of review (POR) November 1, 2016, through October 31, 2017.

DATES: Applicable October 26, 2018.

FOR FURTHER INFORMATION CONTACT: Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-6312.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2017, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order¹ on certain

¹ See *Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Welded Non-Alloy Steel Pipe from Korea*, 57 FR 49453 (November 2, 1992) (the *Order*).

circular welded non-alloy steel pipe from Mexico for the POR.² Commerce received a timely request from Wheatland Tube (the petitioner), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), to conduct an administrative review of this antidumping duty order with respect to 25 companies.³ No other party submitted a request for administrative review.

On January 11, 2018, Commerce published in the **Federal Register** a notice of initiation with respect to 25 companies.⁴ Commerce stated in its initiation of this review that it intended to rely on U.S. Customs and Border Protection (CBP) data to select respondents.⁵ However, our review of the CBP data, with respect to the companies for which reviews were requested, showed no entries of certain circular welded non-alloy steel pipe originating in Mexico which were subject to antidumping (AD) duties during the POR.⁶

Between January 17, 2018, and February 12, 2018, Tubacero S. de R.L. de C.V. (“Tubacero”); Lamina y Placa Comercial, S.A. de C.V. (“LYPCSA”) and its affiliate Tuberia Nacional, S.A. de C.V. (“TUNA”);⁷ Regiomontana de Perfiles y Tubos S.A. de C.V. (“Regiopytsa”) and its affiliate Pytco, S.A. de C.V. (“Pytco”);⁸ and Mach 1

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 82 FR 50260 (November 1, 2017).

³ See Petitioner Letter re: Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Request for Administrative Review, dated November 30, 2017.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 1329 (January 11, 2018) (*Initiation Notice*), at 1330-1331. The 25 companies listed were: Acerorey; Arcelormittal Monterrey; Arco Metal; Fischer Mexicana; Forza Steel; Mach 1 Aero Servicios S De RL De Cv; Nacional De Acero; Nova Steel; Perfiles Y Herrajes; Precitubo; Procarsa; Productos Especializados De Acero; Productos Laminados de Monterrey, S.A. de C.V.; PYTCO, S.A. de C.V.; Regiomontana de Perfiles y Tubos, S.A. de C.V.; Rymco Conduit S.A. De C.V.; Swecomex S.A. De C.V.; Ternium Tuberia; Tubac; Tubacero; Tuberia Laguna; Tubesa; Tubos Omega; Tumex; and Villacero Tuna.

⁵ See *Initiation Notice*, 83 FR at 1329.

⁶ See Memorandum: “Certain Circular Welded Non-Alloy Steel Pipe from Mexico, 2016-2017 Administrative Review: Placement of Customs and Border Protection (CBP) Information on the Record of this Administrative Review,” dated February 15, 2018 (CBP Information Memorandum).

⁷ See Villacero Tuna Letter re: Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Notice of No Sales, dated January 26, 2018.

⁸ See Regiopytsa/Pytco Letter re: Circular Welded Non-Alloy Steel Pipe from Mexico: No Shipment Notification, dated February 1, 2018. Commerce has collapsed Regiopytsa and Pytco in past segments of this proceeding. See, e.g., *Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review and*

Global Services, Inc. and its affiliate Mach 1 Aero Servicios S De RL de CV each timely submitted a certification of no shipments.⁹ On February 15, 2018, we placed on the record the results of our query of the CBP database and invited comment from interested parties.¹⁰ We received no comments.

In accordance with our standard practice, we transmitted port inquiry messages to CBP requesting that any CBP import officer with information contrary to the statements of no shipments submitted by Lamina y Placa, TUNA, Tubacero, Villacero Tuna, Regiopytsa, Pytco, or Mach 1 report that information to Commerce.¹¹ We received no information from CBP contrary to the statements of no shipments from Lamina y Placa, TUNA, Tubacero, Villacero Tuna, Pytco, or Mach 1. In addition, we received no comment from any party with regard to these port inquiry messages.

On March 20, 2018, we placed on the record the CBP response to our port inquiry message for Regiopytsa, which showed certain entries, and invited comment from interested parties.¹² We received no comments. Consequent to the CBP response to our port inquiry message for Regiopytsa, we requested the entry documents for the entries in question. On May 15, 2018, we placed the entry documents we received from CBP on the record, inviting interested parties to submit rebuttal factual information.¹³ On May 29, 2018,

Final Determination of No Shipments; 2014-2015, 82 FR 27039 (June 13, 2017), at 27040.

⁹ See Mach 1 Letter re: Certain Circular Welded Non-Alloy Steel Pipes and Tubes: Notice of no Exports, Sales, or Entries, dated February 12, 2018.

¹⁰ See Memorandum: “Certain Circular Welded Non-Alloy Steel Pipe from Mexico, 2016-2017 Administrative Review: Placement of Customs and Border Protection (CBP) Information on the Record of this Administrative Review,” dated February 15, 2018 (CBP Information Memorandum).

¹¹ See re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Mach 1 Aero Servicios S De RL De Cv (A-201-805), message number 8064304, dated March 5, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by PYTCO, S.A. de C.V. (A-201-805), message number 8064305, dated March 5, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Villacero Tuna (A-201-805), message number 8064307, dated March 5, 2018.

¹² See Memorandum: “Certain Circular Welded Non-Alloy Steel Pipe from Mexico, 2016-2017 Administrative Review: Placement of Customs and Border Protection (CBP) Response to Port Inquiry on the Record of this Administrative Review,” dated March 20, 2018.

¹³ See Memorandum: “Certain Circular Welded Non-Alloy Steel Pipe from Mexico, 2016-2017

Regiopytsa submitted rebuttal factual information and contended that the entries in question did not constitute subject merchandise.¹⁴ Specifically, Regiopytsa submitted a copy of Commerce's 2016 Regiopytsa Scope Ruling,¹⁵ and noted that the products in question had already been determined to be not within the scope of the *Order*.¹⁶ Moreover, Regiopytsa stated that it subsequently revised the categorization of these entries with CBP.¹⁷ We confirmed this revision of categorization with CBP. No party commented upon Regiopytsa's rebuttal factual information submission.

We subsequently transmitted additional port inquiry messages to CBP requesting that any CBP import officer with information of entries by the remaining 21 companies under review¹⁸ report that information to Commerce.¹⁹ We received no such

Administrative Review: Placement of Customs and Border Protection (CBP) Entry Documents on the Record of this Administrative Review," dated May 15, 2018.

¹⁴ See Regiopytsa Letter re: Circular Welded Non-Alloy Steel Pipe from Mexico, Rebuttal Factual Information, dated May 29, 2018 (Regiopytsa's rebuttal factual information submission).

¹⁵ See Memorandum: "Final Scope Ruling on Certain Black, Circular Tubing Produced to ASTM A-513 Specifications by Regiomontana de Perfiles y Tubos S.A. de C.V.," dated March 31, 2016 (Regiopytsa Scope Ruling), placed on the record of this administrative review as Exhibit 3 of Regiopytsa's rebuttal factual information submission.

¹⁶ See *Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Welded Non-Alloy Steel Pipe from Korea*, 57 FR 49453 (November 2, 1992) (the *Order*).

¹⁷ See Regiopytsa's rebuttal factual information submission, at 1 and Exhibit 1.

¹⁸ The 21 remaining companies under review for which we sent this second set of port inquiry messages were: Acerorey; Arcelormittal Monterrey; Arco Metal; Fischer Mexicana; Forza Steel; Nacional De Acero; Nova Steel; Perfiles Y Herrajes; Precitubo; Procarsa; Productos Especializados De Acero; Productos Laminados de Monterrey, S.A. de C.V.; Rymco Conduit S.A. De C.V.; Swecomex S.A. De C.V.; Ternium Tuberia; Tubac; Tubacero; Tuberia Laguna; Tubesa; Tubos Omega; and Tumex.

¹⁹ See re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Acerorey (A-201-805), message number 8212314, dated July 31, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Arcelormittal Monterrey (A-201-805), message number 8212315, dated July 31, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Arco Metal (A-201-805), message number 8212316, dated July 31, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Fischer Mexicana (A-201-805), message number 8212317, dated July 31, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Forza Steel (A-201-805), message

information from CBP. We received no comment from any party with regard to these port inquiry messages.

On August 29, 2018, we issued a memorandum stating that, because the CBP data showed that there are no suspended entries of subject merchandise from any of the companies subject to this review upon which to assess duties, we intended to rescind this review.²⁰ We invited parties to

number 8212318, dated July 31, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Nacional De Acero (A-201-805), message number 8212319, dated July 31, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Nova Steel (A-201-805), message number 8212320, dated July 31, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Perfiles Y Herrajes (A-201-805), message number 8212321, dated July 31, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Precitubo (A-201-805), message number 8212307, dated July 31, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Procarsa (A-201-805), message number 8212322, dated July 31, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Productos Especializados De Acero (A-201-805), message number 8212323, dated July 31, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Rymco Conduit S.A. De C.V. (A-201-805), message number 8212325, dated July 31, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Swecomex S.A. De C.V. (A-201-805), message number 8212326, dated July 31, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Ternium Tuberia (A-201-805), message number 8212327, dated July 31, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Tubac (A-201-805), message number 8212328, dated July 31, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Tubacero (A-201-805), message number 8212329, dated July 31, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Tuberia Laguna (A-201-805), message number 8212331, dated July 31, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Tubesa (A-201-805), message number 8212330, dated July 31, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Tubos Omega (A-201-805), message number 8212332, dated July 31, 2018; see also re: No shipments inquiry for certain circular welded non-alloy steel pipe from Mexico produced and/or exported by Tumex (A-201-805), message number 8212333, dated July 31, 2018.

²⁰ See Memorandum: "Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Intent to Rescind 2016-2017 Administrative Review," dated August 29, 2018.

comment on this memorandum, but did not receive any comments.

Rescission of Administrative Review

It is Commerce's practice to rescind an administrative review pursuant to 19 CFR 351.213(d)(3) when there are no entries of subject merchandise during the POR subject to AD/CVD duties and for which liquidation is suspended.²¹ At the end of the administrative review, the suspended entries are liquidated at the assessment rate computed for the review period.²² Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry to be liquidated at the newly calculated assessment rate. Because the CBP data showed that there are no suspended entries of subject merchandise from any of the companies subject to this review upon which to assess duties, we are rescinding this review of the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico for the period of review (POR) November 1, 2016, through October 31, 2017, in its entirety, pursuant to 19 CFR 351.213(d)(3).

Notification Regarding Administrative Protective Orders

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

²¹ See, e.g., *Certain Preserved Mushrooms from India: Notice of Rescission of Antidumping Duty Administrative Review*, 79 FR 52300 (September 3, 2014); see also *Certain Frozen Warmwater Shrimp from Brazil: Notice of Rescission of Antidumping Duty Administrative Review*; 2012-2013, 78 FR 30272 (May 22, 2013); see also *Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation: Notice of Rescission of Antidumping Duty Administrative Review*, 77 FR 65532 (October 29, 2012); see also *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Antidumping Duty Administrative Review*, 76 FR 42679 (July 19, 2011); see also *Certain Cut-to-Length Carbon-Quality Steel Plate Products from Italy: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 39299, 39302 (July 12, 2006). Commerce's practice of rescinding annual reviews when there are no entries of subject merchandise during the POR has been upheld by the Court of Appeals for the Federal Circuit, see *Allegheny Ludlum Com. v. United States*, 346 F.3d 1368 (Fed. Cir. 2003).

²² See 19 CFR 351.212(b)(1); see also section 751(a)(2)(A) of the Act.

Dated: October 22, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2018–23454 Filed 10–25–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–087]

Steel Propane Cylinders From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of steel propane cylinders from the People’s Republic of China (China) for the period of investigation December 1, 2017, through January 31, 2017. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 26, 2018.

FOR FURTHER INFORMATION CONTACT: Samuel Brummitt, 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) 482–7851.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on June 18, 2018.¹ On August 1, 2018, Commerce postponed the preliminary determination of this investigation until October 19, 2018.² For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision

¹ See *Steel Propane Cylinders from the People’s Republic of China: Initiation of Countervailing Duty Investigation*, 83 FR 28189 (June 18, 2018) (Initiation Notice).

² See *Steel Propane Cylinders from the People’s Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 83 FR 37463 (August 1, 2018).

Memorandum.³ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are steel propane cylinders from China. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the preamble to Commerce’s regulations,⁴ the Initiation Notice set aside a period of time for parties to raise issues regarding product coverage, (*i.e.*, scope).⁵ Certain interested parties commented on the scope of the investigation as it appeared in the Initiation Notice. Commerce intends to issue its preliminary decision regarding comments concerning the scope of the AD and CVD investigations in the preliminary determination of the companion AD investigation.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, we preliminarily 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.⁶ In making these findings, we relied, in part, on facts available and, because we find that one or more producers and exporters did not

³ See Memorandum, “Decision Memorandum for the Preliminary Affirmative Determination in the Countervailing Duty Investigation of Steel Propane Cylinders from the People’s Republic of China,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁵ See *Initiation Notice*.

⁶ 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.

act to the best of their ability to respond our requests for information, we drew an adverse inference where appropriate in selecting from among the facts otherwise available.⁷ For further information, see “Use of Facts Otherwise Available and Adverse Inferences” in the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of steel propane cylinders from China based on a request made by the petitioners.⁸ Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than March 4, 2019, unless postponed.⁹

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary 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 preliminarily assigned a rate based entirely on facts available to TPA Metals and Machinery (SZ) Co. Ltd. (TPA Metals). Therefore, the only rate that is not zero, *de minimis* or based entirely on facts otherwise available is the rate calculated for Shandong Huanri Group Co. Ltd. (Huanri). Consequently, the rate calculated for Huanri is also assigned as the rate for all-other producers and exporters.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

⁷ See sections 776(a) and (b) of the Act.

⁸ See Letter from the petitioners, “Steel Propane Cylinders from the People’s Republic of China—Petitioners’ Request to Postpone Preliminary Determination,” dated July 20, 2018 (Request for Postponement).

⁹ See *Steel Propane Cylinders from the People’s Republic of China and Thailand: Postponement of Preliminary Determinations in the Less-Than-Fair Value Investigations*, 83 FR 51927 (October 15, 2018).

Company	Subsidy rate (percent)
Guangzhou Lion Cylinders Co. Ltd	145.37
Hubei Daly LPG Cylinder Manufacturer Co. Ltd	145.37
Shandong Huanri Group Co. Ltd	42.77
Taishan Machinery Factory Ltd	145.37
TPA Metals and Machinery (SZ) Co. Ltd	145.37
Wuyi Xilinde Machinery Manufacture Co., Ltd	145.37
Zhejiang Jucheng Steel Cylinder Co., Ltd	145.37
All-Others	42.77

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct 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 this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.¹⁰ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a

written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: October 19, 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 products subject to this investigation are steel cylinders for compressed or liquefied propane gas (steel propane cylinders) meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specifications 4B, 4BA, or 4BW, or Transport Canada Specification 4BM, 4BAM, or 4BWM, or United Nations pressure receptacle standard ISO 4706. The scope includes steel

propane cylinders regardless of whether they have been certified to these specifications before importation. Steel propane cylinders range from 2.5 pound nominal gas capacity (approximate 6 pound water capacity and approximate 4–6 pound tare weight) to 42 pound nominal gas capacity (approximate 100 pound water capacity and approximate 28–32 pound tare weight). Steel propane cylinders have two or fewer ports and may be imported assembled or unassembled (*i.e.*, welded or brazed before or after importation), with or without all components (including collars, valves, gauges, tanks, foot rings, and overfill prevention devices), and coated or uncoated. Also included within the scope are drawn cylinder halves, unfinished propane cylinders, collars, and foot rings for steel propane cylinders.

An “unfinished” or “unassembled” propane cylinder includes drawn cylinder halves that have not been welded into a cylinder, cylinders that have not had flanges welded into the port hole(s), cylinders that are otherwise complete but have not had collars or foot rings welded to them, otherwise complete cylinders without a valve assembly attached, and cylinders that are otherwise complete except for testing, certification, and/or marking.

This investigation also covers steel propane cylinders that meet, are produced to meet, or are certified as meeting, other U.S. or Canadian government, international, or industry standards (including, for example, American Society of Mechanical Engineers (ASME), or American National Standard Institute (ANSI)), if they also meet, are produced to meet, or are certified as meeting USDOT Specification 4B, 4BA, or 4BW, or Transport Canada Specification 4BM, 4BAM, or 4BWM, or a United Nations pressure receptacle standard ISO 4706.

Subject merchandise also includes steel propane cylinders that have been further processed in a third country, including but not limited to, attachment of collars, foot rings, or handles by welding or brazing, heat treatment, painting, testing, certification, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope steel propane cylinders.

Specifically excluded are seamless steel propane cylinders and propane cylinders made from stainless steel (*i.e.*, steel containing at least 10.5 percent chromium by weight and less than 1.2 percent carbon by weight), aluminum, or composite fiber material. Composite fiber material is material consisting of the mechanical combination of two components: Fiber (typically glass,

¹⁰ See 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

carbon, or aramid (synthetic polymer)) and a matrix material (typically polymer resin, ceramic, or metallic).

The merchandise subject to this investigation is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope Comments
- IV. Scope of the Investigation
- V. Alignment
- VI. Injury Test
- VII. Application of the CVD Law to Imports From the China
- VIII. Diversification of China's Economy
- IX. Subsidies Valuation
- X. Benchmarks and Interest Rates
- XI. Use of Facts Otherwise Available and Adverse Inferences
- XII. Analysis of Programs
- XIII. Calculation of the All-Others Rate
- XIV. ITC Notification
- XV. Disclosure and Public Comment
- XVI. Verification
- XVII. Recommendation

[FR Doc. 2018-23453 Filed 10-25-18; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG580

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Social Science Planning Team will hold a teleconference on November 9, 2018.

DATES: The meeting will be held on Friday, November 9, 2018, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held telephonically at (907) 271-2896.

Council address: North Pacific Fishery Management Council, 605 W 4th Ave. Suite 306, Anchorage, AK 99501-2252; telephone: (907) 271-2809.

FOR FURTHER INFORMATION CONTACT: Sarah Marrinan, Council staff; telephone: (907) 271-2809.

SUPPLEMENTARY INFORMATION:

Agenda

Friday, November 9, 2018

Agenda topics for the teleconference include the following:

- Discuss and adopt terms of reference
- Consider document on socio-economic guidance in other Councils
- Gap analysis update and future plans
- Consider response to Council's request for Tribal representation
- Agenda items for next in-person meeting
- Other business

This meeting schedule is subject to change. Final agenda will be posted at: <https://www.npfmc.org/committees/social-science-planning-team/>.

Public Comment

Public comment letters will be accepted before November 5, 2018 and should be submitted either electronically to Sarah Marrinan, Council staff: sarah.marrinan@noaa.gov or through the mail: North Pacific Fishery Management Council, 605 W 4th Ave. Suite 306, Anchorage, AK 99501-2252. Oral public testimony will be accepted at the discretion of the chair.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271-2809 at least 7 working days prior to the meeting date.

Dated: October 23, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018-23446 Filed 10-25-18; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG537

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Oil and Gas Activities in Cook Inlet, Alaska

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

ACTION: Notice; receipt of application for Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from Hilcorp Alaska, LLC (Hilcorp) for

authorization to take small numbers of marine mammals incidental to oil and gas activities in Cook Inlet, Alaska over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the Hilcorp's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the Hilcorp's application and request.

DATES: Comments and information must be received no later than November 26, 2018.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to ITP.young@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/node/23111> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Sara Young, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of the Hilcorp's application may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-oil-and-gas.htm>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of

small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: Any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On September 29, 2018, NMFS received an adequate and complete application from Hilcorp requesting authorization for take of marine mammals incidental to oil and gas activities in Cook Inlet, Alaska. The requested regulations would be valid for five years, from April 1, 2019 through March 31, 2024. Hilcorp’s plans to conduct necessary work, including 2D and 3D seismic surveys, geohazard surveys, vibratory sheet pile driving, and drilling of exploratory well. The proposed action may incidentally expose marine mammals occurring in the vicinity to sources of harassment, particularly through elevated levels of underwater sound in the marine environment, thereby resulting in incidental take, by Level A and Level B harassment. Therefore, Hilcorp requests

authorization to incidentally take marine mammals.

Specified Activities

Hilcorp owns and operates in over 29 oil and has field production facilities, including several located in Cook Inlet. Hilcorp plans to continue to conduct exploration and production activities in Cook Inlet. The petition includes all four stages of oil and gas activities: Exploration, development, production, and decommissioning. The work expected to span five years includes: 30 days of 2D seismic survey, 45–60 days of 3D seismic survey, geohazard surveys in the Outer Continental Shelf (OCS) (30 days), middle Cook Inlet subseawall area (14 days), and Trading Bay (30 days), exploratory wells in the OCS (40–60 days per well, 2–4 wells annually for three years) and Trading Bay (120–150 days), Iniskin Peninsula exploration and development (180 days annually for two years), platform and pipeline maintenance (180 days annually for five years), middle Cook Inlet well abandonment (90 days), and Drift River terminal decommissioning (120 days). Eleven species of marine mammal are known to occur in Cook Inlet: Eight cetacean species and three pinniped species. Of those species, the Northeastern Pacific stock of fin whale, Western North Pacific stock of humpback whale, Cook Inlet stock of beluga whale, and Western Distinct Population of Steller sea lion are listed as Endangered under the Endangered Species Act.

Information Sought

Interested persons may submit information, suggestions, and comments concerning Hilcorp’s request (*see ADDRESSES*). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by Hilcorp, if appropriate.

Dated: October 22, 2018.

Donna Wieting,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2018–23405 Filed 10–25–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Solicitation for Members of the NOAA Science Advisory Board; Correction

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Oceanic and Atmospheric Research (OAR), Department of Commerce (DOC).

ACTION: Notice of solicitation for members of the NOAA Science Advisory Board; correction.

SUMMARY: On October 17, 2018, NOAA published a notice in the **Federal Register** soliciting nominations for members of the NOAA Science Advisory Board (SAB). The closing date for receiving nominations in that notice was incorrect. This document corrects that date to November 30, 2018.

DATES: The closing date for receiving nominations for the notice published October 17, 2018, at 83 FR 52417, is corrected. Nominations must be received by November 30, 2018, and should be sent to the web address specified.

ADDRESSES: Applications should be submitted electronically to noaa.sab.newmembers@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459, Email: Cynthia.Decker@noaa.gov); or visit the NOAA SAB website at <http://www.sab.noaa.gov>.

SUPPLEMENTARY INFORMATION: NOAA is soliciting nominations for members of the NOAA Science Advisory Board. The SAB is the only Federal Advisory Committee with the responsibility to advise the Under Secretary of Commerce for Oceans, Atmosphere, and NOAA Administrator on long- and short-range strategies for research, education, and application of science to resource management and environmental assessment and prediction. The SAB consists of approximately fifteen members reflecting the full breadth of NOAA’s areas of responsibility and assists NOAA in maintaining a complete and accurate understanding of scientific issues critical to the agency’s missions.

The notice that published October 17, 2018, incorrectly established November 16, 2018, as the closing date for submitting nominations. This notice corrects that date to November 30, 2018, as originally intended.

At this time, individuals are sought with expertise in cloud computing, artificial intelligence and data management; weather modeling and data assimilation; remote/autonomous sensing technology; ocean exploration science and technology; and 'omics science. Individuals with expertise in other NOAA mission areas are also welcome to apply.

Composition and Points of View: The Board will consist of approximately fifteen members, including a Chair, designated by the Under Secretary in accordance with FACA requirements.

Members will be appointed for three-year terms, renewable once, and serve at the discretion of the Under Secretary. If a member resigns before the end of his or her first term, the vacancy appointment shall be for the remainder of the unexpired term, and shall be renewable twice if the unexpired term is less than one year. Members will be appointed as special government employees (SGEs) and will be subject to the ethical standards applicable to SGEs. Members are reimbursed for actual and reasonable travel and per diem expenses incurred in performing such duties but will not be reimbursed for their time. As a Federal Advisory Committee, the Board's membership is required to be balanced in terms of viewpoints represented and the functions to be performed as well as the interests of geographic regions of the country and the diverse sectors of U.S. society.

The SAB meets in person three times each year, exclusive of teleconferences or subcommittee, task force, and working group meetings. Board members must be willing to serve as liaisons to SAB working groups and/or participate in periodic reviews of the NOAA Cooperative Institutes and overarching reviews of NOAA's research enterprise.

Nominations: Interested persons may nominate themselves or third parties.

Applications: An application is required to be considered for Board membership, regardless of whether a person is nominated by a third party or self-nominated. The application package must include: (1) The nominee's full name, title, institutional affiliation, and contact information; (2) the nominee's area(s) of expertise; (3) a short description of his/her qualifications relative to the kinds of advice being solicited by NOAA in this Notice; and (4) a current resume (maximum length four [4] pages).

Dated: October 22, 2018.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2018-23460 Filed 10-25-18; 8:45 am]

BILLING CODE 3510-KD-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG577

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Groundfish Plan Teams will meet November 13, 2018 through November 16, 2018.

DATES: The meetings will be held on Tuesday, November 13, 2018 through Friday, November 16, 2018 from 9 a.m. to 5 p.m. Pacific Time.

ADDRESSES:

Meeting address: The meetings will be held at the Alaska Fishery Science Center in the Traynor Room 2076 and NMML Room 2079, 7600 Sand Point Way NE, Building 4, Seattle, WA 98115. Teleconference numbers and connection information for the online broadcast of the meeting will be posted at the NPFMC web address provided below.

Council address: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501-2252; telephone: (907) 271-2809.

FOR FURTHER INFORMATION CONTACT: Diana Stram or Jim Armstrong, Council staff; telephone: (907) 271-2809.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, November 13, 2018 to Friday, November 16, 2018

The Plan Teams will compile and review the annual Groundfish Stock Assessment and Fishery Evaluation (SAFE) reports, (including the Economic Report, the Ecosystems/assessment and status report, and the stock assessments for Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) groundfishes), and recommend final groundfish harvest specifications for 2019/20.

The Agenda is subject to change, and the latest version will be posted at

<http://www.npfmc.org/fishery-management-plan-team/goa-bsai-groundfish-plan-team/>.

Public Comment

Public comment letters will be accepted and should be submitted either electronically to Jim Armstrong, Council staff: james.armstrong@noaa.gov or through the mail: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501-2252. In-person oral public testimony will be accepted at the discretion of the chairs.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271-2809 at least 7 working days prior to the meeting date.

Dated: October 23, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018-23445 Filed 10-25-18; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG545

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public workshop.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold a public workshop for the purposes of addressing law enforcement issues in for-hire fisheries operations, particularly operator versus angler (client) responsibility for fisheries violations that occur on for-hire vessels and law enforcement options for addressing these and issues related to the sale of fish by private recreational anglers (particularly golden tilefish and tunas) focusing on the need for vessels selling fish to comply with U.S. Coast Guard requirements and/or Federal permits that allow for the sale of fish.

DATES: The workshop will be held from Tuesday, November 13, 2018, from 12 noon to 5 p.m. and Wednesday, November 14, 2018, from 8:30 a.m. to 4 p.m.

ADDRESSES:

Meeting address: The workshop will be held at the Embassy Suites by Hilton Philadelphia Airport 9000 Bartram Avenue, Philadelphia, PA 19153; phone: (215) 796-6001.

This workshop has a limited number of spaces. Participants are strongly encouraged to register early so that workshop personnel can provide background information and plan accordingly. Please register at <http://www.mafmc.org/workshop/law-enforcement-for-hire-workshop> or email the workshop coordinator at aloftus@andrewloftus.com.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674-2331; www.mafmc.org.

FOR FURTHER INFORMATION CONTACT:

Andrew Loftus, Workshop Coordinator; telephone: (410) 295-5997; email: aloftus@andrewloftus.com or Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526-5255. The Council's website, www.mafmc.org also has details on the proposed agenda and briefing materials.

SUPPLEMENTARY INFORMATION: Fishing activity on for-hire (party and charter boats) fishing vessels generally differs from that on commercial or private recreational vessels in that the vessel operator is not the primary fisher, but is generally hired by the fisher to take them onto the water and provide access to fish. However, even though the for-hire operator may never partake in reeling in or handling the fish, they are still responsible for ensuring that their customers adhere to fishing regulations and can be subject to fines and other legal actions for violations by their customers. Operators and crew of these vessels may be faced with difficulties in tracking the fishing activities of every customer given the multiple tasks associated with safely operating the vessel and taking care of up to 40 or more passengers at a time. This may be particularly difficult when fishing is heavy and crew members are kept busy assisting many customers at any one time. The issue of whether the vessel operator should be legally responsible for infractions (intentional or unintentional) of their customer has been a long-running discussion among some in the Mid-Atlantic for-hire community.

Additionally, concerns have been expressed about the sale of golden tilefish and tuna by operators of recreational vessels that do not possess permits allowing for the sale of those species or possess Coast Guard (vessel

safety) requirements for commercial vessels. High prices that can be obtained from the sale of some of these species may provide greater incentives for this to occur.

The MAFMC's Law Enforcement Committee, Tilefish Committee, and Highly Migratory Species Committee held a joint conference call on September 20, 2018 to discuss these two issues. During the call, a draft outline of agenda topics for a future workshop were discussed. Subsequently, during the MAFMC meeting on October 4, 2018, a presentation was made regarding these issues and Council members made brief remarks regarding them. Recordings of both meetings are available at the Council's website www.mafmc.org.

To address these issues further, a workshop will be held November 13-14 bringing together representatives of the federal fisheries law enforcement community (principally NOAA Fisheries and U.S. Coast Guard), representatives of state fisheries law enforcement agencies, the Mid-Atlantic for-hire community, and other interested members of the public to further refine these issues and develop potential solutions. A workshop summary and recommendations will be presented to the MAFMC during their December 2018 meeting. An agenda and background documents will be posted at the Council's website (www.mafmc.org) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526-5251, at least 5 days prior to the meeting date.

Dated: October 23, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018-23444 Filed 10-25-18; 8:45 am]

BILLING CODE 3510-22-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and deletions from the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be

provided by the nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: Date added to and deleted from the Procurement List: November 25, 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:

Addition

On 7/27/2018 (83 FR 145), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the service to the Government.

2. The action will result in authorizing a small entity to provide the service 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 service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type: Grounds Maintenance Service
Mandatory for: U.S. Air Force, Cannon Air Force Base, 110 Alison Avenue, Cannon AFB, NM

Mandatory Source of Supply: CW Resources, Inc., New Britain, CT

Contracting Activity: Dept of the Air Force, FA4855 27 SOCONS LGC

Deletions

On 9/7/2018 (83 FR 174), 9/14/2018 (83 FR 179), and 9/21/2018 (83 FR 184), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices 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): 8140–01–004–9410—Container, Wood, Rocket Motor

Mandatory Source of Supply: Helena Industries, Inc., Helena, MT

Contracting Activity: NAVAIR WARFARE CTR Aircraft Div LKE, Joint Base MDL, NJ

NSN(s)—Product Name(s): 5365–01–138–6660—Spacer, Sleeve

Mandatory Source of Supply: Arizona Industries for the Blind, Phoenix, AZ

Contracting Activity: Defense Logistics Agency Troop Support

NSN(s)—Product Name(s):

MR 10681—Bib, Baby, Halloween
MR 10683—Socks, Halloween
MR 10684—Gloves, Halloween
MR 10685—Party Favors, Halloween, Spiders and Webs
MR 10686—Party Favors, Halloween, Witch's Fingers
MR 10687—Party Favors, Halloween, Nose and Glasses
MR 10688—Party Favors, Halloween, Fangs

MR 10689—Party Favors, Halloween, Mini Spiral Note Book

MR 10690—Party Favors, Halloween, Sticky Eyes

MR 10679—Baster, Bottletop

MR 10668—Jar, Drinking, 19 oz., Licensed

MR 10664—Bowl, Cereal and Sipping, Sesame Street

MR 10665—Holder, Juice Box, Sesame Street

MR 385—Kit, Gifts for Santa

Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC

Contracting Activity: Defense Commissary Agency

NSN(s)—Product Name(s): 8475–01–217–7456—Pad, Nape

Mandatory Source of Supply: Cambria County Association for the Blind and Handicapped, Johnstown, PA

Contracting Activity: Defense Logistics Agency Troop Support

NSN(s)—Product Name(s):

8415–01–576–8355—Pants, Loft, Type 2 Level 7, PCU, Army, Woodland Camouflage, XXXLL

8415–01–577–0103—Vest, Loft, Level 7, PCU, Army, Woodland Camouflage, XS

8415–01–576–9714—Vest, Loft, Level 7, PCU, Army, Desert Camouflage, XS

8415–01–576–9978—Vest, Loft, Level 7, PCU, Army, Desert Camouflage, SR

8415–01–576–9990—Vest, Loft, Level 7, PCU, Army, Desert Camouflage, ML

8415–01–576–9992—Vest, Loft, Level 7, PCU, Army, Desert Camouflage, LR

8415–01–577–0052—Vest, Loft, Level 7, PCU, Army, Desert Camouflage, LL

8415–01–577–0058—Vest, Loft, Level 7, PCU, Army, Desert Camouflage, XLL

8415–01–577–0068—Vest, Loft, Level 7, PCU, Army, Desert Camouflage, XXL

8415–01–577–0072—Vest, Loft, Level 7, PCU, Army, Desert Camouflage, XXLL

8415–01–577–0083—Vest, Loft, Level 7, PCU, Army, Desert Camouflage, XXXL

8415–01–577–0100—Vest, Loft, Level 7, PCU, Army, Desert Camouflage, XXXLL

8415–01–576–8700—Jacket, Loft, Level 7, Type 1, ECWCS, PCU, Army, Desert Camouflage, XS

8415–01–576–8704—Jacket, Loft, Level 7, Type 1, ECWCS, PCU, Army, Desert Camouflage, SR

8415–01–576–8708—Jacket, Loft, Level 7, Type 1, ECWCS, PCU, Army, Desert Camouflage, MR

8415–01–576–8713—Jacket, Loft, Level 7, Type 1, ECWCS, PCU, Army, Desert Camouflage, LR

8415–01–576–9193—Jacket, Loft, Level 7, Type 1, ECWCS, PCU, Army, Desert Camouflage, L

8415–01–576–9190—Jacket, Loft, Level 7, Type 1, ECWCS, PCU, Army, Desert Camouflage, ML

8415–01–576–9187—Jacket, Loft, Level 7, Type 1, ECWCS, PCU, Army, Desert Camouflage, XL

8415–01–576–9202—Jacket, Loft, Level 7, Type 1, ECWCS, PCU, Army, Desert Camouflage, XXL

8415–01–576–9231—Jacket, Loft, Level 7, Type 1, ECWCS, PCU, Army, Desert Camouflage, XLL

8415–01–576–9233—Jacket, Loft, Level 7, Type 1, ECWCS, PCU, Army, Desert Camouflage, XXL

8415–01–576–9243—Jacket, Loft, Level 7, Type 1, ECWCS, PCU, Army, Desert Camouflage, XXLL

8415–01–576–7734—Pants, Loft, Type 2 Level 7, PCU, Army, Desert Camouflage, XS

8415–01–576–7751—Pants, Loft, Type 2 Level 7, PCU, Army, Desert Camouflage, SR

8415–01–576–7754—Pants, Loft, Type 2 Level 7, PCU, Army, Desert Camouflage, MR

8415–01–576–7761—Pants, Loft, Type 2 Level 7, PCU, Army, Desert Camouflage, ML

8415–01–576–7769—Pants, Loft, Type 2 Level 7, PCU, Army, Desert Camouflage, LR

8415–01–576–7775—Pants, Loft, Type 2 Level 7, PCU, Army, Desert Camouflage, LL

8415–01–576–7780—Pants, Loft, Type 2 Level 7, PCU, Army, Desert Camouflage, XL

8415–01–576–7943—Pants, Loft, Type 2 Level 7, PCU, Army, Desert Camouflage, XLL

8415–01–576–7945—Pants, Loft, Type 2 Level 7, PCU, Army, Desert Camouflage, XXL

8415–01–576–8329—Pants, Loft, Type 2 Level 7, PCU, Army, Desert Camouflage, XXLL

8415–01–577–0108—Vest, Loft, Level 7, PCU, Army, Woodland Camouflage, SR

8415–01–577–0115—Vest, Loft, Level 7, PCU, Army, Woodland Camouflage, MR

8415–01–577–0120—Vest, Loft, Level 7, PCU, Army, Woodland Camouflage, ML

8415–01–577–0127—Vest, Loft, Level 7, PCU, Army, Woodland Camouflage, LR

8415–01–577–0159—Vest, Loft, Level 7, PCU, Army, Woodland Camouflage, LL

8415–01–577–0163—Vest, Loft, Level 7, PCU, Army, Woodland Camouflage, XL

8415–01–577–0165—Vest, Loft, Level 7, PCU, Army, Woodland Camouflage, XLL

8415–01–577–0167—Vest, Loft, Level 7, PCU, Army, Woodland Camouflage, XXL

8415–01–577–0169—Vest, Loft, Level 7, PCU, Army, Woodland Camouflage, XXLL

8415–01–577–0174—Vest, Loft, Level 7, PCU, Army, Woodland Camouflage, XXXL

8415–01–577–0177—Vest, Loft, Level 7, PCU, Army, Woodland Camouflage, XXXLL

8415–01–576–9249—Jacket, Loft, Type 1 Level 7, PCU, Army, Woodland Camouflage, XS

8415–01–576–9759—Jacket, Loft, Level 7, Type 1, ECWCS, PCU, Army, Woodland Camouflage, SR

8415–01–576–9761—Jacket, Loft, Level 7, Type 1, ECWCS, PCU, Army, Woodland Camouflage, MR

8415–01–576–9764—Jacket, Loft, Level 7, Type 1, ECWCS, PCU, Army, Woodland Camouflage, ML

8415–01–576–9767—Jacket, Loft, Level 7, Type 1, ECWCS, PCU, Army, Woodland Camouflage, LR

- 8415-01-576-9776—Jacket, Loft, Type 1 Level 7, PCU, Army, Woodland Camouflage, XL
- 8415-01-576-9781—Jacket, Loft, Type 1 Level 7, PCU, Army, Woodland Camouflage, XLL
- 8415-01-576-9785—Jacket, Loft, Type 1 Level 7, PCU, Army, Woodland Camouflage, XXL
- 8415-01-576-9788—Jacket, Loft, Type 1 Level 7, PCU, Army, Woodland Camouflage, XXXL
- 8415-01-576-9791—Jacket, Loft, Type 1 Level 7, PCU, Army, Woodland Camouflage, XXXL
- 8415-01-576-9794—Jacket, Loft, Type 1 Level 7, PCU, Army, Woodland Camouflage, XXXLL
- 8415-01-576-8380—Pants, Loft, Type 2 Level 7, PCU, Army, Woodland Camouflage, XS
- 8415-01-576-8429—Pants, Loft, Type 2 Level 7, PCU, Army, Woodland Camouflage, SR
- 8415-01-576-8438—Pants, Loft, Type 2 Level 7, PCU, Army, Woodland Camouflage, MR
- 8415-01-576-9152—Pants, Loft, Type 2 Level 7, PCU, Army, Woodland Camouflage, LR
- 8415-01-576-9155—Pants, Loft, Type 2 Level 7, PCU, Army, Woodland Camouflage, LL
- 8415-01-576-9173—Pants, Loft, Level 7, PCU, Army, Woodland Camouflage, XXL
- 8415-01-576-9183—Pants, Loft, Level 7, PCU, Army, Woodland Camouflage, XLL
- 8415-01-576-9648—Pants, Loft, Level 7, PCU, Army, Woodland Camouflage, XXXL
- 8415-01-576-9652—Pants, Loft, Level 7, PCU, Army, Woodland Camouflage, XXXLL
- 8415-01-576-9987—Vest, Loft, Level 7, PCU, Army, Desert Camouflage, MR
- 8415-01-577-0055—Vest, Loft, Level 7, PCU, Army, Desert Camouflage, XL
- 8415-01-576-8533—Pants, Loft, Type 2 Level 7, PCU, Army, Woodland Camouflage, ML
- 8415-01-576-9199—Jacket, Loft, Level 7, Type 1, ECWCS, PCU, Army, Desert Camouflage, XLL
- 8415-01-576-8344—Pants, Loft, Type 2 Level 7, PCU, Army, Desert Camouflage, XXXL
- 8415-01-576-9775—Jacket, Loft, Level 7, Type 1, ECWCS, PCU, Army, Woodland Camouflage, LL
- 8415-00-NSH-3123—Drawers, PCU, Army, Level 1 FR Boxer Shorts, Brown, SR
- 8415-00-NSH-3124—Drawers, PCU, Army, Level 1 FR Boxer Shorts, Brown, MR
- 8415-00-NSH-3125—Drawers, PCU, Army, Level 1 FR Boxer Shorts, Brown, LR
- 8415-00-NSH-3126—Drawers, PCU, Army, Level 1 FR Boxer Shorts, Brown, LL
- 8415-00-NSH-3127—Drawers, PCU, Army, Level 1 FR Boxer Shorts, Brown, XLR
- 8415-00-NSH-3128—Drawers, PCU, Army, Level 1 FR Boxer Shorts, Brown, XLL
- 8415-00-NSH-3129—Drawers, PCU, Army, Level 1 FR Boxer Shorts, Brown, XXLR
- 8415-01-584-1682—Vest, Loft, Level 7, PCU, Army, Multi Camouflage, XSR
- 8415-01-584-1686—Vest, Loft, Level 7, PCU, Army, Multi Camouflage, SR
- 8415-01-584-1696—Vest, Loft, Level 7, PCU, Army, Multi Camouflage, ML
- 8415-01-584-1709—Vest, Loft, Level 7, PCU, Army, Multi Camouflage, LR
- 8415-01-584-1712—Vest, Loft, Level 7, PCU, Army, Multi Camouflage, LL
- 8415-01-584-1734—Vest, Loft, Level 7, PCU, Army, Multi Camouflage, XL
- 8415-01-584-1722—Vest, Loft, Level 7, PCU, Army, Multi Camouflage, XLL
- 8415-01-584-1743—Vest, Loft, Level 7, PCU, Army, Multi Camouflage, XXL
- 8415-01-584-1875—Vest, Loft, Level 7, PCU, Army, Multi Camouflage, XXLL
- 8415-01-584-1869—Vest, Loft, Level 7, PCU, Army, Multi Camouflage, XXXL
- 8415-01-584-1865—Vest, Loft, Level 7, PCU, Army, Multi Camouflage, XXXLL
- 8415-01-584-1923—Jacket, Loft, Type 1 Level 7, PCU, Army, Multi Camouflage, XS
- 8415-01-584-1930—Jacket, Loft, Type 1 Level 7, PCU, Army, Multi Camouflage, SR
- 8415-01-584-1975—Jacket, Loft, Type 1 Level 7, PCU, Army, Multi Camouflage, ML
- 8415-01-584-1995—Jacket, Loft, Type 1 Level 7, PCU, Army, Multi Camouflage, LR
- 8415-01-584-1997—Jacket, Loft, Type 2 Level 7, PCU, Army, Multi Camouflage, LL
- 8415-01-584-1918—Jacket, Loft, Type 1 Level 7, PCU, Army, Multi Camouflage, XL
- 8415-01-584-2005—Jacket, Loft, Type 2 Level 7, PCU, Army, Multi Camouflage, XLL
- 8415-01-584-2018—Jacket, Loft, Type 1 Level 7, PCU, Army, Multi Camouflage, XXL
- 8415-01-584-2002—Jacket, Loft, Type 2 Level 7, PCU, Army, Multi Camouflage, XXLL
- 8415-01-584-2000—Jacket, Loft, Type 1 Level 7, PCU, Army, Multi Camouflage, XXXL
- 8415-01-584-4410—Pants, Loft, Level 7, PCU, Army, Multi Camouflage, XS
- 8415-01-584-4418—Pants, Loft, Level 7, PCU, Army, Multi Camouflage, SR
- 8415-01-584-4421—Pants, Loft, Level 7, PCU, Army, Multi Camouflage, MR
- 8415-01-584-4424—Pants, Loft, Level 7, PCU, Army, Multi Camouflage, ML
- 8415-01-584-4426—Pants, Loft, Level 7, PCU, Army, Multi Camouflage, LR
- 8415-01-584-4431—Pants, Loft, Level 7, PCU, Army, Multi Camouflage, LL
- 8415-01-584-4441—Pants, Loft, Level 7, PCU, Army, Multi Camouflage, XLL
- 8415-01-584-4446—Pants, Loft, Level 7, PCU, Army, Multi Camouflage, XXL
- 8415-01-584-4448—Pants, Loft, Level 7, PCU, Army, Multi Camouflage, XXLL
- 8415-01-584-4455—Pants, Loft, Level 7, PCU, Army, Multi Camouflage, XXXL
- 8415-01-584-4462—Pants, Loft, Level 7, PCU, Army, Multi Camouflage, XXXLL
- 8415-01-584-4434—Pants, Loft, Level 7, PCU, Army, Multi Camouflage, XL
- 8415-01-584-1692—Vest, Loft, Level 7, PCU, Army, Multi Camouflage, MR
- 8415-01-584-1971—Jacket, Loft, Type 1 Level 7, PCU, Army, Multi Camouflage, MR

Mandatory Source of Supply: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, KY

Contracting Activity: Army Contracting Command—Aberdeen Proving Ground, Natick Contracting Division

Services

Service Type: Janitorial/Custodial Service
Mandatory for: Cherry Capital Airport System Support Center, General Aviation Terminal Bldg., 1220 Airport Access Road, 2nd Floor, Traverse City, MI

Mandatory Source of Supply: Grand Traverse Industries, Inc., Traverse City, MI
Contracting Activity: Federal Aviation Administration, FAA

Service Type: Switchboard Operation Service
Mandatory for: VA Medical Clinic: 25 North Spruce, Colorado Springs, CO

Mandatory Source of Supply: Bayaud Industries, Inc., Denver, CO

Contracting Activity: Veterans Affairs, Department of, 259—Network Contract OFC 19(00259)

Service Type: Food Service Attendant Service
Mandatory for: Schofield Barracks: Building 3004, Fort Shafter, HI

Mandatory Source of Supply: Opportunities and Resources, Inc., Wahiawa, HI

Contracting Activity: DEPT OF THE ARMY, 0413 AQ HQ

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2018-23467 Filed 10-25-18; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete products and services from the Procurement List that was previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* November 25, 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.

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s): 5330-00-884-4807—Gasket and Preformed Packing Set
Mandatory Source of Supply: Walterboro Vocational Rehabilitation Center, Walterboro, SC

Contracting Activity: DLA Troop Support
NSN(s)—Product Name(s): 7240-00-889-3785—Pail, Utility, Plastic, 5-Pint

Mandatory Source of Supply: Community Enterprises of St Clair County, Port Huron, MI

Contracting Activity: GSA/FSS Greater Southwest Acquisition, Fort Worth, TX

Services

Service Type: Janitorial/Custodial Service
Mandatory for: U.S. Army Reserve Center: 2838-98 Woodhaven Road, Philadelphia Memorial, Philadelphia, PA

Mandatory Source of Supply: The Chimes, Inc., Baltimore, MD

Contracting Activity: Dept of the Army, W40M NORTHEREGION Contract OFC

Service Type: Switchboard Operation Service
Mandatory for: Shaw Air Force Base, SC

Mandatory Source of Supply: Palmetto Goodwill Services, North Charleston, SC

Contracting Activity: Dept of the Air Force, FA4803 20 CONS LGCA

Service Type: Grounds Maintenance Service
Mandatory for: U.S. Army Reserve Center: 2838-98 Woodhaven Road, Philadelphia Memorial, Philadelphia, PA

U.S. Army Reserve Center: 2501 Ford Road, Bristol Veterans, Bristol, PA

Mandatory Source of Supply: The Chimes, Inc., Baltimore, MD

Contracting Activity: Dept of the Army, W6QM MICC CTR—FT DIX (RC)

Service Type: Laundry Service
Mandatory for: Department of Homeland Security: Alien Detention & Removal (ADR), Immigration & Customs Enforcement (IEC) and Custom, San Diego, CA

Mandatory Source of Supply: Job Options, Inc., San Diego, CA

Contracting Activity: U.S. Customs and Border Protection, Border Enforcement Contracting Division

Service Type: Janitorial/Custodial Service
Mandatory for: Veterans Affairs Medical

Center: OI Services Center, Edward Hines Jr., 1st Avenue, Bldg. 20, Hines, IL
Mandatory Source of Supply: Jewish Vocational Service and Employment Center, Chicago, IL

Contracting Activity: Veterans Affairs, Department of, Acquisition Service—FREDERICK

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2018-23465 Filed 10-25-18; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD-2018-OS-0085]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Research and Engineering, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Office of the Under Secretary of Defense for Research and Engineering announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 26, 2018.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Mail:** Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09B, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name, docket number, and title for this **Federal**

Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov> for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Grants Policy Manager, ATTN: Barbara Orlando, 4800 Mark Center Drive, Alexandria, VA 22311 or call Barbara Orlando at (571) 372-6413.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Research Progress Production Report (RPPR); OMB Control Number 0704-0527.

Needs and Uses: The information collection requirement is necessary to: (a) Monitor Federal awards and ensure compliance with applicable terms and conditions of award regulations, policies, and procedures; (b) evaluate progress/completion in accordance with goals, aims, and objectives set forth in competing applications and to determine if the grantee satisfactorily met the objectives of the program; (c) evaluate grantee plans for the next budget period and any significant changes; (d) manage scientific programs; (e) plan future scientific initiatives; (f) determine funding for the next budget segment; (g) identify any publications, inventions, property disposition, and other required elements to close out the grant in a timely manner; and (f) complete reports to Congress, the public, and other Federal agencies.

Affected Public: Business or other for profit; not-for-profit institutions; and state, local, or tribal government.

Annual Burden Hours: 24,000.

Number of Respondents: 2,000.

Responses per Respondent: 2.

Annual Responses: 4,000.

Average Burden per Response: 6 hours.

Frequency: Semi-annually.

Dated: October 22, 2018.

Aaron T. Siegel,

*Alternate OSD Federal Register, Liaison
Officer, Department of Defense.*

[FR Doc. 2018-23410 Filed 10-25-18; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Inland Waterways Users Board Meeting Notice

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the U.S. Army Corps of Engineers, Inland Waterways Users Board (Board). This meeting is open to the public. For additional information about the Board, please visit the committee's website at <http://www.iwr.usace.army.mil/Missions/Navigation/InlandWaterwaysUsersBoard.aspx>.

DATES: The Army Corps of Engineers, Inland Waterways Users Board will meet from 8:00 a.m. to 12:00 p.m. on November 28, 2018. Public registration will begin at 7:15 a.m.

ADDRESSES: The Inland Waterways Users Board meeting will be conducted at the Embassy Suites by Hilton St. Louis St. Charles, Two Convention Center Plaza, St. Charles, MO 63303, 636-946-5544.

FOR FURTHER INFORMATION CONTACT: Mr. Mark R. Pointon, the Designated Federal Officer (DFO) for the committee, in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR-GM, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315-3868; by telephone at 703-428-6438; and by email at Mark.Pointon@usace.army.mil. Alternatively, contact Mr. Kenneth E. Lichtman, the Alternate Designated Federal Officer (ADFO), in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR-GW, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315-3868; by telephone at 703-428-8083; and by email at Kenneth.E.Lichtman@usace.army.mil.

SUPPLEMENTARY INFORMATION: The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C.,

Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150.

Purpose of the Meeting: The Board is chartered to provide independent advice and recommendations to the Secretary of the Army on construction and rehabilitation project investments on the commercial navigation features of the inland waterways system of the United States. At this meeting, the Board will receive briefings and presentations regarding the investments, projects and status of the inland waterways system of the United States and conduct discussions and deliberations on those matters. The Board is interested in written and verbal comments from the public relevant to these purposes.

Agenda: At this meeting the agenda will include the status of funding for inland Navigation for FY 2019; status of the Inland Waterways Trust Fund (IWTF) and project updates; status of the construction activities for Olmsted Locks and Dam Project, the Locks and Dams 2, 3, and 4 on the Monongahela River Project, Chickamauga Lock Project and Kentucky Lock Project; efficient funding for the ongoing cost shared IWTF projects; and status of the Colorado River Locks and Brazos River Floodgates Study and estimated total costs.

Availability of Materials for the Meeting. A copy of the agenda or any updates to the agenda for the November 28, 2018 meeting. The final version will be provided at the meeting. All materials will be posted to the website after the meeting.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102-3.140 through 102-3.165, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to attend the meeting will begin at 7:15 a.m. on the day of the meeting. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number at registration. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee, as set forth below.

Special Accommodations: The meeting venue is fully handicap accessible, with wheelchair access. Individuals requiring special accommodations to access the public

meeting or seeking additional information about public access procedures, should contact Mr. Pointon, the committee DFO, or Mr. Lichtman, the ADFO, at the email addresses or telephone numbers listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102-3.105(j) and 102-3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Board about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to Mr. Pointon, the committee DFO, or Mr. Lichtman, the committee ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO or ADFO at least five (5) business days prior to the meeting so that they may be made available to the Board for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting. Please note that because the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the Board meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three business (3) days in advance to the committee DFO or ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO and ADFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the

end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO and ADFO.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018-23448 Filed 10-25-18; 8:45 am]

BILLING CODE 3720-58-P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Joint Notice of Availability for the Coastal Texas Protection and Restoration Study Draft Integrated Feasibility Report and Environmental Impact Statement

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers, Galveston District (USACE) announces the release of the Draft Integrated Feasibility Report and Environmental Impact Statement (DIFR-EIS) for the Tentatively Selected Plan (TSP) of the Coastal Texas Protection and Restoration Study, Texas. The DIFR-EIS documents the existing condition of environmental resources in and around areas considered for development, and potential impacts on those resources as a result of implementing the alternatives.

This public notice is also issued for the purpose of advising all known interested parties that there is pending before the Texas Commission on Environmental Quality (TCEQ) a decision on water quality certification. A copy of the public notice, with a description of work, has been made available for review in the TCEQ's Austin office.

DATES: USACE will accept written public comments on the DIFR-EIS from October 26, 2018 to January 9, 2019. Comments on the DIFR-EIS must be postmarked by January 9, 2019.

ADDRESSES: Public comments can be mailed to: USACE, Galveston District, Attn: Mrs. Jennifer Morgan, Environmental Compliance Branch, Regional Planning and Environmental Center, P.O. Box 1229, Galveston, TX 77553-1229 or emailed to

CoastalTexas@usace.army.mil. See website: <http://coastalstudy.texas.gov/> for additional information.

FOR FURTHER INFORMATION CONTACT: Mrs. Jennifer Morgan, (409) 766-3131.

SUPPLEMENTARY INFORMATION:

Authority: The lead agency for this proposed action is the USACE. This study has been prepared under the standing authority of Section 4091, Water Resources Development Act of 2007, Public Law 110-114. The non-Federal sponsor is the Texas General Land Office.

Background: This DIFR-EIS was prepared as required by the National Environmental Policy Act (NEPA) to present an evaluation of potential impacts associated with the Coastal Texas Protection and Restoration Feasibility Study (Coastal Texas) TSP. The USACE and the non-Federal sponsor for the study, the Texas General Land Office (GLO), have conducted this study and prepared the DIFR-EIS.

The study area for the Coastal Texas Study consists of the entire Texas Gulf coast from the mouth of the Sabine River to the mouth of the Rio Grande, and includes the Gulf and tidal waters, barrier islands, estuaries, coastal wetlands, rivers and streams, borrow sources, and adjacent areas that make up the interrelated ecosystems along the coast of Texas. The study area encompasses 18 coastal counties along the Gulf coast and bayfronts.

This report presents the proposed alternatives that would reduce the risk of storm damage to industries and businesses critical to the Nation's economy and protect the health and safety of Texas coastal communities. The study analyzed alternatives that involved structural and nonstructural measures. Additionally, the report discusses alternatives intended to address critical coastal ecosystems in need of restoration, including wetlands, seagrass beds, sea turtle nesting habitat, piping plover critical habitat, and bird rookery islands, as well as numerous Federal and State wildlife refuges.

Tentatively Selected Plan: The TSP consists of the Coastal Barrier Coastal Storm Risk Management (CSRSM) System, South Padre Island CSRSM measure, and a comprehensive set of ecosystem restoration (ER) measures. The Coastal Barrier is a risk reduction system made up of the following features: Floodwalls, floodgates, seawall improvements, drainage structures, pump stations, and surge barrier gates. One fundamental feature of the TSP is surge barrier structures that include floating sector gates for navigation traffic and environmental lift gates

across the span at Bolivar Roads between Bolivar Peninsula and Galveston Island. The alternative includes four reaches: Eastern Tie-in Reach, Bolivar Peninsula Reach, Galveston Ring Levee/Floodwall Reach, and West Galveston Island Reach in addition to features located at Clear Creek Channel and Dickinson Bayou. The South Padre Island CSRSM measure consists of approximately 2.2 miles of dune and beach restoration along the barrier island on the Gulf, including renourishment cycles. The ER component of the TSP has been formulated to address the habitat loss and degradation from coastal processes. ER measures restore and create habitat and support structural CSRSM efforts by providing a natural buffer from coastal storms. ER measures proposed in this study include a combination of features formulated in specific geographic locations to restore diverse habitats and coastal features that provide multiple lines of defense against coastal storms and long term coastal processes. Restoration measures include beach and dune complexes, oyster reefs, bird rookery islands, wetland and marsh complexes, and protection of submerged aquatic vegetation.

A final decision will be made following the reviews and higher-level coordination within the USACE to select a plan for feasibility-level design and recommendation for implementation. The decision will be documented in the Final Integrated Feasibility Report (FIFR)-EIS. Coordination with the natural resource agencies will continue throughout the study process.

Project Impacts and Environmental Compliance: Preliminary studies indicate that the recommended plan's surge barrier gates (proposed as features of the Coastal Barrier) may alter wetland functions by constricting tidal exchange and associated sediment transport, altering hydrosalinity gradients, reducing flow into and out of Galveston Bay, and increasing velocities near the gate openings at specific times. The TSP was formulated to reduce the risk of damages from coastal storms as well as avoid disturbance to environmentally significant resources. Where impacts could not be avoided, they were quantified, and a conceptual mitigation plan was formulated. Impacts would be fully compensated with the restoration of palustrine and estuarine emergent marsh in the amount determined during final feasibility planning. The Coastal Barrier would provide a level of protection to tidal and freshwater wetlands north of the barrier location by serving as a physical barrier against

storm surge during coastal storms. The South Padre Island CSRM feature would restore the beach and dune complex; therefore, providing reduced risk to the area while sustaining and increasing beach habitat, and helping preserve existing wetland habitat on the bayside of the measure. Ecosystem restoration measures would restore the natural features of the Texas coast that provide habitat for many Federally threatened and endangered species and State species of concern. These measures will also maintain a natural buffer for upland areas from coastal processes, relative sea level rise (RSLR), and storm surge, while stabilizing the coastline by absorbing energy from waves and vessel wakes.

The DIFR-EIS presents an evaluation of the potential impacts to soils, waterbottoms, water quality, protected wildlife species, benthic organisms, essential fish habitat, coastal barrier resources, air quality, and noise. Additionally, potential impacts to floodplains, flood control, protected/managed lands, and minority or low-income populations have been evaluated. Steps would be taken to avoid, minimize, and mitigate any potential impacts to the best extent practicable. The USACE is proposing to execute a Programmatic Agreement among USACE, the Texas State Historic Preservation Office, and any NFS, in coordination with the Advisory Council on Historic Preservation and Tribal Nations, to address the identification and discovery of cultural resources that may occur during the construction and maintenance of proposed or existing facilities.

Solicitation of Comments: The USACE is soliciting comments from the public, Federal, State, and local agencies, elected officials, Tribal Nations, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Comments will be used in preparation of the FIFR-EIS. Any comments concerning water quality certification may be submitted to the TCEQ, 401 Coordinator, MSC-150, P.O. Box 13087, Austin, Texas 78711-3087.

Meetings: The Galveston District will hold public meetings at 5:30 p.m. for the DIFR-EIS on the following dates and locations: November 27, 2018 at Bauer Community Center, 2300 TX-35, Port Lavaca, TX 77979; November 28, 2018 at Harte Research Institute at Texas A&M Corpus Christi, 6300 Ocean Dr., Corpus Christi, TX 78412; November 29, 2018 at Port Isabel Event & Cultural Center, 309 Railroad Ave., Port Isabel, TX 78578; December 11, 2018 at Winnie Community Building, 335 South Park

St., Winnie, TX 77665; December 12, 2018 at Galveston Island Convention Center, 5600 Seawall Blvd., Galveston, TX 77551; and December 18, 2018 at Bay Area Community Center, 5002 E NASA Parkway, Seabrook, TX 77586.

Document Availability: Compact disc copies of the DIFR-EIS are available for viewing at county libraries throughout the 18 county study area. The document can also be viewed and downloaded from the Galveston District website: <http://www.swg.usace.army.mil/Business-With-Us/Planning-Environmental-Branch/Documents-for-Public-Review/>.

Lars N. Zetterstrom,
Colonel, U.S. Army, Commanding.

[FR Doc. 2018-23450 Filed 10-25-18; 8:45 am]

BILLING CODE 3720-58-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Record of Decision for the Atlantic Fleet Training and Testing Final Environmental Impact Statement/Overseas Environmental Impact Statement

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The United States Department of the Navy (DoN), announces its decision to conduct training and testing in the Atlantic Fleet study area as described in Alternative 1 of the Atlantic Fleet Training and Testing Final Environmental Impact Statement/Overseas Environmental Impact Statement (AFTT FEIS/OEIS). Under Alternative 1, the DoN will be able to meet current and future DoN training and testing requirements.

SUPPLEMENTARY INFORMATION:

Alternative 1 is the DoN's preferred alternative, and is representative of training to account for the natural fluctuations of training cycles, deployment schedules, and use of synthetic training opportunities. Alternative 1 also includes an annual level of testing that reflects the fluctuations in DoN testing programs. The complete text of the Record of Decision (ROD) for the AFTT FEIS/OEIS is available on the project website at <http://aftteis.com>, along with the September 2018 AFTT FEIS/OEIS, dated September 2018 and supporting documents. Single copies of the ROD are available upon request by contacting: Naval Facilities Engineering Command Atlantic, Attn: Code EV22 (AFTT EIS/OEIS project manager), 6506

Hampton Boulevard, Norfolk, VA 23508-1278.

Dated: October 23, 2018.

Meredith Steingold Werner,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2018-23488 Filed 10-25-18; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF ENERGY

[FE Docket No. 18-144-LNG]

Energía Costa Azul S. de R.L. de C.V.; Application for Long-Term, Multi-Contract Authorization To Export Natural Gas to Mexico and To Export Liquefied Natural Gas to Non-Free Trade Agreement Nations

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on September 27, 2018, by Energía Costa Azul S. de R.L. de C.V. (Energía Costa Azul), a subsidiary of Infraestructura Energetica Nova, S.A.B. de C.V. (IEnova) and IEnova's subsidiaries. A majority of the ownership interests in IEnova (66.43%) is held by indirect, wholly-owned subsidiaries of Semptra Energy, a publicly traded California corporation. The Application requests long-term, multi-contract authorization to export domestically produced natural gas to Mexico in a volume up to 182 billion cubic feet (Bcf) per year (Bcf/yr) (0.5 Bcf per day), and to re-export a portion of this natural gas as liquefied natural gas (LNG) in a volume equivalent to 161 Bcf/yr of natural gas (0.44 Bcf per day). Energía Costa Azul seeks to export this LNG from the proposed Energía Costa Azul Mid-Scale Project, which consists of certain liquefaction and export terminal facilities located on the site of Energía Costa Azul's existing LNG import terminal north of Ensenada, Baja California, Mexico. The volumes for which Energía Costa Azul seeks authorization in this Application would be additive to the volumes for which Energía Costa Azul seeks authorization in its application in FE Docket No. 18-145-LNG. Energía Costa Azul requests authorization to export this LNG to: (i) Countries with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries) and (ii) any other countries with which trade is not prohibited by U.S. law or policy (non-FTA countries). Energía Costa Azul

seeks to export the requested volume of natural gas and the requested volume of LNG on its own behalf and as agent for other entities who hold title to the natural gas at the time of export. Energía Costa Azul requests the authorization for a 20-year term to commence on the earlier of the date of first export or seven years from the issuance of the requested authorizations. Energía Costa Azul further requests authorization to continue exporting for a total of three years following the end of the 20-year authorization term requested herein, solely to export any volumes that it is unable to export during the 20-year authorization term (Make-Up Volumes). Energía Costa Azul filed the Application under section 3 of the Natural Gas Act (NGA). Additional details and related procedural history can be found in Energía Costa Azul's Application, posted on the DOE/FE website at: <https://www.energy.gov/fe/downloads/energ-costa-azul-s-de-rl-de-cv-dkt-no-18-144-lng>. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, December 26, 2018.

ADDRESSES: *Electronic Filing by Email:* fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE-34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026-4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE-34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E-042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Benjamin Nussdorf or Larine Moore, U.S. Department of Energy (FE-34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E-042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-7970; (202) 586-9478.

Cassandra Bernstein or Ronald (R.J.) Colwell, U.S. Department of Energy (GC-76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-9793; (202) 586-8499.

SUPPLEMENTARY INFORMATION:

DOE/FE Evaluation

In the Application, Energía Costa Azul requests authorization to export LNG from the proposed Energía Costa Azul liquefaction and export terminal facilities to both FTA countries and non-FTA countries. This Notice applies only to the portion of the Application requesting authority to export LNG to non-FTA countries pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a). DOE/FE will review Energía Costa Azul's request for a FTA export authorization separately pursuant to section 3(c) of the NGA, 15 U.S.C. 717b(c).

In reviewing Energía Costa Azul's request for a non-FTA authorization, DOE will consider any issues required by law or policy. DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. As part of this analysis, DOE will consider one or more of the following studies examining the cumulative impacts of exporting domestically produced LNG:

- *Effect of Increased Levels of Liquefied Natural Gas on U.S. Energy Markets*, conducted by the U.S. Energy Information Administration upon DOE's request (2014 EIA LNG Export Study);¹

- *The Macroeconomic Impact of Increasing U.S. LNG Exports*, conducted jointly by the Center for Energy Studies at Rice University's Baker Institute for Public Policy and Oxford Economics, on behalf of DOE (2015 LNG Export Study);² and

- *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports*, conducted by NERA Economic Consulting on behalf of DOE (2018 LNG Export Study).³

Additionally, DOE will consider the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports*

¹ The 2014 EIA LNG Export Study, published on Oct. 29, 2014, is available at: <https://www.eia.gov/analysis/requests/fe/>.

² The 2015 LNG Export Study, dated Oct. 29, 2015, is available at: http://energy.gov/sites/prod/files/2015/12/f27/20151113_macro_impact_of_lng_exports_0.pdf.

³ The 2018 LNG Export Study, dated June 7, 2018, is available at: <https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf>. DOE is currently evaluating public comments received on this Study (83 FR 27314).

of Natural Gas From the United States, 79 FR 48132 (Aug. 15, 2014);⁴ and

- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States*, 79 FR 32260 (June 4, 2014).⁵

Parties that may oppose this Application should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to fergas@hq.doe.gov, with FE Docket No. 18-144-LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 18-144-LNG. PLEASE NOTE: If submitting a filing via email, please

⁴ The Addendum and related documents are available at: <https://www.energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf>.

⁵ The Life Cycle Greenhouse Gas Report is available at: <http://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states>.

include all related documents and attachments (e.g., exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E-042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: <http://www.fe.doe.gov/programs/gasregulation/index.html>.

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

Amy Sweeney,

Director, Division of Natural Gas Regulation.

[FR Doc. 2018-23473 Filed 10-25-18; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments on submission of information collection request for approval from the Office of Management and Budget (OMB).

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, has submitted an

information collection request to the OMB for approval of a reinstatement and extension of the lapsed OMB approval for three years. Comments are invited on: Whether the extended collection of information is necessary for the proper performance of the functions of the agency; 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; ways to enhance the quality, utility, and clarity of the information to be collected; and 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.

DATES: Comments regarding this proposed information collection must be received on or before November 26, 2018. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments should be sent to the following address: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to Andrea Lachenmayr, *LPO*, *PaperworkReductionAct.Comments@hq.doe.gov*, (202) 586-3399.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No.: 1910-5137 (2) Information Collection Request Title: Application for Loans under the Advanced Technology Vehicles Manufacturing Incentive Program; (3) Type of Request: Extension; (4) Purpose: This information collection package covers collection of information necessary to evaluate applications for loans submitted under Section 136 of the Energy Independence and Security Act of 2007, as amended (EISA) (42 U.S.C. 17013). Applications for loans submitted to DOE under Section 136 of EISA must contain certain information. This information will be used to analyze whether a project is eligible for a loan and to evaluate the application under criteria specified in the interim final regulations implementing Section 136 of EISA, located at 10 CFR part 611. The collection of this information is critical to ensure that the government has sufficient information to determine

whether applicants meet the eligibility requirements to qualify for a DOE loan and to provide DOE with sufficient information to evaluate an applicant's project using the criteria specified in 10 CFR part 611; (5) Annual Estimated Number of Respondents: 7 Applications; (6) Annual Estimated Number of Total Responses: It is estimated that the total number of annual responses will not exceed 7; (7) Annual Estimated Number of Burden Hours: 910 hours, most of which is likely to be time committed by firms that seek debt and/or equity financing for their projects, regardless of their intent to apply for a DOE loan; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: It is estimated that the annual estimated reporting and recordkeeping cost burden for applicants will not exceed \$26,296 per annum, per applicant.

Authority: Section 136 of the EISA authorizes the collection of information.

Signed in Washington, DC, on October 18, 2018.

John Sneed,

Executive Director, Department of Energy Loan Programs Office.

[FR Doc. 2018-23457 Filed 10-25-18; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments on submission of information collection request for approval from the Office of Management and Budget (OMB).

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, has submitted an information collection request to the OMB for approval of an extension of the existing OMB approval for three years. Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must

be received on or before November 26, 2018. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments should be sent to the following address: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Andrea Lachenmayr, *LPO*. *PaperworkReductionAct.Comments@hq.doe.gov*, (202)586-3399.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No.: 1910-5134; (2) Information Collection Request Title: DOE Loan Guarantees for Energy Projects; (3) Type of Request: Extension (4) Purpose: This information collection package covers collection of information necessary to evaluate applications for loan guarantees submitted under Title XVII of the Energy Policy Act of 2005, as amended, 16516 (Title XVII), 42 U.S.C. 16511, and under Section 2602(c) of the Energy Policy Act of 1992, as amended (TELGP), 25 U.S.C. 3502(c). Because the information collection package pertains to applications for loan guarantees under both Title XVII and TELGP (the latter of which does not require innovative technology), the Information Collection Request Title is being changed from its original title, “10 CFR part 609—Loan Guarantees for Projects that Employ Innovative Technologies” to its new title, “DOE Loan Guarantees for Energy Projects.” This title is more descriptive of the purpose of the Information Collection Request. Applications for loan guarantees submitted to DOE in response to a solicitation under Title XVII or TELGP must contain certain information. This information will be used to analyze whether a project is eligible for a loan guarantee and to evaluate the application under criteria specified in the final regulations implementing Title XVII, located at 10 CFR part 609, and adopted by DOE for purposes of TELGP, with certain immaterial modifications and omissions. The collection of this information is critical to ensure that the government has sufficient information to determine whether applicants meet the eligibility requirements to qualify for a DOE loan guarantee under Title XVII or TELGP, as the case may be, and

to provide DOE with sufficient information to evaluate an applicant’s project using the criteria specified in 10 CFR part 609 (for Title XVII applications) or the applicable solicitation (for TELGP applications); (5) Annual Estimated Number of Respondents: 20 Applications; (6) Annual Estimated Number of Total Responses: It is estimated that the total number of annual responses will not exceed 20; (7) Annual Estimated Number of Burden Hours: 2,650 hours, most of which is likely to be time committed by firms that seek debt and/or equity financing for their projects, regardless of their intent to apply for a DOE loan guarantee; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: It is estimated that the annual estimated reporting and recordkeeping cost burden for applicants will not exceed \$26,296 per annum, per applicant.

Authority: Title XVII and TELGP authorize the collection of information.

Signed in Washington, DC, on October 18, 2018.

John Sneed,

Executive Director, Department of Energy Loan Programs Office.

[FR Doc. 2018-23458 Filed 10-25-18; 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 electric rate filings:

Docket Numbers: ER11-4633-004.

Applicants: Madison Gas and Electric Company.

Description: Supplement to June 22, 2018 Updated Market Power Analysis of Madison Gas & Electric Company (Transmittal Letter). Also on October 18, 2018, filed Revised Exhibit DBS-2.

Filed Date: 10/18/18.

Accession Number: 20181018-5148, 20181018-5149.

Comments Due: 5 p.m. ET 11/8/18.

Docket Numbers: ER17-1428-001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report to be effective N/A.

Filed Date: 10/16/18.

Accession Number: 20181016-5206.

Comments Due: 5 p.m. ET 11/6/18.

Docket Numbers: ER18-563-001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report [ER18-563 and EL18-59] to be effective N/A.

Filed Date: 10/16/18.

Accession Number: 20181016-5205.

Comments Due: 5 p.m. ET 11/6/18.

Docket Numbers: ER18-1150-001.

Applicants: Trishe Wind Ohio, LLC.
Description: Notice of Non-Material Change in Status of Trishe Wind Ohio, LLC.

Filed Date: 10/18/18.

Accession Number: 20181018-5143.

Comments Due: 5 p.m. ET 11/8/18.

Docket Numbers: ER18-1945-001.

Applicants: Alabama Power Company.

Description: Tariff Amendment: Deficiency Amendment to Southern’s Tariff Vol. No. 4 Amendment Filing to be effective 12/31/9998.

Filed Date: 10/19/18.

Accession Number: 20181019-5025.

Comments Due: 5 p.m. ET 11/9/18.

Docket Numbers: ER18-2280-001.

Applicants: Alliant Energy Corporate Services, Inc.

Description: Tariff Amendment: Amendment to AECs Updated Rate Schedule 2 to be effective 11/1/2018.

Filed Date: 10/19/18.

Accession Number: 20181019-5089.

Comments Due: 5 p.m. ET 11/9/18.

Docket Numbers: ER18-2338-001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2018-10-19_SA 3151 Rosewater Wind Farm-NIPSCO GIA (J513) Substitute Original to be effective 8/15/2018.

Filed Date: 10/19/18.

Accession Number: 20181019-5026.

Comments Due: 5 p.m. ET 11/9/18.

Docket Numbers: ER19-8-000.

Applicants: Sweetwater Solar, LLC.
Description: Supplement to October 1, 2018 Sweetwater Solar, LLC tariff filing.

Filed Date: 10/17/18.

Accession Number: 20181017-5228.

Comments Due: 5 p.m. ET 11/7/18.

Docket Numbers: ER19-142-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revision to RAA Article 1 re Winter Peal Load Calculation to be effective 12/17/2018.

Filed Date: 10/18/18.

Accession Number: 20181018-5106.

Comments Due: 5 p.m. ET 11/8/18.

Docket Numbers: ER19-143-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Second Revised ISA, SA No. 1127; Queue No. AD1-099 to be effective 9/20/2018.

Filed Date: 10/18/18.

Accession Number: 20181018-5128.

Comments Due: 5 p.m. ET 11/8/18.

Docket Numbers: ER19-144-000.

Applicants: Midcontinent Independent System Operator, Inc., ALLETE, Inc.

Description: § 205(d) Rate Filing: 2018-10-19 SA 3188 MP-GRE T-L IA (Motley) to be effective 10/20/2018.

Filed Date: 10/19/18.

Accession Number: 20181019-5042.

Comments Due: 5 p.m. ET 11/9/18.

Docket Numbers: ER19-145-000.

Applicants: Midcontinent Independent System Operator, Inc., ALLETE, Inc.

Description: § 205(d) Rate Filing: 2018-10-19 SA 3189 MP-GRE T-L IA (Bear Creek) to be effective 10/20/2018.

Filed Date: 10/19/18.

Accession Number: 20181019-5093.

Comments Due: 5 p.m. ET 11/9/18.

Docket Numbers: ER19-146-000.

Applicants: NSTAR Electric Company.

Description: Initial rate filing: NSTAR-HQUS Transfer Agreement (ENE Use Rights) to be effective 11/20/2018.

Filed Date: 10/19/18.

Accession Number: 20181019-5122.

Comments Due: 5 p.m. ET 11/9/18.

Docket Numbers: ER19-147-000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: GIAs and Distribution Service Agmts Hecate Energy Johanna Facility LLC to be effective 10/20/2018.

Filed Date: 10/19/18.

Accession Number: 20181019-5134.

Comments Due: 5 p.m. ET 11/9/18.

Docket Numbers: ER19-148-000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: GIAs and Distribution Service Agmts Convergent Energy and Power LP to be effective 10/20/2018.

Filed Date: 10/19/18.

Accession Number: 20181019-5137.

Comments Due: 5 p.m. ET 11/9/18.

Docket Numbers: ER19-149-000.

Applicants: New York State Electric & Gas Corporation.

Description: § 205(d) Rate Filing: NYSEG-DCEC Attachment C Annual Update to be effective 1/1/2019.

Filed Date: 10/19/18.

Accession Number: 20181019-5155.

Comments Due: 5 p.m. ET 11/9/18.

The filings are accessible in the Commission's eLibrary system by

clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: October 19, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018-23439 Filed 10-25-18; 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: CP19-6-000.

Applicants: Natural Gas Pipeline Company of America LLC and Kinder Morgan Illinois Pipeline LLC.

Description: Joint Application of Natural Gas Pipeline Company of America LLC and Kinder Morgan Illinois Pipeline LLC for Certificate and Abandonment Authorization under CP19-6.

Filed Date: 10/12/18.

Accession Number: 20181012-5227.

Comments Due: 5 p.m. ET 11/2/18.

Docket Numbers: RP15-904-001.

Applicants: Gas Transmission Northwest LLC.

Description: Pre-Arranged/Pre-Agreed (Amended Stipulation and Agreement of Settlement) Filing of Gas Transmission Northwest LLC under RP15-904.

Filed Date: 10/16/18.

Accession Number: 20181016-5172.

Comments Due: 5 p.m. ET 10/29/18.

Docket Numbers: RP19-94-000.

Applicants: Algonquin Gas

Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate—Keyspan to Brooklyn 797626 to be effective 11/1/2018.

Filed Date: 10/18/18.

Accession Number: 20181018-5020.

Comments Due: 5 p.m. ET 10/30/18.

Docket Numbers: RP19-95-000.

Applicants: Midcontinent Express Pipeline LLC.

Description: § 4(d) Rate Filing: Fuel Tracker Filing 10/18/18 to be effective 12/1/2018.

Filed Date: 10/18/18.

Accession Number: 20181018-5021.

Comments Due: 5 p.m. ET 10/30/18.

Docket Numbers: RP19-96-000.

Applicants: Centra Pipelines Minnesota Inc.

Description: § 4(d) Rate Filing: Updated Shipper Index December 2018 to be effective 12/1/2018.

Filed Date: 10/18/18.

Accession Number: 20181018-5029.

Comments Due: 5 p.m. ET 10/30/18.

Docket Numbers: RP19-97-000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: Neg Rate 2018-10-18 Encana to be effective 10/18/2018.

Filed Date: 10/18/18.

Accession Number: 20181018-5063.

Comments Due: 5 p.m. ET 10/30/18.

Docket Numbers: RP19-98-000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rate—Spotlight 911548 to be effective 11/1/2018.

Filed Date: 10/18/18.

Accession Number: 20181018-5083.

Comments Due: 5 p.m. ET 10/30/18.

Docket Numbers: RP19-99-000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rate—EQT Energy 911235 to be effective 11/1/2018.

Filed Date: 10/18/18.

Accession Number: 20181018-5093.

Comments Due: 5 p.m. ET 10/30/18.

Docket Numbers: RP19-100-000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate—ConEd to High Rise 797652 eff 10-20-18 to be effective 10/20/2018.

Filed Date: 10/19/18.

Accession Number: 20181019-5013.

Comments Due: 5 p.m. ET 10/31/18.

Docket Numbers: RP19-101-000.

Applicants: Texas Eastern Transmission, LP.

Description: Compliance filing STEP Project (CP15-499) In-Service Compliance Filing to be effective 12/1/2018.

Filed Date: 10/19/18.

Accession Number: 20181019-5032.

Comments Due: 5 p.m. ET 10/31/18.
Docket Numbers: RP19–102–000.
Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rate EQT to Colonial 8953383 to be effective 11/1/2018.
Filed Date: 10/19/18.

Accession Number: 20181019–5057.
Comments Due: 5 p.m. ET 10/31/18.
Docket Numbers: RP19–103–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: § 4(d) Rate Filing: Volume No. 2 Bay State Gas Company d/b/a Columbia Gas of Massachusetts SP330904 to be effective 11/1/2018.

Filed Date: 10/19/18.
Accession Number: 20181019–5068.
Comments Due: 5 p.m. ET 10/31/18.
Docket Numbers: RP19–104–000.

Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—ConEd to High Rise 797663 to be effective 10/21/2018.

Filed Date: 10/19/18.
Accession Number: 20181019–5128.
Comments Due: 5 p.m. ET 10/31/18.
Docket Numbers: RP19–105–000.

Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Sempra Deal IDs 951842 and 951848 to be effective 11/1/2018.

Filed Date: 10/19/18.
Accession Number: 20181019–5154.
Comments Due: 5 p.m. ET 10/31/18.
Docket Numbers: RP19–106–000.

Applicants: Northwest Pipeline LLC.
Description: eTariff filing per 1430: Petition for a waiver of the requirement to file FERC Form No. 501–G.

Filed Date: 10/19/18.
Accession Number: 20181019–5160.
Comments Due: 5 p.m. ET 10/31/18.
Docket Numbers: RP19–107–000.

Applicants: Spire Storage West LLC.
Description: § 4(d) Rate Filing: Spire Storage West LLC—Modification of Creditworthiness Provisions to be effective 11/19/2018.

Filed Date: 10/19/18.
Accession Number: 20181019–5185.
Comments Due: 5 p.m. ET 10/31/18.

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 22, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–23443 Filed 10–25–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–3–000]

Gulf South Pipeline Company, LP; Notice of Application

Take notice that on October 9, 2018, Gulf South Pipeline Company, LP (Gulf South), 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) regulations seeking authorization to construct, operate, and maintain two new electric-driven 5,000 horsepower compressor units, within the existing Petal III Compressor Station (Petal III CS) building, associated with the Petal Gas Storage facility in Forrest County, Mississippi (Petal III Compression Project). Gulf South also proposes to add a dehydration unit, thermal oxidizer, and other auxiliary, appurtenant facilities which would be all located adjacent to the Petal III CS. The Petal III Compression Project would allow Gulf South to (i) increase the injection capability to 1,738 million cubic feet per day (MMcf/d); and (ii) decrease the certificated withdrawal capability to 2,495 MMcf/d., all as more fully described in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Juan

Eligio Jr., Supervisor of Regulatory Affairs, Gulf South Pipeline Company, LP, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046; by telephone at (713) 479–3480 or by email at juan.eligio@bwpmlp.com or Payton Barrientos, Senior Regulatory Analyst, Gulf South Pipeline Company, LP, 9 Greenway Plaza, Suite 2800, Houston, Texas, 77046; by telephone at (713) 479–8157 or by email at payton.barrientos@bwpmlp.com.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 3 copies of filings made in the proceeding with the Commission and must provide a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition

to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, and will be notified of any meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16-4-001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new Natural Gas Act section 3 or section 7 proceeding.¹ Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to "show good cause why the time limitation should be waived," and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.²

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on November 9, 2018.

Dated: October 19, 2018.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2018-23440 Filed 10-25-18; 8:45 am]

BILLING CODE 6717-01-P

¹ *Tennessee Gas Pipeline Company, L.L.C.*, 162 FERC ¶61,167 at ¶50 (2018).

² 18 CFR 385.214(d)(1).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14883-000]

Tenn-Tom Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 5, 2018, Tenn-Tom Hydro, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Aberdeen Hydropower Project (Aberdeen Project or project) to be located at the U.S. Army Corps of Engineers' (Corps) Aberdeen Lock and Dam on the Tennessee-Tombigbee Waterway, in Monroe County, Mississippi. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A cylindrical intake structure in each of the three existing gated spillways sections, on the eastern end of the dam; (2) four proprietary shaped penstocks with run underneath each of the existing three Corps' spillway gates; (3) four submerged generating units, below each spillway section for a total of twelve units, with a total combined capacity of 4.8 megawatts; (4) a 50-foot-long, 50-foot-wide control building with switchyard on the dam's east abutment; (5) a 0.8 mile-long transmission line. The proposed project would have an estimated average annual generation of 32,000 megawatt-hours, and operate run-of-river utilizing surplus water from the Aberdeen Lock & Dam, as directed by the Corps.

Applicant Contact: Mr. Jeremy Wells, Wells Engineering, LLC, 101 Yearwood Drive, Macon, Georgia 31206; phone: (478) 238-3054.

FERC Contact: Michael Spencer, (202) 502-6093, michael.spencer@ferc.gov

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P-14883-000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's website at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-14883) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 19, 2018.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2018-23442 Filed 10-25-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC19-14-000.

Applicants: Fawkes Holdings, LLC, Wheelabrator Technologies Inc.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Wheelabrator Technologies Inc., et al.

Filed Date: 10/19/18.

Accession Number: 20181019-5233.

Comments Due: 5 p.m. ET 11/9/18.

Docket Numbers: EC19-15-000.

Applicants: Bishop Hill Energy III LLC, Bishop Hill Interconnection LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Bishop Hill Energy III LLC, et al.

Filed Date: 10/19/18.

Accession Number: 20181019-5235.

Comments Due: 5 p.m. ET 11/9/18.

Take notice that the Commission received the following electric rate filings:

- Docket Numbers:* ER16–1609–002.
Applicants: ID SOLAR 1, LLC.
Description: Compliance filing: ID Solar 1 Notice of Change in Status to be effective 10/23/2018.
Filed Date: 10/22/18.
Accession Number: 20181022–5097.
Comments Due: 5 p.m. ET 11/13/18.
Docket Numbers: ER18–2339–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2018–10–22 SA 3152 Polaris Wind Energy-METC GIA (J533) Substitute Original to be effective 8/15/2018.
Filed Date: 10/22/18.
Accession Number: 20181022–5077.
Comments Due: 5 p.m. ET 11/13/18.
Docket Numbers: ER19–150–000.
Applicants: MidAmerican Energy Company.
Description: § 205(d) Rate Filing: Concurrence filing for Prairie Wind Remote LBA Gen. Interchange Agt. to be effective 10/15/2018.
Filed Date: 10/19/18.
Accession Number: 20181019–5157.
Comments Due: 5 p.m. ET 11/9/18.
Docket Numbers: ER19–151–000.
Applicants: MATL LLP.
Description: § 205(d) Rate Filing: Open Solicitation Filing to be effective 10/23/2018.
Filed Date: 10/22/18.
Accession Number: 20181022–5039.
Comments Due: 5 p.m. ET 11/13/18.
Docket Numbers: ER19–152–000.
Applicants: Arizona Public Service Company.
Description: Notice of Cancellation of Transmission Service Agreement No. 132 of Arizona Public Service Company.
Filed Date: 10/19/18.
Accession Number: 20181019–5239.
Comments Due: 5 p.m. ET 11/9/18.
Docket Numbers: ER19–153–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Cooperative Energy NITSA Amendment (Remove West Hattiesburg DP) to be effective 10/1/2018.
Filed Date: 10/22/18.
Accession Number: 20181022–5136.
Comments Due: 5 p.m. ET 11/13/18.
Docket Numbers: ER19–154–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Agreement for Interconnection of the Harry Allen to Eldorado 500kV Line to be effective 10/23/2018.
Filed Date: 10/22/18.
Accession Number: 20181022–5137.

Comments Due: 5 p.m. ET 11/13/18.
Docket Numbers: ER19–155–000.
Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC–DEP As-Available Capacity Agreement to be effective 12/22/2018.
Filed Date: 10/22/18.
Accession Number: 20181022–5144.
Comments Due: 5 p.m. ET 11/13/18.

Take notice that the Commission received the following qualifying facility filings:
Docket Numbers: QF19–129–000.
Applicants: Flint Hills Resources Pine Bend, LLC.

Description: Form 556 of Flint Hills Resources Pine Bend, LLC.
Filed Date: 10/12/18.
Accession Number: 20181012–5240.
Comments Due: None-Applicable.

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 22, 2018.
Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. 2018–23441 Filed 10–25–18; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0619; FRL–9983–97–OEI]

Agency Information Collection Activities; Submitted to OMB for Review and Approval; Comment Request; Pesticide Program Public Sector Collections (FIFRA Sections 18 & 24(c)) (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted the

following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA): Pesticide Program Public Sector Collections (FIFRA Sections 18 & 24(c)) (EPA ICR Number 2311.03 and OMB Control Number 2070–0182). The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized in this document. This is a request to renew the approval of an existing ICR, which is currently approved through October 31, 2018. EPA did not receive any comments in response to the previously provided public review opportunity issued in the **Federal Register** on May 18, 2018. With this submission, EPA is providing an additional 30 days for public review.

DATES: Comments must be received on or before November 26, 2018.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2017–0619, to both EPA and OMB as follows:

- To EPA online using <http://www.regulations.gov> (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

- To OMB via email to oir_submission@omb.eop.gov. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the 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. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Connie Hernandez, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–5190; email address: Hernandez.Conn@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket: Supporting documents, including the ICR that explains in detail the information collection activities and the related burden and cost estimates that are summarized in this document, are available in the docket for this ICR. The docket can be viewed online at

<http://www.regulations.gov> or in person at the EPA Docket Center, West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is (202) 566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

ICR status: This ICR is currently scheduled to expire on October 31, 2018. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. EPA did not receive any comments in response to the previously provided public review opportunity issued in the **Federal Register** on May 18, 2018 (83 FR 23274).

Under PRA, 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR covers the paperwork burden associated with two types of pesticide registration requests made by states, U.S. Territories, or Federal agencies under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136a *et seq.*: (1) Emergency exemption requests under FIFRA section 18, which allow for an unregistered use pesticide; and (2) Requests by states to register a pesticide use to meet a special local need (SLN) under FIFRA section 24(c).

FIFRA section 18 allows EPA to grant emergency exemptions to states, U.S. Territories, and Federal agencies to allow an unregistered pesticide for a limited time if EPA determines that emergency conditions exist. FIFRA section 18 requests include unregistered pesticide use exemptions for specific agricultural, public health and quarantine purposes. FIFRA section 24(c) allows EPA to grant permission to a particular state to register additional uses of a federally registered pesticide for distribution and use within that state to meet a SLN.

Respondents/Affected Entities: Pesticides registrants, which may be identified by North American Classification System (NAICS) codes 325320 (pesticide and other agricultural chemical manufacturing), and 9241 (governments that administer environmental quality programs).

Respondent's obligation to respond: Mandatory (FIFRA Sections 3 & 11).

Estimated total number of potential respondents: 283.

Frequency of response: On occasion.
Estimated total burden: 25,753 hours. Burden is defined at 5 CFR 1320.3(b).

Estimated total costs: \$1,829,103, includes \$0 annualized capital investment or maintenance and operational costs.

Changes in the estimates: There is an overall estimated decrease of 8,422 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This change corresponds with a decrease in the estimated average annual number of submissions that the Agency has projected it might receive in the future, *i.e.*, the projection for the estimated number of annual FIFRA section 18 submissions decreased from 185 to 143 (burden decrease of 4,158 hours), and the projection for the estimated number of annual FIFRA section 24(c) submissions decreased from about 305 to 223 (burden decrease of 4,264 hours). This change is an adjustment.

Courtney Kerwin,

Director, Collection Strategies Division.

[FR Doc. 2018-23426 Filed 10-25-18; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9041-9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7156 or <https://www.epa.gov/nepa/>.

Weekly receipt of Environmental Impact Statements

Filed 10/15/2018 Through 10/19/2018 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. 20180244, Draft, USFS, CA, Plumas National Forest Over-Snow Vehicle (OSV) Use Designation, Comment Period Ends: 12/10/2018, **Contact:** Katherine Carpenter (530) 283-7742.

EIS No. 20180250, Final, USAF, NV, Nevada Test and Training Range Land Withdrawal Legislative Environmental Impact Statement, Review Period Ends: 11/26/2018, **Contact:** Mike Ackerman (210) 925-2741.

EIS No. 20180251, Final, HUD, NJ, Rebuild by Design (RBD) Meadowlands Flood Control Project, Review Period Ends: 11/26/2018, **Contact:** Dennis Reinknecht (609) 984-0556.

EIS No. 20180252, Final, FHWA, CA, U.S. 50/South Shore Community Revitalization Project, Review Period Ends: 11/26/2018, **Contact:** Abdelmoez Abdalla (775) 687-1231.

EIS No. 20180253, Final Supplement, FHWA, WI, WIS 23 Fond du Lac to Plymouth, **Contact:** Ian Chidister (608) 829-7503. Under 23 U.S.C. 139(n)(2), FHWA has issued a single document that consists of a supplemental final environmental impact statement and record of decision. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

EIS No. 20180254, Draft, FERC, AK, Grant Lake Hydropower License, Comment Period Ends: 12/10/2018, **Contact:** Office of External Affairs (866) 208-3372.

EIS No. 20180255, Final, USN, HI, Hawaii-Southern Californian Training and Testing Final Environmental Impact Statement/Overseas Environmental Impact Statement, Review Period Ends: 11/26/2018, **Contact:** Nora Macariola-See (808) 472-1402.

EIS No. 20180256, Draft, USACE, TX, Coastal Texas Protection and Restoration Study Draft Integrated Feasibility Report and Environmental Impact Statement, Comment Period Ends: 01/09/2019, **Contact:** Jennifer Morgan (409) 766-3044.

Amended Notices

EIS No. 20180219, Final, USACE, CA, Delta Islands and Levees Integrated Feasibility Study and Environmental Impact Statement, Review Period Ends: 10/26/2018, **Contact:** Anne Baker (916) 557-7277. Revision to FR Notice Published 09/21/2018; Extending the Review Period from 10/22/2018 to 10/26/2018.

Dated: October 22, 2018.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2018-23342 Filed 10-25-18; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM**Government in the Sunshine Meeting Notice**

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:30 a.m. on Wednesday, October 31, 2018.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets, NW, Washington, DC 20551.

STATUS: Open.

On the day of the meeting, you will be able to view the meeting via webcast from a link available on the Board's public website. *You do not need to register to view the webcast of the meeting.* A link to the meeting documentation will also be available approximately 20 minutes before the start of the meeting. Both links may be accessed from the Board's public website at www.federalreserve.gov.

If you plan to attend the open meeting in person, we ask that you notify us in advance and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling 202-452-2474 or you may *register online*. You may pre-register until close of business on Tuesday, October 30, 2018. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call 202-452-2955 for further information. If you need an accommodation for a disability, please contact Penelope Beattie on 202-452-3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on 202-263-4869.

Privacy Act Notice: The information you provide will be used to assist us in prescreening you to ensure the security of the Board's premises and personnel. In order to do this, we may disclose your information consistent with the routine uses listed in the Privacy Act Notice for BGFRS-32, including to appropriate federal, state, local, or foreign agencies where disclosure is reasonably necessary to determine whether you pose a security risk or where the security or confidentiality of your information has been compromised. We are authorized to collect your information by 12 U.S.C. 243 and 248, and Executive Order 9397. In accordance with Executive Order 9397, we collect your SSN so that we can keep accurate records, because other

people may have the same name and birth date. In addition, we use your SSN when we make requests for information about you from law enforcement and other regulatory agency databases. Furnishing the information requested is voluntary; however, your failure to provide any of the information requested may result in disapproval of your request for access to the Board's premises. You may be subject to a fine or imprisonment under 18 U.S.C 1001 for any false statements you make in your request to enter the Board's premises.

Matters To Be Considered*Discussion Agenda:*

1. Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and State Member Banks.

Notes: 1. The staff memos to the Board will be made available to attendees on the day of the meeting in paper and the background material will be made available on a compact disc (CD). If you require a paper copy of the entire document, please call Penelope Beattie on 202-452-3982. The documentation will not be available to the public until about 20 minutes before the start of the meeting.

2. This meeting will be recorded for the benefit of those unable to attend. The webcast recording and a transcript of the meeting will be available after the meeting on the Board's public website <http://www.federalreserve.gov/aboutthefed/boardmeetings/> or if you prefer, a CD recording of the meeting will be available for listening in the Board's Freedom of Information Office, and copies can be ordered for \$4 per disc by calling 202-452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

For more information please contact: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202-452-2955.

SUPPLEMENTARY INFORMATION: You may access the Board's public website at www.federalreserve.gov for an electronic announcement. (The website also includes procedural and other information about the open meeting.)

Dated: October 24, 2018

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2018-23559 Filed 10-24-18; 4:15 pm]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM**Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 13, 2018.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Lance E. Skov, Albert Lea, Minnesota*; to become trustee of the Lake Bank Shares, Inc., Employee Stock Ownership Plan, and thereby indirectly acquire shares of Lake Bank Shares, Inc., which owns Security Bank Minnesota, both of Albert Lea, Minnesota.

Board of Governors of the Federal Reserve System, October 22, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018-23385 Filed 10-25-18; 8:45 am]

BILLING CODE 6210-01-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 23, 2018.

A. Federal Reserve Bank of Boston (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210-2204. Comments can also be sent electronically to BOS.SRC.Applications.Comments@bos.frb.org:

1. *Hometown Financial Group, MHC and Hometown Financial Group, Inc., both of Easthampton, Massachusetts*; to merge with Pilgrim Bancshares, Inc., and thereby acquire Pilgrim Bank, both of Cohasset, Massachusetts.

Board of Governors of the Federal Reserve System, October 23, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018-23449 Filed 10-25-18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2018-D-3614]

Biopharmaceuticals Classification System-Based Biowaivers; International Council for Harmonisation; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled “Biopharmaceuticals Classification System-Based Biowaivers.” The draft guidance was prepared under the auspices of the International Council for Harmonisation (ICH), formerly the International Conference on Harmonisation. The draft guidance will provide recommendations to support

the biopharmaceuticals classification of drug substances and the Biopharmaceuticals Classification System (BCS)-based waiver of in vivo bioequivalence (BE) studies for drug products. In vivo BE studies are needed to demonstrate lack of impact of significant formulation changes on a drug’s bioavailability during its development, for post-approval line extensions, and when developing a generic product. Utilizing the critical properties of the drug substance and the drug product, and applying the BCS framework, assurance of in vivo BE findings can be obtained using extensive in vitro studies. The draft guidance is intended to avoid unnecessary human BE trials based on extensive in vitro characterization of the drug substance and drug product properties.

DATES: Submit either electronic or written comments on the draft guidance by January 24, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and

Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2018-D-3614 for “Biopharmaceuticals Classification System-Based Biowaivers.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002, or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 240-402-8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Mehul Mehta, Center for Drug Evaluation and Research, Food and Drug Administration, Bldg. 51, Rm. 2178, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 301-796-1573.

Regarding the ICH: Amanda Roache, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1176, Silver Spring, MD 20993-0002, 301-796-4548.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, regulatory authorities and industry associations from around the world have participated in many important initiatives to promote international harmonization of regulatory requirements under the ICH. FDA has participated in several ICH meetings designed to enhance harmonization, and FDA is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and reduce differences in technical requirements for drug development among regulatory Agencies.

ICH was established to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products for human use among regulators around the world. The six founding members of the ICH are the

European Commission; the European Federation of Pharmaceutical Industries Associations; FDA; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; and the Pharmaceutical Research and Manufacturers of America. The Standing Members of the ICH Association include Health Canada and Swissmedic. Any party eligible as a Member in accordance with the ICH Articles of Association can apply for membership in writing to the ICH Secretariat. The ICH Secretariat, which coordinates the preparation of documentation, operates as an international nonprofit organization and is funded by the Members of the ICH Association.

The ICH Assembly is the overarching body of the Association and includes representatives from each of the ICH members and observers. The Assembly is responsible for the endorsement of draft guidelines and adoption of final guidelines. FDA publishes ICH guidelines as FDA guidance.

In May 2018, the ICH Assembly endorsed the draft guideline entitled “Biopharmaceutics Classification System-Based Biowaivers” and agreed that the guideline should be made available for public comment. The draft guideline is the product of the Multidisciplinary M9 Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Multidisciplinary M9 Expert Working Group.

The draft guidance provides guidance on the biopharmaceutics classification of drug substances and the BCS-based waiver of in vivo BE studies for drug products.

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on “Biopharmaceutics Classification System-Based Biowaivers.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, <https://www.regulations.gov>, or <https://www.fda.gov/BiologicsBloodVaccines/GuidanceCompliance>

RegulatoryInformation/Guidances/default.htm.

Dated: October 22, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018-23425 Filed 10-25-18; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA-2017-E-4274; FDA-2016-E-3887]

Determination of Regulatory Review Period for Purposes of Patent Extension; TALTZ

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for TALTZ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by December 26, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by April 24, 2019. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 26, 2018. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 26, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket Nos. FDA-2017-E-4274 and FDA-2016-E-3887 for "Determination of Regulatory Review Period for Purposes of Patent Extension; TALTZ." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS

CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301-796-3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit

the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product TALTZ (ixekizumab). TALTZ is indicated for treatment of adults with moderate-to-severe plaque psoriasis who are candidates for systemic therapy or phototherapy. Subsequent to this approval, the USPTO received patent term restoration applications for TALTZ (U.S. Patent Nos. 7,838,638 and 8,110,191) from Eli Lilly and Company, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 20, 2017, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of TALTZ represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for TALTZ is 3,036 days. Of this time, 2,670 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* December 1, 2007. The applicant claims December 2, 2007, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 1, 2007, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42*

U.S.C. 262): March 23, 2015. FDA has verified the applicant's claim that the biologics license application (BLA) for TALTZ (BLA 125521) was initially submitted on March 23, 2015.

3. *The date the application was approved*: March 22, 2016. FDA has verified the applicant's claim that BLA 125521 was approved on March 22, 2016.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,156 days or 935 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: October 22, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–23438 Filed 10–25–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0902]

Agency Information Collection Activities; Proposed Collection; Comment Request; Prescription Drug Product Labeling; Medication Guide Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on regulations requiring distribution of patient labeling, called Medication Guides, for certain products that pose a serious and significant public health concern.

DATES: Submit either electronic or written comments on the collection of information by December 26, 2018.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 26, 2018. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 26, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted,

such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2011–N–0902 for “Agency Information Collection Activities; Proposed Collection; Comment Request; Prescription Drug Product Labeling; Medication Guide Requirements.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and

contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.

Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA’s functions, including whether the information will have practical utility; (2) the accuracy of FDA’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Prescription Drug Product Labeling; Medication Guide Requirements

OMB Control Number 0910–0393–Extension

FDA regulations require the distribution of patient labeling, called Medication Guides, for certain prescription human drug and biological products used primarily on an outpatient basis that pose a serious and significant public health concern. Medication Guides provide patients the

most important information about drug products, including the drugs’ approved uses, contraindications, adverse drug reactions, and cautions for specific populations. These regulations are intended to improve the public health by providing information necessary for patients to use certain medications safely and effectively.

The regulations contain the following reporting requirements that are subject to the PRA:

- 21 CFR 208.20—Applicants must submit draft Medication Guides for FDA approval according to the prescribed content and format.
 - 21 CFR 314.70(b)(3)(ii) and 21 CFR 601.12(f)—Application holders must submit changes to Medication Guides as supplements to their applications to FDA for approval.
 - 21 CFR 208.24(c)—Each distributor or packer who receives Medication Guides, or the means to produce Medication Guides, from a manufacturer under paragraph (b) of this section shall provide those Medication Guides to each authorized dispenser to whom it ships a drug product.
 - 21 CFR 208.24(e)—Each authorized dispenser of a prescription drug product for which a Medication Guide is required must provide a Medication Guide directly to each patient when dispensing the product to the patient or to the patient’s agent, unless an exemption applies under 21 CFR 208.26.
 - 21 CFR 208.26(a)—Requests may be submitted for an exemption or a deferral from particular Medication Guide content or format requirements.
- FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Content and Format of a Medication Guide—§ 208.20	61	1	61	320	19,520
Supplements and Other Changes to an Approved Application—§§ 314.70(b)(3)(ii) and 601.12(f)	155	1	155	72	11,160
Exemptions and Deferrals—§ 208.26(a)	1	1	1	4	4
Total					30,684

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN ¹

21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Distributing Medication Guide to Authorized Dispenser—§ 208.24(c)	191	9,000	1,719,000	1.25	2,148,750

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN¹—Continued

21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Distributing and Dispensing a Medication Guide to Patient—§ 208.24(e)	88,736	5,705	506,238,880	* 0.05	25,311,944
Total	27,460,694

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

* 3 minutes.

Our estimated annual reporting burden for the information collection reflects an increase of 51 respondents and responses and a corresponding overall increase of 4,664 total hours. We attribute this adjustment to an increase in the number of submissions we received over the last few years. Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our annual third-party disclosure burden estimate, except for correction in calculations.

Dated: October 22, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–23422 Filed 10–25–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2017–E–6904 and FDA–2017–E–6909]

Determination of Regulatory Review Period for Purposes of Patent Extension; REBINYN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for REBINYN and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by December 26, 2018.

Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by April 24, 2019. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 26, 2018. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 26, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

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- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket Nos. FDA–2017–E–6904 and FDA–2017–E–6909— for “Determination of Regulatory Review Period for Purposes of Patent Extension; REBINYN.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you

must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301-796-3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent

was issued), FDA’s determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product REBINYN (Coagulation Factor IX (Recombinant) GlycoPEGylated). REBINYN is indicated for use in adults and children with hemophilia B for: (1) On-demand treatment and control of bleeding episodes, and (2) Perioperative management of bleeding. Subsequent to this approval, the USPTO received a patent term restoration application for REBINYN (U.S. Patent Nos. 7,138,371 and 7,179,617) from Novo Nordisk A/S, and the USPTO requested FDA’s assistance in determining this patent’s eligibility for patent term restoration. In a letter dated February 6, 2018, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of REBINYN represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product’s regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for REBINYN is 2,793 days. Of this time, 2,412 days occurred during the testing phase of the regulatory review period, while 381 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* October 9, 2009. The applicant claims May 16, 2009, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 9, 2009, which was the first date after receipt of the IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* May 16, 2016. FDA has verified the applicant’s claim that the biologics license application (BLA) for REBINYN (BLA 125611/0) was initially submitted on May 16, 2016.

3. *The date the application was approved:* May 31, 2017. FDA has verified the applicant’s claim that BLA 125611/0 was approved on May 31, 2017.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,660 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA-2013-S-0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: October 22, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018-23437 Filed 10-25-18; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2007-D-0369]

Product-Specific Guidance; Revised Draft Guidance for Industry on Sucralfate; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is reopening the comment period for a

revised draft product-specific guidance on Sucralfate that appeared in a notice of availability, published in the **Federal Register** of October 20, 2017. In that notice, FDA requested comments on the revised draft guidance for industry on Sucralfate, as well as comments on other product-specific guidances. FDA is reopening the comment period for the Draft Guidance on Sucralfate (revised October 2017) to facilitate submission of comments pertaining to this draft guidance following an FDA response to two citizen petitions. The petition response suggests that the petitioners submit to the docket comments relating to the guidance.

DATES: Submit either electronic or written comments on the draft guidance by December 26, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management

Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2007-D-0369 for "Product-Specific Guidance; Revised Draft Guidance for Industry on Sucralfate; Reopening of Comment Period." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Xiaoqiu Tang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4730, Silver Spring, MD 20993-0002, 301-796-5850.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 20, 2017 (82 FR 48826), FDA published a notice of availability with a 60-day comment period to request comments on the revised draft guidance for industry on Sucralfate, as well as comments on other product-specific guidances. This draft guidance includes recommendations pertaining to abbreviated new drug applications seeking approval of sucralfate oral suspension products, 1 gram/10 milliliters.

The comment period for all draft guidances identified in that notice ended on December 19, 2017.

On December 18, 2017, FDA received a citizen petition from Haynes and Boone, LLP (Docket No. FDA-2017-P-6922), requesting that FDA deny approval to any abbreviated new drug application for a sucralfate oral suspension drug product that relies on patient-based clinical endpoint studies to establish bioequivalence with the reference listed drug. On March 28, 2018, FDA received a citizen petition from Vertice Pharma (Docket No. FDA-2018-P-1310) requesting specific changes to the recommendations made in the "Draft Guidance on Sucralfate" (revised October 2017), available at <https://www.fda.gov/downloads/Drugs/GuidanceCompliance/RegulatoryInformation/Guidances/UCM573202.pdf>.

FDA denied both petitions in a joint response dated May 17, 2018. However, given the interest in this guidance, FDA is reopening the comment period until December 26, 2018. The Agency believes that an additional 60 days will allow adequate time for interested persons to submit comments without compromising the timely publication of the final version of the guidance.

II. Electronic Access

Persons with access to the internet may obtain the draft guidance at either <https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> or <https://www.regulations.gov>.

Dated: October 22, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018-23386 Filed 10-25-18; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS-0990-0430, 0431, 0432, 0433, 0434]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before November 26, 2018.

ADDRESSES: Submit your comments to OIRA_submission@omb.eop.gov or via facsimile to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, Sherrette.Funn@hhs.gov or (202) 795-7714. When submitting comments or requesting information, please include the document identifier 0990-New-30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Crime Control Act—Requirement for Background Checks.

Type of Collection: Extension.

OMB No.: 0990-0430—Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy, and Accountability, Division of Acquisition.

Abstract: Crime Control Act—Requirement for Background Checks: Performance of HHS mission requires the support of contractors. In some circumstances, depending on the requirements of the specific contract, the contractor is tasked to provide personnel who will be working with children under the age of 18. After contract award, contractor personnel must undergo a criminal background check as required by HHS Acquisition Regulation (HHSAR) 337.103(d)(3) and the clause at HHSAR 352.237-72 Crime Control Act—Requirement for Background Checks before working on the contract as required by federal law (Crime Control Act of 1990). The contractor is therefore required to provide a list of the names of its relevant personnel for purposes of enabling HHS to conduct a criminal background check.

The Agency is requesting a 3 year extension to collect this information from public or private businesses.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Business (contractor)	160	1	1	160
Total	160	1	1	160

Title of the Collection: Acquisitions Involving Human Subjects.

Type of Collection: Extension.

OMB No.: 0990-0431—Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy, and Accountability, Division of Acquisition.

Abstract: Acquisitions Involving Human Subjects: Performance of HHS mission requires the support of contractors involving human subjects. Before awarding a contract to any

contractor that will need to use human subjects, the Contracting Officer is required to verify that, the contractor holds a valid Federal Wide Assurance (FWA) approved by the Office for Human Research Protections (OHRP), as described in HHSAR Subpart 370.3—Acquisitions Involving Human Subjects. The provisions are implemented via contract clauses found at HHSAR 352.270-4a (Protection of Human Subjects), the clause at HHSAR 352.270-4b (Protection of Human

Subjects), the provision at HHSAR 352.270-10 (Notice to Offerors—Protection of Human Subjects, Research Involving Human Subjects Committee (RIHSC) Approval of Research Protocols Required), and the clause at HHSAR 352.270-11 (Protection of Human Subjects—Research Involving Human Subjects Committee (RIHSC) Approval of Research Protocols Required).

The Agency is requesting a 3-year extension to collect this information from public or private businesses.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Business (contractor)	90	4	5	1,800

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Total	90	4	5	1,800

Title of the Collection: Acquisitions Involving the Use of Laboratory Animals.

Type of Collection: Extension.

OMB No.: 0990–0432—Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy, and Accountability, Division of Acquisition.

Abstract: Acquisitions Involving the Use of Laboratory Animals: Performance of HHS mission requires the use of live

vertebrate animals. Before awarding a contract to any contractor, which will need to use live vertebrate animals, the Contracting Officer is required to verify that the contractor holds a valid Animal Welfare Assurance (AWA) from the Office of Laboratory Animal Welfare (OLAW) within NIH. Contractors are required to show that they have an AWA or will have the appropriate Assurance as described in HHSAR Subpart 370.4—Acquisitions Involving

the Use of Laboratory Animals. The applicable clauses are found at HHSAR 352.270–5a (Notice to Offerors of Requirement for Compliance with the Public Health Service Policy on Humane Care and Use of Laboratory Animals), and the clause at HHSAR 352.270–5b (Care of Live Vertebrate Animals).

The Agency is requesting a 3-year extension to collect this information from public or private businesses.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Business (contractor)	36	1	3	108
Total	36	1	3	108

Title of the Collection: Indian Child Protection and Family Violence Act.

Type of Collection: Extension.

OMB No.: 0990–0433—Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy, and Accountability, Division of Acquisition.

Abstract: Indian Child Protection and Family Violence Act: Performance of IHS mission requires the support of contractors. In some circumstances,

depending on the requirements of the specific contract, the contractor is tasked to provide personnel who will be dealing with Indian children under the age of 18. After contract award contractor personnel must undergo a criminal background check as required by HHSAR 337.103(d)(4) and the clause at HHSAR 352.237–73 Indian Child Protection and Family Violence Act before working on the contract as

required by federal law (Indian Child Protection and Family Violence Act (ICPFVA)). The contractor is therefore required to provide a list of names of the relevant personnel so that a proper background check can be performed, as stated in the HHS Acquisition Regulation.

The Agency is requesting a 3-year extension to collect this information from public or private businesses.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Business (contractor)	40	4	1	160
Total	40	4	1	160

Title of the Collection: Meetings, Conferences, and Seminars.

Type of Collection: Extension.

OMB No.: 0990–0434—Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy, and Accountability, Division of Acquisition.

Abstract: Meetings, Conferences, and Seminars: Performance of HHS mission requires the support of contractors. In

some circumstances, depending on the requirements of the specific contract, the contractor is tasked to conduct meetings, conferences, and seminars. HHSAR 311.7101(a) (Responsibilities) and the clause at HHSAR 352.211–1 (Accessibility of meetings, conferences and seminars to persons with disabilities) require contractors to provide a plan describing the contractor’s ability to meet the

accessibility standards in 28 CFR part 36. HHSAR 311.7202(b) (Responsibilities) and the clause at HHSAR 352.211–2 (Conference sponsorship request and conference materials disclaimer) require contractors to provide funding disclosure and a content disclaimer statement on conference materials. As a result of these clauses, HHS contractors providing conference, meeting, or

seminars services are required to provide specific information to HHS as

stated in the HHS Acquisition Regulation.

The Agency is requesting a 3-year extension to collect this information from public or private businesses.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Business (contractor)	1,604	1	1	1,604
Total	1,604	1	1	1,604

Terry Clark,
Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.
[FR Doc. 2018-23484 Filed 10-25-18; 8:45 am]
BILLING CODE 4150-04-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel; NRSA Individual Predoctoral and Postdoctoral Fellowship.
Date: November 2, 2018.

Time: 8:30 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Conference Room BC 1st Floor, Bethesda, MD 20817.

Contact Person: Richard A. Rippe, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2109, Bethesda MD 20817, 301-443-8599, rippera@mail.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.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Review Member Conflict Applications AA (03).

Date: November 28, 2018.

Time: 10:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Anna Ghambaryan, M.D., Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2120, Bethesda MD 20817, 301-443-4032, anna.ghambaryan@nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Review Member Conflict Applications ZAA1 AA (02).

Date: November 29, 2018.

Time: 12:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Anna Ghambaryan, M.D., Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2120, Bethesda MD 20817, 301-443-4032, anna.ghambaryan@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: October 22, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018-23394 Filed 10-25-18; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice to Close Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Lasker Clinical Research Scholars Program.

Date: November 5, 2018.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Boulevard, 6701 Democracy Boulevard, Suite 703, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weiqun Li, MD., Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 710, Bethesda, MD 20892, (301) 594-5966, wli@mail.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. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: October 19, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018-23429 Filed 10-25-18; 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; Mass Spectrometric Assays in Type 1 Diabetes Research.

Date: November 14, 2018.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7015, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–4721, ryan.morris@nih.gov.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Computational and Experimental Resources for Virome Analysis in Inflammatory Bowel Disease.

Date: November 16, 2018.

Time: 8:00 a.m. to 9:30 a.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: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7345, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, rushingp@extra.nidk.nih.gov.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Silvio O. Conte Digestive Diseases Research Core Centers.

Date: December 6–7, 2018.

Time: 6:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Arlington Pentagon City, 550 Army Navy Drive, Arlington, VA 22202.

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7345, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, rushingp@extra.nidk.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 22, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–23392 Filed 10–25–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Virology Quality Assurance (VQA) Program (N01).

Date: November 16, 2018.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: J. Bruce Sundstrom, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G11A, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, 240–669–5045, sundstromj@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology,

and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 22, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–23393 Filed 10–25–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Mentored Training (K) and Conference Grant Applications (R13).

Date: November 19–20, 2018.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Zhihong Shan, MD, Ph.D., Scientific Review Officer (Contractor), Division of Extramural Activities, National Eye Institute, National Institute of Health, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892, 301–435–1779, zhihong.shan@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: October 22, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–23391 Filed 10–25–18; 8:45 am]

BILLING CODE 4140–01–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Issuance of the U.S. Department of Veterans Affairs Program Comment for Vacant and Underutilized Properties

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of issuance of the U.S. Department of Veterans Affairs Program comment for vacant and underutilized properties.

SUMMARY: The Advisory Council on Historic Preservation (ACHP) has a program comment for the U.S. Department of Veterans Affairs (VA) that sets forth the way in which VA complies with Section 106 of the National Historic Preservation Act (NHPA) for its real property actions related to the transfer of property rights of vacant and underutilized buildings, structures and land, including out leases, exchanges, sales, transfers, conveyances, deconstructions and demolitions, and for certain maintenance and repairs.

DATES: The program comment went into effect on October 26, 2018.

ADDRESSES: Address any questions concerning the Program Comment to Angela McArdle, Office of Federal Agency Programs, Advisory Council on Historic Preservation, 401 F Street NW, Suite 308, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Angela McArdle, (202) 517-0221, amcardle@achp.gov.

SUPPLEMENTARY INFORMATION: Section 106 of the NHPA requires federal agencies to consider the effects of projects they carry out, license, or assist (undertakings) on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. The ACHP has issued the regulations that set forth the process through which federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (Section 106 regulations).

Under Section 800.14(e) of those regulations, agencies can request the ACHP to provide a "Program Comment" on a particular category of undertakings in lieu of conducting individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.4 through 800.7. An agency can meet its Section 106 responsibilities with regard to the effects of those undertakings by taking into account an applicable Program Comment and following the steps set forth in that comment.

The U.S. Department of Veterans Affairs (VA) sought a Program Comment for its real property actions related to the transfer of property rights of vacant and underutilized buildings, structures and land, including out leases, exchanges, sales, transfers, conveyances, deconstructions and demolitions, and for certain maintenance and repairs. The ACHP issued the Program Comment on October 19, 2018. The regulations implementing Section 106 require that such program comments be published in the **Federal Register** before going into effect.

I. Overview of the Program Comment

Reducing vacant and underutilized properties in its portfolio will allow VA to redirect limited operations and maintenance staff and funding to those facilities supporting delivery of services and benefits to veterans.

Changing needs, technology, and medical care have contributed to the functional obsolescence of many buildings and structures in VA's real property portfolio and altered how facilities are used or not used given VA's funding parameters. These changes have resulted, and will continue to result, in vacancies and underutilized buildings and structures in VA's portfolio. The Program Comment will enable VA to more efficiently complete the Section 106 review process to achieve a reduction of vacant and underutilized buildings and structures, thereby reducing the square footage to be maintained, costs for management of VA's real property and ultimately the burden on taxpayers. The Program Comment creates an alternative process that will result in greater project schedule certainty, increased engagement of VA field personnel, and a better understanding of VA's Section 106 responsibilities.

The Program Comment applies to VA disposals of federal real property including sales, transfers, conveyances or exchanges to non-federal entities, lease termination, public benefit conveyance, deconstruction and demolition of vacant and underutilized properties, as well as maintenance and repair of such properties that are non-historic or historic properties that have been categorized as utilitarian. This Program Comment does not apply to real property transfers, conveyances or exchanges from VA to another federal agency where such property remains in federal ownership and the receiving agency continues to be subject to Section 106.

This Program Comment also applies to Enhanced Use Leases (EULs) developed under 38 U.S.C. 8161 and

leases or exchanges under 54 U.S.C. 306121 and 306122 (formerly Section 111 of the NHPA). These authorities allow outside parties to lease a building or structure from VA for development of supportive housing for homeless veterans (EUL) or to lease historic properties for other uses that may benefit veterans, their families or communities. An exchange of one historic property with a comparable historic property is allowed under Section 111 of the NHPA.

According to VA's real property database, the Capital Asset Inventory (CAI), there are currently about 1,000 vacant and underutilized properties, of which approximately 400 are vacant and about 600 are underutilized. Not all of the vacant and underutilized properties are historic properties. There are currently about 330 vacant historic properties, of which about 160 are categorized as utilitarian. There are currently about 260 underutilized historic properties, of which about 200 are categorized as utilitarian.

By eliminating the need for Section 106 review of each individual real property action, the Program Comment will allow more efficient compliance with Section 106 for the reduction of VA's vacant and underutilized properties.

II. Background Leading to the Program Comment

Since 1971, VA has steadfastly invested in identification and evaluation of its historic properties. In 1981, the Keeper of the National Register of Historic Places (National Register) determined all national cemeteries, regardless of age, eligible for inclusion in the National Register. Over the past fifteen years, VA has evaluated or re-evaluated more than 115 of its 152 medical centers according to the National Register Criteria for Evaluation to assess the significance in American history, architecture, archaeology, engineering, and culture present in VA's districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association.

In 2004, VA partnered with the National Park Service (NPS) to inventory its oldest medical centers, the eleven branches of the National Home for Disabled Volunteer Soldiers. This group of facilities includes properties dating from just after the Civil War through 1930, and is known within VA as the First Generation.

From 2008 to 2012, VA compiled documentation on 50 facilities built at the end of World War I through the end of World War II. The "United States

Second Generation Veterans Hospitals” National Register Multiple Property Documentation was accepted by the NPS in January 2012.

Since 2010, VA has compiled documentation on 57 of its facilities built after World War II up to 1958. The “United States Third Generation Veterans Hospitals” National Register Multiple Property Documentation was accepted by the NPS in May 2018.

In March 2016, the NPS accepted the Inter-World War National Cemeteries National Register Multiple Property Documentation for facilities opened between 1934 and 1939.

As of May 2018, VA has over 8,350 buildings and structures within its three divisions: Veterans Health Administration (VHA), National Cemetery Administration (NCA), and Veterans Benefits Administration (VBA). VA has evaluated about 7,325 of these 8,350 buildings and structures, approximately 88% of the built resources in its inventory, for eligibility to the National Register. Approximately 2,325 of these are historic: National Register eligible or listed, or National Historic Landmarks (NHLs). Of these historic properties, about 85%, or nearly 2,000 buildings and structures, are being used in support of veterans. More than 5,000 other buildings and structures have been evaluated and determined not eligible.

In recent decades, the White House, Congress and agencies have been assessing the federal government’s ability to manage its capital assets—specifically buildings, structures, and land. These efforts have prompted the federal government to identify, assess, analyze, and review capital asset management to improve fiscal accountability and management. Several studies, Presidential memoranda, and Executive Orders have highlighted this matter:

(1) A 2003 Government Accountability Office report (GAO–03–122) titled *High-Risk Series: Federal Real Property* highlighted federal real property as high risk, noting “multibillion-dollar cost implications [that] can seriously jeopardize mission accomplishment.”

(2) Issued in 2004, Executive Order 13327, *Federal Real Property Asset Management*, became law in December 2016 as the Federal Property Management Reform Act (Pub. L. 114–318). The order directed creation of the Federal Real Property Profile (FRPP), a database updated annually with descriptions of individual buildings, structures, and objects including, among other elements, the historic status of the property. FRPP historic status is defined

as: NHL, National Register listed or eligible, Non-contributing element of an NHL/National Register district, Not Evaluated or Evaluated/Not Historic. National Register listed or eligible assets are considered historic properties under the NHPA.

(3) A Presidential Memorandum issued in 2010, *Disposing of Unneeded Federal Real Estate*, required federal agencies to: Identify and eliminate excess properties; increase space utilization and occupancy rates; reduce operating costs; and improve energy efficiency and sustainability. The government-wide goal as directed by the Memorandum was to encourage federal agencies to save costs and be more efficient in managing real property. Oversight and implementation roles were assigned to the Office of Management and Budget (OMB) and General Services Administration (GSA).

(4) Two OMB memoranda applicable to all federal agencies’ real property management followed in 2012 and 2013. The first memorandum (M–12–12, *Promoting Efficient Spending to Support Agency Operations*) provided that any acquisition of new civilian real property that increases the total square footage of an agency must be offset through consolidation, co-location or disposal of space from that agency’s inventory. The second memorandum (Management Procedures No. 2013–02, *Implementation of OMB Memorandum M–12–12*), known as “Freeze the Footprint,” set an annual performance standard of no net increase/no net growth in the square footage of each agency’s domestic office and warehouse owned and leased property relative to a Fiscal Year (FY) 2012 FRPP inventory baseline. Acceptable offsets, or removal from a federal agency’s inventory, include declaration of individual buildings to GSA as excess and disposal. According to OMB policy, unacceptable offsets include mothballing, EULs, other out leases, or simply leaving a building unused or unoccupied.

(5) In 2015, OMB issued the “National Strategy for the Efficient Use of Real Property 2015–2020, Reducing the Federal Portfolio through Improved Space Utilization, Consolidation, and Disposal.” This national effort, known as “Reduce the Footprint” is a follow-up to the earlier “Freeze the Footprint” initiative. The strategy and related policy require federal agencies to reduce their domestic real property square footage rather than simply maintaining their FY 2012 levels.

(6) In May 2017, the VA Secretary emphasized the need for VA to develop “different types of strategic

partnerships” related to the reduction of vacant and underutilized buildings and specifically called out 430 vacant buildings and 735 underutilized buildings which VA had identified during a December 2016 review of its real property database, the Capital Asset Inventory (CAI). The VA MISSION Act of 2018 (S.2372) requires consideration of “the extent to which the real property that no longer meets the needs of the Federal Government could be reconfigured, repurposed, consolidated, realigned, exchanged, outleased, replaced, sold, or disposed.”

A Program Comment under the NHPA Section 106 regulations, 36 CFR 800.14(e), is an efficient alternative to address several categories of undertakings in support of VA’s need to reduce its square footage of vacant and underutilized properties.

III. Public Participation

VA sought public participation in the Program Comment’s development prior to formally requesting the ACHP to review its proposal for the Program Comment. These actions included publication of a Notice of Availability in the **Federal Register** in April 2018, giving the public a 30-day period to submit comments. Comments from the public were provided to the ACHP with VA’s formal request.

Working with the Veterans Service Organizations (VSOs) Liaison, VA consulted with Disabled American Veterans (DAV), Veterans of Foreign Wars (VFW), American Legion, Military Officers Association of America (MOAA), Paralyzed Veterans of America (PVA), AMVETS, and Vietnam Veterans of America (VVA). These organizations were consulted prior to the development of the Program Comment to help determine issues that may be of specific concern prior to formal submission to the ACHP.

In December 2017 and January 2018, VA invited staff from the ACHP, National Conference of State Historic Preservation Officers (NCSHPO), National Association of Tribal Historic Preservation Officers (NATHPO), and National Trust for Historic Preservation (NTHP) to face-to-face meetings concerning VA’s proposed request for a Program Comment. These meetings solicited input from the participating entities to develop a Program Comment that considered the consulting parties’ perspectives.

VA’s Office of Tribal Government Relations (OTGR) reached out to leaders of all federally recognized Indian tribes through a letter sent in March 2018, which included a 45-day comment period. A webinar for Indian tribes,

hosted by NATHPO, was held March 22, 2018, and led by VA's Federal Preservation Officer (FPO). VA coordinated with OTGR in the internal review of the draft Program Comment. OTGR also participated in the January 2018 consultation meeting with the consulting parties. In addition, information regarding the proposed Program Comment was included in the 2017 VA/OTGR Executive Summary Report.

On August 2, 2018, VA presented its proposal for a Program Comment at the ACHP's Federal Agency Programs (FAP) Committee meeting in Washington, DC and submitted its formal request for a Program Comment to the ACHP, starting the ACHP's 45-day regulatory clock, which was originally set to end on September 17, 2018. The most substantial change in the draft submitted with the formal request was the removal of National Historic Landmarks from consideration under the Program Comment, a request that multiple consulting parties had made in the early stages of the draft's development.

Following VA's formal request, the ACHP carried out its own consultation. ACHP hosted a consultation meeting with NCSHPO, NATHPO, NTHP, and VA on August 9, 2018 to discuss the draft sent with VA's formal request. These preservation organizations expressed a desire for a longer public comment period than would have been possible in the original 45-day period. Based on this feedback, ACHP requested and obtained a 2-week extension from VA on August 23, 2018, to allow for an extended public review period of 28 days.

ACHP created a web page to host the text of the Program Comment, linked to it on its Trending Topics web page and its Twitter and Facebook web pages, and sent a broadcast email announcing the posting of the Program Comment text and ACHP's request for public review and comment. ACHP sent the email to ACHP members, Senior Policy Officials and Senior Policy Official Representatives (SPOs & SPO Reps), ACHP Alumni, Federal Preservation Officers and Federal Preservation Officer Representatives (FPOs & FPO Reps), State Historic Preservation Officers (SHPOs), NTHP, National Preservation Organizations, Preservation Partners, Statewide and Local Preservation Organizations, Native Hawaiian Organizations (NHOs), Tribal 106 Chairs, Tribal 106 Contacts, and the same seven VSOs VA had consulted earlier in the development process. VA also posted a link to the Program Comment text on its Historic

Preservation Office web page. The public review period began August 23, 2018 and ended September 19, 2018 for a total period of four weeks.

Mid-way through the public comment period, ACHP members requested the opportunity to discuss the Program Comment in person at the next business meeting. In response, ACHP requested and obtained an additional 6-day extension from VA on September 6, 2018, to extend the period for ACHP comment until October 4, 2018, which would allow ACHP to accommodate an assembled vote at its October 4 Business Meeting.

By the close of the public comment period, ACHP received comments from 21 respondents. The primary concerns expressed in the comments focused on the need for: (1) A greater degree of procedural transparency by increasing notification and consultation with parties external to VA; (2) clarification on the categorization of VA's real property into "utilitarian" and "non-utilitarian" and consideration of the cumulative effects to historic districts if multiple utilitarian historic properties were removed; and (3) clarification on how the Program Comment addresses archaeological historic properties and properties of traditional religious and cultural significance to Indian tribes or Native Hawaiian Organizations (NHOs).

ACHP staff held a conference call with ACHP members on September 21, 2018 to discuss the comments received during the public comment period and to seek any comments or recommendations for revisions to the draft that ACHP members wished to provide. Fourteen ACHP members participated. ACHP staff hosted another consultation meeting September 26, 2018 with NCSHPO, NTHP, and VA to discuss specific revisions to address the comments received during the public comment period and those raised during the ACHP member teleconference.

Based on this feedback, ACHP and VA then worked together to revise the draft in the following ways:

(1) A new consultation process was added in Section 3. (Annual Publication and Review of VA's Real Property Portfolio) where each year VA will provide a composite list of properties that could be subject to the Program Comment to the ACHP for posting on a publicly accessible web page. VA would provide this list, with an accompanying narrative, to accommodate interested parties who wished to request additional information or send comments to VA concerning properties on the composite list. New processes of notification and consultation with parties external to VA were also added

to Section 5.1. (Leases and Exchanges), Section 5.2. (Sales, Transfers, Exchanges, and Conveyances), Section 5.3. (Deconstruction and Demolition), Section 6. (Programmatic Mitigation), Section 7. (Review of Undertakings), and Section 8. (Consideration of Archaeological Properties and Properties of Traditional Religious and Cultural Significance to Indian tribes or NHOs);

(2) the definition of the term "utilitarian property" was updated in Section 2.2. (Definitions) and the consultation process added in Section 3. affords greater transparency on which properties VA will categorize as utilitarian. The Section 3. consultation process also allows interested parties to request more information about a utilitarian property and provide their views on that property's categorization as utilitarian. Section 4.3.1. (Utilitarian Historic Properties) has been made more concise for clarity, and the requests for clarification about maintenance and repair on utilitarian properties have been addressed in Section 2.2. (Definitions) and Section 5.4. (Maintenance and Repair of Non-Historic and Utilitarian Historic Properties); and

(3) the newly added Section 8. (Consideration of Archaeological Properties and Properties of Traditional Religious and Cultural Significance to Indian tribes or NHOs) introduces procedures for how historic properties other than buildings and structures will be addressed when an undertaking subject to the Program Comment could affect them. The procedures require (1) Further identification efforts (notification and consultation with SHPOs, Indian tribes, and NHOs) of VA if there are ground disturbance activities proposed in previously undisturbed areas that VA has no record of being previously surveyed; (2) No further identification efforts of VA if land has been previously reviewed/surveyed and found to have no such properties that would be adversely affected, if previous ground disturbance indicates a low probability of finding such properties, or if a qualified professional has determined the area has a low probability for such properties; and (3) VA to follow the steps at 36 CFR 800.13 (b) (Post-review Discoveries), if historic properties are discovered or unanticipated effects on historic properties are found during the implementation of an undertaking.

With these revisions, ACHP staff anticipated that the VA Program Comment was ready for vote by the membership. A draft was sent to ACHP members for their consideration on

September 28, 2018 with the expectation that it would be the subject of discussion at the October 3 Federal Agency Program (FAP) Committee Meeting and voted on at the October 4 ACHP Business Meeting in Washington, DC. Discussion at the FAP Committee meeting on October 3, 2018 indicated that the ACHP members had additional concerns about the VA Program Comment that needed to be addressed prior to a vote. Namely, the need for an annual meeting, for clarification on the language concerning historic tax credits, for more consideration of cultural landscapes, for the addition of more consulting parties, and for additional clarification on the level of consultation with Indian tribes with ground disturbance activities. Consequently, on October 3, 2018, ACHP requested a third extension from VA for an additional 15 days to work through the remaining concerns. VA granted the extension.

ACHP members provided their final comments to ACHP staff on October 9, 2018. ACHP staff then worked with VA to produce another draft that was circulated to the ACHP members on October 11, 2018 and was to be the basis of discussion for a teleconference scheduled the next day, October 12, 2018. Fourteen ACHP members participated in the teleconference call on October 12, 2018. Discussion during the teleconference indicated that the ACHP members were comfortable moving forward with a vote on the draft. Consequently, the draft was revised one final time for minor technical edits and sent to ACHP members on October 15, 2018 along with a ballot for them to cast their vote. On a vote that closed on October 19, 2018, the ACHP members voted in favor of issuing the program comment reproduced below.

IV. Text of the Program Comment

What follows is the text of the issued program comment:

*U.S. Department of Veterans Affairs
Program Comment for Vacant and
Underutilized Properties*

1. Introduction

This Program Comment provides the U.S. Department of Veterans Affairs (VA) with an alternative way to comply with its responsibilities under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. 306108, and its implementing regulations at 36 CFR part 800 (Section 106), regarding vacant and underutilized properties. It enables VA to proceed with certain undertakings following an expedited review process that complements VA's real property

priorities in finding uses for vacant and underutilized properties. VA has and will continue to prioritize finding uses for vacant and underutilized properties in its inventory in the following order: (1) VA use; (2) third-party use via an Enhanced Use Lease (EUL) or NHPA Section 111 lease; (3) sales, transfers, exchanges, or conveyances (note: property must be severable from the campus); and (4) deconstruction and demolition.

VA has an annual budget planning process, called the Strategic Capital Investment Planning (SCIP) process that addresses space needs projected out over a 10-year horizon for all its facilities. The SCIP process has successfully found a VA use for approximately 85 percent of VA's historic properties. This Program Comment will address those vacant and underutilized properties for which the SCIP process is unable to identify a viable VA need.

As of October 2018, according to VA's real property database, the Capital Asset Inventory (CAI), there were about 1,000 vacant and underutilized properties, of which approximately 400 were vacant and about 600 were underutilized. Not all of such vacant and underutilized properties were historic properties. There were about 330 vacant historic properties, of which about 160 were categorized as utilitarian. There were about 260 underutilized historic properties, of which about 200 were categorized as utilitarian.

2. Scope of Program Comment and Definitions

2.1. Scope

The Program Comment applies to the following categories of undertakings regarding management of VA's vacant and underutilized properties in its CAI:

- (1) EULs and NHPA Section 111 Leases and Exchanges;
- (2) Sales, Transfers, Exchanges, and Conveyances;
- (3) Deconstruction and Demolition; and
- (4) Maintenance and repair of non-historic properties and utilitarian historic properties.

VA may choose to utilize a case-by-case approach for each undertaking and meet Section 106 requirements by following 36 CFR 800.3–800.7 in the event VA determines the undertaking warrants individual consideration. Individual consideration may be warranted where State Historic Preservation Officers (SHPOs), Indian tribes or Native Hawaiian organizations (NHOs), and/or other interested parties have requested additional consideration.

This Program Comment does not apply to National Historic Landmarks (NHLs), any property coming into VA's portfolio as the result of an exchange, or to the following when VA has a record of their existence: (1) Archaeological historic properties, or (2) properties of traditional religious and cultural significance to Indian tribes or NHOs. Undertakings with the potential to affect any of these historic properties will follow the standard Section 106 review process, or if extant, the process detailed in any previously executed Section 106 agreement documents that govern such undertakings. VA will comply with the Native American Graves Protection and Repatriation Act (NAGPRA) and Archaeological Resources Protection Act (ARPA), as applicable.

A VA facility or campus with a Section 106 agreement in effect that addresses a disposal, lease, or exchange of vacant or underutilized historic properties can choose to: (1) Continue to implement the existing agreement for its duration; (2) seek to amend the existing agreement, per its stipulations, to incorporate, in whole or in part, the terms of this Program Comment; or (3) terminate the existing agreement per the stipulations of that agreement and, prior to approving any undertaking formerly under its scope, follow the terms of this Program Comment. Terminating an existing agreement would require any undertakings previously covered by said agreement that would not be covered under the scope of the Program Comment to go through the standard Section 106 review process.

2.2. Definitions

For purposes of this Program Comment, the following definitions apply:

Area of potential effects (APE) means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Day means one calendar day, including weekends and federal holidays. A deadline that would otherwise fall on a weekend or a holiday is extended until the next business day.

Disposal is sale, lease termination, public benefit conveyance, exchange, deconstruction or demolition, and/or transfer of real property from VA's inventory.

Ground disturbance is any activity that moves, compacts, alters, displaces,

or penetrates the ground surface of previously undisturbed soils. “Undisturbed soils” are soils that possess significant intact and distinct natural soil horizons. Previously undisturbed soils may occur below the depth of disturbed soils.

Historic property is any district (including contributing resources), site, building, structure, or object listed in or eligible for listing in the National Register of Historic Places (National Register).

Maintenance and repair are minor routine activities needed to keep a building or structure in, or return it to, working or usable condition. These activities typically involve general repairs or replacement of in-kind materials and typically do not diminish the integrity of a historic property’s character-defining features, which make a property eligible for listing in the National Register. Major alterations (e.g., additions that substantially increase the square footage of a building or structure) are not considered routine maintenance and repair.

Non-historic property is any site, building, structure, or object that is not listed in or eligible for listing in the National Register. This includes non-contributing resources to National Register-listed or eligible historic districts.

Non-utilitarian property is a building or structure that is generally of a higher quality construction and architectural detail than a utilitarian property and provided space for hospitals, medical care, staff offices or living quarters.

Records Check means VA will request relevant information about whether archaeological historic properties or properties of traditional religious and cultural significance to Indian tribes or NHOs are known to exist within the APE from SHPO, tribal, and relevant federal agency files, records, inventories and databases, or other sources identified by the SHPO.

Underutilized is a building or structure that is currently listed in the Federal Real Property Profile (FRPP) as underutilized (i.e., occupied but the current function does not require all the available space) and has been listed as such for a consecutive period of 12 months or longer. That period includes any time in such a list prior to the adoption of this Program Comment.

Utilitarian property is a building or structure of practical design, usually without much architectural ornamentation, utilizing traditional construction materials, with functions primarily limited to industrial and storage needs. VA’s utilitarian properties tend to have standardized

plans and little architectural design, complexity, or uniqueness, were constructed quickly, and have been determined by VA to have minor or no historic significance and/or diminished or no integrity. Utilitarian properties in VA’s inventory could include, but are not limited to, warehouses, garages and carports, storage sheds, sewage plants, transformer buildings, incinerators, smoking shelters, pump houses, trailers, boiler/power plants, barns, Quonset structures, laundry facilities, golf shacks, gate houses, guard stations, connecting corridors, greenhouses, fall-out shelters, maintenance shops (e.g., machine, paint, vehicle repair, housekeeping), animal research laboratories, and associated research sheds or ancillary buildings.

Note: Buildings and structures that are individually listed, or individually eligible for listing, in the National Register, are not considered “utilitarian properties” for purposes of this Program Comment.

Vacant is a building or structure that is currently listed in the FRPP as vacant/unutilized (i.e., less than 50 percent occupied) and has been listed as such for a consecutive period of 12 months or longer. That period includes any time in such a list prior to the adoption of the Program Comment.

Note: The definitions of “vacant” and “underutilized” in the Program Comment are based on the Federal Real Property Council’s 2018 Guidance for Real Property Inventory Reporting (Version 2—Issue Date: August 27, 2018) and VA Directive 7633, and its accompanying Handbook, Managing Underutilized Real Property Assets, Including Options for Reuse and Disposal (published January 11, 2018). The “vacant” and “underutilized” categories are independent of one another because they assess different patterns (i.e., physical occupation of space versus efficient utilization of space).

3. Annual Publication and Review of VA’s Real Property Portfolio

Every building, structure, or object owned or leased by VA is included in its CAI database, which also records whether a property has been evaluated and found to be historic. Utilizing real property portfolio information in the CAI allows VA a measure of predictability for addressing effects to its historic properties for the undertakings covered by the Program Comment.

The Program Comment distinguishes between non-historic and historic properties, and, among historic properties, between utilitarian and non-utilitarian buildings and structures.

Each year the Program Comment is in effect, once VA provides its real

property information to the FRPP (i.e., December/January), VA will provide the Advisory Council on Historic Preservation (ACHP) with:

(a) A composite list of properties that could be subject to the Program Comment should an applicable undertaking covered by the Program Comment be proposed (i.e., a combined list that incorporates the most current lists of VA’s vacant and underutilized properties as defined in Section 2.2., indicating where the properties are located, those that are historic and non-historic, and those further classified as “utilitarian”); and

(b) a narrative explaining its conclusion that historic utilitarian properties may be eliminated without endangering the continued National Register eligibility of the historic districts in which they are located. The narrative may include examples of situations where such eliminations have occurred with SHPO concurrence.

The ACHP will host a publicly accessible web page that features information on the VA Program Comment and, each year upon receipt of the list and narrative from VA, will post the composite list of properties and narrative on that web page and send electronic mail (using its most recently updated lists) to the National Conference of State Historic Preservation Officers (NCSHPO), SHPOs, Tribal Historic Preservation Officers (THPOs), Indian tribes, NHOs, interested Veterans Service Organizations (VSOs), and ACHP members about its availability, along with a reminder about the timeframes outlined below. For 60 days after the electronic mail is sent, interested parties may request additional information and/or send comments to VA concerning properties on the composite list. For instance, any interested party may: Provide VA with additional information on a property and/or any associated land that it would like VA to take into consideration when proposing any future undertakings for said property; comment on and/or provide relevant information about the relationship between any buildings and structures on the composite list to the campus setting; or comment on and/or provide relevant information about the presence of or potential effects to cultural landscapes, traditional cultural properties, and/or properties of traditional religious and cultural significance to Indian tribes or NHOs. VA will respond to such requests and comments. Also within this 60-day period, SHPOs, THPOs, Indian tribes, and NHOs may object to VA in writing if there is a discrepancy between their files and the eligibility evaluations in

VA's CAI, and/or they believe the elimination of one or more utilitarian properties within particular historic districts in their states could (individually or cumulatively) endanger the continued eligibility of such districts. If any of these parties provide VA such an objection within the 60-day period, VA will either resolve the objection with the party or refer the matter to the ACHP for comments. Upon receipt of the referral, the ACHP has 30 days to provide comments to VA. VA will consider any such timely comments. Thereafter, and prior to proceeding with an undertaking involving the properties at issue, VA will notify the relevant party and the ACHP as to its final decision on the issue.

Within the first year of the Program Comment's adoption, VA will present an implementation webinar to educate interested parties on the Program Comment.

The 60-day period mentioned above will be reduced to 30 days in years subsequent to the first one. The 30-day period afforded the ACHP will be reduced to 15 days in years subsequent to the first one. The ACHP at its discretion may extend that time period for 15 days, in which case it shall notify the agency of such extension prior to the end of the initial 15-day period.

4. Consideration of Properties

4.1. Consideration of Properties Not Yet Evaluated

If any vacant or underutilized building or structure in VA's CAI is being considered for an undertaking subject to this Program Comment and has not yet been evaluated for National Register eligibility, VA will undertake evaluation for eligibility to the National Register pursuant to 36 CFR 800.4 (c). Only evaluated properties can be subject to the Program Comment. Evaluation will be conducted by a person or persons meeting the Secretary of the Interior's Historic Preservation Professional Qualifications Standards in the appropriate discipline found in **Federal Register**, Vol. 62, p. 33,708 (June 20, 1997).

Following concurrence on the evaluation results by the relevant SHPO, VA may proceed with following the applicable section(s) of this Program Comment for either non-historic or historic property. In case of a disagreement between VA and the relevant SHPO, VA will refer the matter to the Keeper of the National Register. VA will proceed in accordance with the Keeper's determination of eligibility.

4.2. Consideration of Non-Historic Properties

Prior to any final approval on a proposed undertaking where there are no historic properties within the APE, VA's Federal Preservation Officer (FPO) will verify in writing for its records (Attachment 1) that the APE is appropriate and there are no historic properties in the APE (note: Non-historic properties includes non-contributing resources to historic districts). Once VA's FPO has completed the verification process, VA will have concluded its Section 106 review for such undertakings.

4.3. Consideration of Historic Properties

4.3.1. Utilitarian Historic Properties

Unless VA agrees otherwise because of the Section 3. consultation process, above, VA will not have any further Section 106 responsibilities regarding its leases, exchanges, sales, transfers, conveyances, deconstruction, or demolition of utilitarian historic properties that contribute to a historic district.

With regard to the maintenance and repair of utilitarian historic properties that contribute to a historic district or non-historic properties located within a historic district, VA will follow Section 5.4.

4.3.2. Non-Utilitarian Historic Properties

Undertakings involving non-utilitarian historic properties will be reviewed in accordance with Section 5., below.

5. Consideration of Non-Utilitarian Historic Properties

These buildings and structures are generally of a higher quality construction and architectural detail than utilitarian properties and provided space for hospitals, medical care, staff offices or living quarters.

When VA determines there is no viable VA need for a non-utilitarian historic property, VA will ensure the property is considered for reuse via EUL or NHPA Section 111 Lease/Exchange as well as a sale, transfer, exchange, or conveyance (if property is severable from the campus) before deconstruction or demolition is considered.

5.1. Leases and Exchanges

The Program Comment aims to incentivize reuse of VA's unneeded historic properties via lease or exchange by creating more certainty within the EUL process for the development of additional supportive housing for homeless veterans, and creating

opportunities for efficiently converting vacant space into educational, training, conference, or other uses for veterans under NHPA Section 111. VA will issue a minimum of two solicitations for possible reuse of unneeded non-utilitarian historic properties through an EUL or NHPA Section 111 lease or exchange in an effort to prioritize the reuse of vacant and underutilized buildings.

VA will give priority consideration to design proposals that conform to the Secretary of the Interior's Standards for the Treatment of Historic Properties (Standards) and will include language in the initial public announcement that informs potential respondents of VA's commitment to this priority consideration.

5.1.1. First Solicitations for Lease or Exchange

VA will market its first solicitation for reuse of a historic property through an EUL or NHPA Section 111 lease for a minimum of 60 days at the national level through the Federal Business Opportunities (www.fbo.gov) platform. VA will consider additional time for solicitation based on level of interest of respondents or public comments. VA may also ask other national media to cross-reference the original posting.

5.1.1.1. Enhanced Use Lease (EUL)

For an EUL, VA's initial public announcement will identify the building or structure as a historic property, and mention that financial incentives and financing options linked to the federal Historic Preservation Tax Incentives may be available to parties interested in leasing a historic property for supportive housing for homeless veterans. An EUL requires local public hearings, and this information will be presented to the affected community. To qualify and receive the tax incentives, the lessee must meet legal requirements and review processes identified in the National Park Service (NPS) Technical Preservation Services Tax Incentives Program and the Internal Revenue Service tax code. If a lessee pursues these financial incentives, and has "Part 1—Evaluation of Significance" and "Part 2—Description of Rehabilitation" of its Historic Preservation Certification Application approved by NPS through the normal submission and review process and requirements, no further reviews will be required related to Section 106.

If the lessee will not pursue federal Historic Preservation Tax Incentives or if Part 2 of its Historic Preservation Certification Application is not approved, VA will submit a design

proposal to the relevant SHPO for its 30-day review and concurrence that the design conforms to the Standards. If VA finds that the proposal does not conform to the Standards, or if the SHPO does not concur with VA's assessment that it does conform, VA will request that the SHPO identify the specific characteristics of the building or structure that qualify the property for the National Register that will be adversely affected by the proposal. VA will encourage modification of the proposal to include retention of these character-defining features.

If the lessee agrees to retention of these specific characteristics, VA will add language confirming their retention to the lease. If the lessee does not agree to retain the qualifying characteristics, VA will notify the relevant SHPO, along with any parties VA identified as additional consulting parties for the relevant property(ies) during the Section 3. consultation process, and ensure the qualifying characteristics are documented prior to removal or alteration or that another form of mitigation of equal or lesser cost that is identified in consultation with the relevant SHPO is carried out. The notification will include VA's estimate of such cost. Prior to any building alteration under the lease, VA will (1) allow the SHPO and other identified parties 30 days after the mentioned notification to submit any ideas for alternate mitigation of equal or lesser cost and (2) take into account any such ideas that are submitted within that timeframe and respond in writing with its decision. For purposes of this subsection, the "cost" is a good faith estimate, by a qualified professional, of the additional cost of preserving and rehabilitating the qualifying characteristics to be removed or altered.

5.1.1.2. NHPA Section 111 Lease or Exchange

NHPA Section 111 leases or exchanges allow a lessee to secure funding for capital improvements and maintenance of historic properties VA does not need. VA will identify the building or structure's historic status in the solicitation for the Request for Expression of Interest (RFEI), Request for Qualifications (RFQ), or Request for Proposal (RFP). If the property was previously considered for an EUL, information about why an EUL was not pursued will inform the NHPA Section 111 solicitation to promote a successful NHPA Section 111 lease and preservation of the property. If a lessee pursues federal Historic Preservation Tax Incentives, and has "Part 1—Evaluation of Significance" and "Part

2—Description of Rehabilitation" of its Historic Preservation Certification Application approved by NPS through the normal submission and review process and requirements, no further reviews will be required related to Section 106.

If the lessee will not pursue federal Historic Preservation Tax Incentives or if Part 2 of its Historic Preservation Certification Application is not approved, VA will submit a design proposal to the relevant SHPO for its 30-day review and concurrence that the design conforms to the Standards. If VA finds that the proposal does not conform to the Standards, or if the SHPO does not concur with VA's assessment that it does conform, VA will request that the SHPO identify the specific characteristics of the building or structure that qualify the property for the National Register that will be adversely affected by the proposal. VA will encourage modification of the proposal to include retention of these character-defining features.

VA will add language incorporating specific requirements of the lessee regarding treatment of the qualifying characteristics to the lease. The lease will include terms to adequately ensure preservation of the historic property; however, this does not prohibit adverse effects if such effects will not disqualify the property from being National Register-eligible.

If the lessee does not agree to retain all of the qualifying characteristics, VA will notify the relevant SHPO, along with any parties VA identified as additional consulting parties for the relevant property(ies) during the Section 3. consultation process, and ensure the qualifying characteristics are documented prior to removal or alteration or that another form of mitigation of equal or lesser cost that is identified in consultation with the relevant SHPO is carried out. The notification will include VA's estimate of such cost. Prior to any alteration under the lease, VA will (1) allow the SHPO and other identified parties 30 days after the mentioned notification to submit any ideas for alternate mitigation of equal or lesser cost and (2) take into account any such ideas that are submitted within that timeframe and respond in writing with its decision. For purposes of this subsection, the "cost" is a good faith estimate, by a qualified professional, of the additional cost of preserving and rehabilitating the qualifying characteristics to be removed or altered.

5.1.2. Second Solicitations for Lease or Exchange

If the first solicitation to reuse a historic property through an EUL or NHPA Section 111 lease or exchange is not successful, VA will again solicit for either an EUL or NHPA Section 111 lease or exchange via RFEI, RFQ, or RFP in the state of the property's location. This second solicitation will be directed to local, state, and/or tribal governments, municipalities, and non-profit organizations that may have a potential program need for space. The solicitation will be listed in state and local newspapers or other local media where a potentially interested party may see it. VA may also request other media to cross-reference the mentioned postings. VA will notify the relevant SHPO, Indian tribes, and veterans' groups of the solicitation so they may further circulate the notice to encourage responses.

If there is no viable response to VA's second solicitation after 60 days, VA may proceed to consideration of the property for sale, transfer, exchange, or conveyance (Section 5.2.). VA will consider additional time for solicitation based on level of interest of respondents or public comments.

5.1.3. Annual Compliance Review of Leases

VA will conduct and document an annual compliance review for the life of any lease. The review ensures the terms of the lease, including any agreed upon historic property treatments, are being met. VA retains the right to terminate the lease in the event its terms are not implemented or followed.

5.2. Sales, Transfers, Exchanges, and Conveyances

For any sale, transfer, exchange, or conveyance from VA out of federal government ownership, VA will either: (a) Include a preservation covenant or conservation easement for non-utilitarian historic properties to prevent future alterations that would disqualify the property from being National Register-eligible; or (b) carry out mitigation of equal or lesser value that VA identifies in consultation with the relevant SHPO and any parties VA identified as additional consulting parties for the relevant property(ies) during the Section 3. consultation process. For purposes of this subsection, such "value" is, as calculated by a professional appraiser with experience in the evaluation of historic properties, the difference between the fair market value of the property before and after

the recording of the preservation covenant or conservation easement.

(a) In the event a preservation covenant or conservation easement is included in the sale, transfer, exchange, or conveyance for non-utilitarian historic properties, the holder would be identified at the time of each individual real property transaction. This process allows for the flexibility of negotiation unique to the circumstances of the sale, transfer, exchange, or conveyance of a particular historic property. VA will grant the covenant or easement to an organization (either private, nonprofit, or government) with access to qualified historic preservation expertise. VA will submit a draft of the preservation covenant or conservation easement to the relevant SHPO and other identified parties for a 30-day review and comment period. If after 30 days, there is no agreement on the language to be included in the covenant or easement, VA will refer the matter to the ACHP for comments. Upon receipt of the referral, the ACHP has 15 days to provide comments to VA. VA will consider any such timely comments and respond in writing with its decision. The ACHP at its discretion may extend that time period for 15 days, in which case it shall notify VA of such extension prior to the end of the initial 15-day period.

(b) For any non-utilitarian historic property being considered for sale, transfer, exchange, or conveyance to a non-federal party without a covenant or easement, VA will consult for 30 days with the relevant SHPO to determine appropriate mitigation prior to completing the real estate transaction. If after 30 days there is no agreement on the mitigation, VA will refer the matter to the ACHP for comments. Upon receipt of the referral, the ACHP has 15 days to provide comments to VA. VA will consider any such timely comments and respond in writing with its decision. The ACHP at its discretion may extend that time period for 15 days, in which case it shall notify VA of such extension prior to the end of the initial 15-day period.

VA will, prior to the transaction being concluded, complete any mitigation agreed upon in consultation.

For any sale, transfer, exchange, or conveyance from VA to another federal agency, VA will take no further actions to document or protect the historic property.

5.3. Deconstruction and Demolition

If there is no viable response to solicitations for an EUL or NHPA Section 111 lease or exchange per Section 5.1., VA determines that a sale, transfer, exchange, or conveyance is not

feasible per Section 5.2., and VA continues to have no use for a non-utilitarian historic property, VA may proceed with deconstruction or demolition of the property without any further consultation after notifying the relevant SHPO, any parties VA identified as additional consulting parties for the relevant property(ies) during the Section 3. consultation process, and the ACHP that it is doing so.

However, if an entire historic district that up to this point in the process had been subject to the Program Comment is proposed for deconstruction or demolition, VA will consult for 90 days with the relevant SHPO and any parties VA identified as additional consulting parties for the relevant property(ies) during the Section 3. consultation process to develop a Memorandum of Agreement (MOA). If after 90 days there is no agreement on the terms of the MOA, VA will refer the matter to the ACHP for comments. Upon receipt of the referral, the ACHP has 30 days to provide comments to VA. VA will consider any such timely comments and respond in writing with its decision.

Prior to deconstruction or demolition of a non-utilitarian historic property, VA will either: (a) Complete a Historic American Buildings Survey (HABS), Historic American Engineering Record (HAER), or Historic American Landscape Survey (HALS) documentation package, in accordance with the applicable guidelines, or (b) carry out another form of mitigation of equal or lesser cost that is identified in consultation with the relevant SHPO and any parties VA identified as additional consulting parties for the relevant property(ies) during the Section 3. consultation process. For purposes of this subsection, the "cost" is a good faith estimate, by a qualified professional, of the cost of producing the HABS/HAER/HALS documentation. If the mitigation detailed in (a) is pursued, the documentation will be submitted to NPS for inclusion in the HABS/HAER/HALS collection, submitted to the relevant SHPO, and will be distributed in digital form to the ACHP, NCSHPO, National Association of Tribal Historic Preservation Officers (NATHPO), National Trust for Historic Preservation, and VSOs upon request. If another form of mitigation is pursued as detailed in (b), VA will consult for 30 days with the relevant SHPO and any parties VA identified as additional consulting parties for the relevant property(ies) during the Section 3. consultation process to determine the type of mitigation appropriate. If after 30 days there is no agreement on the

alternate mitigation, VA will refer the matter to the ACHP for comments. Upon receipt of the referral, the ACHP has 15 days to provide comments to VA. VA will consider any such timely comments and respond in writing with its decision. The ACHP at its discretion may extend that time period for 15 days, in which case it shall notify VA of such extension prior to the end of the initial 15-day period.

5.4. Maintenance and Repair of Non-Historic and Utilitarian Historic Properties

Maintenance and repair is limited to vacant and underutilized non-historic properties and historic properties that VA has categorized as "utilitarian." Routine maintenance and repair activities are included under the scope of this Program Comment with the goal of making it easier to undertake such improvements to prevent these properties from remaining vacant or underutilized. A building or structure that is no longer vacant or underutilized is no longer subject to the Program Comment, and is less likely to be proposed for disposal. For maintenance and repair activities on utilitarian historic properties, VA will encourage in-kind repairs, meaning that new materials used in repairs or replacements match the material being repaired or replaced in design, color, texture, other visual properties, and, where possible, materials. VA's FPO will verify in writing for its records (Attachment 1) that the proposed maintenance and repair activities on utilitarian historic properties meet the common-sense definition of "routine" and where feasible, are performed in-kind. Major alterations (*e.g.*, additions that substantially increase the square footage of a building or structure) are not considered routine maintenance and repair.

6. Programmatic Mitigation

Since additional documentation for utilitarian historic properties described in Sections 2.2 and 4.3.1. will not be carried out, VA will develop, within five years, a public benefit document based on existing literature in archives, available VA documentation, photographs, and other source material. This document will be crafted specifically with veterans and the lay public as its audience. VA has generated substantial technical documentation on its properties (about 7,325 of its 8,350 buildings and structures [88 percent] have been evaluated). VA recognizes that while that information may be publicly available, it is not in a format that is readily accessible or of interest to

a wide audience. VA will use this information to develop a study grounded in the fields of anthropology, sociology, and geography to explore how veterans, and the way the U.S. government has cared for those veterans, have shaped the physical geography of VA's buildings, structures, and landscapes.

The emphasis will be the cultural geography of VA over time—a study of the relationship between VA culture and place over three identified generations of its history. The three generational periods are (1) post-Civil War, (2) WWI through end of WWII, and (3) post-WWII through 1958. The document will explore how VA culture developed out of local landscapes but also shaped those landscapes, and will examine the interaction between the natural landscape and the veterans creating the cultural landscape. The document will focus on how VA shaped its particular facilities through the built environment, which encompasses places and spaces created or modified by people, and how those places and spaces reflect the people who produced them. It will address the different roles utilitarian buildings and structures serve on VA's medical campuses and national cemeteries and include information on where and how designed landscapes contribute to the National Register eligibility of campuses.

Prior to finalization, VA will provide the ACHP, NCSHPO, NATHPO, and interested VSOs a draft of the document for their 30-day review and comment. Once finalized, the document will be available for download on VA's website.

7. Review of Undertakings

All VA facilities and campuses utilizing the Program Comment will complete the VA Program Comment Form (Attachment 1) and submit it to VA's FPO. VA's FPO will review and retain all forms to ensure appropriate use of the Program Comment. The VA facility or campus must receive approval from the FPO prior to commencing the undertaking. VA will compile statistics annually at the end of each fiscal year for the duration of the Program Comment.

Summary information about utilization of the Program Comment compiled by VA's FPO will be updated annually, available from VA's website, and included in VA's Executive Order 13287 Section 3 reports. VA will notify the ACHP and NCSHPO when the annually updated summary information is available.

Once the summary information is available, VA will convene an annual meeting with the ACHP, NCSHPO,

NATHPO, National Trust for Historic Preservation, and interested VSOs to report on use of the VA Program Comment. The annual meeting will include the opportunity to discuss the composite list of VA properties provided during the Section 3 consultation process (see Attachment 2 for more detail about the annual meeting).

8. Consideration of Archaeological Properties and Properties of Traditional Religious and Cultural Significance to Indian Tribes or NHOs

When an undertaking is proposed under the Program Comment, VA's FPO will verify the potential for ground disturbance activities associated with that undertaking as submitted. If there is the potential for ground disturbance activities, VA will proceed as follows:

8.1. Further Identification Efforts Required

If there are ground disturbance activities proposed for areas outside the area of original/previous disturbance and VA has no internal record that this land has been previously surveyed for archaeological historic properties or properties of traditional religious and cultural significance to Indian tribes or NHOs, VA will:

a. Notify the relevant SHPO, Indian tribes, and NHOs of VA's intent to follow this Program Comment, provide these parties with a proposed APE, and request comments on the APE and any information regarding known historic properties within the relevant APE be provided to VA within 30 days.

b. Complete a Records Check to identify any archaeological historic properties within the APE of which VA does not already have a record. If a Records Check reveals no information on the presence of archaeological historic properties within the APE, VA will consult with the relevant SHPO, Indian tribes, and NHOs to determine whether, based on professional expertise, tribal culture and history, familiarity with the area, and similar geomorphology elsewhere, the APE includes areas that have a high probability of containing National Register-eligible archaeological properties. If so, those areas within the APE will be avoided. If they cannot be avoided, VA will consult with the SHPO, Indian tribes, and NHOs to determine whether a survey or monitoring program should be carried out to identify historic properties. VA will consider any comments or additional information provided by the SHPO, Indian tribes, and NHOs received within 30 days of the notification prior

to making a final decision on its efforts to identify such historic properties.

c. If historic properties are identified, VA will follow the steps at 36 CFR 800.13(b) (Post-review Discoveries).

8.2. No Further Identification Efforts Required

If the area where ground disturbance activities are proposed falls under one or more of the below criteria, VA has no further responsibilities to identify archaeological historic properties or properties of traditional religious and cultural significance to Indian tribes or NHOs prior to implementing the undertaking. VA will follow the steps at 36 CFR 800.13(b) (Post-review Discoveries), if historic properties are discovered or unanticipated effects on historic properties are found during the implementation of the undertaking.

a. If the land has been previously surveyed or reviewed by interested Indian tribes or NHOs or been the subject of previous consultation, and no historic properties of traditional religious and cultural significance to Indian tribes or NHOs have been identified whose National Register qualifying characteristics would be adversely affected; or

b. If the land has been previously field surveyed by a qualified professional for archaeological resources and there have been no archaeological historic properties nor historic properties of traditional religious and cultural significance to Indian tribes or NHOs located within the APE whose National Register qualifying characteristics would be adversely affected; or

c. If the land has been previously disturbed to the extent and depth where the probability of finding intact archaeological historic properties is low; or

d. If the land is not considered to have a high probability for archaeological historic properties by a qualified professional based on professional expertise, familiarity with the area, and similar geomorphology elsewhere.

9. Effect of Program Comment

By adhering to the terms of this Program Comment, VA meets its responsibilities for compliance under Section 106 of the NHPA for disposals, leases, or exchanges of its vacant and underutilized properties, and maintenance or repair of such properties that are non-historic or utilitarian historic. VA is no longer required to follow the process set forth in 36 CFR 800.3–800.7 for case-by-case reviews for each of these individual undertakings.

This Program Comment will remain in effect for 10 years from issuance

unless, prior to that time, VA determines that such comments are no longer needed and notifies the ACHP, in writing, or the ACHP withdraws the Program Comment in accordance with 36 CFR 800.14(e)(6). Following such withdrawal, VA will again be required to comply with Section 106 through the process in 36 CFR 800.3–800.7, or an applicable program alternative under 36 CFR 800.14, for each individual undertaking formerly covered by this Program Comment.

During the first six months of the ninth year since issuance of this Program Comment, VA and the ACHP will meet to determine whether to consider an extension to its term. Such an extension would need to be pursued through an amendment, as detailed below.

10. Amendment

The ACHP may amend this Program Comment after consulting with VA, and other parties as appropriate. The ACHP will publish notice in the **Federal Register** to that effect within 30 days after its decision to amend this Program Comment.

Attachment 1: VA Program Comment Form 1–A

This Section To Be Completed by Facility Staff

Facility Name and Location:

Building Number:

Date building vacated and/or number of years vacant:

Date building listed as underutilized and/or number of years underutilized:

Type of building: __utilitarian __non-utilitarian

Photo: insert below

Describe Proposed Undertaking/Action:

Please Circle the Applicable Undertaking and give an explanation:

- (1) Enhanced Use Leases, NHPA Section 111 Leases and Exchanges
- (2) Sales, Transfers, Exchanges, Conveyances
- (3) Deconstruction, Demolition
- (4) Maintenance and repair of non-historic properties and utilitarian historic properties

Are there any ground-disturbing activities associated with Undertaking?

If yes, describe the activities in detail and include a map indicating where these activities will likely occur (Area of Potential Effects):

Has the APE been previously surveyed for archaeological historic properties or properties of traditional religious and cultural significance to Indian tribes or Native Hawaiian organizations?

If yes, reference reports:

Your Name:

Title:

Email address:

Phone number:

Signature:

Date:

This Section To Be Completed by VA's Federal Preservation Officer

Historic Evaluation:

—Date

—Historic Status

Comments:

VA FPO Approval Signature:

Date:

Attachment 2: Annual Meeting Protocol

Annual Meeting Protocol

A. *Annual Meeting:* A meeting among VA, ACHP, NCSHPO, NATHPO, National Trust for Historic Preservation, and interested VSOs will be coordinated on an annual basis for the duration of this Program Comment.

B. *Topics:* At least two weeks prior to these meetings, VA will provide the other parties with the following information (subject to the confidentiality requirements of 36 CFR 800.11(c), and other applicable laws):

1. A list of all undertakings reviewed in the previous year under Sections 4 through 8 of this Program Comment, including the following:

- a. Building or site identification, including location;
- b. a brief undertaking description;
- c. portfolio outcome, with completion date;

C. *Assessing Overall Effectiveness:* In addition to providing an opportunity for the parties to discuss the specific information described in paragraph B, the annual meetings will also provide the parties an opportunity to assess the overall effectiveness of the Program Comment in addressing the preservation of historic properties, consistent with the operational mission and activities of VA. Specifically, the annual meetings will provide the parties an opportunity to discuss the planning, design, review, and implementation of undertakings affecting historic properties, and to discuss and evaluate the following issues:

1. Whether the time periods allocated for review and consultation in the Program Comment have been adequate to ensure consideration of potential alternatives that avoid, minimize, or mitigate harm to historic properties; and
2. Whether problems or misunderstandings have arisen in the course of applying the Program Comment and, if so, how those problems could be avoided in the future.

Authority: 36 CFR 800.14(e).

Dated: October 22, 2018.

John M. Fowler,

Executive Director.

[FR Doc. 2018–23397 Filed 10–25–18; 8:45 am]

BILLING CODE 4310–K6–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2014–0713]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–NEW

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for the following collection of information: 1625–NEW, State Registration Data. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before November 26, 2018.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2014–0713] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email:* dhsdeskofficer@omb.eop.gov.

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: COMMANDANT (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An

ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG-2014-0713], and must be received by November 26, 2018.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24,

2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at <https://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625-NEW.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day Notice (81 FR 85987, November 29, 2016) required by 44 U.S.C. 3506(c)(2). The Coast Guard previously published a 60-day Notice for this ICR on October 7, 2014 (79 FR 60483). The comments from that Notice were addressed in the latest 60-day Notice (81 FR 85987), November 29, 2016). The present 60-day Notice elicited several questions from a single commenter.

Comment (1) A commenter questioned the Coast Guard's response to previously submitted comment (6) in which the Coast Guard noted a reduced reporting burden with the revised form. The commenter noted that the burden is not reduced since collecting aspects of vessels such as hull material and engine type are already required under 33 CFR 174 even if statistics regarding these aspects are not required on form CGHQ-3923.

Answer: The burden of filling out the revised form is reduced. On the previous version of CGHQ-3923, the Coast Guard required statistics on over 150 data points whereas the proposed version of the form requires only 69. The previous version requested information on five variables (vessel type, hull material, length, engine type and use) whereas the proposed version requires only three variables (vessel type, length, primary operation). The Coast Guard expects a reduced burden as the proposed form will require fewer queries and fewer data point checks to complete it.

Comment (2) A commenter questioned why aspects of vessels such as hull material and engine type are necessary in 33 CFR 174 since they are not required elements to be reported on form CGHQ-3923.

Answer: Various aspects of vessels are required to be collected for law enforcement purposes. Even though various vessel aspects such as hull material and engine type are not on the proposed form CGHQ-3923, they are used in accident, theft, and fraud investigations. Using common

terminology facilitates common understanding.

Comment (3) A commenter noted that hull material and engine type are of interest to sectors and should be on form CGHQ-3923 since information on them cannot be obtained outside of CGHQ-3923.

Answer: The Coast Guard works with various sectors including government, industry, non-profits, and researchers. If a party requested information other than what is available on CGHQ-3923, the Coast Guard would direct the user to a more appropriate contact.

Comment (4) A commenter provided a recommended version of CGHQ-3923 that is a modification of the previous CGHQ-3923. It includes additional hull material entries, an additional engine type, and changes the names of some categories.

Answer: The Coast Guard thanks the commenter for the suggested form but maintains a desire to have a simplified form for use by the States. The Coast Guard has not used the hull material or engine information collected previously. Because we have not used the data, we removed it from the form so as to reduce the burden of data reporting on the States.

Information Collection Request

Title: State Registration Data.

OMB Control Number: 1625-NEW.

Summary: This file provides information on the collection of registration data from the State reporting authorities.

Need: 46 U.S.C. 12302 and 33 CFR 174.123 authorize the collection of this information. Registration data is used for statistical purposes.

Forms: CGHQ-3923, State Registration Data.

Respondents: 56 State reporting authorities respond.

Frequency: Annually.

Hour Burden Estimate: This is a new information collection; the estimated annual burden is 42 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: 23 October 2018.

James D. Roppel,

U.S. Coast Guard, Acting Chief, Office of Information Management.

[FR Doc. 2018-23477 Filed 10-25-18; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[ADM-9-03 OT:RR:RD:TC H300753 MS]

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public that the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties will remain the same from the previous quarter. For the calendar quarter beginning October 1, 2018, the interest rates for overpayments will be 4 percent for corporations and 5 percent for non-corporations, and the interest rate for underpayments will be 5 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

DATES: The rates announced in this notice are applicable as of October 1, 2018.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Revenue Division, Collection Refunds & Analysis Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 298-1107.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 provides different interest rates applicable to overpayments: One for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2018-25, the IRS determined the rates of interest for the calendar quarter beginning October 1, 2018, and ending on December 31, 2018. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (2%) plus three percentage points (3%) for a total of five percent (5%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (2%) plus two percentage points (2%) for a total of four percent (4%). For overpayments made by non-corporations, the rate is the Federal short-term rate (2%) plus three percentage points (3%) for a total of five percent (5%). These interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties are the same from the previous quarter. These interest rates are subject to change for the calendar quarter beginning January 1, 2019, and ending March 31, 2019.

For the convenience of the importing public and U.S. Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Under payments (percent)	Overpayments (percent)	Corporate overpayments (Eff. 1-1-99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8

Beginning date	Ending date	Under payments (percent)	Overpayments (percent)	Corporate overpayments (Eff. 1-1-99) (percent)
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3
100111	033116	3	3	2
040116	033118	4	4	3
040118	123118	5	5	4

Dated: October 23, 2018.

Samuel D. Grable,

Assistant Commissioner and Chief Financial Officer, Office of Finance.

[FR Doc. 2018-23469 Filed 10-25-18; 8:45 am]

BILLING CODE 9111-14-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. 4 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 October 10, 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 disaster is closed effective September 29, 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. 2018-23378 Filed 10-25-18; 8:45 am]

BILLING CODE 9111-11-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-3401-EM; Docket ID FEMA-2018-0001]

North Carolina; 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 State of North Carolina (FEMA-3401-

EM), dated September 10, 2018, and related determinations.

DATES: This amendment was issued October 10, 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 29, 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. 2018-23381 Filed 10-25-18; 8:45 am]

BILLING CODE 9111-11-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2018-0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate

appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of December 21, 2018 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at <https://msc.fema.gov> by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Map Information eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified

flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at <https://msc.fema.gov>.

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below. (Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

David I. Maurstad,
Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Alameda County, California and Incorporated Areas Docket No.: FEMA-B-1532	
City of Alameda	City Hall West, 950 West Mall Square, Room 110, Alameda, CA 94501.
City of Albany	City Hall, 1000 San Pablo Avenue, Albany, CA 94706.
City of Berkeley	Permit Service Center, 2120 Milvia Street, Berkeley, CA 94704.
City of Emeryville	Engineering Department, 1333 Park Avenue, Emeryville, CA 94608.
City of Hayward	City Hall, 777 B Street, Hayward, CA 94541.
City of Oakland	Permit Center, 250 Frank H. Ogawa Plaza, Room 2114, 2nd Floor, Oakland, CA 94612.
City of San Leandro	Division of Building and Safety, 835 East 14th Street, San Leandro, CA 94577.
Unincorporated Areas of Alameda County	Public Works Agency, 399 Elmhurst Street, #113, Hayward, CA 94544.
Los Angeles County, California and Incorporated Areas Docket Nos.: FEMA-B-1553, FEMA-B-1664 & FEMA-B-1720	
City of Culver City	City Hall, 9770 Culver Boulevard, 2nd Floor, Culver City, CA 90232.
City of Los Angeles	Department of Public Works, 1149 South Broadway, Suite 810, Los Angeles, CA 90015.
Unincorporated Areas of Los Angeles County	Los Angeles County Watershed Management, 900 South Fremont Avenue, Alhambra, CA 91803.
Jasper County, Indiana and Incorporated Areas Docket Nos.: FEMA-B-1276 and FEMA-B-1648	
City of Rensselaer	City Hall, Building Department, 124 South Van Rensselaer Street, Rensselaer, IN 47978.
Town of DeMotte	Town Hall, 112 Carnation Street SE, DeMotte, IN 46310.
Town of Remington	Town Hall, 24 South Indiana Street, Remington, IN 47977.
Town of Wheatfield	Town Hall, 170 South Grace Street, Wheatfield, IN 46392.

Community	Community map repository address
Unincorporated Areas of Jasper County	Jasper County Planning and Development, Jasper County Courthouse, 115 West Washington Street, Suite 109, Rensselaer, IN 47978.

**Lafayette Parish, Louisiana and Incorporated Areas
Docket No.: FEMA-B-1515 and FEMA-B-1724**

City of Broussard	City Hall, 310 East Main Street, Broussard, LA 70518.
City of Carencro	City Hall, Planning Department, 210 East St. Peter Street, Carencro, LA 70520.
City of Lafayette	Department of Planning, Zoning and Development, 220 West Willow Street, Building B, Lafayette, LA 70501.
City of Scott	City Hall, 125 Lions Club Road, Scott, LA 70583.
City of Youngsville	City Hall, 305 Iberia Street, Youngsville, LA 70592.
Town of Duson	Town Hall, 498 Toby Mouton Road, Duson, LA 70529.
Unincorporated Areas Lafayette Parish	Department of Planning, Zoning and Development, 220 West Willow Street, Building B, Lafayette, LA 70501.

**Carver County, Minnesota and Incorporated Areas
Docket No.: FEMA-B-1657**

City of Carver	City Hall, 801 Jonathan Carver Parkway, Carver, MN 55315.
City of Chanhassen	City Hall, Planning Department, 7700 Market Boulevard, Chanhassen, MN 55317.
City of Chaska	City Hall, One City Hall Plaza, Chaska, MN 55318.
City of Cologne	City Hall, 1211 Village Parkway, Cologne, MN 55322.
City of Mayer	City Hall, 413 Blue Jay Avenue, Mayer, MN 55360.
City of New Germany	Carver County Courthouse, Public Health & Environment Division, 600 East 4th Street, Chaska, MN 55318.
City of Norwood Young America	City Hall, 310 Elm Street West, Norwood Young America, MN 55368.
City of Victoria	City Hall, 1670 Stieger Lake Lane, Victoria, MN 55386.
City of Waconia	City Hall, 201 South Vine Street, Waconia, MN 55387.
City of Watertown	City Hall, 309 Lewis Avenue South, Watertown, MN 55388.
Unincorporated Areas of Carver County	Carver County Courthouse, Public Health & Environment Division, 600 East 4th Street, Chaska, MN 55318.

[FR Doc. 2018-23383 Filed 10-25-18; 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. 6 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 October 14, 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 areas 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.

Anson and Union Counties for Individual Assistance (already designated for Public Assistance).

Orange County for Individual Assistance. (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. 2018-23380 Filed 10-25-18; 8:45 am]

BILLING CODE 9111-11-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4399-DR; Docket ID FEMA-2018-0001]

Florida; Amendment No. 2 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 Florida (FEMA-4399-DR), dated October 11, 2018, and related determinations.

DATES: This amendment was issued October 13, 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 Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 11, 2018.

Holmes and Washington Counties 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. 2018-23379 Filed 10-25-18; 8:45 am]

BILLING CODE 9111-11-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2018-0002; Internal Agency Docket No. FEMA-B-1857]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment

regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before January 24, 2019.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://www.fema.gov/preliminaryfloodhazarddata> and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA-B-1857, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Map Information eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact

stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at https://www.floodsrp.org/pdfs/srp_overview.pdf.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location <https://www.fema.gov/preliminaryfloodhazarddata> and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Lane County, Oregon and Incorporated Areas Project: 12-10-0400S Preliminary Date: March 29, 2018	
City of Dunes City	Dunes City, City Hall, 82877 Spruce Street, Westlake, OR 97493.
City of Florence	City Hall, 2675 Kingwood Street, Florence, OR 97439.
Unincorporated Areas of Lane County	Lane County Customer Service Center, 3050 North Delta Highway, Eugene, OR 97401.

[FR Doc. 2018-23377 Filed 10-25-18; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2018-0057]

The President's National Security Telecommunications Advisory Committee**AGENCY:** Department of Homeland Security.**ACTION:** Committee management; notice of Federal Advisory Committee Meeting.**SUMMARY:** The President's National Security Telecommunications Advisory Committee (NSTAC) will meet on Wednesday November 14, 2018, in Washington, DC. The meeting will be partially closed to the public.**DATES:** The NSTAC will meet on Wednesday November 14, 2018, from 9:30 a.m. to 3:30 p.m. Eastern Time (ET). Please note that the meeting may close early if the committee has completed its business.**ADDRESSES:** The November 2018 NSTAC Meeting's open session will be held at the Eisenhower Executive Office Building, Washington, DC. Due to limited seating, requests to attend in person will be accepted and processed in the order in which they are received. The meeting's proceedings will also be available via Webcast at <http://www.whitehouse.gov/live>, for those who cannot attend in person. Individuals who intend to participate in the meeting will need to register by sending an email to NSTAC@hq.dhs.gov by 5:00 p.m. ET on Thursday, November 8, 2018. For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, or to attend in person, contact NSTAC@hq.dhs.gov as soon as possible.Members of the public are invited to provide comment on the issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated briefing materials that participants may discuss during the meeting will be available at www.dhs.gov/nstac for review as of Thursday, November 8, 2018.

Comments may be submitted at any time and must be identified by docket number DHS-2018-0057. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Please follow the instructions for submitting written comments.

- *Email:* NSTAC@hq.dhs.gov. Include the docket number DHS-2018-0057 in the subject line of the email.

- *Fax:* (703) 705-6190, ATTN: Sandy Benevides.

- *Mail:* Designated Federal Official, Stakeholder Engagement and Critical Infrastructure Resilience Division, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, Mail Stop 0612, Arlington, VA 20598-0612.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at www.regulations.gov, including any personal information provided.**Docket:** For access to the docket and comments received by the NSTAC, please go to www.regulations.gov and enter docket number DHS-2018-0057.A public comment period will be held during the meeting on Wednesday, November 14, 2018, from 2:30 p.m. to 3:00 p.m. ET. Speakers who wish to participate in the public comment period must register in advance by no later than Thursday, November 8, 2018, at 5:00 p.m. ET by emailing NSTAC@hq.dhs.gov. Speakers are requested to limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.**FOR FURTHER INFORMATION CONTACT:**Helen Jackson, NSTAC Designated Federal Official, Department of Homeland Security, (703) 705-6276 (telephone) or helen.jackson@hq.dhs.gov (email).**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under *the Federal Advisory Committee Act (FACA)*, 5 U.S.C. Appendix (Pub. L. 92-463). The

NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications and cybersecurity policy.

Agenda: The committee will meet in an open session on November 14, 2018, and receive remarks from Department of Homeland Security (DHS) leadership and other senior Government officials regarding the Government's current cybersecurity initiatives and NS/EP priorities. The meeting will include a keynote address. NSTAC members will also deliberate and vote on the *NSTAC Report to the President on a Cybersecurity Moonshot*. The goal of this study is to examine and expedite progress against the nation's critical cybersecurity challenges. The committee examined various approaches to a cybersecurity Moonshot and developed recommendations that steer the Administration towards a shared, strategic vision and an ambitious, outcome-focused cybersecurity end-goal. Additionally, NSTAC members will receive a status update on the *Advancing Resiliency and Fostering Innovation in the ICT Ecosystem* study, which is examining technology capabilities that are critical to NS/EP functions in the evolving ICT ecosystem and Government measures and policy actions to manage near term risks, support innovation, and enhance vendor diversity for NS/EP-critical capabilities.

The committee will also meet in a closed session from 10:00 a.m. to 12:00 p.m. to receive a classified briefing regarding cybersecurity threats.

Basis for Closure: In accordance with 5 U.S.C. 552b(c)(1)(A) and (9)(B), *The Government in the Sunshine Act*, it has been determined that one agenda item requires closure, as the disclosure of the information discussed would not be in the public interest.

The classified briefing and discussion will provide members with a cybersecurity threat briefing on vulnerabilities related to the communications infrastructure. Disclosure of these threats would provide criminals who seek to compromise commercial and Government networks with information

on potential vulnerabilities and mitigation techniques, weakening the Nation's cybersecurity posture. This briefing will be at the classified top secret/sensitive compartmented information level, thereby exempting disclosure of the content by statute. Therefore, this portion of the meeting is required to be closed pursuant to 5 U.S.C. 552b(c)(1)(A) & (9)(B).

Dated: October 19, 2018.

Helen Jackson,

Designated Federal Officer for the NSTAC.

[FR Doc. 2018-23464 Filed 10-25-18; 8:45 am]

BILLING CODE 9110-9P-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000-XXX-L19100000.BK0000-LRCSE1802700; MO# 4500129344]

Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey for the lands described in this notice are scheduled to be officially filed 30 calendar days after the date of this publication in the BLM Montana State Office, Billings, Montana.

DATES: Protests must be received by the BLM Montana State Office by November 26, 2018.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101, upon required payment. The plats may be viewed at this location at no cost. A person or party who wishes to protest an official filing of a plat of survey must file a written notice of protest with the BLM Chief Cadastral Surveyor for Montana at this same address.

FOR FURTHER INFORMATION CONTACT: Josh Alexander, BLM Chief Cadastral Surveyor for Montana; telephone: (406) 896-5123; email: jalexand@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (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: The survey was conducted at the request of the Department of Veterans Affairs,

Office of Real Property, Washington, DC, as provided for by Public Law 115-175, the Black Hills National Cemetery Boundary Expansion Act, and Interagency Agreement No. 36C10F-18-M-3356, executed with the Department of Veterans Affairs, Office of Real Property, Washington, DC, dated August 8, 2018. The survey is necessary to establish the boundary and legal description of lands to be transferred from the administrative jurisdiction of Secretary of the Interior, BLM, to the Secretary of Veterans Affairs for use as a national cemetery in accordance with Public Law 115-175.

The lands surveyed are:

Black Hills Meridian, South Dakota

T. 5 N, R. 5 E
Secs. 23 and 26.

The survey includes the following described land to be transferred under the authority of Public Law 115-175 as follows:

Black Hills Meridian, South Dakota

T. 5 N, R. 5 E
Tract 40.

Containing 181.32 acres, all in Meade County, South Dakota

The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be received in the BLM Montana State Office no later than the scheduled date of the proposed official filing for the plat(s) of survey being protested; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of the protest, if not filed with the notice of protest, must be filed with the BLM Chief Cadastral Surveyor for Montana within 30 calendar days after the notice of protest is received.

If a notice of protest of the plat(s) of survey is received prior to the scheduled date of official filing or during the 10 calendar day grace period provided in 43 CFR 4.401(a) and the delay in filing is waived, the official filing of the plat(s) of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day after all timely protests have been dismissed or otherwise resolved, including appeals.

If a notice of protest is received after the scheduled date of official filing and the 10 calendar day grace period provided in 43 CFR 4.401(a), the notice of protest will be untimely, may not be considered, and may be dismissed.

Before including your address, phone number, email address, or other personal identifying information in a

notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C. Chapter 3)

Joshua F. Alexander,

Chief Cadastral Surveyor for Montana.

[FR Doc. 2018-23489 Filed 10-25-18; 8:45 am]

BILLING CODE 4310-DN-P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Environmental Impact Statement on the Liberty Development and Production Plan in the Beaufort Sea Planning Area

AGENCY: Bureau of Ocean Energy Management (BOEM), Department of the Interior.

ACTION: Notice of Availability of a Record of Decision.

SUMMARY: BOEM is announcing the availability of the Record of Decision for the Final Environmental Impact Statement (FEIS) for the Liberty Development and Production Plan (DPP) in the Beaufort Sea Planning Area. The Record of Decision identifies the Bureau's selected alternative for the Liberty DPP. The Record of Decision and associated information are available on BOEM's website at <https://www.boem.gov/liberty>.

FOR FURTHER INFORMATION CONTACT: Lauren Boldrick, Project Manager, Bureau of Ocean Energy Management, Alaska OCS Region, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503, 907-334-5200.

SUPPLEMENTARY INFORMATION: The proposed action would recover and process oil from the Liberty oil field and transport sales-quality oil to market. To accomplish this, Hilcorp Alaska, LLC would construct the Liberty Drilling and Production Island (LDPI) to recover reserves from three Federal leases (OCS-Y-1585, OCS-Y-1650, and OCS-Y-1886) in Foggy Island Bay of the Beaufort Sea. The ocean bottom footprint of the proposed LDPI is approximately 24 acres. Hilcorp would construct a new pipeline linking the LDPI to the Badami Sales Oil Pipeline (Badami pipeline). They would bury the subsea portion (approximately 5.6 miles) of the pipeline along a route

running south from the LDPI to the Alaska coastline west of the Kadleroshilik River. The pipeline would transition to above-ground for approximately 1.5 miles and tie into the existing Badami pipeline. Hilcorp would produce and process oil from the LDPI, transport it through the Badami pipeline to the existing common carrier pipeline system, and from there on to the Trans-Alaska Pipeline System.

After careful consideration, the Department of the Interior (DOI) has selected the Proposed Action (Alternative 1) with additional mitigation measures analyzed in the Liberty DPP FEIS. DOI's selection of the Proposed Action meets the purpose and need as identified in the Liberty DPP FEIS, and reflects an informed decision balancing orderly resource development with protection of the human, marine, and coastal environments. The full text of the mitigation measures which will be included in the project approval are available in the Record of Decision, which is available on BOEM's website at: www.boem.gov/liberty.

Authority: This Notice of Availability is published pursuant to regulations (40 CFR part 1506) implementing the provisions of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: October 19, 2018.

Walter D. Cruickshank,

Acting Director, Bureau of Ocean Energy Management.

[FR Doc. 2018-23366 Filed 10-25-18; 8:45 am]

BILLING CODE 4310-MR-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-944 (Modification Proceeding)]

Certain Network Devices, Related Software and Components Thereof (I); Institution of Modification Proceeding; Request for Briefing

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute a modification proceeding in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Amanda P. Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2737. 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 at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the investigation on January 27, 2015, based on a complaint filed on behalf of Cisco Systems, Inc. ("Cisco") of San Jose, California. 80 FR 4314-15 (Jan. 27, 2015). The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain network devices, related software and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,162,537 ("the '537 patent"); U.S. Patent No. 8,356,296; U.S. Patent No. 7,290,164 ("the '164 patent"); U.S. Patent No. 7,340,597; U.S. Patent No. 6,741,592 ("the '592 patent"); and U.S. Patent No. 7,200,145, and alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complaint named Arista Networks, Inc. ("Arista") of Santa Clara, California as the respondent. A Commission investigative attorney ("OUII") is participating in the investigation.

On June 23, 2016, the Commission found that a Section 337 violation had occurred as to the '537, '592, and '145 patents and therefore issued a limited exclusion order and a cease and desist order against Arista. 81 FR 42375-76 (June 29, 2016).

On August 28, 2018, Cisco filed a petition pursuant to Commission Rule 210.76 to suspend the remedial orders issued in this investigation based on a settlement agreement between Cisco and Arista. Neither Arista nor OUII filed a response.

On September 21, 2018, the Commission extended the time for determining whether to institute the requested proceeding until October 22, 2018.

The Commission has determined that Cisco's request complies with the requirements for institution of a

modification proceeding under Commission Rule 210.76 due to changed circumstances. Accordingly, the Commission has determined to institute a modification proceeding. The Commission sets the target date for completion of the modification proceeding as 90 days after publication of this notice in the **Federal Register**.

The Commission requests that the parties brief the following issue:

1. Given the parties' representations (1) that they have entered into a binding settlement wherein Arista must "maintain the modifications it has made to its current products for sale in the United States," Pet. at 1, Exh. A at 9; and (2) that "Commission Rule 210.76 permits modifications of Commission remedial orders" based on settlement, Pet. at 2, please discuss your position regarding modification of the existing remedial orders to expressly exempt the Arista redesigned products from the scope of the remedial orders.

The parties are requested to brief the discrete issue identified above, with reference to the applicable law. The parties are requested to submit proposed remedial orders, which exempt the redesigned products, for the Commission's consideration.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. The written submissions and proposed remedial orders must be filed no later than close of business on November 1, 2018. Reply submissions must be filed no later than the close of business on November 8, 2018. Opening submissions are limited to 10 pages exclusive of draft orders. Reply submissions are limited to 7 pages. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight 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 2.10.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-944") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.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,¹ solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 22, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018-23414 Filed 10-25-18; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-481 and 731-TA-1190 (Review)]

Crystalline Silicon Photovoltaic Cells and Modules From China: Revised Schedule for Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: October 22, 2018.

FOR FURTHER INFORMATION CONTACT:

Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting

the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: On July 16, 2018, the Commission established a schedule for the conduct of the full five-year reviews (83 FR 34873, July 23, 2018). The Commission is revising its schedule.

The Commission's revised dates in the schedule are as follows: Requests to appear at the hearing must be filed with the Secretary to the Commission not later than November 16, 2018; the prehearing conference will be held at the U.S. International Trade Commission Building on November 20, 2018, if deemed necessary; the prehearing staff report will be placed in the nonpublic record on November 2, 2018; the deadline for filing prehearing briefs is November 13, 2018; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on November 27, 2018; the deadline for filing posthearing briefs is December 4, 2018; the Commission will make its final release of information on January 2, 2019; and final party comments are due on January 4, 2019.

For further information concerning these reviews, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Authority: These reviews are 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 22, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018-23375 Filed 10-25-18; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1065]

Certain Mobile Electronic Devices and Radio Frequency and Processing Components Thereof; 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: Carl Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2382. 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 after considering the public interest factors listed in 19 U.S.C. 1337(d)(1), it finds such articles should not be prevented from entry. 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

¹ All contract personnel will sign appropriate nondisclosure agreements.

raised by the recommended relief should the Commission find a violation, specifically whether the Commission should issue: (1) A limited exclusion order (“LEO”) against certain mobile electronic devices that are imported, sold for importation, and/or sold after importation by respondent Apple Inc. of Cupertino, CA (“Apple”); and (2) a cease and desist order (“CDO”) against Apple.

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 Thursday, November 8, 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–1065”) 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 22, 2018.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2018–23411 Filed 10–25–18; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1422–1423 (Preliminary)]

Strontium Chromate From Austria and France

Determination

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of strontium chromate from Austria and France provided for in subheadings 2841.50.91 and 3212.90.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (“LTFV”).²

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission’s rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission’s rules, upon notice from the U.S. Department of Commerce (“Commerce”) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On September 5, 2018, WPC Technologies, Oak Creek, Wisconsin, filed a petition with the Commission

¹ The record is defined in sec. 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

² 83 FR 49543 (October 2, 2018).

and Commerce, alleging that an industry in the United States is materially injured by reason of LTFV imports of strontium chromate from Austria and France. Accordingly, effective September 5, 2018, the Commission, pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)), instituted antidumping duty investigation Nos. 731-TA-1422-1423 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 12, 2018 (82 FR 46189). The conference was held in Washington, DC, on September 26, 2018, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)). It completed and filed its determinations in these investigations on October 22, 2018. The views of the Commission are contained in USITC Publication 4836 (October 2018), entitled *Strontium Chromate from Austria and France: Investigation Nos. 731-TA-1422-1423 (Preliminary)*.

By order of the Commission.

Issued: October 23, 2018.

Jessica Mullan,
Attorney Advisor.

[FR Doc. 2018-23490 Filed 10-25-18; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1084]

Certain Insulated Beverage Containers, Components, Labels, and Packaging Materials Thereof; Commission's Determination Not To Review an Initial Determination Finding Two Respondents in Default and Terminating the Investigation With Respect to Three Respondents; Request for Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination

("ID") (Order No. 29) finding two respondents in default and terminating the investigation with respect to the three remaining respondents. The Commission requests written submissions, under the schedule set forth below, on remedy, public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-5468. 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 at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 24, 2017, based on a complaint and supplement, filed on behalf of YETI Coolers, LLC of Austin, Texas ("Yeti"). 82 FR 55860-61 (Nov. 24, 2017). The amended complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain insulated beverage containers, components, labels, and packaging materials thereof by reason of infringement of U.S. Trademark Registration Nos. 5,233,441 and 4,883,074; U.S. Copyright Registration Nos. VA 1-974-722, VA 1-974-732, VA 1-974-735; and U.S. Design Patent Nos. D752,397, D780,533, D781,146, and D784,775. The complaint further alleges that an industry in the United States exists as required by section 337. The Notice of Investigation named as respondents, *inter alia*, Huizhou Dashu Trading Co., Ltd. of Huizhou City, China ("Huizhou Dashu Trading"); Huagong Trading Co., Ltd. of Wangshizhuang, China ("Huagong Trading"); Tan Er Pa Technology Co., Ltd. of Hong Kong, China ("Tan Er Pa"); Shenzhen Great Electronic Technology Co., Ltd. of Shenzhen, China ("Great Electronic"); and SZ Flowerfair Ltd. of Shenzhen,

China ("Flowerfair"), which are the only five respondents remaining in this investigation. The Office of Unfair Import Investigations ("OUII") was also named as a party.

The Commission served the complaint and notice of investigation on Huizhou Dashu Trading and Huagong Trading. Neither party responded to the complaint, the notice of investigation, or discovery requests. On July 20, 2018, Yeti moved for an order for Huizhou Dashu Trading and Huagong Trading to show cause why they should not be found in default. On August 1, 2018, the ALJ ordered Huizhou Dashu Trading and Huagong Trading to show cause why they should not be held in default within 14 days. Order No. 28.

Neither Huizhou Dashu Trading nor Huagong Trading responded to the ALJ's order. On September 14, 2018, Yeti moved for an order finding Huizhou Dashu Trading and Huagong Trading in default for their failure to respond. Yeti also moved to terminate the investigation with respect to Tan Er Pa, Great Electronic, and Flowerfair based on a withdrawal of the complaint because those respondents were not served with the complaint and notice of investigation. Yeti stated in its motion that it is not seeking a general exclusion order. On September 26, 2018, OUII supported the motion.

On September 27, 2018, the ALJ issued the subject ID, finding Huizhou Dashu Trading and Huagong Trading in default, and terminating Tan Er Pa, Great Electronic, and Flowerfair from the investigation based on a voluntary withdrawal of the complaint. No petitions for review were filed.

The Commission has determined not to review the subject ID.

Section 337(g)(1) and Commission Rule 210.16(c) authorize the Commission to order relief against a respondent found in default, unless, after considering the public interest, it finds that such relief should not issue.

In connection with the final disposition of this investigation, the Commission may: (1) Issue an order that could result in the exclusion of articles manufactured or imported by the defaulting respondents; and/or (2) issue cease and desist orders that could result in the defaulting respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for

consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (December 1994).

In addition, if a party seeks issuance of any cease and desist orders, the written submissions should address that request in the context of recent Commission opinions, including those in *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor*, Inv. No. 337-TA-977, Comm'n Op. (Apr. 28, 2017) and *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same*, Inv. No. 337-TA-959, Comm'n Op. (Feb. 13, 2017). Specifically, if Complainants seek a cease and desist order against a defaulting respondent, the written submissions should respond to the following requests:

1. Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a cease and desist order is sought. If Complainants also rely on other significant domestic operations that could undercut the remedy provided by an exclusion order, please identify with citations to the record such information as to each respondent against whom a cease and desist order is sought.

2. In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors that the Commission will consider include the effect that the exclusion order and/or cease and desists orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or

disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Yeti and OUII are requested to submit proposed remedial orders for the Commission's consideration. Yeti is also requested to state the HTSUS numbers under which the accused products are imported, and to state the dates that the patents expire. Yeti is further requested to supply identification information on any known importers.

Written submissions and proposed remedial orders must be filed no later than the close of business on November 5, 2018. Reply submissions must be filed no later than the close of business on November 12, 2018. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadline stated above and submit eight true paper copies to the Office of the Secretary 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-1084") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.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,¹ solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.
Issued: October 22, 2018.

Lisa Barton,
Secretary to the Commission.

[FR Doc. 2018-23408 Filed 10-25-18; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Leonardo Academy

Notice is hereby given that, on October 4, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Leonardo Academy ("LEO") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Leonardo Academy, Madison, WI. The nature and scope of

¹ All contract personnel will sign appropriate nondisclosure agreements.

LEO's standards development activities are: Environmental improvement, sustainability, emissions, energy, resilience, and land management.

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018-23407 Filed 10-25-18; 8:45 am]

BILLING CODE 4410-11-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Node.js Foundation

Notice is hereby given that, on October 5, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Node.js Foundation ("Node.js Foundation") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, \wedge Lift Security, Richland, WA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Node.js Foundation intends to file additional written notifications disclosing all changes in membership.

On August 17, 2015, Node.js Foundation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 28, 2015 (80 FR 58297).

The last notification was filed with the Department on July 25, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 13, 2018 (83 FR 40085).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018-23436 Filed 10-25-18; 8:45 am]

BILLING CODE 4410-11-P

DEPARTMENT OF JUSTICE

[1105-NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection

AGENCY: Security and Emergency Planning Staff, Justice Management Division, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Justice Management Division, Security and Emergency Planning Staff (SEPS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until November 26, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Dorianna Rice, Security and Emergency Planning Staff, 145 N Street NE, Suite 2W.507, Washington, DC 20530. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to OIRA_submissions@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Security and Emergency Planning Staff, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* New collection.
2. *The Title of the Form/Collection:* Department Personnel Security Reporting Requirements, iReport Forms and PDF Fillable Forms:
 - a. *Self-Reporting of Arrests*
 - b. *Self-Reporting of Allegations of Misconduct*
 - c. *Self-Reporting of Personal Foreign Travel*
 - d. *Self-Reporting of Contact with Foreign Nationals*
 - e. *Self-Reporting of Possession/ Application for Foreign Passport or Identity Card*
 - f. *Self-Reporting on Other Foreign Matters*
 - g. *Self-Reporting of Roommate/ Cohabitant/Marriage*
 - h. *Self-Reporting of Alcohol or Drug Related Addiction or Treatment*
 - i. *Self-Reporting of Attempted Elicitation, Exploitation, Blackmail, Coercion or Enticement to Obtain Information*
 - j. *Self-Reporting of Financial Issues/ Delinquencies*
 - k. *Self-Reporting of Unofficial Contact with the Media*
 - l. *Reportable Activities of Other Covered Personnel*
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* iReport and Fillable PDF Forms for each item in No. 2 above.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals.

Individuals who are contractors for the Department of Justice or who are processed for access to classified information by the Department of Justice.

Abstract: Self-reporting requirements set forth in the Department of Justice (DOJ) Policy Statement 1700.04, *Department Personnel Security Reporting Requirements*, issued April 18, 2018, apply to non-federal employee personnel affiliated with the DOJ. The policy contains reporting requirements that are applicable to the entire DOJ workforce as well as reporting requirements that apply only to personnel occupying a national security

position or who have access to classified information. The requirements relating to national security are mandated by the Director of National Intelligence as the Security Executive Agent. The majority of the reports relate to the submitter's personal conduct and activities. There is one form for personnel to submit information on other personnel, consistent with government-wide reporting requirements. This collection request seeks approval for contractors and other non-federal employees who are processed for access to classified information to utilize the Department's automated reporting system called iReport, or, for the small population with no access to the IT system, to utilize PDF fillable forms to report the required information. The Security and Emergency Planning Staff, and other Department Security Offices, will use the reported information to determine the submitter's continued fitness for employment at the Department of Justice or continued eligibility for access to national security information. The Department security offices for each agency component will review, evaluate, and adjudicate the information received.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. Department-wide population covered by the requirement to self-report information in the forms listed in Sections 2a and 2b is estimated at 35,000. It is estimated that only three percent (1,050) will actually need to self-report.

b. Department-wide population covered by the requirement to report information in the forms listed in Sections 2c through 2l is estimated to be less than 500.

c. Amount of time estimated for an average reported is less than ten minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* 260 annual burden hours.

If additional information is required contact: Melody D. Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: October 23, 2018.

Melody D. Braswell,
Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018-23424 Filed 10-25-18; 8:45 am]

BILLING CODE 4410-BA-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219-0030]

Proposed Extension of Information Collection; Main Fan Operation and Inspection (I-A, II-A, III, and V-A Mines)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for main fan operation and inspection (I-A, II-A, III, and V-A mines).

DATES: All comments must be received on or before December 26, 2018.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments for docket number MSHA-2018-0030.

- *Regular Mail:* Send comments to USDOL-MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202-5452.

- *Hand Delivery:* USDOL-Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202-5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at MSHA.information.collections@dol.gov (email); (202) 693-9440 (voice); or (202) 693-9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Potentially gassy (explosive) conditions underground are largely controlled by the main fans. When accumulations of explosive gases, such as methane, are not swept from the mine by the main fans, they may reasonably be expected to contact an ignition source. The results of such contacts are usually disastrous, and multiple fatalities may be reasonably expected to occur. The standard contains significantly more stringent requirements for main fans in "gassy" mines than for main fans in other mines. Title 30 CFR 57.22204, which only applies to metal and nonmetal underground mines that are categorized as "gassy," requires main fans to have pressure-recording systems. This standard also requires main fans to be inspected daily while operating if persons are underground and certification made of such inspections by signature and date. Certifications and pressure recordings must be retained for one year and made available to authorized representatives of the Secretary of Labor.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to main fan operation and inspection (I-A, II-A, III, and V-A mines). MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The information collection request will be available on <http://www.regulations.gov>. MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on www.regulations.gov and www.reginfo.gov.

The public may also examine publicly available documents at USDOL-Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202-5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This request for collection of information contains provisions for main fan operation and inspection (I-A, II-A, III, and V-A mines). MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219-0030.

Affected Public: Business or other for-profit.

Number of Respondents: 6.

Frequency: On occasion.

Number of Responses: 5,940.

Annual Burden Hours: 2,046 hours.

Annual Respondent or Recordkeeper Cost: \$2,400.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Roslyn B. Fontaine,
Certifying Officer.

[FR Doc. 2018-23421 Filed 10-25-18; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219-0095]

Proposed Extension of Information Collection; Explosive Materials and Blasting Units

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed

collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Explosive Materials and Blasting Units.

DATES: All comments must be received on or before December 26, 2018.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments for docket number MSHA-2018-0032.

- *Regular Mail:* Send comments to USDOL-MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202-5452.

- *Hand Delivery:* USDOL-Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202-5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at MSHA.information.collections@dol.gov (email); (202) 693-9440 (voice); or (202) 693-9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Under 30 CFR parts 7 and 15, MSHA evaluates and approves explosive materials and blasting units as permissible for use in mines. However, some underground metal and nonmetal Category III mines (gassy mines) use non-approved explosive materials or blasting units because there are no permissible explosive materials and blasting units.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Explosive Materials and Blasting Units. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the

Agency, including whether the information has practical utility;

- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The information collection request will be available on <http://www.regulations.gov>. MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on www.regulations.gov and www.reginfo.gov.

The public may also examine publicly available documents at USDOL-Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202-5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Explosive Materials and Blasting Units. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219-0095.

Affected Public: Business or other for-profit.

Number of Respondents: 1.

Frequency: On occasion.

Number of Responses: 1.

Annual Burden Hours: 1 hours.

Annual Respondent or Recordkeeper Cost: \$6.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the

information collection request; they will also become a matter of public record.

Roslyn B. Fontaine,
Certifying Officer.

[FR Doc. 2018-23418 Filed 10-25-18; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219-0051]

Proposed Extension of Information Collection; Escape and Evacuation Plans for Surface Coal Mines, Surface Facilities and Surface Work Areas of Underground Coal Mines.

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Escape and Evacuation Plans for Surface Coal Mines, Surface Facilities and Surface Work Areas of Underground Coal Mines.

DATES: All comments must be received on or before December 26, 2018.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments for docket number MSHA-2018-0029.

- *Regular Mail:* Send comments to USDOL-MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202-5452.

- *Hand Delivery:* USDOL-Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202-5452. Sign in at the

receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693-9440 (voice); or (202) 693-9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The escape and evacuation plan required by existing standard 30 CFR 77.1101 is prepared by the mine operator and is used by mines, MSHA, and persons involved in rescue and recovery operations. The plan is used to instruct employees in the proper methods to evacuate structures in the event of a fire. MSHA inspection personnel use the plan to determine compliance with the standard requiring a means of escape and evacuation be established and the requirement that employees be instructed in the procedures to follow should a fire occur.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Escape and Evacuation Plans for Surface Coal Mines, Surface Facilities and Surface Work Areas of Underground Coal Mines. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The information collection request will be available on <http://www.regulations.gov>. MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on www.regulations.gov and www.reginfo.gov.

The public may also examine publicly available documents at USDOL—Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202-5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Escape and Evacuation Plans for Surface Coal Mines, Surface Facilities and Surface Work Areas of Underground Coal Mines. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219-0051.

Affected Public: Business or other for-profit.

Number of Respondents: 35.

Frequency: On occasion.

Number of Responses: 35.

Annual Burden Hours: 150 hours.

Annual Respondent or Recordkeeper Cost: \$0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Roslyn B. Fontaine,
Certifying Officer.

[FR Doc. 2018-23417 Filed 10-25-18; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2011-0059]

The Occupational Exposure to Hazardous Chemicals in Laboratories Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to

extend OMB approval of the information collection requirements contained in the Occupational Exposure to Hazardous Chemicals in Laboratories.

DATES: Comments must be submitted (postmarked, sent, or received) by December 26, 2018.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693-1648. The OSHA Docket Office is located in N-3508.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA-2011-0059, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the OSHA Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA-2011-0059) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments, see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at (202) 693-2222 to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney,

Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, telephone (202) 693-2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance process to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, the reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (see 29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with a minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining said information (see 29 U.S.C. 657).

The Standard entitled "Occupational Exposure to Hazardous Chemicals in Laboratories" (29 CFR 1910.1450; the "Standard") applies to laboratories that use hazardous chemicals in accordance with the Standard's definitions for "laboratory use of hazardous chemicals" and "laboratory scale." The Standard requires these laboratories to maintain worker exposures at or below the permissible exposure limits specified for the hazardous chemicals in 29 CFR part 1910, subpart Z. The laboratories do so by developing a written Chemical Hygiene Plan (CHP) that describes the following: Standard operating procedures for using hazardous chemicals; hazard-control techniques; equipment-reliability measures; worker information and training programs; conditions under which the employer must approve operations, procedures, and activities before implementation; and medical consultations and examinations. The CHP also designates personnel responsible for implementing the CHP, and specifies the procedures to be used to provide additional protection

to workers exposed to particularly hazardous chemicals.

Other information collection requirements of the Standard include: Documenting exposure monitoring results; notifying workers in writing of these results; presenting specified information and training to workers; establishing a medical surveillance program for overexposed workers; providing required information to the physician; obtaining the physician's written opinion on using proper respiratory equipment; and establishing, maintaining, transferring, and disclosing exposure monitoring and medical records. This collection of information requirements, including the CHP, control worker overexposure to hazardous laboratory chemicals, thereby preventing serious illnesses and death among workers exposed to such chemicals.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply—for example, by using automated or other technological information collection and transmission techniques.

OSHA is requesting an adjustment increase in the existing burden hour estimate for the collection of information requirements in the Standard. In this regard, the agency is requesting to increase the current burden hour estimate from 332,350 to 695,105 hours, a total adjustment of 362,755 hours. The increase is due to an increase in the worker and establishment estimates and underestimation of data during the prior ICR.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of the information collection requirements contained in the Occupational Exposure to Hazardous Chemicals in Laboratories Standard.

III. Proposed Actions

Type of Review: Extension of a currently approved collection.

Title: Occupational Exposure to Hazardous Chemicals in Laboratories (29 CFR 1910.1450).

OMB Control Number: 1218-0131.

Affected Public: Business or other for-profits.

Number of Respondents: 140,956.

Frequency: Annually; monthly, quarterly, semi-annually, on occasion.

Average Time per Response: Varies from 3 minutes to replace the safe practice manual to 1 hour to develop a new manual.

Estimated Number of Responses: 1,782,322.

Estimated Total Burden Hours: 695,105.

Estimated Cost (Operation and Maintenance): \$79,770,481.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

(1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number (Docket No. OSHA-2011-0059) for the ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify electronic comments by your name, date, and the docket number so that the agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693-2350; TTY (877) 889-5627.

Comments and submissions are posted without change at: <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as Social Security numbers and dates of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the <http://www.regulations.gov> website to submit comments and access the docket is available at the website's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1-2012 (77 FR 3912).

Signed at Washington, DC, on October 19, 2018.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2018-23419 Filed 10-25-18; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2017-0004]

Maritime Advisory Committee for Occupational Safety and Health (MACOSH): Request for Nominations

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for nominations.

SUMMARY: OSHA invites interested persons to submit nominations for membership on the Maritime Advisory Committee for Occupational Safety and Health.

DATES: You must submit nominations for MACOSH membership (postmarked, sent, transmitted, or received) by December 10, 2018.

ADDRESSES: You may submit nominations and supporting materials by one of the following methods:

Electronically: You may submit nominations, including attachments, electronically at: <http://www.regulations.gov>, the Federal eRulemaking Portal. Follow the online instructions for submitting nominations.

Facsimile: If your nomination and supporting materials, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

Regular mail, express mail, hand delivery, and messenger or courier service: You may submit nominations

and supporting materials to the OSHA Docket Office, Docket No. OSHA-2015-0014, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (express mail, hand (courier) delivery, and messenger service) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name and docket number for this **Federal Register** notice (Docket No. OSHA-2017-0004). Because of security-related procedures, submissions by regular mail may result in a significant delay in receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions by express mail, hand (courier) delivery, and messenger service.

OSHA will post submissions in response to this **Federal Register** notice, including personal information provided, without change at <http://www.regulations.gov>. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

Docket: To read or download submissions in response to this **Federal Register** notice, go to Docket No. OSHA-2017-0004 at <http://www.regulations.gov>. All documents in the docket are available in the <http://www.regulations.gov> index; however, some documents (e.g., copyrighted material) are not publicly available to read or download through that web page. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693-1999; email: meilinger.francis2@dol.gov.

For general information about MACOSH: Ms. Amy Wangdahl, Director, Office of Maritime and Agriculture, OSHA, U.S. Department of Labor; telephone: (202) 693-2066; email wangdahl.amy@dol.gov.

*For copies of this **Federal Register** notice:* Electronic copies of this **Federal Register** notice are available at <http://www.regulations.gov>. This notice, as well as news releases and other relevant information, are also available at OSHA's web page at: www.osha.gov.

SUPPLEMENTARY INFORMATION: The Secretary of Labor invites interested persons to submit nominations for membership on MACOSH.

I. Background

The Secretary of Labor renewed the MACOSH charter for two years on January 23, 2017. MACOSH is a Federal Advisory Committee established under the authority of the Occupational Safety and Health Act (OSH Act) (29 U.S.C. 651 *et seq.*), the Federal Advisory Committee Act (FACA) 5 U.S.C. App. 2, and regulations issued pursuant to those statutes (29 CFR part 1912, 41 CFR part 102–3). The Committee advises the Secretary of Labor on matters relating to occupational safety and health programs, enforcement, new initiatives, and standards for the maritime industries of the United States, which include longshoring, marine terminals, commercial fishing, and shipyard employment. OSHA invites persons interested in serving on MACOSH to submit their names for consideration for Committee membership.

MACOSH reports to the Secretary of Labor through OSHA, and functions solely as an advisory body. MACOSH provides recommendations and advice to the Department of Labor and OSHA on various policy issues pertaining to safe and healthful employment in the maritime industries. The Secretary of Labor consults with MACOSH on various subjects, including: Ways to increase the effectiveness of safety and health standards that apply to the maritime industries, injury and illness prevention, the use of stakeholder partnerships to improve training and outreach initiatives, and ways to increase the national dialogue on occupational safety and health. In addition, MACOSH provides advice on enforcement initiatives that will improve the working conditions and the safety and health of workers in the maritime industries. The Committee meets approximately two times per year. Committee members serve without compensation, but OSHA provides travel and per diem expenses. Members serve a two-year term, which begins from the date of appointment by the Secretary of Labor. The term of the most recent MACOSH membership expired on January 20, 2018.

II. MACOSH Membership

MACOSH consists of not more than 15 members appointed by the Secretary of Labor. The Agency seeks committed members who have a strong interest in the safety and health of workers in the maritime industries. The U.S. Department of Labor is committed to equal opportunity in the workplace. The Secretary of Labor will appoint members to create a broad-based, balanced, and diverse committee

reflecting the shipyard, longshoring, and commercial fishing industries, and representing affected interests such as employers, employees, safety and health professional organizations, government organizations with interests or activities related to the maritime industry, academia, and the public.

Nominations of new members, or resubmissions of former members, will be accepted in all categories of membership. Interested persons may nominate themselves or submit the name of another person whom they believe to be interested in and qualified to serve on MACOSH. Nominations may also be submitted by organizations from one of the categories listed above (*e.g.*, employer, employee, public, safety and health professional organization, state safety and health agency, academia).

III. Submission Requirements

Nominations must include the following information:

- (1) Nominee's contact information and current employment or position;
- (2) Nominee's resume or curriculum vitae, including prior membership on MACOSH and other relevant organizations and associations;
- (3) Maritime industry interest (*e.g.*, employer, employee, public, safety and health professional organization, state safety and health agency, academia) that the nominee is qualified to represent;
- (4) A summary of the background, experience, and qualifications that addresses the nominee's suitability for membership; and
- (5) A statement that the nominee is aware of the nomination, is willing to regularly attend and participate in MACOSH meetings, and has no conflicts of interest that would preclude membership on MACOSH.

OSHA will conduct a basic background check of candidates before their appointment to MACOSH. The background check will involve accessing publicly available, internet-based sources.

IV. Member Selection

The Secretary of Labor will select MACOSH members based on their experience, knowledge, and competence in the field of occupational safety and health, particularly in the maritime industries. Information received through this nomination process, and other relevant sources of information, will assist the Secretary of Labor in appointing members to MACOSH. In selecting MACOSH members, the Secretary of Labor will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals. OSHA will

publish a list of MACOSH members in the **Federal Register**.

Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 29 U.S.C. 655(b)(1) and 656(b), 5 U.S.C. App. 2, Secretary of Labor's Order No. 1–2012 (77 FR 3912), and 29 CFR part 1912.

Signed at Washington, DC, on October 19, 2018.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2018–23423 Filed 10–25–18; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Notice of Intent to Award—Grant Awards for the Provision of Civil Legal Services to Eligible Low-Income Clients Beginning January 1, 2019

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to make FY 2019 Grant Awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award grants to provide economical and effective delivery of high quality civil legal services to eligible low-income clients, beginning January 1, 2019.

DATES: All comments and recommendations must be received on or before the close of business on November 26, 2018.

ADDRESSES: Grant Awards, Legal Services Corporation, 3333 K Street NW, Third Floor, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Reginald Haley, Office of Program Performance, at (202) 295–1545, or haley@lsc.gov.

SUPPLEMENTARY INFORMATION: Pursuant to LSC's announcement of funding availability on March 9, 2018, 83 FR 10524, and Grant Renewal applications due beginning June 4, 2018, LSC intends to award funds to provide civil legal services in the indicated service areas. Applicants for each service area are listed below. The amounts below are estimates based on the 2018 grant awards to each service area. The funding estimates may change based on the final FY 2019 appropriation.

LSC will post all updates and/or changes to this notice at <http://www.grants.lsc.gov/grants-grantee-resources>. Interested parties are asked to visit <http://www.grants.lsc.gov/grants->

grantee-resources regularly for updates on the LSC grants process.

Name of applicant organization	State	Service area	Estimated annualized 2019 funding
Alaska Legal Services Corporation	AK	AK-1	\$861,045
Alaska Legal Services Corporation	AK	NAK-1	594,038
Legal Services Alabama	AL	AL-4	6,448,641
Legal Aid of Arkansas	AR	AR-6	1,460,547
Center for Arkansas Legal Services	AR	AR-7	2,322,821
American Samoa Legal Aid	AS	AS-1	262,020
DNA-Peoples Legal Services	AZ	AZ-2	462,988
Community Legal Services	AZ	AZ-3	5,399,177
Southern Arizona Legal Aid	AZ	AZ-5	2,282,764
Community Legal Services	AZ	MAZ	248,346
DNA-Peoples Legal Services	AZ	NAZ-5	2,866,264
Southern Arizona Legal Aid	AZ	NAZ-6	700,146
California Indian Legal Services	CA	CA-1	14,069
Inland Counties Legal Services	CA	CA-12	4,940,888
Legal Aid Society of San Diego	CA	CA-14	2,940,287
Legal Aid Society of Orange County	CA	CA-19	3,968,018
Greater Bakersfield Legal Assistance	CA	CA-2	1,251,117
Central California Legal Services	CA	CA-26	3,165,086
Legal Services of Northern California	CA	CA-27	4,080,151
Bay Area Legal Aid	CA	CA-28	4,218,203
Legal Aid Foundation of Los Angeles	CA	CA-29	6,032,045
Neighborhood Legal Services of Los Angeles County	CA	CA-30	4,151,911
California Rural Legal Assistance	CA	CA-31	4,694,373
California Rural Legal Assistance	CA	MCA	3,049,971
California Indian Legal Services	CA	NCA-1	970,436
Colorado Legal Services	CO	CO-6	4,395,784
Colorado Legal Services	CO	MCO	252,607
Colorado Legal Services	CO	NCO-1	105,488
Statewide Legal Services of Connecticut	CT	CT-1	2,684,133
Pine Tree Legal Assistance	CT	NCT-1	17,197
Neighborhood Legal Services Program of DC	DC	DC-1	905,444
Legal Services Corporation of Delaware	DE	DE-1	1,030,360
Legal Aid Bureau	DE	MDE	15,654
Legal Services of North Florida	FL	FL-13	1,700,981
Three Rivers Legal Services	FL	FL-14	2,409,062
Community Legal Services of Mid-Florida	FL	FL-15	5,173,526
Bay Area Legal Services	FL	FL-16	3,791,294
Community Legal Services of Mid-Florida	FL	FL-17	4,024,276
Florida Rural Legal Services	FL	FL-17	4,024,276
Coast to Coast Legal Aid of South Florida	FL	FL-18	2,363,114
Legal Services of Greater Miami	FL	FL-5	3,687,821
Community Legal Services of Mid-Florida	FL	MFL	651,649
Florida Rural Legal Services	FL	MFL	651,649
Atlanta Legal Aid Society	GA	GA-1	3,699,000
Georgia Legal Services Program	GA	GA-2	8,478,946
Georgia Legal Services Program	GA	MGA	323,806
Micronesian Legal Services	GU	GU-1	295,291
Legal Aid Society of Hawaii	HI	HI-1	1,248,404
Legal Aid Society of Hawaii	HI	NHI-1	251,612
Iowa Legal Aid	IA	IA-3	2,299,059
Iowa Legal Aid	IA	MIA	391,532
Idaho Legal Aid Services	ID	ID-1	1,481,917
Idaho Legal Aid Services	ID	MID	299,893
Idaho Legal Aid Services	ID	NID-1	71,362
Land of Lincoln Legal Assistance Foundation	IL	IL-3	2,836,906
Legal Assistance Foundation	IL	IL-6	5,954,947
Prairie State Legal Services	IL	IL-7	3,836,993
Legal Assistance Foundation	IL	MIL	301,698
Indiana Legal Services	IN	IN-5	6,954,996
Indiana Legal Services	IN	MIN	221,711
Kansas Legal Services	KS	KS-1	2,771,728
Legal Aid of the Bluegrass	KY	KY-10	1,591,474
Legal Aid Society	KY	KY-2	1,259,848
Appalachian Research and Defense Fund of Kentucky	KY	KY-5	1,762,508
Kentucky Legal Aid	KY	KY-9	1,295,698
Acadiana Legal Service Corporation	LA	LA-15	3,673,067
Southeast Louisiana Legal Services Corporation	LA	LA-13	3,552,592
Community Legal Aid	MA	MA-10	1,573,204
Volunteer Lawyers Project of the Boston Bar Assoc	MA	MA-11	2,178,414

Name of applicant organization	State	Service area	Estimated annualized 2019 funding
South Coastal Counties Legal Services	MA	MA-12	914,610
Northeast Legal Aid	MA	MA-4	966,774
Legal Aid Bureau	MD	MD-1	4,464,249
Legal Aid Bureau	MD	MMD	59,430
Pine Tree Legal Assistance	ME	ME-1	1,091,476
Pine Tree Legal Assistance	ME	MMX-1	306,179
Pine Tree Legal Assistance	ME	NME-1	70,798
Michigan Advocacy Program	MI	MI-12	1,776,673
Lakeshore Legal Aid	MI	MI-13	4,649,658
Legal Services of Eastern Michigan	MI	MI-14	1,692,105
Legal Aid of Western Michigan	MI	MI-15	2,005,462
Legal Services of Northern Michigan	MI	MI-9	842,093
Michigan Advocacy Program	MI	MMI	383,032
Michigan Indian Legal Services	MI	NMI-1	180,817
Southern Minnesota Regional Legal Services	MN	MMN	338,206
Legal Aid Service of Northeastern Minnesota	MN	MN-1	417,295
Legal Services of Northwest Minnesota Corporation	MN	MN-4	365,119
Southern Minnesota Regional Legal Services	MN	MN-5	1,557,850
Central Minnesota Legal Services	MN	MN-6	1,584,128
Anishinabe Legal Services	MN	NMN-1	262,500
Legal Aid of Western Missouri	MO	MMO	234,187
Legal Aid of Western Missouri	MO	MO-3	1,951,476
Legal Services of Eastern Missouri	MO	MO-4	2,040,119
Mid-Missouri Legal Services Corporation	MO	MO-5	458,232
Legal Services of Southern Missouri	MO	MO-7	1,870,695
Micronesian Legal Services	MP	MP-1	1,480,894
Mississippi Center for Legal Services	MS	MS-10	2,805,976
North Mississippi Rural Legal Services	MS	MS-9	1,738,416
Mississippi Center for Legal Services	MS	NMS-1	91,306
Montana Legal Services Association	MT	MMT	127,528
Montana Legal Services Association	MT	MT-1	924,993
Montana Legal Services Association	MT	NMT-1	174,897
Legal Aid of North Carolina	NC	MNC	456,525
Legal Aid of North Carolina	NC	NC-5	11,663,345
Legal Aid of North Carolina	NC	NNC-1	239,724
Southern Minnesota Regional Legal Services	ND	MND	143,470
Legal Services of North Dakota	ND	ND-3	476,634
Legal Services of North Dakota	ND	NND-3	295,883
Legal Aid of Nebraska	NE	MNE	268,125
Legal Aid of Nebraska	NE	NE-4	1,386,831
Legal Aid of Nebraska	NE	NNE-1	36,308
Legal Advice & Referral Center	NH	NH-1	794,068
South Jersey Legal Services	NJ	MNJ	84,074
Legal Services of Northwest Jersey	NJ	NJ-15	485,958
Central Jersey Legal Services	NJ	NJ-17	1,323,043
Northeast New Jersey Legal Services Corporation	NJ	NJ-18	1,968,667
South Jersey Legal Services	NJ	NJ-20	2,396,491
Essex-Newark Legal Services Project	NJ	NJ-8	1,012,586
New Mexico Legal Aid	NM	MNM	115,571
DNA-Peoples Legal Services	NM	NM-1	245,882
New Mexico Legal Aid	NM	NM-5	2,947,923
DNA-Peoples Legal Services	NM	NNM-2	24,956
New Mexico Legal Aid	NM	NNM-4	510,366
Nevada Legal Services	NV	NNV-1	146,060
Nevada Legal Services	NV	NV-1	3,164,112
Legal Aid Society of Mid-New York	NY	MNY	293,824
Legal Services of the Hudson Valley	NY	NY-20	1,857,194
Legal Aid Society of Northeastern New York	NY	NY-21	1,379,025
Legal Aid Society of Mid-New York	NY	NY-22	1,769,763
Legal Assistance of Western New York	NY	NY-23	1,870,445
Neighborhood Legal Services	NY	NY-24	1,410,404
Nassau/Suffolk Law Services Committee	NY	NY-7	1,462,676
Legal Services NYC	NY	NY-9	12,380,700
Legal Aid of Western Ohio	OH	MOH	271,334
Legal Aid Society of Greater Cincinnati	OH	OH-18	1,750,741
Community Legal Aid Services	OH	OH-20	2,033,531
The Legal Aid Society of Cleveland	OH	OH-21	2,474,413
Legal Aid of Western Ohio	OH	OH-23	2,899,525
Ohio State Legal Services	OH	OH-24	3,609,525
Legal Aid Services of Oklahoma	OK	MOK	167,151
Oklahoma Indian Legal Services	OK	NOK-1	899,369
Legal Aid Services of Oklahoma	OK	OK-3	4,807,067

Name of applicant organization	State	Service area	Estimated annualized 2019 funding
Legal Aid Services of Oregon	OR	MOR	535,226
Legal Aid Services of Oregon	OR	NOR-1	202,768
Legal Aid Services of Oregon	OR	OR-6	3,896,236
Philadelphia Legal Assistance Center	PA	MPA	214,797
Philadelphia Legal Assistance Center	PA	PA-1	3,204,335
Southwestern Pennsylvania Legal Services	PA	PA-11	424,853
Legal Aid of Southeastern Pennsylvania	PA	PA-23	1,365,547
North Penn Legal Services	PA	PA-24	2,037,974
MidPenn Legal Services	PA	PA-25	2,644,519
Northwestern Legal Services	PA	PA-26	747,015
Laurel Legal Services	PA	PA-5	684,616
Neighborhood Legal Services Association	PA	PA-8	1,433,575
Puerto Rico Legal Services	PR	MPR	64,688
Puerto Rico Legal Services	PR	PR-1	11,818,285
Community Law Office	PR	PR-2	215,933
Rhode Island Legal Services	RI	RI-1	967,489
South Carolina Legal Services	SC	MSC	155,528
South Carolina Legal Services	SC	SC-8	6,038,140
Dakota Plains Legal Services	SD	NSD-1	1,025,591
East River Legal Services	SD	SD-2	430,728
Dakota Plains Legal Services	SD	SD-4	467,961
Legal Aid Society of Middle TN and the Cumberlands	TN	TN-10	3,125,749
Memphis Area Legal Services	TN	TN-4	1,550,924
West Tennessee Legal Services	TN	TN-7	714,802
Legal Aid of East Tennessee	TN	TN-9	2,523,870
Texas RioGrande Legal Aid	TX	MSX-2	1,943,157
Texas RioGrande Legal Aid	TX	NTX-1	34,378
Lone Star Legal Aid	TX	TX-13	12,034,312
Legal Aid of NorthWest Texas	TX	TX-14	9,145,325
Texas RioGrande Legal Aid	TX	TX-15	11,501,517
Utah Legal Services	UT	MUT	92,972
Utah Legal Services	UT	NUT-1	90,366
Utah Legal Services	UT	UT-1	2,349,840
Central Virginia Legal Aid Society	VA	MVA	187,615
Southwest Virginia Legal Aid Society	VA	VA-15	867,059
Legal Aid Society of Eastern Virginia	VA	VA-16	1,570,775
Virginia Legal Aid Society	VA	VA-17	808,012
Central Virginia Legal Aid Society	VA	VA-18	1,310,918
Blue Ridge Legal Services	VA	VA-19	861,283
Legal Services of Northern Virginia	VA	VA-20	1,597,692
Legal Services of the Virgin Islands	VI	VI-1	194,590
Legal Services Law Line of Vermont	VT	VT-1	521,364
Northwest Justice Project	WA	MWA	707,725
Northwest Justice Project	WA	NWA-1	312,902
Northwest Justice Project	WA	WA-1	5,899,908
Legal Action of Wisconsin	WI	MWI	400,274
Wisconsin Judicare	WI	NWI-1	170,387
Wisconsin Judicare	WI	WI-2	1,009,735
Legal Action of Wisconsin	WI	WI-5	3,858,281
Legal Aid of West Virginia	WV	WV-5	2,770,204
Legal Aid of Wyoming	WY	NWY-1	189,810
Legal Aid of Wyoming	WY	WY-4	527,640

These grants will be awarded under the authority conferred on LSC by section 1006(a)(1) of the Legal Services Corporation Act, 42 U.S.C. 2996e(a)(1). Awards will be made so that each service area is served, although no listed organization is guaranteed an award. Grants will become effective and grant funds will be distributed on or about January 1, 2019.

This notice is issued pursuant to 42 U.S.C. 2996f(f). Comments and recommendations concerning potential grantees are invited and should be

delivered to LSC within 30 days from the date of publication of this notice.

Dated: October 22, 2018.

Stefanie Davis,

Assistant General Counsel.

[FR Doc. 2018-23406 Filed 10-25-18; 8:45 am]

BILLING CODE 7050-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33277; 812-14936]

Beyond Advisors IC, et al.

October 22, 2018.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the “Act”) for an

exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies ("Funds") to issue shares redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds ("Funds of Funds") to acquire shares of the Funds.

APPLICANTS: Beyond Advisors IC (the "Initial Adviser"), a Jersey incorporated cell company that will be registered as an investment adviser under the Investment Advisers Act of 1940, ETF Series Solutions (the "Trust"), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Quasar Distributors, LLC, a Delaware limited liability company and broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act").

FILING DATES: The application was filed on August 2, 2018.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 16, 2018 and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a

hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090; Applicants: Beyond Advisors IC, Digital Hub Jersey, Block 3, Ground Floor, Grenville Street, St Helier, Jersey, JE2 4UF; ETF Series Solutions, 615 East Michigan Street, Milwaukee, Wisconsin 53202; Quasar Distributors, LLC, 777 East Wisconsin Avenue, 6th Floor, Milwaukee, Wisconsin 53202.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551-6817, or Kaitlin C. Bottock, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds ("ETFs").¹ Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an "Authorized Participant", which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond generally to the performance of an

¹ Applicants request that the order apply to Beyond Advisors US Vegan Climate ETF (the "Initial Fund"), a new series of the Trust, and any additional series of the Trust, and any other open-end management investment company or series thereof ("Future Funds" and together with the Initial Fund, "Funds"), each of which will operate as an ETF and will track a specified index comprised of domestic and/or foreign equity securities and/or domestic and/or foreign fixed income securities (each, an "Underlying Index"). Each Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity and any successor thereto, an "Adviser") and (b) comply with the terms and conditions of the application. For purposes of the requested Order, "successor" is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act ("Affiliated Person"), or an affiliated person of an Affiliated Person ("Second-Tier Affiliate"), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.²

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments ("Deposit Instruments"), and shareholders redeeming their shares will receive specified instruments ("Redemption Instruments"). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c-1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent

² Each Self-Indexing Fund will post on its website the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second-Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.³

³ The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of

The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(f) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-23376 Filed 10-25-18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84462; File No. SR-NYSEArca-2018-25]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, Regarding the Continued Listing and Trading of Shares of the Natixis Loomis Sayles Short Duration Income ETF

October 22, 2018.

On April 16, 2018, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant

Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to continue listing and trading shares of the Natixis Loomis Sayles Short Duration Income ETF under NYSE Arca Rule 8.600-E, Managed Fund Shares.³ The proposed rule change was published for comment in the **Federal Register** on May 3, 2018.⁴ On June 5, 2018, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated August 1, 2018 as the date by which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁶ On June 6, 2018, the Exchange filed Amendment No. 1 to the proposed rule change.⁷ On July 27, 2018, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁸ The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act⁹ provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on May 3, 2018. October 30, 2018 is 180 days from that date, and December 29, 2018 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Currently, the Exchange lists and trades the shares pursuant to NYSE Arca Rule 8.600-E. As discussed in Amendment No. 1, *infra* note 7, the Exchange submitted this proposed rule change to permit the fund's portfolio to deviate from two of the "generic" listing requirements applicable to Managed Fund Shares.

⁴ See Securities Exchange Act Release No. 83122 (April 27, 2018), 83 FR 19578.

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 83385, 83 FR 27034 (June 11, 2018).

⁷ Amendment No. 1, which amended and replaced the proposed rule change in its entirety, is available at: <https://www.sec.gov/comments/sr-nysearca-2018-25/nysearca201825-3795048-162717.pdf>.

⁸ See Securities Exchange Act Release No. 83733, 83 FR 37831 (August 2, 2018).

⁹ 15 U.S.C. 78s(b)(2).

disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change, as modified by Amendment No. 1. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹⁰ designates December 29, 2018 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-NYSEArca-2018-25), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018-23387 Filed 10-25-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84463; File No. SR-ICEEU-2018-016]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amendments to the ICE Clear Europe Delivery Procedures

October 22, 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 October 10, 2018, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule changes pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(4)(ii) thereunder,⁴ so that the proposal was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed amendments is for ICE Clear Europe to amend its Delivery Procedures (the “Delivery

Procedures”)⁵ with respect to the delivery terms relating to the ICE Futures Europe (“ICE Futures Europe” or “IFEU”) Permian West Texas Intermediate Crude Oil Futures Contract.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is amending its Delivery Procedures to add a new Part CC addressing delivery under a new Permian West Texas Intermediate Crude Oil Futures Contract (the “Permian WTI Contract”) that will be traded on ICE Futures Europe and cleared by ICE Clear Europe, and to make certain related changes. ICE Clear Europe does not otherwise propose to amend its Clearing Rules (the “Rules”)⁶ or Procedures in connection with these changes.

New Part CC of the Delivery Procedures provides specifications and procedures for deliveries under the Permian WTI Contract, which will take place at the Magellan Crude Oil Pipeline Company, L.P. (“Magellan”) East Houston terminal (“MEH”). Consistent with the exchange contract terms, the buyer and seller must be approved shippers with delivery documentation with Magellan. Delivery may be effected through orders for inter-facility transfer, in-line (or in-system) transfer or in-tank transfer of title, in accordance with relevant Magellan documentation and tariffs, as set out in Part CC and the relevant exchange contract terms. The amendments also establish standards for delivery quality, as well as relevant procedures for exchange of futures for physical transactions under exchange rules.

Part CC addresses certain the responsibility of the Clearing House and

relevant parties for delivery under the Permian WTI Contracts, supplementing the existing provisions of the Rules. Specifically, neither the Clearing House nor ICE Futures Europe are responsible for the performance of Magellan or any person operating MEH nor do they make any representation regarding the authenticity, validity or accuracy of any delivery tender notice, confirmation of transfer or any other notice, document, file, record or instrument used or delivered pursuant to the Rules and Procedures.

The amendments address delivery margin and relevant contract security with respect to Permian WTI Contracts. The amendments specify certain details of the delivery process. Delivery of ICE Permian WTI Contracts will be based on open contract positions at the close of trading on the last trading day for which physical delivery is specified. A delivery schedule must be agreed between Magellan and the Buyer and Seller. The procedures include a detailed timeframe for relevant notices of intent to deliver or receive, nominations of parties to delivery or receive, delivery confirmations, invoicing, release of delivery margin following completion of delivery and other matters.

The amendments also contemplate the use of alternative delivery procedures for Permian WTI Contracts, under which the buyer and seller under a contract may agree to arrange delivery and payment for a specific tender outside of the exchange rules and in lieu of the standard delivery arrangements and procedures. The amendments set out notice and other requirements for such alternative delivery procedures.

ICE Clear Europe is also adding a new section 16.7 requiring Clearing Members, Buyers, Seller, Transferors and Transferees that make or take delivery pursuant to a Contract to comply with requirements relating to filing, notification, reporting, registration, certification or authorization under Applicable Laws or from the Delivery Facility.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act⁷ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible,

¹⁰ *Id.*

¹¹ 17 CFR 200.30-3(a)(57).

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)(4)(ii).

⁵ Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Delivery Procedures.

⁶ Capitalized terms used but not defined herein have the meanings specified in the Rules.

⁷ 15 U.S.C. 78q-1(b)(3)(F).

and the protection of investors and the public interest. The proposed amendments are designed to facilitate the clearing of a new physically settled oil futures contract, the Permian WTI Contract, that is being launched for trading by the ICE Futures Europe exchange. The amendments set out the obligations and roles of Clearing Members, the Clearing House and Magellan, the facility used for physical delivery under the Permian WTI Contracts. ICE Clear Europe believes that its financial resources, risk management, systems and operational arrangements are sufficient to support clearing of such products (and to address physical delivery under such contracts) and to manage the risks associated with such contracts. As a result, in ICE Clear Europe's view, the amendments will be consistent with the prompt and accurate clearance and settlement of the Permian WTI Contracts, and the protection of investors and the public interest consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁸ (In ICE Clear Europe's view, the amendments will not affect the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, within the meaning of Section 17A(b)(3)(F).⁹)

In addition, Rule 17Ad-22(e)(10)¹⁰ requires that each covered clearing agency establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor and manage the risks associated with such physical deliveries. As discussed above, the amendments to the Delivery Procedures to allow for the delivery and settlement of ICE Permian WTI Contracts, taken together with the Rules and ICE Futures Europe exchange contract terms, set out the obligations of the Clearing House and other parties with respect to delivery under the Permian WTI Contract. The amendments also adopt procedures for such deliveries, which will facilitate identifying, monitoring and managing risks associated with delivery.

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the

purposes of the Act. The changes are being proposed in order to update the Delivery Procedures in connection with the listing of the ICE Permian WTI Contract for trading on the ICE Futures Europe market. ICE Clear Europe believes that such contracts will provide additional opportunities for interested market participants to engage in trading activity in the Permian WTI market. ICE Clear Europe does not believe the amendments would adversely affect competition among Clearing Members, materially affect the cost of clearing, adversely affect access to clearing in ICE Permian WTI Contracts for Clearing Members or their customers, or otherwise adversely affect competition in clearing services. Accordingly, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed amendments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and paragraph (f) of Rule 19b-4¹² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission or advance notice 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-ICEEU-2018-016 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-ICEEU-2018-016. 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, security-based swap submission or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation#rule-filings>. 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-ICEEU-2018-016 and should be submitted on or before November 16, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-23388 Filed 10-25-18; 8:45 am]

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⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 17 CFR 240.17Ad-22(e)(10).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f).

¹³ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84464; File No. SR-ICEEU-2018-017]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amendments to the Clearing Rules and the CDS Procedures

October 22, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 15, 2018, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and subparagraph (f)(4)⁴ of Rule 19b-4 thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe Limited proposes to modify certain provisions of its CDS Procedures (the “CDS Procedures”) and its Clearing Rules (the “Rules”)⁵ to account for a change in the DC Secretary for the Credit Derivatives Determinations Committees.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe proposes to modify certain provisions of its CDS Procedures and its Rules to account for an expected change in the DC Secretary for the Credit Derivatives Determinations Committees. The DC Secretary performs certain administrative functions in respect of the Credit Derivatives Determinations Committees that make certain determinations relevant to cleared CDS Contracts under the Rules and CDS Procedures. The International Swaps and Derivatives Association (“ISDA”), which currently serves as the DC Secretary, has announced that it intends to cease performing that role and that it has appointed a new DC Secretary. Once the transition is complete, certain references in the Rules and CDS Procedures to ISDA will no longer be accurate.

The amendments will add a new term in the CDS Procedures for “DC Secretary,” which will mean ISDA or such other secretary of the Credit Derivatives Determinations Committees as may be appointed from time to time under the Credit Derivatives Determinations Committees Rules to carry out the functions required thereunder. Certain references to actions by ISDA will be modified to refer to actions by either ISDA or the DC Secretary. Specifically, the definition of “RMP Deadline Time”, which is a deadline for certain obligations upon a Relevant Restructuring Event, is being modified such that “the date of publication by ISDA of the Final List” will become “the date of publication by ISDA or DC Secretary of the Final List”. Section 6.5(d) relating to Deliverable Obligations disputes will be amended such that relevant time periods will refer to the date on which ISDA or DC Secretary publicly announces the resolution of the Credit Derivatives Determinations Committee.

Further pursuant to the proposed amendments, the definition of “Determining Body” in the Rules is being amended to clarify that neither the Credit Derivatives Determination Committee nor a secretary of the Credit Derivatives Determination Committee (or any such other body or Person) is a Representative or committee of the Clearing House.

(b) Statutory Basis

ICE Clear Europe believes that the changes described herein are consistent with the requirements of Section 17A of

the Act⁶ and the regulations thereunder applicable to it. Section 17A(b)(3)(F) of the Act⁷ in particular requires, among other things, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions, to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and the protection of investors, and, in general, protect investors and the public interest. The proposed amendments are designed to address industry changes resulting in the appointment of a new DC Secretary for the Credit Derivatives Determinations Committees. Amending the CDS Procedures and Rules to be consistent with these industry changes ensures that they will continue to be effective for announcements or other actions by the DC Secretary. The amendments do not affect the substantive terms of cleared CDS Contracts. As a result, in ICE Clear Europe’s view, the amendments are consistent with the prompt and accurate clearance and settlement of transactions and the protection of investors and the public interest (and will not affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible).

(B) Clearing Agency’s Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The proposed changes to the CDS Procedures and the Rules are intended to accommodate an industry-wide change in the administration of the Credit Derivatives Determination Committees, and will not change the substantive terms of cleared CDS Contracts. The change will apply uniformly across all CDS Clearing Members and market participants. ICE Clear Europe does not believe the amendments will adversely affect competition among CDS Clearing Members, the cost of clearing, or the ability of market participants to clear CDS contracts generally. Therefore, ICE Clear Europe does not believe the proposed rule changes impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

⁶ 15 U.S.C. 78q-1.

⁷ 15 U.S.C. 78q-1(b)(3)(F).

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)(4).

⁵ Capitalized terms used but not defined herein have the meanings specified in the Rules and CDS Procedures.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-ICEEU-2018-017 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-ICEEU-2018-017. 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 Section, 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 filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/notices/Notices.shtml?regulatoryFilings>. 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-ICEEU-2018-017 and should be submitted on or before November 16, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018-23389 Filed 10-25-18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84465 File No. SR-ISE-2018-86]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 303 (Approval To Operate Multiple Memberships)

October 22, 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 October 10, 2018, Nasdaq ISE, LLC ("ISE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁸ 17 CFR 200.30-3(a)(12).

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 amend Rule 303 (Approval to Operate Multiple Memberships).

The text of the proposed rule change is available on the Exchange's website at <http://ise.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 purpose of the proposed rule change is to amend Rule 303 to permit ISE, instead of ISE's Board of Directors ("Board"), to grant waivers to allow its members to operate multiple Primary Market Maker ("PMM") Memberships³ and Competitive Market Maker ("CMM") Memberships (together, "Market Maker Memberships"). As explained below, the Exchange is seeking to streamline the process by which its members may be approved to operate multiple Market Maker Memberships (hereinafter, "waiver process"). No changes to the Market Maker Membership structure itself are being contemplated by this rule change filing.

Background

PMM Rights and CMM Rights (together, "Market Maker Rights") are owned today by Exchange members or non-member owners (collectively, "holders").⁴ This ownership interest

³ The term "Membership" refers to the trading privileges associated with PMM Rights, CMM Rights, and EAM Rights. See Rules 100(a)(21) and 100(a)(31).

⁴ "Non-member owners" are individuals and organizations that are not members of the Exchange or that are otherwise members, but do not seek to

gives holders the ability to transfer or lease their Market Maker Rights to other members for trading pursuant to Rule 307 (Sale and Transfer of Market Maker Rights) or Rule 308 (Leasing Memberships), respectively. As such, the Exchange's rules provide holders with limited voting rights (in addition to the trading rights) to protect their ownership over these trading rights.⁵ This structure is a remnant of ISE's original membership structure, where the original Market Maker Rights provided the holders with an equity ownership interest in ISE as well as trading rights on the Exchange.⁶ Today, Market Maker Rights do not convey equity ownership in ISE, and the ownership and operation of trading rights associated with Market Maker Rights continue to exist separately. Despite this separation, ISE's rules still contain certain limited voting rights and restrictions related to the Market Maker Rights. The voting rights that remain in place today for the holders of Market Maker Rights are as follows: (i) The right to vote on any increase in the number of authorized PMM Rights or CMM Rights, which must be approved by the affirmative vote of the holders of at least a majority of the outstanding PMM Rights, voting as a class, and the affirmative vote of the holders of at least

exercise trading privileges associated with such Market Maker Rights. See Rule 300(a). Non-member owners are required to lease the trading privileges associated with the Market Maker Rights (*i.e.*, the Membership) to Exchange members. See Rule 300(b).

⁵ As discussed more fully later in the filing, these voting rights are in paragraphs (d) and (e) of Rule 300.

⁶ Under ISE's original membership structure, the original Market Maker Rights provided the holders with an equity ownership interest in ISE as well as trading rights on the Exchange. As such, those rights were transferable or leaseable to approved persons or entities (*i.e.*, Exchange members or non-member owners), subject to ownership and voting limitations, as well as concentration limits on exercising the trading rights associated with multiple Market Maker Rights. Additionally, the original Market Maker Rights conferred broader voting rights to protect the holder's equity interest, such as the right to vote on corporate actions like mergers or consolidations, and the right to vote on changes to the ownership structure of ISE like increasing the number of memberships in a class. From the beginning, the holders of EAM Rights had no equity interests in the Exchange and only had rights to trade on the Exchange. Those rights were not transferable by the holders, and could only be held by Exchange members. See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (Order Granting Registration as a National Securities Exchange). ISE has since demutualized and reorganized, resulting in the separation of the two functions of Market Maker Rights. Today, equity ownership in ISE is held by ISE Holdings as the sole LLC member; the ownership and operation of trading rights associated with the Market Maker Rights (along with the ability to transfer or lease such rights) continue to exist separately, as held by member or non-member owners.

a majority of the outstanding CMM Rights, voting as a class (such voting rights, "Core Rights");⁷ and (ii) the right to vote on any amendments to ISE's LLC Agreement or By-Laws that would alter or change the powers, preferences, or special rights of one or more series of PMM Rights or CMM Rights, which must be approved by the holders of a majority of such PMM Rights or CMM Rights, as applicable.⁸ As noted above, these narrow voting rights exist today to protect the ownership interests associated with the Market Maker Rights (*i.e.*, the ability to transfer or lease to other members for trading on ISE), whether as a safeguard against potential dilution in value as noted above, or as the right to vote on any impactful changes to ISE's governing documents that would alter the nature of their interests. Also, one limitation, which has existed without change since ISE's inception, is a mandatory cap that prohibits the holder or lessee of Market Maker Rights, together with any affiliates, from gaining ownership or voting rights in excess of 20% of the outstanding PMM Rights or CMM Rights, as applicable.⁹

In addition to the ownership and voting limitations, Rule 303(b) contains trading concentration limits that restrict an applicant or approved member, together with any affiliates, from operating more than one (1) PMM Membership or more than ten (10) CMM Memberships. Today, the Board may waive the limitations contained in this rule if it determines that good cause has been shown and such action is, in its judgment, in the best interests of the Exchange.¹⁰ The Board is not permitted, however, to waive this requirement if such waiver would result in the applicant or approved member (together with any of its affiliates) being approved to exercise trading privileges associated with more than 20% of the outstanding

⁷ See Rule 300(d). Presently, the number of outstanding PMM Rights and CMM Rights are 10 and 160, respectively. See Rule 100(a)(13) and (46). Due to this limited number, the Core Rights effectively serve as a protection against the potential dilution of the value of the PMM and CMM Rights resulting from subsequent increases in the number of those rights.

⁸ See Rule 300(e).

⁹ See Supplementary Material .02 to Rule 303. The Exchange is not proposing any changes to the ownership and voting limitations.

¹⁰ When making its determination whether good cause has been shown to waive the limitations contained in Rule 303(b), the Board will consider whether an operational, business or regulatory need to exceed the limits has been demonstrated. In those cases where such a need is demonstrated, the Board also will consider any operational, business or regulatory concerns that might be raised if such a waiver were granted. See Supplementary Material .01 to Rule 303.

CMM Memberships.¹¹ The foregoing limitations serve to minimize potential concerns arising from a member owning or operating multiple memberships, and the Commission has previously noted that a regulatory concern can arise if a member's interest in an exchange becomes so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member. For example, a member that directly or indirectly controls an exchange might be tempted to exercise that controlling influence by directing the exchange to refrain from diligently monitoring and surveilling the member's conduct or diligently enforcing its rules and the federal securities laws with respect to conduct by the member that violates such provisions.¹²

Rule 303 is implicated in the context of a transfer or lease of Market Maker Rights pursuant to Rule 307 (Sale and Transfer of Market Maker Rights) or Rule 308 (Leasing Memberships), respectively, and the approval of such transfer or lease would result in a member exceeding the limits contained in Rule 303(b) (*i.e.*, the transfer or lease would result in the member operating more than 1 PMM Membership or more than 10 CMM Memberships). The Exchange notes that a transfer or lease of Market Maker Rights can occur when an ISE Market Maker exits the options market making community, and thus ceases operating their Market Maker Membership, resulting in a decrease of the number of ISE Market Makers.¹³ In such cases, the Board may find it appropriate to waive the trading concentration limit in Rule 303(b) after determining that good cause has been shown and if doing so would be in the

¹¹ A similar strict 20% concentration cap was previously in place for operating multiple PMM Memberships, but the Exchange has over the years relaxed and later eliminated this strict cap. See Securities Exchange Act Release Nos. 53271 (February 10, 2006), 71 FR 8625 (February 17, 2006) (SR-ISE-2005-46) ("2005 Proposal"); and 77410 (March 21, 2016), 81 FR 16248 (March 25, 2016) (SR-ISE-2016-07) ("2016 Proposal"). In justifying the 2016 Proposal, the Exchange cited to other exchanges like CBOE and NYSE Arca that did not have mandatory caps on the number of issues or trading rights that could be allocated to their designated primary market-maker or lead market makers. See 2016 Proposal at 16249. It should also be noted that both CBOE and NYSE Arca provide for allocations to be done at the exchange, not board, level. See CBOE Rule 8.84 and NYSE Arca Rule 6.82-0.

¹² See 2005 Proposal at 8625 and 8626.

¹³ While Exchange receives applications for new ISE Market Makers as well, this decrease is parallel to the continued consolidation in the options market making community and resulting decrease in the number of market makers, which served as an impetus for the both the 2005 Proposal and 2016 Proposal as discussed in note 11 above.

best interest of the Exchange to allow, for instance, a qualified PMM to operate more than 1 PMM Membership. In making this determination, the Board would also take into account whether the waiver to allow a member to operate multiple Market Maker Memberships would enable the member to exercise direct or indirect control over ISE in a manner that would cast doubt on whether ISE can fairly and objectively exercise its self-regulatory responsibilities with respect to that member.¹⁴ In this respect, the Board serves as an independent check on potential undue influence concerns.

Proposal

The Exchange now proposes to amend Rule 303 to permit the Exchange to grant waivers to allow members to operate multiple Market Maker Memberships, instead of the Board. As such, the limitations on members exercising the trading privileges associated with more than one (1) PMM Membership or more than ten (10) CMM Memberships may be waived by the Exchange if the member shows good cause, which will be determined by the Exchange pursuant to the standards set forth in Supplementary Material .01 to Rule 303. The Exchange is not proposing any changes to the Market Maker Rights ownership structure itself, or to the Exchange's corporate governance by bringing the waiver authority from the Board to the Exchange. As proposed, holders will continue to have the ability to transfer or lease their rights to other members for trading on ISE as well as voting rights on certain limited matters to protect their ownership over these trading rights.¹⁵ Furthermore, the Market Maker Rights will still be subject to the same ownership, voting, and concentration limits in place today. Specifically, the 20% ownership and voting limitations in Supplementary Material .02 to Rule 303 will remain under this proposal. The trading concentration limits in Rule

303(b), including the strict cap that prohibits the Board from approving a member to operate more than 20% of the outstanding CMM Memberships, will likewise remain under this proposal. The Exchange is only proposing to change the manner in which the 1 PMM Membership and 10 CMM Membership concentration limits in Rule 303(b) may be waived (*i.e.*, from the Board to the Exchange).

The Exchange believes that this change will help with the administration and application of Rule 303 by bringing the Exchange's membership transfer process more in line with other exchanges.¹⁶ The current practice often results in a long and lengthy process to organize a Board meeting to consider such applications, and the Exchange is concerned that there may be a deterioration of market quality in the interim. Furthermore, Exchange staff has been involved in all aspects of the waiver process through its work with the Board, including gathering and assessing relevant information on the member applying to operate multiple Market Maker Memberships for purposes of determining whether or not there is good cause shown under Rule 303.¹⁷ Given that PMM and CMM Rights are, for all practical purposes, rights to trade on the Exchange as described above, the Exchange believes that the process in Rule 303, specifically making the determination whether good cause has been shown to waive the limitations in Rule 303(b) to allow a member to operate multiple trading privileges associated with a PMM or CMM Right, is a proper function of the Exchange. As noted above, the Exchange's proposal does not change the Market Maker Rights ownership structure, nor does it change the Exchange's governance.

¹⁶ See note 11 above. Furthermore, the Exchange notes that its affiliates, Phlx and BX, similarly allow for transfers of allocated options classes at the exchange, and not board, level. See Phlx Rule 508, which requires exchange approval of any proposed agreement between specialists to transfer one or more options classes already allocated to a specialist. See also BX Chapter VII, Section 13(D), which governs requested transfers of options classes between BX lead market makers, and also provides for an exchange-driven process. On ISE, a Market Maker Membership manifests itself as a group of options classes allocated to the member, so a transfer of the membership is similar to the way transfers of options classes are handled on Phlx and BX.

¹⁷ Specifically, Exchange staff, including from the options business team, market operations, and regulatory department, gather relevant information on the applicant member that includes the number of Market Maker Memberships that the member currently operates and other market quality data as appropriate. This information is then compiled into a report that is sent to the Board to assist them in making the good cause determination under Rule 303.

Holders will continue to have the same ability to transfer and lease their rights to other members for trading on ISE as well as voting rights on certain limited matters to protect their ownership over these trading rights.

The Exchange recognizes that allowing a member to operate multiple Market Maker Memberships could raise issues regarding concentration of market making expertise, including regulatory concerns around undue influence, as discussed above. In this regard, Rule 303 is still only an enabling rule. With the proposed change, the Exchange will still need to find good cause to approve any member to operate more than one PMM Membership or more than ten CMM Memberships, and could consider the number of Memberships already operated by the member in determining whether or not there is good cause shown. Thus, the Exchange will need to weigh each potential application on its own merits, balancing the potential benefits of allowing a member to exercise more than one PMM Memberships, or more than ten CMM Memberships, against any concentration concern.

In addition, the Exchange's internal procedures will stipulate that all such determinations will be made in consultation with the Exchange's Chief Regulatory Officer ("CRO").¹⁸ It is already the Exchange's current practice to involve the CRO as part of the waiver process in that the CRO weighs in on any regulatory concerns that could arise from a member operating multiple Market Maker Memberships, so the Exchange would effectively make current practice a requirement. Furthermore, the CRO reports directly to the Regulatory Oversight Committee ("ROC"), a Board committee composed solely of Public Directors that are also independent directors, and ultimately to the Board, on a regular basis.¹⁹ As proposed, to the extent any determinations are made under Rule 303(b), such determinations will be reported to the ROC and the Board on a regular basis. In addition, the Exchange's regulatory staff, which will continue to be involved in the waiver process, operates under the direction of

¹⁸ Specifically, Exchange staff, including regulatory staff, in consultation with the CRO, would make this determination based on relevant information on the applicant member, including the number of Memberships already operated by the member and other market quality data that the Exchange deems appropriate.

¹⁹ See note 14 above. See also Nasdaq ISE By-Law Article IV, Section 7. The Board receives reports from the ROC during its regularly scheduled Board meetings, where the ROC members as well as the CRO are all present to answer any questions from the Board.

¹⁴ Pursuant to the Exchange's By-Laws, the Board is responsible for ensuring that the Exchange complies with its self-regulatory obligations to protect investors, maintain fair and orderly markets, and advance the public interest. In carrying out this responsibility, the Board is further required to appoint a Regulatory Oversight Committee, composed solely of Board members each of whom must be a Public Director (*i.e.*, has no material business relationship with a broker or dealer or with the Exchange or its affiliates) and an "independent director" as defined in Rule 5605 of the Rules of The Nasdaq Stock Market, LLC, to assist the Board in overseeing the adequacy and effectiveness of ISE's regulatory and self-regulatory responsibilities. See Exchange By-Law Article III, Sections 3(b) and 5(c).

¹⁵ See notes 7 and 8 above, and accompanying text.

the ROC, and works separately and independently from the Exchange's business units. Given the foregoing, the Exchange believes that the proposed process serves an appropriate independent safeguard in assessing and protecting against regulatory concerns around undue influence.

The Board will therefore still be informed of determinations made under Rule 303 under the proposed process through the CRO's regular reports to the ROC and will, through this process, review and assess against potential undue influence concerns.²⁰

Accordingly, the Exchange believes that the Board will still have meaningful oversight notwithstanding the proposed changes to the waiver process itself. Ultimately, the Exchange believes that the proposed changes should significantly improve the flow and efficiency of the waiver process while retaining the regulatory independence of the waiver process through the both the ROC's and Board's oversight.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²² 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. As discussed above, the Exchange is not seeking to amend any of the rights or limitations associated with the Market Maker Rights ownership structure, or to Exchange's corporate governance by bringing the waiver authority from the Board to the Exchange. Overall, the proposed rule change is intended to streamline the Exchange's waiver process by allowing the Exchange, instead of the Board, to waive the trading concentration limits in Rule 303(b). As discussed above, the current practice often results in a long and lengthy process to organize a Board meeting to consider such applications, and the Exchange is concerned that there may be a deterioration of market quality in the interim. The Exchange views the waiver process as a proper function of the Exchange given that the PMM and CMM Rights are, for all practical purposes, rights to trade on the Exchange. Furthermore, the proposed changes will bring the Exchange's

waiver process more in line with other exchanges, where the transfer of a market maker's allocated options classes are handled at the exchange, and not the board, level.²³ As discussed above, Exchange staff, including regulatory staff, has been involved in all aspects of the waiver process through its work with the Board, and will continue to be involved by gathering and assessing relevant information on the member applying to operate multiple Market Maker Memberships for purposes of determining whether or not there is good cause shown under Rule 303. Furthermore, the CRO will be directly involved in all such determinations as described above, as is the case today, and will report to the ROC and Board on such matters. Accordingly, the Exchange believes that the proposed changes will help with the administration and application of Rule 303 while retaining the regulatory independence of the waiver process through both the ROC's and Board's oversight, as discussed above.

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 rule change is designed to streamline the waiver process for allowing a member to operate multiple Market Maker Memberships, and does not have a competitive effect. Furthermore, all similarly situated members will be subject to the same requirements and processes proposed hereunder.

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)(iii) of the Act²⁴ and

subparagraph (f)(6) of Rule 19b-4 thereunder.²⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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-ISE-2018-86 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-ISE-2018-86. 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

²⁰ See notes 14 and 19 above, with accompanying text.

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

²³ See notes 11 and 16 above, with accompanying text.

²⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-ISE-2018-86, and should be submitted on or before November 16, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-23390 Filed 10-25-18; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15752 and #15753; PENNSYLVANIA Disaster Number PA-00091]

Administrative Declaration of a Disaster for the Commonwealth of Pennsylvania

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 10/18/2018.

Incident: Flooding.

Incident Period: 08/31/2018 through 09/01/2018.

DATES: Issued on 10/18/2018.

Physical Loan Application Deadline Date: 12/17/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 07/18/2019.

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 disaster declaration,

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 Counties: Lancaster, York.

Contiguous Counties:

Pennsylvania: Adams, Berks, Chester, Cumberland, Dauphin, Lebanon.

Maryland: Baltimore, Carroll, Cecil, Harford.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
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
<i>For Economic Injury:</i>	
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 15752 6 and for economic injury is 15753 0.

The States which received an EIDL Declaration # are Pennsylvania, Maryland.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: October 13, 2018.

Linda E. McMahon,
Administrator.

[FR Doc. 2018-23480 Filed 10-25-18; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15754 and #15755; TEXAS Disaster Number TX-00507]

Administrative Declaration of a Disaster for the State of Texas

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Texas dated 10/18/2018.

Incident: Severe Storms and Flooding.

Incident Period: 09/21/2018 through 09/23/2018.

DATES: Issued on 10/18/2018.

Physical Loan Application Deadline Date: 12/17/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 07/18/2019.

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 disaster declaration, 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 Counties: Ellis, Sutton, Tarrant.

Contiguous Counties:

Texas: Crockett, Dallas, Denton, Edwards, Henderson, Hill, Johnson, Kaufman, Kimble, Menard, Navarro, Parker, Schleicher, Val Verde, Wise.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
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
<i>For Economic Injury:</i>	
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 15754 6 and for economic injury is 15755 0.

The State which received an EIDL Declaration # is Texas.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: October 13, 2018.

Linda E. McMahon,
Administrator.

[FR Doc. 2018-23483 Filed 10-25-18; 8:45 am]

BILLING CODE 8025-01-P

²⁶ 17 CFR 200.30-3(a)(12).

SURFACE TRANSPORTATION BOARD**[Docket No. FD 36231]****Iowa & Middletown Railway LLC—
Lease and Operation Exemption—
American Ordnance LLC, Owner's
Representative for U.S. Army Joint
Munitions Command**

Iowa & Middletown Railway LLC (I&M), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from American Ordnance LLC (AO), as owner's representative for the U.S. Army Joint Munitions Command (JMC), and to operate, within the Iowa Army Ammunition Plant (Plant),¹ approximately four miles of track (Line).² According to I&M, there are no mileposts assigned to the Line. The Line is located in Des Moines County, Iowa, on a portion of the Plant that JMC no longer needs and will be repurposed as a business park.

I&M states that upon consummation of the transaction and the commencement of operations, I&M will be a Class III carrier. I&M states that it is leasing the Line in order to provide common carrier rail service to transload customers and other rail customers that may locate in the planned business park. I&M states it will originate and terminate freight traffic and conduct loading and unloading operations and that it will also offer rail car storage and car repair services within the Plant. The Line connects with BNSF Railway Company (BNSF) at Middletown, Iowa, and I&M is working with BNSF to establish interchange there.

According to I&M, it intends to commence common carrier operations on or about January 1, 2019. I&M states, however, that Eyal Shapira, President of I&M, would file a related notice of exemption for common control of I&M and other railroads under his control. Mr. Shapira filed that notice in *Eyal Shapira—Continuance in Control Exemption—Iowa & Middletown Railway*, Docket No. FD 36232, on October 23, 2018.³ Therefore, the effective date of this lease and operation

¹ The Plant is owned by JMC. According to I&M, AO and JMC are parties to an Operations and Maintenance Agreement that permits AO to grant rights to use certain property within the Plant, including the railroad tracks.

² I&M states that the lease also includes a number of other tracks that will be operated by I&M under as yard and industrial tracks for which no Board authority is required.

³ The notice of exemption in Docket No. FD 36232 also relates to a concurrently filed notice of exemption in *Wolf Creek Railroad LLC—Lease & Operation Exemption—American Ordnance LLC, Owner's Representative for U.S. Army Joint Munitions Command*, Docket No. FD 36236.

exemption will be held in abeyance pending review of Mr. Shapira's notice of exemption.

I&M certifies that its projected annual revenues as a result of this transaction will not exceed \$5 million or result in the creation of a Class II or Class I rail carrier.

I&M also certifies that the lease does not impose or include an interchange commitment.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than seven days before the exemption becomes effective; a deadline for filing petitions for stay will be established in a future decision that establishes an effective date for this exemption.

An original and 10 copies of all pleadings, referring to Docket No. FD 36231, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

According to I&M, this action is exempt from environmental review under 49 CFR 1105.6(c) and exempt from historic review under 49 CFR 1105.8(b).

Board decisions and notices are available on our website at www.stb.gov.

Decided: October 23, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2018-23472 Filed 10-25-18; 8:45 am]

BILLING CODE 4915-01-P

TENNESSEE VALLEY AUTHORITY**Shawnee Fossil Plant Coal
Combustion Residual Management**

AGENCY: Tennessee Valley Authority.

ACTION: Issuance of Record of Decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations and Tennessee Valley Authority's (TVA) procedures for implementing the National Environmental Policy Act (NEPA). TVA has decided to close the Shawnee Fossil Plant (SHF) Special Waste Landfill (SWL) and Ash

Impoundment 2 and construct a new process water basin (PWB). A notice of availability (NOA) of the Final Supplemental Environmental Impact Statement (SEIS) for Shawnee Fossil Plant Coal Combustion Residual (CCR) Management was published in the **Federal Register** on August 31, 2018. The Final SEIS identified TVA's preferred alternative as Alternative C—Closure-in-Place and Regrading of the SWL and Ash Impoundment 2 and Construction of a New PWB. TVA's decision would achieve the purpose and need to manage the disposal of CCR materials on a dry basis and to meet the U.S. Environmental Protection Agency's 2015 CCR regulations, as well as the Commonwealth of Kentucky's regulations.

FOR FURTHER INFORMATION CONTACT:

Ashley Pilakowski, Project Environmental Planning, NEPA Specialist, Tennessee Valley Authority, 400 W. Summit Hill Drive Knoxville, TN 37902; telephone 865-632-2256, or by email aapilakowski@tva.gov. The Final SEIS, this Record of Decision and other project documents are available on TVA's website <https://www.tva.gov/nepa>.

SUPPLEMENTARY INFORMATION: In December 2017, TVA issued the *Shawnee Fossil Plant Coal Combustion Residual Management Final Environmental Impact Statement* (Final EIS). The year-long assessment called for closing both the SWL and Ash Impoundment 2, as well as building and operating a new lined landfill to store dry CCR waste produced by SHF in the future. In the Final EIS, TVA identified its preferred alternative as Alternative B—Construction of an Onsite CCR Landfill, Closure-in-Place of Ash Impoundment 2 with a Reduced Footprint, and Closure-in-Place of the SWL. On January 16, 2018, TVA issued a record of decision (ROD) to implement construction of the new dry CCR landfill, and elected to further consider the alternatives regarding the closure of the SWL and Ash Impoundment 2 before making a decision. The Final EIS and ROD can be viewed here: <https://www.tva.gov/nepa>.

TVA prepared the SEIS to further analyze the alternatives for closure of the SWL and Ash Impoundment 2. Additionally, while a preliminary location for the PWB was considered in the 2017 Final EIS, upon further investigation TVA chose to consider additional alternative locations for the PWB in the SEIS.

The purpose and need of ceasing CCR management operations at both the SWL and Ash Impoundment 2 and closing

them was, and continues to be, to manage the disposal of CCR materials on a dry basis and to meet the 2015 CCR regulations, as well as the Commonwealth of Kentucky's regulations.

Alternatives Considered

TVA reevaluated all of the closure alternatives previously presented in the Final EIS, including those previously eliminated from consideration. The majority of the closure alternatives remained eliminated as evaluated in the Final EIS. However, TVA decided to reconsider previously eliminated Alternative 4b Closure-in-Place of both facilities with general grading within the permit boundary.

Alternative 4b was initially eliminated because it "would not improve stability." This did not mean that Alternative 4b would cause instability; rather, it merely did not improve stability. Ash Impoundment 2 and the SWL are stable and in full compliance with all standards and regulations; thus closure-in-place with general grading would not destabilize either facility. Though not described in the 2017 Final EIS, TVA originally anticipated that Alternative 4b would require import of a large quantity of borrow material from an offsite source, more material than was potentially available from the Shawnee East Site. This caused Alternative 4b to be ranked lower on constructability and environmental considerations than other alternatives. Thus, it was eliminated from consideration in the Final EIS.

As TVA continued to review the closure alternatives, TVA identified the potential to beneficially reuse CCR from the SWL for grading the closed facilities. TVA is currently conducting a demonstration study to determine the feasibility of this proposed beneficial reuse of CCR in place of borrow material. The beneficial reuse of CCR for closure would be subject to Kentucky Department for Environmental Protection approval. TVA also identified the potential for the use of a ClosureTurf® or equivalent system as a cap for Ash Impoundment 2 and SWL. This type of cap system consists of a special engineered turf and sand fill and would, therefore, also require less borrow material.

Additionally, for grading, Alternative 4b would move approximately 1 million cubic yards of CCR less than Alternative B from the 2017 Final EIS. This CCR would be dry CCR from the SWL as opposed to wet CCR (which would have to be dewatered) from Ash Impoundment 2. Therefore, the closure

could be completed with greater simplicity, less risk to workers, more quickly, and with a lower cost than Alternative B. Additionally, because Alternative 4b would involve movement of less CCR, air quality impacts of this alternative would be less than the air quality impacts of Alternative B in the 2017 Final EIS. Thus, the air quality impacts associated with this alternative are less than, and therefore bracketed by, the air quality analysis as presented in the Final EIS for Alternative B. For all these reasons, TVA found that Alternative 4b scored better on constructability, design considerations, schedule, and economics than many of the other alternatives, including Alternative B in the 2017 Final EIS. Therefore, TVA elected to carry Alternative 4b forward for analysis in this SEIS. Alternative 4b became the new Alternative C in the SEIS.

At the same time that Alternative 4b became a higher scoring alternative in TVA's reanalysis, TVA determined that Alternative B Closure-by-Consolidation in the 2017 Final EIS would require over-excavation of native materials within the area from which materials are removed/consolidated to confirm complete removal of CCR. Approximately one foot of over-excavation is assumed to be necessary. This modified alternative, which includes over-excavation, is included in this SEIS as Alternative B.

Based on TVA's re-evaluation of the preliminary alternatives analysis, as described above, TVA identified two feasible action alternatives for future CCR management at SHF, in addition to a No-Action alternative (Alternative A), which served as a baseline.

Alternative A—No Action. Under the No Action Alternative, TVA would continue current plant operations and not cease operations at its SWL and Ash Impoundment 2 (*i.e.*, neither facility would be closed) and no closure activities (*i.e.*, installing a cover system to align with closure activities) would occur. Additionally, TVA would not construct and operate a new PWB. The existing associated impoundments would continue to be operated as currently permitted until completion of the new CCR landfill. Under the No Action Alternative, SHF's operations likely would not comply with the CCR Rule; therefore, this alternative would not meet the purpose and need for the proposed actions and is not considered viable or reasonable. It does, however, provide a benchmark for comparing the environmental impacts of implementation of Action Alternatives B and C.

Alternative B—Closure-in-Place by Reduced Footprint of the Special Waste Landfill and Ash Impoundment 2 and Construction of a New Process Water Basin. Under Alternative B, TVA would close Ash Impoundment 2 in place by removing portions of ash in the northwest corner of the impoundment and consolidating this in another portion of the footprint. As part of the re-evaluation of alternatives, TVA identified that this alternative (formerly Alternative B in the 2017 Final EIS) would also require approximately one foot of over-excavation of native materials across the area from which materials are removed/consolidated to confirm complete removal of CCR. Due to the unknown nature of underlying material, over-excavation of significantly more than one foot could be required and could potentially include other remediation measures which cannot be defined at this time. The SWL and remaining Ash Impoundment 2 (including the dredge cell) would be covered and capped. This alternative would also include the construction of a lined process water basin to receive plant flows and allow for operations to cease at Ash Impoundment 2.

Alternative C—Closure-in-Place and Regrading of the Special Waste Landfill and Ash Impoundment 2 and Construction of a New Process Water Basin. Most activities would be the same under Alternative C as described previously for Alternative B. However, under Alternative C, the remaining ash in the northwest corner of Ash Impoundment 2 would not be removed and consolidated and no native material would be excavated. Instead, both the SWL and Ash Impoundment 2 would be closed-in-place and regraded with materials redistributed to establish appropriate drainage and stability. New storm water outfalls would be installed along the perimeter of the facilities to discharge at elevations at or above the 100-year flood elevation.

Environmentally Preferable Alternative

Alternative A (No Action) would result in fewer environmental impacts than Alternative B and C. However, Alternative A does not meet the purpose and need for the project as continuing current operations would not promote the future management of dry CCR at SHF, and would not meet the federal regulatory requirements for closing ash impoundments including EPA's CCR Rule.

The environmental impact differences between Alternatives B and C are minor. Alternative B may have slightly more beneficial impacts with regard to

groundwater; however, Alternative C would achieve the purpose and need of the project and calls for less movement of CCR material and less dewatering than Alternative B resulting in greater stability, less impacts to air and less risk to worker safety. Consequently, Alternative C could also be completed sooner and for a lower cost than Alternative B.

Impacts associated with the construction and operation of a lined process water basin to handle plant flows would be the same under Alternatives B and C.

The beneficial impacts to groundwater, which environmentally advantage Alternative B over Alternative C, are not substantive enough to outweigh the benefits associated with air quality, constructability, design considerations, schedule, and economics.

Under Alternative B and C, there would be minor impacts to land use, prime farmlands and soil, surface water, vegetation, wildlife, threatened and endangered species, and wetlands. Minor impacts to land use include conversion of undeveloped land to industrial use. Borrow material may be required for closure activities resulting in minor impacts to soils. Alterations of the wet-weather conveyance and storm water flow are minor impacts to surface water. Disruption of habitat during closure and construction activities and conversion of undeveloped land to industrial result in minor impacts to vegetation, wildlife, and threatened and endangered species. Minor impacts are associated with conversion of 0.26 acre of wetlands. There would be no impacts to cultural resources. Impacts under Alternative C would be slightly less than those described under Alternative B.

Public Involvement

On November 1, 2016, TVA published a Notice of Intent in the **Federal Register** announcing that it planned to prepare an EIS to address the potential environmental effects associated with ceasing operations at both the SWL and Ash Impoundment 2, and constructing, operating, and maintaining a new CCR Landfill at SHF. TVA hosted an open house scoping meeting on November 15, 2016, at the Robert Cherry Civic Center in Paducah, Kentucky. The Draft EIS was issued on June 8, 2017, and TVA hosted a public meeting on June 22, 2017, at the Robert Cherry Civic Center in Paducah, Kentucky. The Final EIS was issued on December 8, 2017, and a ROD was signed on January 16, 2018. Public comments and TVA's responses

are included in Appendix I of the Final EIS.

The NOA for the Draft SEIS was published in the **Federal Register** on May 4, 2018, initiating a 45-day public scoping period, which concluded on June 18, 2018. In addition to the notice in the **Federal Register**, TVA sent notification of the availability of the Draft SEIS to local and state government entities and federal agencies; published notices regarding this effort in local newspapers; issued a press release to media; and posted the NOA on the TVA website. TVA accepted comments submitted through mail and email. TVA received a total of 19 comments from 6 commenters. Summarized comments and TVA's responses are included in Appendix E of the Final SEIS.

The NOA for the Final SEIS was published in the **Federal Register** on August 31, 2018.

Decision

TVA has decided to close the SWL and Ash Impoundment 2 in place with regrading of both facilities and to construct a new PWB (Alternative C). These actions would achieve the purpose and need of the project and call for less movement of CCR material and less dewatering and would result in fewer air quality impacts than Alternative B, while also potentially being completed sooner and for a lower cost than Alternative B.

Mitigation Measures

TVA would use appropriate best management practices during all phases of impoundment closure and construction and operation of a process water basin. Mitigation measures, actions taken to reduce adverse impacts associated with the proposed action, include:

- Final drainage for the temporary treatment basin (if utilized) would be routed to existing or new discharge outfalls and comply with the Kentucky Pollutant Discharge Elimination System permit to ensure that no adverse impacts to surface waters would occur. Mitigation measures would be identified, as needed, to ensure the discharges meet permit limits. This may or may not require a permit modification.

- Prior to disturbing wetland and surface water features within the process water basin project site, TVA would obtain a Clean Water Act Section 404 permit and a Kentucky Division of Water 401 Water Quality Certification. Where impacts to these features cannot be avoided, TVA would mitigate impacts in accordance with the Section 404 permit and/or Water Quality

Certification as determined in consultation with the U.S. Army Corps of Engineers and Kentucky Division of Water.

- Tree removal would occur in winter months (between November 15 and March 31) outside breeding season, and would be tracked, documented, and reported to the U.S. Fish and Wildlife Service.

Dated: October 22, 2018.

Robert M. Deacy, Sr.,

Senior Vice President, Generation Construction, Projects & Services.

[FR Doc. 2018-23427 Filed 10-25-18; 8:45 am]

BILLING CODE 8120-08-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR-2018-0034]

Request for Comments on Negotiating Objectives for a U.S.-Japan Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing.

SUMMARY: On October 16, 2018, the United States Trade Representative notified Congress of the Administration's intention to enter into negotiations with Japan for a U.S.-Japan Trade Agreement. The Office of the United States Trade Representative (USTR) is seeking public comments on a proposed U.S.-Japan Trade Agreement including U.S. interests and priorities, in order to develop U.S. negotiating positions. You can provide comments in writing and orally at a public hearing. Our aim in negotiations with Japan is to address both tariff and non-tariff barriers and to achieve fairer, more balanced trade.

DATES:

November 26, 2018: Deadline for the submission of written comments, and for written notification of your intent to testify, as well as a summary of your testimony at the public hearing.

December 10, 2018: The Trade Policy Staff Committee (TPSC) will hold a public hearing beginning at 9:30 a.m., at the main hearing room of the U.S. International Trade Commission, 500 E Street SW, Washington DC 20436.

ADDRESSES: You should submit notifications of intent to testify and written comments through the Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments in parts 2 and 3 below. For alternatives to on-line submissions, please contact

Yvonne Jamison, Trade Policy Staff Committee, at (202) 395-3475.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments, please contact Yvonne Jamison at (202) 395-3475. Direct all other questions to David Boling, Deputy Assistant U.S. Trade Representative for Japan, at (202) 395-5070.

SUPPLEMENTARY INFORMATION:

1. Background

The decision to launch negotiations for a U.S.-Japan Trade Agreement is an important step toward achieving fairer, more balanced trade with Japan and was preceded by bilateral consultations on trade under the U.S.-Japan Economic Dialogue. In April 2018, new bilateral trade and investment consultations were announced, led by U.S. Trade Representative Robert Lighthizer for the United States, in order to intensify engagement on bilateral trade. These consultations culminated in the announcement in September 2018 that the United States and Japan plan to enter into negotiations for a U.S.-Japan Trade Agreement. See <https://www.whitehouse.gov/briefings-statements/joint-statement-united-states-japan/>.

On October 16, 2018, following consultations with relevant Congressional committees, the United States Trade Representative informed Congress that the President intends to commence negotiations with Japan for a U.S.-Japan Trade Agreement.

2. Public Comment and Hearing

The TPSC invites interested parties to submit comments and/or oral testimony to assist USTR as it develops its negotiating objectives and positions for the agreement, including with regard to objectives identified in section 102 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (19 U.S.C. 4201). In particular, the TPSC invites interested parties to comment on issues including, but not limited to, the following:

- a. General and product-specific negotiating objectives for the proposed agreement.
- b. Relevant barriers to trade in goods and services between the United States and Japan that should be addressed in the negotiations.
- c. Economic costs and benefits to U.S. producers and consumers of removal or reduction of tariffs and removal or reduction of non-tariff barriers on articles traded with Japan.
- d. Treatment of specific goods (described by HTSUS numbers) under the proposed agreement, including comments on:

- i. Product-specific import or export interests or barriers.

- ii. Experience with particular measures that should be addressed in the negotiations.

- iii. Ways to address export priorities and import sensitivities in the context of the proposed agreement.

- e. Customs and trade facilitation issues that should be addressed in the negotiations.

- f. Sanitary and phytosanitary measures and technical barriers to trade that should be addressed in the negotiations.

- g. Other measures or practices that undermine fair market opportunities for U.S. businesses, workers, farmers, and ranchers that should be addressed in the negotiations.

USTR must receive written comments no later than Monday, November 26, 2018. The TPSC will hold a hearing on December 10, 2018, in the Main Hearing Room at the U.S. International Trade Commission, 500 E Street SW, Washington DC 20436. If necessary, the hearing will continue on the next business day. Persons wishing to testify at the hearing must provide written notification of their intention by November 26, 2018. The intent to testify notification must be made in the 'type comment' field under docket number USTR-2018-0034 on the www.regulations.gov website and should include the name, address, and telephone number of the person presenting the testimony. You should attach a summary of the testimony by using the 'upload file' field. The file name also should include who will be presenting the testimony. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC.

3. Requirements for Submissions

In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make online submissions, using the www.regulations.gov website. Persons submitting a notification of intent to testify and/or written comments must do so in English and must identify (on the first page of the submission) the 'U.S.-Japan Trade Agreement.'

To submit comments via www.regulations.gov, enter docket number USTR-2018-0034 on the home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled 'comment now!' For further information on using the www.regulations.gov website, please consult the resources provided on the

website by clicking on 'How to Use This Site' on the left side of the home page.

The www.regulations.gov website allows users to provide comments by filling in a 'type comment' field, or by attaching a document using an 'upload file' field. USTR prefers that you provide comments in an attached document. If a document is attached, it is sufficient to type 'see attached' in the 'type comment' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the 'type comment' field.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters 'BC.' Any page containing business confidential information must be clearly marked BUSINESS CONFIDENTIAL on the top of that page. Filers of submissions containing business confidential information also must submit a public version of their comments. The file name of the public version should begin with the character 'P.' The 'BC' and 'P' should be followed by the name of the person or entity submitting the comments or reply comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

As noted, USTR strongly urges submitters to file comments through www.regulations.gov. You must make any alternative arrangements before transmitting a comment and in advance of the applicable deadline with Yvonne Jamison at (202) 395-3475.

USTR will place comments in the docket for public inspection, except business confidential information. General information concerning USTR is available at www.ustr.gov.

Edward Gresser,

Chair of the Trade Policy Staff Committee, Office of the United States Trade Representative.

[FR Doc. 2018-23569 Filed 10-25-18; 8:45 am]

BILLING CODE 3290-F9-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Procedures for Non-Federal Navigation Facilities**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 27, 2018.

The collection involves the compilation of:

- Commissioning data, such as the initial standards and tolerances parameters for the aerial navigation aids (NavAids) and electrical/electronic facilities, owned and operated by non-Federal sponsors;
- Maintenance activities and operational history, such as outages and repairs, for facilities owned and operated by non-Federal sponsors; and
- The facilities' periodically verified parameters for the life of the facility.

The information collected is necessary to ensure that operation and maintenance of these non-Federally owned facilities is in accordance with FAA safety standards.

DATES: Written comments should be submitted by November 26, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to oir_submission@omb.eop.gov, or faxed to (202) 395-6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to

enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall at (940) 594-5913, or by email at: Barbara.L.Hall@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0014.

Title: Procedures for Non-Federal Navigation Facilities.

Form Numbers: FAA Form 6000-10; FAA Form 6000-8; FAA Form; 6030-1.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 27, 2018 (83 FR 43724). Title 14 CFR part 171 establishes procedures and requirements for non-Federal sponsors, ("non-Federal sponsors" refers to entities such as state and local governments, businesses, and private citizens) to purchase, install, operate, and maintain electronic NavAids for use by the flying public, in the National Airspace System (NAS). Part 171 describes procedures for receiving permission to install a facility and requirements to keep it in service. Documenting the initial parameters during commissioning is necessary to have a baseline to reference during future inspections. Another requirement is recording maintenance tasks, removal from service, and any other repairs performed on these facilities in on-site logs to have an accurate history on the performance of the facility. In addition, at each periodic inspection, recording the facilities' current parameters provides performance information for the life of the facility. Records must be kept on site and the FAA must receive copies of the logs.

Respondents: Approximately 2,600 non-Federal navigation facilities—no more than 2,600 respondents.

Frequency: Information is collected (submitted to Inspectors) on occasion.

Estimated Average Burden per Response: 13.72 hours per year.

- Form 6000-10, 1.72 hours per response
- Form 6000-8, 30 minutes per response
- Form 6030-1, 30 minutes per response

Estimated Total Annual Burden: Approximately 36,000 hours per year.

Issued in Washington, DC.

Barbara Hall,

FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP-110.

[FR Doc. 2018-23463 Filed 10-25-18; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Receipt of Noise Compatibility Program and Request for Review for San Francisco International Airport, San Francisco, California**

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program 2018 update that was submitted for San Francisco International Airport by the City and County of San Francisco, Airport Commission, under the provisions of the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act" and the Code of Federal Regulations (CFR). This program update was submitted subsequent to a determination by FAA that associated noise exposure maps submitted for San Francisco International Airport were in compliance with applicable requirements, effective January 29, 2016. The existing noise compatibility program for San Francisco International Airport was approved by the FAA on September 7, 1983. The proposed 2018 update to the noise compatibility program will be approved or disapproved on or before April 16, 2019. **DATES:** FAA's review of the noise compatibility program update began on October 18, 2018. The public comment period ends December 26, 2018.

FOR FURTHER INFORMATION CONTACT: Camille Garibaldi, Environmental Protection Specialist, SFO-613, Federal Aviation Administration, San Francisco Airports District Office, 1000 Marina Boulevard, Suite 220, Brisbane, California 94005-1835; or by telephone at (650) 827-7613. Comments on the proposed noise compatibility program 2018 update should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed 2018 update of the noise compatibility program for San Francisco International Airport, which will be approved or disapproved on or

before April 16, 2019. This notice also announces the availability of the noise compatibility program 2018 update for public review and comment. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of 14 CFR part 150, promulgated pursuant to the Act (49 U.S.C. 47501 *et Seq.*), may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses. The FAA has formally received the noise compatibility program 2018 update for San Francisco International Airport, effective on October 18, 2018. The airport operator has requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act. Preliminary review of the submitted material for the proposed 2018 update indicates that it conforms to 14 CFR part 150 requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before April 16, 2019.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety or create an undue burden on interstate or foreign commerce, and whether they are reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed noise compatibility program 2018 update, with specific reference to these factors. All comments relating to these factors, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, and the noise compatibility program 2018 update are available for examination at the following locations:

Federal Aviation Administration,
Western Pacific Region, Office of
Airports, 777 S Aviation Boulevard,

Suite 150, El Segundo, California
90245.

Federal Aviation Administration, San
Francisco Airports District Office,
1000 Marina Blvd., Suite 220,
Brisbane, California 94005-1835.

San Francisco International Airport,
Bureau of Planning and
Environmental Affairs, 710 North
McDonnell Road, 3rd Floor, San
Francisco, CA 94128.

Questions may be directed to the
individual named above under the
heading, **FOR FURTHER INFORMATION
CONTACT**.

Issued in El Segundo, California, on
October 18, 2018.

Arlene B. Draper,

*Acting Director, Office of Airports, Western-
Pacific Region, AWP-600.*

[FR Doc. 2018-23404 Filed 10-25-18; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway In Utah

AGENCY: Utah Department of
Transportation (UDOT), Federal
Highway Administration (FHWA),
Department of Transportation.

ACTION: Notice of Limitation on Claims
for Judicial Review of Actions Taken by
UDOT on behalf of FHWA.

SUMMARY: This notice announces certain
actions taken by UDOT that are final
Federal agency actions. These actions
relate to a proposed highway project on
State Route 30 (SR-30), from SR-23 to
1000 West, in the County of Cache, State
of Utah. Those actions grant licenses,
permits and/or approvals for the project.

DATES: By this notice, the FHWA, on
behalf of UDOT, is advising the public
of final Federal agency actions subject to
23 U.S.C. 139(l)(1). A claim seeking
judicial review of the Federal agency
actions on the highway project will be
barred unless the claim is filed on or
before March 25, 2019. If the Federal
law that authorizes judicial review of a
claim provides a time period of less
than 150 days for filing such claim, then
that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT:

Brandon Weston, Director of
Environmental Services, UDOT
Environmental Services, PO Box
143600, Salt Lake City, UT 84114;
telephone: (801) 965-4603; email:
brandonweston@utah.gov. UDOT's
normal business hours are 8 a.m. to 5
p.m. (Mountain Standard Time),

Monday through Friday, except State
and Federal holidays.

SUPPLEMENTARY INFORMATION: Effective
January 17, 2017, FHWA assigned to
UDOT certain responsibilities of FHWA
for environmental review, consultation,
and other actions required by applicable
Federal environmental laws and
regulations for highway projects in
Utah, pursuant to 23 U.S.C. 327. Actions
taken by UDOT on FHWA's behalf
pursuant to 23 U.S.C. 327 constitute
Federal agency actions for purposes of
Federal law. Notice is hereby given that
UDOT has taken final agency actions
subject to 23 U.S.C. 139(l)(1) by issuing
licenses, permits, and approvals for the
SR-30, SR-23 to 1000 West project in
the State of Utah. This project proposes
to add roadway capacity and safety
improvements to SR-30 from 1000 West
to SR-23. Improvements from 1000
West to 1900 West include four travel
lanes with a 14-foot-wide center turn
median, 12-foot-wide shoulders, and
curb, gutter, and sidewalk. Improvements
from 1900 West to SR-23 include a center
median, three travel lanes from 1900 West
to just west of 3200 West, two travel lanes
from just west of 3200 West to milepost
103.3, four travel lanes from milepost
103.3 to SR-23, drainage improvements,
access modifications to the PacifiCorp
Lower Logan River Access site, and
intersection improvements at SR-30 and
SR-23. In addition, the project proposes
a separate bicycle and pedestrian trail
(12-foot wide) along SR-30 from 1900
West to SR-23. These improvements
were identified in the Final
Environmental Impact Statement (EIS)
as the Highway Action Alternative
(Alternative 6E) and the Separate
Pedestrian and Bike Path Alternative.
The actions by UDOT, and the laws
under which such actions were taken,
are described in the combined Final EIS
and UDOT Record of Decision for the
project (Record of Decision, Final
Environmental Impact Statement, and
Section 4(f) Evaluation, SR-30, SR-23 to
1000 West in Cache County, Utah,
Project No. S-R199(185)), issued on
October 12, 2018, and in other
documents in the UDOT project records.
The Final EIS and ROD, and other
project records are available by
contacting UDOT at the address
provided above. The Final EIS and ROD
can be viewed and downloaded from
the project website at [https://
www.sr30study.com/](https://www.sr30study.com/).

This notice applies to the Final EIS,
the ROD, the Section 4(f) Determination,
the NHPA Section 106 Review, and all
other UDOT decisions with respect to
the project as of the issuance date of this

notice and all laws under which such actions were taken, including but not limited to the following laws (including their implementing regulations):

1. General: National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4351; Federal-Aid Highway Act, 23 U.S.C. 109 and 23 U.S.C. 128.

2. Air: Clean Air Act, 42 U.S.C. 7401–7671q.

3. Land: Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303; 23 U.S.C. 138; Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.

4. Wildlife: Endangered Species Act, 16 U.S.C. 1531–1544 and Section 1536; Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d; Migratory Bird Treaty Act, 16 U.S.C. 703–712.

5. Water: Section 404 of the Clean Water Act, 33 U.S.C. 1344; E.O. 11990, Protection of Wetlands.

6. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f; Archeological Resources Protection Act of 1977, 16 U.S.C. 470aa–470mm; Archeological and Historic Preservation Act, 16 U.S.C. 469–469c.

7. Noise: Federal-Aid Highway Act of 1970, Public Law 91–605, 84 Stat. 1713.

8. Executive Orders: E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13287 Preserve America; E.O. 12898, Federal Actions to Address Environmental Justice and Low-Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: October 17, 2018.

Ivan Marrero,

Division Administrator, Federal Highway Administration, Salt Lake City, Utah.

[FR Doc. 2018–23428 Filed 10–25–18; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway Projects in Texas

AGENCY: Texas Department of Transportation (TxDOT), Federal Highway Administration (FHWA), U.S. Department of Transportation.

ACTION: Notice of limitation on claims for judicial review of actions by TxDOT and Federal agencies.

SUMMARY: This notice announces actions taken by TxDOT and Federal agencies that are final. The environmental review, consultation, and other actions required by applicable Federal environmental laws for these projects are being, or have been, carried-out by TxDOT and a Memorandum of Understanding dated December 16, 2014, and executed by FHWA and TxDOT. The actions relate to various proposed highway projects in the State of Texas. Those actions grant licenses, permits, and approvals for the projects.

DATES: By this notice, TxDOT is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of TxDOT and Federal agency actions on the highway project will be barred unless the claim is filed on or before March 25, 2019. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such a claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Carlos Swonke, Environmental Affairs Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701; telephone: (512) 416–2734; email: carlos.swonke@txdot.gov. TxDOT's normal business hours are 8:00 a.m.–5:00 p.m. (central time), Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that TxDOT and Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Texas that are listed below.

The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion (CE) or Environmental Assessment (EA) issued in connection with the projects and in other key project documents. The CE or EA, and other key documents for the listed projects are available by contacting TxDOT at the address provided above.

This notice applies to all TxDOT and Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).

3. *Land:* Section 4(f) of the Department of Transportation Act of

1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 300101 *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [54 U.S.C. 312501 *et seq.*]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401–406; Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287; Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

The projects subject to this notice are:

1. Conflans Road from Valley View Lane to State Highway (SH) 161 in Dallas County, Texas. The proposed improvements would include the extension of existing Conflans Road on new location in the City of Irving. The new roadway would be a four-lane divided section that would begin at Valley View Lane and end at SH 161. The length of the proposed project is

approximately 0.881 miles. The purpose of the proposed project is to improve mobility and provide improved system connectivity. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on July 12, 2018, Finding of No Significant Impact (FONSI) issued on September 7, 2018 and other documents in the TxDOT project file. The EA and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Dallas District Office at 4777 E Highway 80, Mesquite, TX 75150; telephone: (214) 320-4480.

2. SH 155 from 0.3 Miles East of U.S. 259 to Glendia Drive in Upshur County, Texas. The purpose of this project is to widen SH 155 from a two-lane roadway to a four-lane roadway with a center left turn to improve safety and mobility for the traveling public. Total length of the project is approximately 0.69 miles. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on April 2, 2018 and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Atlanta District Office at 701 East Main St., Atlanta, TX 75551; telephone: (903) 799-1306.

3. US 83/84 construct overpass and relocate ramps, from south of FM 204 to south of FM 707, Taylor County, Texas. The project consists of the construction of ramp safety improvements and the construction of a new overpass on U.S.-83 at FM 204 (Clark/Remington Road). This portion of US-83 includes a northern segment of approximately 0.5-miles from south of Iberis Road/County Road (CR) 164 to south of Saddle Creek Road, adjacent to the Lakes at Saddle Creek residential development. The purpose of the project is to enhance connectivity and increase safety in the area. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on July 17, 2017 and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Abilene District Office at 4250 N Clack; telephone: (325) 676-6817.

4. IH 30 from FM 3419 to FM 989, in Bowie County, Texas. This project would construct one-way frontage roads, entrance and exit ramps, and turnarounds on Interstate Highway (IH) 30 in Bowie County, Texas. The total length of the project is approximately 2.6 miles. The purpose of this project is to improve safety, mobility, traffic operations, and local circulation for the traveling public. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on August 1, 2018 and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Atlanta District Office at 701 East Main St., Atlanta, TX 75551; telephone: (903) 799-1306.

5. BS 71F Bridge Construction; at Colorado River in Colorado County, Texas. The proposed project would construct a new concrete bridge adjacent to the existing truss bridge over the Colorado River. The purpose of the project is to provide a safer crossing over the Colorado River and construct a new bridge to allow for the future rehabilitation of a historic truss bridge. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on December 14, 2016 and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Yoakum District Office at 403 Huck St., Yoakum, TX 77995; telephone: (361) 293-4436.

6. State Highway 242 (SH 242) from Interstate Highway 45 to U.S. Highway 59 in Montgomery County, Texas. The project will consist of upgrading approximately 17.25 miles of SH 242, all within existing right-of-way. The current undivided two lane roadway will be expanded to a four-lane divided roadway separated by a depressed grassy median. The purpose of the project is to add capacity, improve mobility and traffic safety, and meet current roadway design standards. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on March 3, 2017 and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by

contacting TxDOT at the address provided above or the TxDOT Houston District Office located at 7600 Washington Avenue, Houston, Texas 77007; telephone: (713) 802-5076.

7. Greens Road from J.F. Kennedy Boulevard to US Highway 59 in Harris County, Texas. The approximately 2.27 mile project will require approximately 18.6 acres of new right-of-way and will consist of widening Greens Road from 2 to 4 lanes with a raised median, sidewalks, new street lighting, drainage improvements and a shared use lane to accommodate bicycle usage. The purpose of the project is to improve mobility and enhance safety. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on January 23, 2017 and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Houston District Office located at 7600 Washington Avenue, Houston, Texas 77007; telephone: (713) 802-5076.

8. Interstate Highway 10 (I-10) from Farm-to-Market (FM) 359 to FM 3538 in Waller and Austin Counties, Texas. The project will consist of reconstructing approximately 16 miles of I-10, all within existing right-of-way, to add one additional through lane in each direction, rebuilding or replacing overpasses, converting the existing frontage road system from two-way to one-way and replacing the existing bridges over the Brazos River. The purpose of the project is to add capacity, improve mobility and traffic safety, enhance the hurricane evacuation network, and improve roadway horizontal and vertical alignments including clearance at bridges. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on November 20, 2017 and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Houston District Office located at 7600 Washington Avenue, Houston, Texas 77007; telephone: (713) 802-5076.

9. Interstate Highway 45 (I-45) from Farm-to-Market 1764 to north of the Galveston Causeway Bridge in Galveston County, Texas. The project will reconstruct and widen I-45 from a six-lane interstate to an eight-lane

interstate for approximately 10 miles and will require approximately 8.7 acres of new right-of-way. The purpose of the project is to add capacity, improve mobility and traffic safety, and enhance the hurricane evacuation network. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on May 16, 2018 and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Houston District Office located at 7600 Washington Avenue, Houston, Texas 77007; telephone (713) 802-5076.

10. FM 407 at Denton Creek in Denton County, Texas. The proposed project would replace and widen the existing bridge at Denton Creek, bridge class culvert at Denton Creek Slough, and roadway approaches including the addition of a culvert extension just north of the bridge. The length of the proposed project is approximately .238 miles. The purpose of the proposed project is to bring the structures to current design standards and provide a safer approach to the two structures. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the documentation supporting the Categorical Exclusion (CE) Determination issued on January 8, 2018, and other documents in the TxDOT project file. The CE Determination and other documents are available by contacting TxDOT at the address provided above or the TxDOT Dallas District Office at 4777 E Highway 80, Mesquite, TX 75150; telephone: (214) 320-4480.

11. FM 148 from South of U.S. 80 to SP 557 in Kaufman County, Texas. The proposed improvements would widen the roadway from two to four lanes with a center turn lane and curb and gutter drainage. Sidewalks and shared use lanes would provide accommodations for pedestrians and bicyclists. The length of the proposed project is approximately 1.1 miles. The purpose of the proposed project is to improve mobility in the project area. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the documentation supporting the Categorical Exclusion Determination issued on May 30, 2017, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents are available by contacting TxDOT at the

address provided above or the TxDOT Dallas District Office at 4777 E Highway 80, Mesquite, TX 75150; telephone: (214) 320-4480.

12. FM 455 from U.S. 75 to CR 286 in Collin County, Texas. The proposed improvements would widen the roadway from a 2-lane rural to a 4-lane divided (6-lane ultimate) roadway. The length of the proposed project is approximately 0.232 miles. The purpose of the proposed project is to improve mobility in the project area. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the documentation supporting the Categorical Exclusion Determination issued on November 9, 2017, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents are available by contacting TxDOT at the address provided above or the TxDOT Dallas District Office at 4777 E Highway 80, Mesquite, TX 75150; telephone: (214) 320-4480.

13. IH 20 Frontage Roads from North Main Street to Camp Wisdom Road in Duncanville in Dallas County, Texas. The proposed improvements include the construction of new concrete-paved eastbound frontage road between Oriole Boulevard and E. Camp Wisdom Road, and westbound frontage Road between N. Main Street and Oriole Boulevard. The new eastbound frontage road would extend the existing frontage road to E. Camp Wisdom Road. A portion of the existing eastbound frontage road would be re-aligned and reconstructed. The new westbound frontage road would extend west of Oriole Boulevard to the west. A section of the westbound frontage road would be reconstructed to align with the new proposed frontage road. The length of the proposed project is approximately 0.63 miles. The purpose of the proposed project is to improve access and circulation and increase safety in the project area. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the documentation supporting the Categorical Exclusion Determination issued on March 10, 2017, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents are available by contacting TxDOT at the address provided above or the TxDOT Dallas District Office at 4777 E Highway 80, Mesquite, TX 75150; telephone: (214) 320-4480.

14. U.S. 377 from IH 35E to South of FM 1830 in Denton County, Texas. The proposed improvements would widen the roadway from two to six lanes (three

in each direction). The length of the proposed project is approximately 1.68 miles. The purpose of the proposed project is to accommodate increasing traffic and alleviate traffic congestion. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the documentation supporting the Categorical Exclusion Determination issued on January 26, 2018, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents are available by contacting TxDOT at the address provided above or the TxDOT Dallas District Office at 4777 E Highway 80, Mesquite, TX 75150; telephone: (214) 320-4480.

15. I-820/SH 121 Northeast Interchange Project, I-820 from SH 121/183 to Randol Mill Road, SH 121 from Handley Ederville Road to the south interchange with I-820, Tarrant County. TxDOT is proposing to reconstruct I-820 and SH 121 interchange in northern Tarrant County. The proposed actions would take place within the cities of North Richland Hills, Richland Hills, Hurst, and Fort Worth. The proposed project would reconstruct I-820 from approximately 2,000 feet north of Pipeline Road/Glenview Drive, at the northern I-820/SH 121/SH 183 interchange, to approximately 3,200 feet south of Randol Mill Rd. Additionally, SH 121 would be reconstructed from the southern I-820/SH 121 interchange to approximately 5,000 feet west of Handley-Ederville Rd. These improvements would also include the addition of connections providing direct access between SH 121 with I-820 and SH 121 with Trinity Boulevard. The proposed project would provide infrastructure to reduce traffic congestion on existing roadways; to provide a safer, more convenient route for traveling through the area; and to increase mobility and provide access (including improved emergency service access) to area. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on November 7, 2017 and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Fort Worth District Office at 2501 S W Loop 820, Fort Worth, Texas 76133; telephone: (817) 370-6744.

16. Loop 337 from I-35 to Hillcrest Drive, Comal County. The project would widen Loop 337 from a 2-lane roadway to a 4-lane divided roadway with a wide

median. The project is approximately 7.3 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on June 7, 2017, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT San Antonio District Office at 4615 NW Loop 410, San Antonio, TX 78229; telephone: (210) 615-5839.

17. RM 2222 from Bonaventure Drive to Ribelin Ranch Drive, Travis County, Texas. The project includes widening RM 2222 from a 4-lane to 6-lane divided roadway. The project is approximately 1.2 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on March 23, 2018, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Austin District Office at 7901 North I-35, Austin, TX 78753; telephone: (512) 832-7000.

18. SH 71 from the SH 71/U.S. 183 interchange to Presidential Blvd., Travis County Texas. The project includes modifications to SH 71 to improve eastbound access to the Austin-Bergstrom International Airport. The project is approximately 2 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on January 11, 2017, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Austin District Office at 7901 North I-35, Austin, TX 78753; telephone: (512) 832-7000.

19. RM 620 from Cornerwood Drive to Wyoming Springs Drive, Williamson County, Texas. The project includes restriping RM 620 from a four-lane to a six-lane roadway. The project is approximately 2 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on May 1, 2017, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in

the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Austin District Office at 7901 North I-35, Austin, TX 78753; telephone (512) 832-7000.

20. SH 71 at Ross Road and Kellam Road, Travis County, Texas. The project includes constructing an overpass at Ross Road and Kellam Road with 2-lane east bound and west bound frontage roads. The project is approximately 2 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on August 30, 2017, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Austin District Office at 7901 North I-35, Austin, TX 78753; telephone: (512) 832-7000.

21. FM 1103 from I-35 to Rodeo Way Drive, Guadalupe and Comal Counties, Texas. The project would widen Loop 1103 from a 2-lane roadway to a 4-lane roadway with a continuous left turn lane. The project is approximately 3.83 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on April 11, 2018, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT San Antonio District Office at 4615 NW Loop 410, San Antonio, TX 78229; telephone: (210) 615-5839.

22. I-10 from I-410 to Loop 1604, Bexar County, Texas. The project includes adding one main lane in each direction, reconstructing the existing I-10 main lanes to address deteriorating pavement conditions and adding auxiliary lanes between entrance and exit ramps where needed. Existing main lane bridge structures and culverts would be replaced and/or widened as needed. The project is approximately 6.2 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on January 18, 2018, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT San Antonio District Office

at 4615 NW Loop 410, San Antonio, TX 78229; telephone: (210) 615-5839.

23. Loop 1604 from U.S. 281 to FM 1303, Bexar County, Texas. The project includes widening Loop 1604 from a 2-lane roadway to a 4-lane divided roadway with shoulders and pedestrian accommodations. The project is approximately 8.1 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on May 9, 2018, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT San Antonio District Office at 4615 NW Loop 410, San Antonio, TX 78229; telephone: (210) 615-5839.

24. I-410 at I-10 interchange, Bexar County, Texas. The project includes replacing the cloverleaf with direct connectors, reconfiguring and reconstructing main lanes, ramps, frontage roads, and surface street connections, including a continuous flow interchange to connect WW White Road with Corner Parkway. The project is approximately 8.87 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on May 17, 2018 and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT San Antonio District Office at 4615 NW Loop 410, San Antonio, TX 78229; telephone: (210) 615-5839.

25. FM 659 (Zaragoza Road)/Montwood Drive/Loop (LP) 375 (Joe Battle Boulevard) interchange in El Paso County, Texas. The proposed project will improve traffic operations by reducing weaving movements, improve bicycle and pedestrian access in the area through the addition of bike lanes and sidewalks, and improve connectivity/operations by extending FM 659 within the project limits. The purpose of the proposed project is to provide connectivity. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on September 5, 2017, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the

address provided above or the TxDOT El Paso District Office at 13301 Gateway West, El Paso, TX 79928-5410; telephone: (915) 790-4203.

26. IH 10 from Hamshire Road to FM 365, Jefferson County, Texas. TxDOT proposes to widen and reconstruct I-10 from a four-lane divided facility to a six-lane highway with a concrete median barrier. The project length is 6.8 miles. The purpose of the project is to improve safety and increase mobility by widening and reconstructing I-10. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on July 21, 2017 and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Beaumont District Office at 8350 Eastex Freeway, Beaumont, Texas 77708; telephone: (409) 898-5745.

27. SH 73 from FM 1663 to Kiker Road in Chambers and Jefferson counties, Texas. The proposed project will construct a grade separation at the SH 124 intersection with continuous frontage roads, ramps, and U-turn improvements. The purpose of the proposed project is to increase safety in the project area. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on March 6, 2018, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT, Beaumont District Office at 8350 Eastex Freeway, Beaumont, Texas 77708; telephone: (409) 898-5745.

28. FM 676 (5 Mile Road) from SH 364 (La Homa Road) to SH 107 in Hidalgo County, Texas. The proposed project would include the widening of FM 676 from a two lane roadway to a four lane curb and gutter roadway with a two-way left turn lane, sidewalks, and drainage structures. The purpose of the proposed project is to improve safety for traffic operations along the corridor. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on October 4, 2018, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address

provided above or the TxDOT Pharr District Office at 600 W. U.S. Expressway 83, Pharr, TX 78577; telephone (956) 702-6100.

29. SH 5 from SH 121 to CR 375 in Collin County, Texas. The proposed improvements would widen and reconstruct the roadway from two lanes to a four-lane divided urban roadway. The improved roadway would have an inside 12-foot wide travel lane, 14-foot wide outside shared use lane, and five to six-foot wide sidewalks with curb and gutter in each direction. The traffic lanes would be separated by a 42-foot wide raised central median. The length of the proposed project is approximately 8.58 miles. The purpose of the proposed project is to reduce congestion and improve mobility. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on September 26, 2018, Finding of No Significant Impact (FONSI) issued on September 26, 2018 and other documents in the TxDOT project file. The EA and other documents are available by contacting TxDOT at the address provided above or the TxDOT Dallas District Office at 4777 E. Highway 80, Mesquite, TX 75150; telephone: (214) 320-4480.

Authority: 23 U.S.C. 139(l)(1).

Issued on: October 17, 2018.

Michael T. Leary,

Director, Planning and Program Development, Federal Highway Administration.

[FR Doc. 2018-23103 Filed 10-25-18; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on a Proposed Highway Project in Wisconsin

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final. The actions required by applicable Federal environmental laws relate to a proposed highway project, the WIS 23 Corridor Project, in Fond du Lac and Sheboygan Counties, Wisconsin. Those actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A

claim seeking judicial review of the Federal agency actions on the proposed highway project will be barred unless the claim is filed on or before March 25, 2019. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Michael Davies, Division Administrator, FHWA, 525 Junction Road, Suite 8000, Madison, Wisconsin 53717; telephone: (608) 829-7500. The FHWA Wisconsin Division's normal office hours are 7 a.m. to 4 p.m. central time. For the Wisconsin Department of Transportation (WisDOT): Scott Lawry, Director, Bureau of Technical Services, Wisconsin Department of Transportation, 4822 Madison Yards Way, 5th Floor, Madison, Wisconsin 53705; telephone: (608) 266-2186. WisDOT's normal office hours are 7:30 a.m. to 4:30 p.m. central time.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing approvals for the following highway project: The WIS 23 Corridor Project in Fond du Lac and Sheboygan Counties, Wisconsin. The purpose of the project is to provide additional highway capacity (*i.e.* to provide appropriate and effective level of service) to serve existing and projected traffic volumes, and improve operational efficiency and safety for local and through traffic while avoiding or minimizing environmental effects. The project will reconstruct WIS 23 over approximately 19 miles from US 151 to County Highway P. Within those limits, the project will widen the existing two-lane roadway to a four-lane divided highway with a median from Whispering Springs Drive to County Highway P. Project-specific actions include acquiring right-of-way, constructing two diamond interchanges and one jug-handle intersection, constructing roundabouts, constructing new travel lanes and frontage roads, modifying local roads and intersections, improving and extending multi-use trails, installing new bridges and culverts, removing and placing fill, removing vegetation, providing storm water management measures, implementing corridor preservation measures, and implementing mitigation measures.

The actions by FHWA on this project, and the laws under which such actions were taken, are described in the combined Record of Decision (ROD) and Limited Scope Supplemental Final Environmental Impact Statement (LS

SFEIS) approved on October 15, 2018, and in other documents in the FHWA project file. The 2018 combined ROD and LS SFEIS incorporates analysis and decisions made in the following previous environmental documents prepared and approved for this project: The 2014 combined ROD and LS SFEIS and the 2010 ROD and Final Environmental Impact Statement. The 2018 combined ROD and LS SFEIS supersedes the previous environmental documents and decisions for this project where it addresses issues identified as part of the 2018 LS SFEIS pursuant to 23 CFR 771.130. The 2018 combined ROD and LS SFEIS were prepared as a single document pursuant to 23 U.S.C. 139(n)(2).

The 2018 combined ROD and LS SFEIS and other documents related to project approvals are available by contacting FHWA and WisDOT at the addresses provided above. The 2018 combined ROD and LS SFEIS can be viewed and downloaded from the project website at <https://wisconsin.gov/Pages/projects/by-region/ne/wis23exp/default.aspx> or viewed at the Fond du Lac or Plymouth public libraries.

This notice applies to all Federal agency decisions as of the issuance date of this notice, and all laws under which such actions were taken, including but not limited to:

1. *General*: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109, 23 U.S.C. 128, and 23 U.S.C. 139].
2. *Air*: Clean Air Act [42 U.S.C. 7401–7671(q)].
3. *Land*: Section 6(f) of the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 4601]; Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].
4. *Wildlife*: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].
5. *Historic and Cultural Resources*: Section 106 of the National Historic Preservation Act of 1966 [54 U.S.C. 306108].
6. *Social and Economic*: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)], Uniform Relocation Assistance and Real Property Acquisition Act of 1970 [42 U.S.C. 61].
7. *Wetlands and Water Resources*: Clean Water Act [33 U.S.C. 1251–1376].
8. *Hazardous Materials*: Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675].

9. *Executive Orders*: E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 11988 Floodplain Management; E.O. 11990 Protection of Wetlands; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 13112 Invasive Species; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 13186 Responsibilities of Federal Agencies to Protect Migratory Birds.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: October 17, 2018.

Michael Davies,

Division Administrator, FHWA Wisconsin Division, Madison, Wisconsin.

[FR Doc. 2018–23339 Filed 10–25–18; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2017–0002–N–5]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) abstracted below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Interested persons are invited to submit comments on or before December 26, 2018.

ADDRESSES: Submit written comments on the information activities described in this notice by mail to either Ms. Rachel Grice, Engineering Psychologist, Office of Railroad Policy and Development, Human Factors Division, RPD–34, FRA, 1200 New Jersey Avenue SE, Room W36–429, Washington, DC 20590; or Ms. Kimberly Toone, Information Collection Clearance

Officer, Office of Information Technology, RAD–20, FRA, 1200 New Jersey Avenue SE, Room W34–212, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, “Comments on OMB Control Number 2130–XXXX,” (the relevant OMB control number for the ICR listed below) and should also include the title of the ICR. Alternatively, comments may be faxed to (202) 493–6172 or (202) 493–6630, or emailed to Rachel.Grice@dot.gov or Kim.Toone@dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT:

Rachel Grice, Engineering Psychologist, Office of Research, Development, and Technology, Human Factors Division, RPD–34, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–429, Washington, DC 20590 (telephone: (202) 493–8005) or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W34–212, Washington, DC 20590 (telephone: (202) 493–6132).

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days’ notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. See 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA’s estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of

information technology. See 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations require. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) ensure organization of information collection requirements in a “user-friendly” format to improve the use of such information; and (3) allow an accurate assessment of the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

The summaries below describe the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: The Impact of Commute Times on the Fatigue and Safety of Locomotive Engineers.

OMB Control Number: 2130–NEW.

Abstract: Time-on-task and time awake are two well-known factors that contribute to fatigue. Time-on-task refers to the length of time a person has been performing a task, whereas time awake refers to the length of time since a person last slept. Both of these factors can have a detrimental effect on performance, with the risk of adverse safety events (e.g., crashes) increasing as the length of time that a person performs a task or remains awake increases. These factors also influence each other; that is, the negative effects of increasing time-on-task may become evident sooner if the person has also been awake for a long time. Drivers with longer commutes experience greater time awake and time-on-task than drivers with shorter commutes. A growing body of evidence from a number of industries (e.g., medical, mining, long-haul trucking) suggests that commuting time has a detrimental impact on driving performance, particularly when combined with night-time shift work. However, the extent to which these factors impact the fatigue and safety of locomotive engineers remains unknown.

Type of Request: New information collection.

Affected Public: Railroad Workers.

Forms: FRA F 245.

Respondent Universe: 35,000 locomotive engineers.

Frequency of Submission: Single submission per person.

Reporting Burden: The estimated total annual burden is 1,750 hours across the 5,250 locomotive engineers (estimating a 15% response rate). Each locomotive engineer completes a single online

questionnaire and the questionnaire is estimated to take 20 minutes.

Total Estimated Annual Responses: 5,250 responses.

Total Estimated Annual Burden: 1,750 hours.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Juan D. Reyes III,

Chief Counsel.

[FR Doc. 2018–23461 Filed 10–25–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Interagency Appraisal Complaint Form

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Notice and request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) 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 an information collection renewal as required by the Paperwork Reduction Act of 1995.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning the renewal of its information collection titled “Interagency Appraisal Complaint Form.”

DATES: Comments must be received by December 26, 2018.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

• *Email:* prainfo@occ.treas.gov.

• *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0314, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Fax:* (571) 465–4326.

Instructions: You must include “OCC” as the agency name and “1557–0314” in your comment. In general, the OCC will publish comments on www.reginfo.gov without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection¹ by any of the following methods:

• *Viewing Comments Electronically:*

Go to www.reginfo.gov. Click on the “Information Collection Review” tab. Underneath the “Currently under Review” section heading, from the drop-down menu, select “Department of Treasury” and then click “submit.” This information collection can be located by searching by OMB control number “1557–0314” or “Interagency Appraisal Complaint Form.” Upon finding the appropriate information collection, click on the related “ICR Reference Number.” On the next screen, select “View Supporting Statement and Other Documents” and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating www.reginfo.gov, please contact the Regulatory Information Service Center at (202) 482–7340.

• *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT:

Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, Chief Counsel’s Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

¹ Following the close of the 60-Day comment period for this notice, the OCC will publish a notice for 30 days of comment for this collection.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information that they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include 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 title 44 requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed collection of information set forth in this document.

Section 1473(p) of the Dodd-Frank Wall Street Reform and Consumer Protection Act² provides that if the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) determines, six months after enactment of that section (*i.e.*, January 21, 2011), that no national hotline exists to receive complaints of non-compliance with appraisal independence standards and Uniform Standards of Professional Appraisal Practice (USPAP), then the ASC shall establish and operate such a hotline (ASC Hotline). The ASC Hotline shall include a toll-free telephone number and an email address. Section 1473(p) further directs the ASC to refer complaints received through the ASC Hotline to the appropriate government bodies for further action, which may include referrals to OCC, the Federal Reserve Board (Board), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Bureau of Consumer Financial Protection (CFPB), and state agencies. The ASC determined that a national appraisal hotline did not exist at a meeting held on January 12, 2011, and a notice of that determination was published in the **Federal Register** on January 28, 2011, (76 FR 5161). As a result, the ASC established a hotline to refer complaints to appropriate state and federal regulators.

Representatives from the OCC, the Board, the FDIC, the NCUA (Agencies), and the CFPB met and established a process to facilitate the referral of complaints received through the ASC Hotline to the appropriate federal

financial institution regulatory agency or agencies. The Agencies developed the Interagency Appraisal Complaint Form to collect information necessary to take further action on the complaint. The CFPB incorporated the process into one of their existing systems.

The Interagency Appraisal Complaint Form was developed for use by those who wish to file a formal, written complaint that an entity subject to the jurisdiction of one or more of the Agencies has failed to comply with the appraisal independence standards or USPAP. The Interagency Appraisal Complaint Form is designed to collect information necessary for the Agencies to take further action on a complaint from an appraiser, other individual, financial institution, or other entities. The Agencies use the information to take further action on the complaint to the extent the complaint relates to an issue within their jurisdiction.

OMB Control No.: 1557–0314.

Estimated Number of Respondents: 100.

Estimated Burden per Response: 0.5 hours.

Estimated Total Annual Burden: 50 hours.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC’s estimates of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 19, 2018.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2018–23395 Filed 10–25–18; 8:45 am]

BILLING CODE 4810–33–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 eight individuals who have been placed on OFAC’s Specially Designated Nationals and Blocked Persons List based on OFAC’s determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for 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 23, 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.

Individuals

1. FAROQUI, Abdullah Samad (a.k.a. “SAMAD, Abdul”), Herat Province, Afghanistan; DOB 1972; alt. DOB 1971; alt. DOB 1973; POB Nahr-e Saraj District, Helmand Province, Afghanistan; Gender Male (individual) [SDGT] (Linked To: TALIBAN).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, “Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism” (E.O. 13224) for acting for or on behalf of the TALIBAN, an entity determined to be subject to E.O. 13224.

2. MANAN, Abdul Rahim (a.k.a. “MANAN, Haji”; a.k.a. “RAHIM, Abdul”), Helmand Province, Afghanistan; DOB 1962; alt. DOB 1961; alt. DOB 1963; Gender Male (individual) [SDGT] (Linked To: TALIBAN).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, “Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism” (E.O. 13224) for acting for or on behalf of the

²Dodd-Frank Wall Street Reform and Consumer Protection Act section 1473, Public Law 111–203, 124 Stat. 1376, July 21, 2010; 12 U.S.C. 3351(i).

TALIBAN, an entity determined to be subject to E.O. 13224.

3. MUZZAMIL, Mohammad Daoud (a.k.a. DAWOUD, Muhammad); DOB 1983; POB Nahr-e Saraj District, Helmand Province, Afghanistan; Gender Male (individual) [SDGT] (Linked To: TALIBAN).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (E.O. 13224) for acting for or on behalf of the TALIBAN, an entity determined to be subject to E.O. 13224.

4. IBRAHIM, Sadr, Afghanistan; DOB 1967; alt. DOB 1968; alt. DOB 1966; Gender Male (individual) [SDGT] (Linked To: TALIBAN).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (E.O. 13224) for acting for or on behalf of the TALIBAN, an entity determined to be subject to E.O. 13224.

5. MAJID, Hafiz Abdul (a.k.a. "MAJID, Hafiz"), Pakistan; DOB 1972; alt. DOB 1973; alt. DOB 1971; Gender Male (individual) [SDGT] (Linked To: TALIBAN).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (E.O. 13224) for acting for or on behalf of the TALIBAN, an entity determined to be subject to E.O. 13224.

6. AZIZ, Abdul (a.k.a. "BALOCH, Abdul Aziz"; a.k.a. "ZAMANI, Aziz Shah"), House #29, 30th St., Karachi, Pakistan; Quetta, Pakistan; DOB 1985; Gender Male; Passport AP1810244 expires 31 Oct 2026 (individual) [SDGT] (Linked To: TALIBAN).

Designated pursuant to section 1(d)(i) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (E.O. 13224) for assisting in, sponsoring, or providing financial, material, or technological support for, or financial or other services to or in support of, the TALIBAN, an entity determined to be subject to E.O. 13224.

7. OWHADI, Mohammad Ebrahim (a.k.a. OWHADI, Jalal; a.k.a. TAHERI, Jalal; a.k.a. VAHEDI, Jalal); DOB 1963; Gender Male (individual) [SDGT] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE; Linked To: TALIBAN).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (E.O. 13224) for acting for or on behalf of the ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, an entity determined to be subject to E.O. 13224. Also designated pursuant to 1(d)(i) of E.O. 13224 for assisting in, sponsoring, or providing financial, material, or technological support for, or financial or other services to or in support of, the TALIBAN, an entity determined to be subject to E.O. 13224.

8. RAZAVI, Esmā'il (a.k.a. MOHAJERI, Mostafa); DOB 1959; Gender Male (individual) [SDGT] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE; Linked To: TALIBAN).

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (E.O. 13224) for acting for or on behalf of the ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, an entity determined to be subject to E.O. 13224. Also designated pursuant to 1(d)(i) of E.O. 13224 for assisting in, sponsoring, or providing financial, material, or technological support for, or financial or other services to or in support of, the TALIBAN, an entity determined to be subject to E.O. 13224.

Dated: October 23, 2018.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2018-23486 Filed 10-25-18; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request on Information Collection for Treasury Decision 8517, Debt Instruments With Original Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property; Treasury Decision 9599, Property Traded on an Established Market

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Treasury Decision 8517, Debt Instruments with Original Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property; Treasury Decision 9599, Property Traded on an Established Market.

DATES: Written comments should be received on or before December 26, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224. Please send separate comments for each

specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the collection tools should be directed to Alissa Berry, at (901) 707-4988, at Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at Alissa.A.Berry@irs.gov.

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Debt Instruments with Original Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property; Property Traded on an Established Market.

OMB Number: 1545-1353.

Treasury Decision Numbers: 8517; 9599.

Abstract: These regulations provide definitions, reporting requirements, elections, and general rules relating to the tax treatment of debt instruments with original issue discount and the imputation of, and accounting for, interest on certain sales or exchanges of property.

Current Actions: Correction of the estimated number of responses reported in TD 9599.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, Individuals or Households.

Taxpayer Burden Estimates:

Treasury Decision 8517:

Estimated Number of Respondents: 525,000.

Estimated Time per Response: 21 minutes.

Estimated Total Annual Burden Hours: 185,500.

Treasury Decision 9599:

Estimated Number of Respondents: 20,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 10,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long

as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 23, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018-23482 Filed 10-25-18; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2009-31 and Rev. Proc. 2009-43

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Election and Notice Procedures for Multiemployer Plans under WRETA and Revenue Procedure 2009-43, Revocation of Elections by Multiemployer Plans to Freeze Funded Status under section 204 of WRETA.

DATES: Written comments should be received on or before December 26, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue

Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of this notice should be directed to Martha R. Brinson, at (202) 317-5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at Martha.R.Brinson@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Election and Notice Procedures for Multiemployer Plans under Sections 204 and 205 of WRETA.

OMB Number: 1545-2141.

Notice Number: Notice 2009-31 and Rev. Proc. 2009-43.

Abstract: Notice 2009-31 provides guidance for sponsors of multiemployer defined benefit plans relating to the elections described in sections 204 and 205 of the Worker, Retiree, and Employer Recovery Act of 2008, Public Law 110-458 (WRETA), and on the notice required to be provided if a plan sponsor makes an election under section 204. Revenue Procedure 2009-43 provides follow-up guidance to Notice 2009-31. This guidance describes procedures for revoking elections under WRETA.

Current Actions: There is no change to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local, or tribal governments.

Estimated Number of Responses: 1,600.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 1,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the

accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 23, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018-23485 Filed 10-25-18; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Senior Executive Service Departmental Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Performance Review Board (PRB).

SUMMARY: This notice announces the appointment of members of the Departmental PRB. The purpose of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions for which the Secretary or Deputy Secretary is the appointing authority. These positions include SES bureau heads, deputy bureau heads and certain other positions. The Board will perform PRB functions for other key bureau positions if requested.

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Julia J. Markham, Director, Office of Executive Resources, 1500 Pennsylvania Avenue NW, ATTN: 1722 Eye Street, 9th Floor, Washington, DC 20220, Telephone: (202) 927-4370.

SUPPLEMENTARY INFORMATION:

Composition of Departmental PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the PRB members are as follows:

- David F. Eisner, Assistant Secretary for Management
- Kenneth Blanco, Director, Financial Crimes and Enforcement Network
- Jamal El-Hindi, Deputy Director, Financial Crimes and Enforcement Network
- Kimberly A. McCoy, Commissioner, Bureau of Fiscal Service

- Stephen L. Manning, Deputy Commissioner, Finance and Administration, Bureau of Fiscal Service
- Matthew J. Miller, Deputy Commissioner, Fiscal Accounting and Shared Services, Bureau of Fiscal Service
- Jeffrey J. Schramek, Deputy Commissioner, Financial Services and Operations, Bureau of Fiscal Service
- Martha Pacold, Deputy General Counsel
- Brian Callanan, Deputy General Counsel
- Kirsten Wielobob, Deputy Commissioner, Services and Enforcement, Internal Revenue Service
- Jeffrey Tribiano, Deputy Commissioner, Operations Support, Internal Revenue Service
- David A. Lebryk, Fiscal Assistant Secretary
- John J. Manfreda, Administrator, Alcohol and Tobacco Tax and Trade Bureau
- Mary G. Ryan, Deputy Administrator, Alcohol and Tobacco Tax and Trade Bureau
- Leonard Olijar, Director, Bureau of Engraving and Printing
- Patricia Greiner, Deputy Director and Chief Administrative Officer, Bureau of Engraving and Printing
- Charlene Williams, Deputy Director and Chief Operating Officer, Bureau of Engraving and Printing

Dated: October 10, 2018.

Julia J. Markham,

Director, Office of Executive Resources.

[FR Doc. 2018-23432 Filed 10-25-18; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF THE TREASURY

Senior Executive Service Departmental Offices Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Offices Performances Review Board

SUMMARY: This notice announces the appointment of members of the Departmental Offices Performance Review Board (PRB). The purpose of this Board is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions in the Departmental Offices, excluding the Legal Division. The Board will perform PRB functions for other bureau positions if requested.

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Julia J. Markham or Kimberly Jackson, Office of Executive Resources, 1500 Pennsylvania Avenue NW, ATTN: 1722 Eye Street, 9th Floor, Washington, DC 20220, Telephone: 202-622-0774.

SUPPLEMENTARY INFORMATION:

Composition of Departmental Offices PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the Board members are as follows:

Names for Federal Register Publication

- John M. Farley, Director, Executive Office for Asset Forfeiture

- John H. Battle, Associate Director for Resource Management, Office of Foreign Assets Control
- Daniel Moger, III, Principal Deputy Assistant Secretary, Terrorist Financing and Financial Crimes
- Elizabeth Shortino, Director, International Monetary Policy
- Michael Kaplan, Deputy Assistant Secretary, Western Hemisphere and South Asia
- Douglas M. Bell, Deputy Assistant Secretary for Trade and Investment Policy
- J. Trevor Norris, Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer
- Carole Y. Banks, Deputy Chief Financial Officer
- Jodie Harris, Director, Small Business, Community Development and Affordable Housing
- Gary Grippo, Deputy Assistant Secretary, Government Finance Policy
- Brian Peretti, Director for Critical Infrastructure Protection and Compliance Policy
- Luke Ballman, Deputy Assistant Secretary for Legislative Affairs
- Robert S. Dohner, Deputy Assistant Secretary for International Economic Analysis
- Edith Brashares, Director for Individual Business and International Taxation

Dated: October 10, 2018.

Julia J. Markham,

Director, Office of Executive Resources.

[FR Doc. 2018-23430 Filed 10-25-18; 8:45 am]

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Part II

Federal Communications Commission

47 CFR Parts 9, 12, 20, *et al.*

Improving the 911 System by Implementing Kari's Law and RAY BAUM'S Act; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 9, 12, 20, 25, and 64

[PS Docket Nos. 18–261, 17–239; FCC 18–132]

Improving the 911 System by Implementing Kari’s Law and RAY BAUM’S Act

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (the FCC or Commission) proposes rules for 911 calls made from multi-line telephone systems (MLTS), pursuant to Kari’s Law, the conveyance of dispatchable location with 911 calls, as directed by RAY BAUM’S Act, and the consolidation of the Commission’s 911 rules. The Commission also proposes consolidating the Commission’s existing 911 rules into a single rule part.

DATES: Comments are due on or before December 10, 2018 and reply comments are due on or before January 9, 2019.

ADDRESSES: You may submit comments, identified by PS Docket Nos. 18–261 and 17–239 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission’s Website:* <http://www.fcc.gov/ecfs/>. Follow the instructions for submitting comments.

- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- *People with Disabilities:* Contact the Commission to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Brenda Boykin, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–2062 or via email at

Brenda.Boykin@fcc.gov; Austin Randazzo, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–1462 or via email at Austin.Randazzo@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Notice of Proposed Rulemaking (*NPRM*) in PS Docket Nos. 18–261 and 17–239, FCC 18–132, adopted and released on September 26, 2018. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW, Washington, DC 20554. The full text may also be downloaded at: www.fcc.gov.

Synopsis

I. Introduction

1. In this proceeding, the Commission takes steps to advance Congressional and Commission objectives to ensure that members of the public can successfully dial 911 to request emergency services and that Public Safety Answering Points (PSAPs) can quickly and accurately locate every 911 caller, regardless of the type of service that is used to make the call. The President recently signed into law two statutes directed to the improvement of 911: (1) Kari’s Law Act of 2017 (Kari’s Law), which requires implementation of direct 911 dialing and on-site notification capabilities in multi-line telephone systems (MLTS), and (2) Section 506 of RAY BAUM’S Act (RAY BAUM’S Act), which requires the Commission by September 23, 2019 to “conclude a proceeding to consider adopting rules to ensure that the dispatchable location is conveyed with a 9–1–1 call, regardless of the technological platform used and including with calls from [MLTS].”

2. In this *NPRM*, we propose to implement Kari’s Law by adopting direct dial and notification rules governing calls to 911 made from MLTS. As required by RAY BAUM’S Act, we also consider the feasibility of requiring dispatchable location for 911 calls from MLTS and other technological platforms that currently complete calls to 911. We propose establishing a dispatchable location requirement for MLTS 911 calls, which would apply contemporaneously with the February 16, 2020 compliance date of Kari’s Law. Additionally, in keeping with the directive in RAY BAUM’S Act to address dispatchable location for 911 calls “regardless of the technological platform used,” we propose to add dispatchable location requirements to

our existing 911 rules for fixed telephony providers, interconnected Voice over internet Protocol (VoIP) providers, and internet-based Telecommunications Relay Services (TRS). We also consider the feasibility of alternative location mechanisms for MLTS and other services that could be used as a complement to dispatchable location or as a substitute when dispatchable location is not available. Additionally, we consider whether dispatchable location requirements should be extended to other communications services that are not covered by existing 911 rules but are capable of making a 911 call.

3. Finally, we propose to take this opportunity to consolidate our existing 911 rules, as well as the direct dialing and dispatchable location rules proposed in this *NPRM*, into a single rule part. The Commission historically has taken a service-specific approach to 911, resulting in 911 requirements for different services scattered across different sections of the agency’s rules. We believe that consolidating our 911 rules from these various rule sections into a single rule part will further the goal of recognizing that all the components of 911 function as part of a single system and will enable service providers, emergency management officials, and other stakeholders to refer to a single part of the Commission’s rules to more easily ascertain all 911 requirements.

II. Background

A. E911 and Multi-Line Telephone Systems

4. Enhanced 911 (E911) was developed to provide PSAPs with the caller’s location and a call-back number as part of each 911 call. Since its implementation, most E911 calls have conveyed information regarding the caller’s location (with varying degrees of accuracy) and a call-back number to the PSAP. These enhancements have significantly improved PSAPs’ ability to effectively deliver critical public safety and emergency response services in a timely manner. In many instances, E911 has proven to be a life-saving, essential emergency response tool for providing critical information when the caller is unable to verbally communicate his or her location, including when the voice call is dropped or discontinued and cannot be reestablished.

5. Under the Commission’s rules, consumers generally have access to these capabilities when they make fixed telephony, mobile, and interconnected VoIP calls to 911. However, to date, the Commission’s E911 rules have not

applied to MLTS. Consequently, consumers in environments such as office buildings, campuses, and hotels may not have the same access to E911 services that is provided by fixed telephony, mobile, and VoIP systems, namely direct dialing access to 911 and the provision of the MLTS user's location information.

6. MLTS include a widely embedded base of legacy PBX, Centrex, and Key Telephone systems, internet Protocol (IP)-based systems, and hybrid systems. MLTS serve millions of employees, residents, and guests of businesses and educational facilities, including corporate parks, hotels, college campuses, and planned community developments. These systems can support anywhere from ten to thousands of telephone station/numbers. Emergency calls from MLTS stations generally only provide PSAPs the telephone or circuit number of the system's outgoing trunk, and not the emergency caller's individual station number. In some cases, the MLTS station that placed the call will not even have its own telephone number. As a result, PSAPs often find they are unable to locate an MLTS emergency call to the station from which it originated. The Commission in 2003 considered E911 requirements for MLTS but deferred to the states to address this issue, while preserving the option of acting should states fail to do so.

7. The National Emergency Number Association (NENA) has proposed model MLTS legislation for states, as well as model federal MLTS legislation. To date, 23 states have enacted legislation that requires organizations over a certain size or purchasing a new PBX/MLTS system to implement E911 on the system. These states have adopted varied requirements for MLTS providers, and only in some instances have state laws specifically addressed prefix dialing requirements.

8. In the absence of federal or consistent state regulation, some MLTS in operation today do not support direct 911 dialing, may not have the capability to route calls to the appropriate PSAP relative to the caller's location, or may not provide accurate information regarding the caller's location. The Commission has observed that these issues have persisted, even as many enterprises are increasingly relying on IP-based systems, including cloud-based services, to support their communications needs. Given that the ongoing evolution of MLTS has not eliminated these shortfalls when serving 911 callers, the Commission has periodically sought to examine MLTS provision of 911, including the

capabilities of MLTS to support direct 911 access, routing, callback, and automatic location

9. In September 2017, the Commission released a Notice of Inquiry (*ECS NOI*) seeking information on the capabilities of enterprise communications systems (ECS) to support direct 911 access, routing, and automatic location. The Commission noted that ECS may not provide consumers with the same access to E911 services as non-ECS wireline, wireless, and interconnected VoIP calls and asked whether it is still the case, as the Commission found in earlier proceedings, that the needs and circumstances of residential and business ECS users are suited to state-level action rather than federal regulation. The *ECS NOI* also sought information on the state of the ECS industry; the costs and benefits of supporting E911 for ECS; the capability of ECS to provide accessible emergency communications for persons with disabilities; and options for ensuring that ECS keep pace with technological developments and consumer expectations for access to 911.

10. The Commission received 19 comments and six reply comments in response to the *ECS NOI*. Commenters generally agreed that the ECS marketplace is diverse and complex. For example, Cisco categorized ECS as falling within three types: (1) On-premises hardware and software; (2) cloud solutions; and (3) over-the-top applications. West Safety categorized ECS as falling within three additional and different types: (1) Time-division multiplexing (TDM) ECS, which are self-contained and proprietary and use physical switches and wiring with localized infrastructure; (2) hybrid ECS, which have combined TDM and IP extensions and provide reduced infrastructure and interoperability; and (3) IP ECS, which have centralized infrastructure and servers, Session Initiation Protocol (SIP) capabilities with multimedia support, and scalability. West Safety noted that TDM-based ECS have been "nearing end-of-life for a long time now" and that the vast majority of enterprises have migrated, or will migrate soon, to pure IP-based ECS to support VoIP and Unified Communications (UC) systems, with an increasing trend toward cloud-based service offerings.

11. Commenters underscored the importance of ensuring the accessibility of ECS for persons with disabilities, including ECS capability to handle text (including real time text (RTT)), data, video, and text telephone (TTY) calls and the availability of dispatchable

location information to PSAPs regardless of the type of call being made. Commenters, however, disagreed over whether it is feasible for all types of ECS to support precise location of 911 callers. In addition, commenters disagreed regarding the Commission's authority to establish 911 requirements for ECS. Some commenters asserted that the Commission lacked such authority because most enterprise owners and equipment manufacturers do not provide interstate communications, or because ECS owners and operators are not service providers under Title II of the Communications Act or licensees under Title III. Other commenters asserted that 911 calls from ECS are interstate in nature, and that the Commission has broad authority over public safety and 911, including authority over ECS operators and equipment and service vendors under Sections 1, 4, and 255 of the Communications Act, as well as the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). Finally, some commenters asserted that state regulation of ECS 911 service is not working and urged the Commission to begin a rulemaking, while others urged the Commission to continue to defer to the states to address ECS 911 functionality.

B. Kari's Law and RAY BAUM'S Act

12. *Kari's Law*. After the close of the *ECS NOI* comment/reply cycle, *Kari's Law* was enacted on February 16, 2018. *Kari's Law* has been added to the Communications Act of 1934 as amended (the Act) as section 721.

13. *Kari's Law* establishes a federal multi-tiered approach to MLTS 911 requirements. First, *Kari's Law* applies to any "person engaged in the business of manufacturing, importing, selling, or leasing" MLTS. Such persons "may not manufacture or import for use in the United States, or sell or lease or offer to sell or lease in the United States, a [MLTS], unless such system is pre-configured such that, when properly installed . . . a user may directly initiate a call to 9-1-1 from any station equipped with dialing facilities, without dialing any additional digit, code, prefix, or post-fix, including any trunk-access code such as the digit '9', regardless of whether the user is required to dial such a digit, code, prefix, or post-fix for other calls."

14. Second, *Kari's Law* applies to any "person engaged in the business of installing, managing, or operating" MLTS. Such persons "may not install, manage, or operate for use in the United States such a system, unless such system is configured such that a user

may directly initiate a call to 9–1–1 from any station equipped with dialing facilities, without dialing any additional digit, code, prefix, or post-fix, including any trunk-access code such as the digit ‘9’, regardless of whether the user is required to dial such a digit, code, prefix, or post-fix for other calls.” Additionally, such persons “shall, in installing, managing, or operating such a system for use in the United States, configure the system to provide a notification to a central location at the facility where the system is installed or to another person or organization regardless of location, if the system is able to be configured to provide the notification without an improvement to the hardware or software of the system.”

15. With regard to implementation, Kari’s Law expressly provides that Congress did not intend to “alter the authority of State commissions or other State or local agencies with jurisdiction over emergency communications, if the exercise of such authority is not inconsistent with this Act.” Kari’s Law directs the Commission to enforce the provisions under Title V of the Communications Act of 1934, as amended, “except that section 501 applies only to the extent that such section provides for the punishment of a fine.” The effective date provision states that Kari’s Law “shall apply with respect to a multi-line telephone system that is manufactured, imported, offered for first sale or lease, first sold or leased, or installed after” February 16, 2020.

16. *RAY BAUM’S Act*. The President signed the Consolidated Appropriations Act of 2018, including RAY BAUM’S Act, into law on March 23, 2018. Section 506 of RAY BAUM’S Act requires the Commission to “conclude a proceeding to consider adopting rules to ensure that the dispatchable location is conveyed with a 9–1–1 call, regardless of the technological platform used and including with calls from multi-line telephone systems” by September 23, 2019. In conducting this proceeding, “the Commission may consider information and conclusions from other Commission proceedings regarding the accuracy of the dispatchable location for a 9–1–1 call, but nothing in this section shall be construed to require the Commission to reconsider any information or conclusion from a proceeding regarding the accuracy of the dispatchable location for a 9–1–1 call in which the Commission has adopted rules or issued an order” before the March 23, 2018 enactment date of Section 506.

III. Discussion

A. Direct Dialing and Notification for MLTS

17. Kari’s Law is a provision of the Communications Act of 1934, as amended. Accordingly, the Commission has authority to prescribe such rules and regulations as are necessary to carry out Kari’s Law. We believe that adoption of implementing regulations would provide additional clarity and specificity regarding the terms used in the statute and the obligations placed on covered entities. Implementing regulations can provide important guidance to covered entities on complying with the law and the mechanism the Commission will use to enforce the statute. Accordingly, our proposed rules include definitions of some of the terms in Kari’s Law, as well as other provisions to clarify the obligations of entities regulated under the statute.

1. Direct Dialing

18. *Applicability and Obligations*. We propose direct dialing requirements for persons engaged in the business of manufacturing, importing, selling, or leasing MLTS, as well as persons engaged in the business of installing, managing, or operating MLTS, that track the obligations in Kari’s Law. We seek comment on these proposed implementing regulations.

2. Notification

19. *Applicability and Obligations*. Consistent with Kari’s Law, we propose to adopt implementing regulations requiring that a person engaged in the business of installing, managing, or operating MLTS shall, in installing, managing, or operating the system, configure it to provide a notification that a 911 call has been placed by a caller on the MLTS system. The system configuration must provide for the notification to be transmitted to a central location at the facility where the system is installed or to another person or organization regardless of location, if the system is able to be configured to provide the notification without an improvement to the hardware or software of the system. This notification requirement will potentially benefit three parties: (1) The 911 caller by speeding response time; (2) enterprise management and staff by providing needed information and reducing confusion and delay when emergency response teams arrive; and (3) first responders by reducing time spent responding to such calls.

20. *Required Information and Purpose*. Although Kari’s Law requires

MLTS to support notification when an MLTS user makes a 911 call, it does not specify what information must be provided in the notification. In comments on the *ECS NOI*, West Safety noted that on-site notification can be configured to include name, callback number, precise station-level location, and links to enhanced data such as detailed floor plans and emergency contacts. NENA’s model federal MLTS legislation provides for on-site notification that would automatically alert a designated emergency station on the premises that 911 has been dialed from the MLTS and would include specific location information for the station from which the call originated. Rules implementing a Texas statute similar to Kari’s Law provide that the notification should include the telephone number or extension and location information of the handset from which the 911 call is made, provided that it is feasible to do so.

21. We tentatively conclude that for notification to be capable of achieving the purpose of Kari’s Law, it should include certain basic information, such as the caller’s location, that will assist the enterprise and first responders in coordinating and expediting on-site response to the emergency. According to Avaya, the benefits of on-site notification include that it can “allow[] internal responders to confirm and assist the person who has dialed 9–1–1, and provide[] notice that first responders are on the way so that preparations can be made. This includes ensuring access doors are unlocked, elevators are available and hallways are unobstructed.” RedSky has stated that on-site notification “can save 2–3 minutes in emergency response time when a 9–1–1 call is made.”

22. We propose to require that notification at a minimum include the following information: (1) The fact that a 911 call has been made, (2) a valid callback number, and (3) the information about the caller’s location that the MLTS conveys to the PSAP with the call to 911. Thus, under our dispatchable location proposal discussed in Section B.1 below, the notification to the enterprise would include the same dispatchable location information that the PSAP receives. Because the notification will help the enterprise to assist first responders, we believe it makes sense for the recipient of the notification to have the same information as the PSAP (and, indirectly, the first responders dispatched to the scene). In addition, because our proposal assumes the notification would only convey information that already exists for the

911 call, we tentatively conclude that providing the same information would minimize additional burdens. We seek comment on this proposed approach. Are there situations in which the callback or location information conveyed to the PSAP need not be included with an on-site notification? Instead of specifying the content of the notification, should we allow enterprises the flexibility to customize notification as they see fit? Is there an alternative approach that would be superior to the one proposed in terms of costs and benefits?

23. *Notification Timing and Destination Points.* Kari's Law is silent on when the notification must be provided. We believe that timely notification is essential, because delayed notification could impede coordination between enterprise management or staff and first responders seeking access to the enterprise premises. Therefore, we propose to require that MLTS covered by Kari's Law be configured so that notification is contemporaneous with the 911 call and does not delay the placement of the call to 911. We seek comment on this proposal, as well as any alternatives.

24. We also seek comment on whether there should be any requirements relating to the location, configuration, or staffing of notification destination points. Kari's Law provides that the notification may be provided either to a "central location at the facility where the system is installed" or to "another person or organization regardless of location." We believe this language indicates Congress's recognition that in the enterprise settings in which MLTS are typically used, providing someone other than the PSAP with notice of the call can be critical to helping first responders gain timely access. At the same time, the language indicates that Congress sought to provide MLTS installers, managers, and operators with broad flexibility in selecting destination points to achieve this goal. For example, the notification could be directed to an on-site security desk that controls access to the premises, to an enterprise employee who may or may not be located at the facility where the MLTS is installed, or to a third party that provides security or safety services from an off-site location. MLTS notification could also be configured to combine these approaches, e.g., by having notifications during business hours go to a central on-site location and off-hours notifications go to an off-site person or organization. We seek comment on additional options for implementing such requirements.

25. We seek comment on whether the Commission should specify any criteria for destination points to ensure that notifications, whether on-site or off-site, are likely to be received by someone able to take appropriate action to facilitate or assist the 911 response. Where on-site notification to a "central location" is provided, should we specify that the destination point must be a location that is normally staffed or, alternatively, a location where on-site staff are likely to hear or see the notification? This would afford the flexibility to direct the on-site notification to a security guard or facilities manager, to personnel who are otherwise employed and can support monitoring notifications as a part of existing duties, or to an on-site location where staff are normally present. We seek comment on this approach. Where notification is provided to a "person or organization regardless of location," should we require that the person or organization be one that is authorized to provide first responders with access to the location from which the MLTS 911 call originated? This would allow notification to be directed to any offsite location, as the statute clearly allows, while furthering the statute's objective of facilitating access to first responders answering a 911 call. We seek comment on this approach.

26. We also seek comment on the cost and expected benefit of the above-mentioned options for implementing the notification requirement of Kari's Law. We note that while some state MLTS statutes include notification requirements, these statutes either expressly provide that the enterprise does not have to make a person available to receive a notification, or they are silent on whether the destination point must be staffed. We do not believe Congress intended to impose staffing or monitoring requirements that would impose unreasonable costs or limit the flexibility of MLTS installers, managers, and operators to develop efficient and cost-effective notification solutions that are appropriate for the technology they use, such as visual alerts on monitors, audible alarms, text messages, and/or email. Rather than requiring staffing or monitoring, we believe that allowing notifications to be directed to the points where they are likely to be seen or heard by existing staff achieves these goals at a negligible cost above what an MLTS manager would already spend when purchasing an MLTS. We seek comment on this approach. What means are available to reasonably ensure that notification will be timely received by a person with

authority to act on it? For example, could alarm companies, security firms, or similar entities create efficiencies by providing 911 notification monitoring for multiple customers? Are there other means to reduce these costs?

27. We also seek comment on how the statute's notification requirements should be applied to small enterprises. Large enterprises such as hotels, hospitals, and schools frequently have on-site personnel that control access to the premises, and notification of 911 calls to such personnel can improve outcomes by enabling them to assist first responders in accessing the premises and reaching the caller's location. Do the benefits and costs of notification apply differently to small businesses? Small businesses are less likely to have personnel controlling access, and first responders may not need the same level of assistance to reach a 911 caller. At the same time, small enterprises using MLTS may find benefits to notification in addition to access and support. For example, on-site personnel can intervene when 911 is dialed in error, enabling them to contact the PSAP and avoid sending emergency responders to a location that does not require a response.

3. Definitions.

28. *Multi-Line Telephone System.* Kari's Law and RAY BAUM'S Act define the term "multi-line telephone system" as "a system comprised of common control units, telephone sets, control hardware and software and adjunct systems, including network and premises based systems, such as Centrex and VoIP, as well as PBX, Hybrid, and Key Telephone Systems (as classified by the Commission under part 68 of title 47, Code of Federal Regulations), and includes systems owned or leased by governmental agencies and non-profit entities, as well as for profit businesses."

29. We propose to interpret this definition to include the full range of networked communications systems that serve enterprises, including circuit-switched and IP-based enterprise systems, as well as cloud-based IP technology and over-the-top applications. We further propose to interpret this definition to include enterprise-based systems that allow outbound calls to 911 without providing a way for the PSAP to place a return call. We believe requiring direct dialing for any MLTS that allows the user to call 911, regardless of whether the system also allows the PSAP to make a return call, advances the purpose of the statute. In addition, there is nothing in the language of the definition of MLTS

from the Middle Class Tax Relief and Job Creation Act of 2012 that excludes systems allowing only outbound calls to 911.

30. We seek comment on our proposed definition of the term MLTS. Are there other ways in which the Commission should clarify the meaning of MLTS, and if so, what are they? Should we define MLTS to include systems that allow outbound calls to 911 but not inbound calls, as proposed above? How common are such systems? Are 911 calls from such systems identified as outbound-only at the PSAP? Are outbound-only systems ever deployed together with systems that allow two-way calling? If so, how do enterprise managers address the potential for end user confusion over the ability to receive a return call from the PSAP over a particular system?

31. *Pre-configured and configured.* Next, we propose to define the statutory terms “pre-configured” and “configured” as applied to MLTS direct dialing. First, we propose to define “pre-configured” to mean that the MLTS comes equipped with a default configuration or setting that enables users to dial 911 directly as required under the statute and rules, so long as the system is installed and operated properly. This does not preclude the inclusion of additional dialing patterns to reach 911. However, if the system is configured with these additional dialing patterns, they must be in addition to the default direct dialing pattern. We believe this means that an MLTS may support additional dialing patterns, but manufacturers (and importers, sellers, or lessors) must ensure that the default, “out-of-the-box” configuration allows users to reach 911 directly.

32. Second, we propose to define “configured” to refer to the settings or configurations implemented for a particular MLTS installation. To meet this definition, the MLTS must be fully capable when installed of dialing 911 directly and providing notification as required under the statute and rules. As with “pre-configured,” an MLTS may be configured to support additional dialing patterns, but manufacturers (and importers, sellers, or lessors) must ensure that they are in addition to the default direct dialing pattern. We seek comment on this proposed definition. Cisco noted in its comments on the *ECS NOI* that “[c]onfiguring [MLTS] is an entirely different line of business than manufacturing [MLTS].” Under our proposed definitions, is the difference between “pre-configuring” an MLTS and “configuring” an MLTS sufficiently clear? If not, how can we clarify the differences?

33. *Improvement to the hardware or software of the system.* Kari’s Law provides that the notification requirements of the statute apply only if the system can be configured to provide notification “without an improvement to the hardware or software of the system.” We propose to define the term “improvement to the hardware or software of the system” to include upgrades to the core systems of an MLTS, as well as substantial upgrades to the software and any software upgrades requiring a significant purchase. We seek comment on this proposed definition. Are there types of routine hardware or software changes that should be included in or excluded from the definition? For example, should we clarify that (1) improvements to the hardware of the system do not include the provision of additional extensions or lines, and (2) improvements to the software of the system do not include minor software upgrades that are easily achieved or made to improve the security of the system? What changes should we consider minor? Should upgrades requiring a significant purchase be determined based on total cost alone, or should we interpret significant to be a relative determination based on the size of the entity making the purchase?

34. *A person engaged in the business of manufacturing, importing, selling, or leasing an MLTS.* Kari’s Law prohibits the manufacture or importation for use in the United States, or sale or lease or offer to sell or lease in the United States, of non-compliant MLTS. We tentatively conclude that the meaning of the term “person engaged in the business of manufacturing, importing, selling, or leasing an MLTS” is self-evident, and we do not propose to modify or add to this definition in our rules. We nonetheless seek comment on whether any additional clarification of this term is necessary for implementation or enforcement of Kari’s Law. For instance, should we clarify that a person engaged in the business of manufacturing, importing, selling, or leasing MLTS includes a distributor or reseller of MLTS?

35. *A person engaged in the business of installing an MLTS.* We propose to define a person engaged in the business of installing an MLTS as a person who installs or configures the MLTS or performs other tasks involved in getting the system ready to operate. These tasks may include, but are not limited to, establishing the dialing pattern for emergency calls, determining how calls will route to the Public Switched Telephone Network (PSTN), and determining where the MLTS will

interface with the PSTN. We note that these tasks are performed when the system is initially installed, but they may also be performed on a more or less regular basis by the MLTS operator as the communications needs of the enterprise change. The MLTS installer may be the MLTS manager or a third party acting on behalf of the manager. We seek comment on our proposed definition.

36. *A person engaged in the business of managing an MLTS.* We propose to define a person engaged in the business of managing an MLTS as the entity that is responsible for controlling and overseeing implementation of the MLTS after installation. These responsibilities include determining how lines should be distributed (including the adding or moving of lines), assigning and reassigning telephone numbers, and ongoing network configuration. We also propose to interpret the definition to mean that a user of MLTS services that does not own or lease the MLTS or exercise any control over it would not be deemed to be engaged in the business of managing the MLTS. Thus, an enterprise that contracts with a third party to provide a total solution for MLTS, including acquiring the MLTS equipment, configuring the system, completing calls, and providing services such as maintenance and end user support, would not be deemed to be engaged in the business of managing the MLTS unless it exercised actual control over the system. We seek comment on this proposed definition.

37. *A person engaged in the business of operating an MLTS.* We propose to define a person engaged in the business of operating an MLTS as an entity responsible for the day-to-day operations of the MLTS. As with our proposed definition of MLTS manager above, we also propose to interpret this term to mean that an MLTS user that does not own, lease, or exercise control over the MLTS would not be deemed to be engaged in the business of operating the MLTS. We seek comment on our proposed definition.

38. We also seek comment on whether there are circumstances in which our proposed definitions of MLTS “manager” or “operator” should extend to enterprise owners. Commenters on the *ECS NOI* emphasized that some enterprise owners purchase, operate, and maintain their own on-premises telephone systems with PBX equipment, while others enter contractual arrangements with third-party providers of network and hosted services. AT&T noted that the decision whether to purchase and implement an MLTS solution lies with the enterprise owner

and that the owner “must have a role to play in ensuring that 911 capabilities are functioning as intended.” As noted above, we do not believe that Kari’s Law was intended to extend liability to enterprise owners that purchase MLTS services but do not exercise control over the manner in which such services are configured or provided. Nevertheless, there may be instances where enterprise owners purchase, operate, and maintain their own MLTS systems, or they may exercise active control over the configuration and provision of MLTS by third parties. In such instances, should enterprise owners be deemed to be MLTS managers or operators? What indicia of active control should be considered in making this determination?

4. Other Issues

39. *Compliance date.* Consistent with the provisions of Kari’s Law, we propose that the compliance date for our implementing regulations will be two years from the date of the law’s enactment, *i.e.*, on February 16, 2020. Thus, the proposed direct dialing and notification requirements would apply to MLTS that are manufactured, imported, offered for first sale or lease, first sold or leased, or installed after February 16, 2020. We seek comment on this proposed compliance date for implementing regulations, as well as on alternatives. Those offering alternatives should explain how any proposed date that differs from the one that we propose would be consistent with the statutory language.

40. *Transitional Issues.* Kari’s Law applies only with respect to MLTS that are manufactured, imported, offered for first sale or lease, first sold or leased, or installed after February 16, 2020. Accordingly, MLTS manufactured, imported, offered for first sale or lease, first sold or leased, or installed on or before that date are grandfathered from compliance with the statute. To what extent is direct dialing of 911 already available and in use in MLTS? To the extent that MLTS in use do not support direct dialing, what options are currently available to installers, managers, and operators that may be planning to upgrade or replace their systems? Are there any barriers facing (1) MLTS manufacturers, importers, sellers, and lessors, and (2) MLTS installers, managers, and operators, to meet the statute’s direct dialing requirements by the compliance date? If so, what are those barriers and what are the potential costs of overcoming them?

41. We also seek comment on whether we should adopt transitional rules to inform consumers of the 911

capabilities of grandfathered MLTS. For example, the state version of Kari’s Law enacted in Texas requires enterprises to place a sticker adjacent to or on non-compliant MLTS devices that provides instruction in English and Spanish on how to call 911. Similarly, the Commission’s interconnected VoIP E911 rules require service providers to distribute stickers or labels warning subscribers that E911 service may be limited. We seek comment on whether to require MLTS installers, operators, and managers to notify callers how to dial 911 from grandfathered systems, as well as options for doing so and their related costs. In addition, we seek comment on potential sources of statutory authority for such requirements.

42. *Enforcement.* Under Kari’s Law, the Commission is empowered to enforce the statute under Title V of the Communications Act, “except that section 501 applies only to the extent that such section provides for the punishment of a fine.” We seek comment on how the Commission should enforce and provide oversight of the requirements of Kari’s Law. As a general matter, we envision following the framework set forth by the statute. For example, a manufacturer could face enforcement action for offering to sell an MLTS that is not pre-configured to support direct 911 dialing, and an MLTS operator could face enforcement action for operating the system when it was not configured so that users could dial 911 directly. We seek comment on the potential use of this enforcement approach for Kari’s Law.

43. Additionally, we seek comment on who, or which entities, should bear responsibility for violations of the proposed rules. Verizon comments that there can be great variation in the business relationships between MLTS installers, operators, and managers: “In some cases the service provider and the system operator or vendor will each have a direct relationship with an enterprise customer. In other cases the service provider may be a subcontractor to the system operator, and only provide certain components of the service (such as MPLS circuits for transport or other trunking services), with limited or no say in the design or configuration of the product. Or the reverse may be true—*i.e.*, the enterprise system operator is a subcontractor of the service provider, and the service provider maintains the direct contractual relationship with the customer.”

44. We propose to apply a presumption that the MLTS manager bears ultimate responsibility for compliance with our proposed rules

implementing Kari’s Law. For example, if an MLTS fails to comply with our proposed rules, the MLTS manager would be presumed to be responsible for that failure, at least in part, unless the manager can rebut that presumption by demonstrating compliance with its obligations under the statute and our proposed rules. We seek comment on this proposal. How should we apportion liability in situations where multiple parties may be responsible for compliance with the statute and our proposed rules? For example, in a case where the MLTS manager contracts with a third party to install and operate an MLTS, but the third party fails to comply with the Commission’s rules, should the MLTS manager and third-party contractor be held jointly or individually responsible? What evidence or factors should we look to in apportioning or rebutting a presumption of liability?

45. *Complaint Mechanisms and Other Issues.* We envision relying on existing Commission complaint mechanisms to facilitate the filing of complaints for potential violations of Kari’s Law. For example, PSAPs and the public could report problems via the Public Safety and Homeland Security Bureau’s Public Safety Support Center or the Commission’s Consumer Complaint Center. We seek comment on this.

46. We also seek comment on whether to modify our equipment authorization rules as they apply to MLTS equipment manufactured after February 16, 2020. Should MLTS applications for equipment authorization under Parts 2, 15, or 68 constitute a representation that such equipment complies with MLTS 911 requirements?

47. Finally, we ask commenters to identify voluntary best practices that can improve the effectiveness of direct dialing and notification for MLTS. For example, the Michigan State 911 Committee has developed guidelines that call for MLTS operators to work directly with their local public safety entities to ensure compliance. The Michigan State 911 Committee also “strongly recommend[s] that every MLTS operator work with their local 911 system manager/director to test the ability to dial 911 from the station lines associated with MLTS systems any time an MLTS has been installed or upgraded.” We seek comment on this and other recommended or potential best practices that would help enterprises ensure the effectiveness of direct dialing and notification. Are there best practices for the training of on-site emergency personnel and others responsible for the implementation of direct dialing and notification?

Similarly, are there best practices for the operation of an on-site or offsite notification point of contact?

5. Comparison of Benefits and Costs

48. According to a Congressional Budget Office analysis, most MLTS systems already are configured to meet the direct dialing and notification requirements of Kari's Law. In evaluating the Senate and House versions of Kari's Law, Cisco stated that it was not aware of any technological barriers to the implementation of Kari's Law as applied to MLTS. In addition, eight states and some local governments already have laws that require direct dialing for 911 from MLTS. For these state and local jurisdictions, our proposed rules would generally not affect the *status quo* and so would likely have little to no impact from a cost perspective. Moreover, the existence of state-level requirements has driven the manufacture of MLTS equipment that supports 911 direct dialing, much of which may have been marketed and sold in jurisdictions that do not have state or local requirements. We seek comment on the number of MLTS systems currently deployed that do not allow direct dialing of 911 and/or cannot be configured to provide notification of 911 calls to an MLTS manager.

49. Consistent with Kari's Law, our proposed rules would apply only with respect to MLTS that are manufactured, imported, offered for first sale or lease, first sold or leased, or installed after February 16, 2020, which means that there should be no immediate costs or stranded investment with respect to existing MLTS or systems that first come into service on or before February 16, 2020. As noted above, many existing, installed MLTS support direct dialing to 911 and notification. Therefore, we tentatively conclude that there will be no immediate costs or benefits associated with meeting the requirements of our rules. For systems coming into service after February 16, 2020, we seek comment on the costs and benefits of satisfying our proposed rules. Are there alternative methods of meeting the requirements of Kari's Law that would reduce costs and/or increase benefits? Will any barriers exist for those wishing to replace their MLTS after this date that would be costly to overcome? We also seek comment on the expected lifespan of existing MLTS that are not currently able to meet the requirements of our proposed rules. What is the prevalence of such systems today, and what will the expected prevalence of such systems be in 2020? We seek comment on the cost of

upgrading to an MLTS that supports the requirements of our proposed rules. Because most of the currently deployed MLTS are capable of being configured to meet the requirements of our rules today, without improvement to the hardware or software of the system, we tentatively conclude that our rules will impose no incremental costs to those who replace their MLTS as they come to the end of their useful life. We seek comment on this tentative conclusion.

50. Specifically as to notification, we tentatively conclude that the costs of implementing our proposed requirements will not exceed the value of their benefits. As discussed above, notification can assist MLTS managers in large enterprises in dealing with first responders. Prepared with information about a 911 call, a manager will be able to quickly direct and assist first responders at large enterprises, rather than spending time trying to gather such information. Notification will also benefit the 911 caller and first responders by allowing quicker response time. This analysis is supported by RedSky's *ECS NOI* comments, which state that, in its experience, ECS customers that receive these types of notifications "can save 2–3 minutes in emergency response time when a 911 call is made." We also anticipate that notification will provide MLTS managers with opportunities to efficiently notify the PSAP of accidental 911 calls, preserving first responder resources and allowing the MLTS manager to avoid state or municipal fines or penalties for accidental 911 calls. We observe that some states already have laws and regulations that require on-site notification for 911 calls from MLTS. Similar to our proposed rules, the largest of these states defines notification to include the fact that a 911 call has been made, the caller's telephone number, and the caller's location. For these state and local jurisdictions, we anticipate that our proposed rules would have minimal impact. Moreover, the existence of state-level requirements has likely driven the manufacture of MLTS equipment that supports notification for 911 calls, much of which may have been marketed and sold in jurisdictions that do not have state or local requirements or to small businesses that are exempted from state or local requirements. We seek comment on our tentative conclusion, as well as particular costs involved in imposing the notification requirement and alternative methods consistent with Kari's Law that may reduce costs and/or improve benefits. We seek comment on the costs and benefits associated

with our proposed definitions. We also seek comment on the benefits and costs associated with any additional notification requirements the Commission might adopt, such as requiring grandfathered MLTS to inform consumers of the 911 capabilities of those systems.

B. Dispatchable Location for MLTS and Other 911-Capable Communications Services

51. RAY BAUM'S Act directs us to consider rules requiring the conveyance of dispatchable location with 911 calls "regardless of the technological platform used." Based on this directive, we consider whether to adopt dispatchable location requirements for MLTS and other 911-capable services. In addition to MLTS, we examine four types of communications services that are currently required under Commission rules to provide 911 service to their customers: (1) Fixed telephony, (2) mobile telecommunications, (3) interconnected VoIP service, and (4) internet-based Telecommunications Relay Services (TRS). In addition, we examine whether we should adopt dispatchable location rules for other 911-capable services that are not currently subject to 911 rules.

1. MLTS

52. *Applicability and Obligations.* When a 911 call is placed in an MLTS environment, a location may be included in the information sent to the PSAP, but that location may not be the location of the caller. On a large campus or in a hotel, for example, a 911 call may convey the location of the main entrance or administrative office. Such location imprecision can lead to delays in locating the person making the 911 call and result in further injury or loss of life.

53. By directing the Commission "to consider adopting rules to ensure that the *dispatchable location* is conveyed with a 9–1–1 call . . . including with calls from multi-line telephone systems," Congress in RAY BAUM'S Act signaled its intent that the Commission focus on ensuring highly precise location information whenever feasible. Moreover, the enactment of RAY BAUM'S Act only weeks after Kari's Law indicates that Congress recognized the importance of providing accurate location information to PSAPs in connection with MLTS 911 calls. Dispatchable location is defined in the statute as "the street address of the calling party, and additional information such as room number, floor number, or similar information necessary to adequately identify the

location of the calling party.” We therefore initiate this portion of our proceeding with Congress’s stated goal in mind.

54. We propose to proscribe the manufacture, import, sale, or leasing of MLTS in the United States unless the system is pre-configured such that, when properly installed, the dispatchable location of the caller will be conveyed to the PSAP with 911 calls. Further, we propose to proscribe the installation, management, or operation of MLTS in the United States unless the system is configured such that the dispatchable location of the caller will be conveyed to the PSAP with 911 calls. And we propose to apply these proscriptions to the same entities subject to Kari’s Law. We seek comment on these proposals.

55. In its comments to the *ECS NOI*, NCTA observed that “ECS involves not only the service provider and end user, but also manufacturers and ECS programmers. Coordination and assignment of responsibilities among these ECS functions must be done seamlessly to ensure that 911 services function properly.” For this reason, our proposals for dispatchable location parallel the direct dialing and notification requirements of Kari’s Law in that they would apply to the participants in the MLTS marketplace we believe are best positioned to ensure that all installed MLTS are capable of conveying an accurate location to the appropriate PSAP. We seek comment on our approach to addressing the division of responsibilities when deploying and operating MLTS. Should more granular requirements be placed on any of the MLTS market participants to which our proposed rules would apply? Are new rules necessary to ensure that communication service providers (such as fixed telephony, mobile carriers, and interconnected VoIP service providers) that complete 911 calls originating from MLTS convey dispatchable location, or are existing 911 rules sufficient? Similarly, are rules needed to ensure that manufacturers and importers of MLTS incorporate capabilities in their products to enable them to convey dispatchable location information? Do standards exist for conveying dispatchable location information from MLTS? If so, should MLTS be required to conform to these standards? How should conformance of MLTS to such rules and standards be demonstrated?

56. *Defining Dispatchable Location.* RAY BAUM’S Act defines “dispatchable location” as “the street address of the calling party, and additional information such as room number, floor number, or similar information

necessary to adequately identify the location of the calling party.” We note that the statutory definition of dispatchable location is nearly identical to the dispatchable location definition in the Commission’s mobile E911 location accuracy rules. Given the substantial similarity between the two definitions, we propose to construe them as functionally identical, aside from the specification of the technological platform to which each definition applies. We seek comment on this proposal.

57. The mobile E911 definition of “dispatchable location” further requires that, when delivering dispatchable location, “[t]he street address of the calling party must be validated and, to the extent possible, corroborated against other location information prior to delivery of dispatchable location information by the CMRS provider to the PSAP.” We seek comment on whether we should require similar validation for dispatchable location information associated with MLTS 911 calls. Is there any reason why street address validation would be more difficult or costly for MLTS than for mobile E911?

58. We also seek comment on whether our rules should further define “additional information” that may be necessary in an MLTS context to “adequately identify the location of the calling party.” In the *Indoor Location Fourth Report and Order*, the Commission found that the definition of dispatchable location applicable to mobile carriers “strikes the appropriate balance between specificity and flexibility,” and therefore does not necessitate further specification of types of location information to be conveyed. We seek comment on applying the same approach for MLTS dispatchable location. We believe MLTS installers, managers, and operators will be able to identify situations in which street address is sufficient for first responders to quickly and accurately find the calling party. We also expect that street address would serve as a dispatchable location for the smallest enterprises. Nonetheless, should we specify the situations in which street address is not sufficient, and more granular location information is needed? For example, NENA’s model federal MLTS legislation generally requires business MLTS to provide location information for each floor of each property served, as well as each 7,000 square feet of workspace beyond the first. Several commenters on the *ECS NOI* supported this approach to providing dispatchable location for MLTS. If commenters believe we should specify when more granular information

is needed, what should be our criteria for identifying those situations? When more granular information is needed, what elements of location, in addition to room, floor, suite, or apartment number, could be used to locate a 911 caller using MLTS?

59. We agree with TIA that we “should be careful [not] to impose burdensome regulations that would eliminate the robust choices enjoyed by enterprises of all types in today’s marketplace.” Accordingly, we do not propose to require implementation of specific location technologies or solutions but rather seek comment on functional requirements that would give participants in the MLTS marketplace flexibility to develop dispatchable location solutions. We believe that this approach will allow the entities affected by these proposed rules to implement them in a manner that is appropriate in terms of cost, enterprise size, site layout, and technical sophistication. We note that several states already place requirements on MLTS providers to obtain and convey location information that is more detailed than street address alone.

60. *Feasibility of Conveying Dispatchable Location from MLTS.* We tentatively conclude that it is feasible for 911 calls that originate from MLTS to convey dispatchable location to the appropriate PSAP, as several commenters to the *ECS NOI* indicate that they are already offering methods for dynamically determining and conveying an MLTS end user’s location. We seek comment on this tentative conclusion. We observe that potential dispatchable location solutions for MLTS include solutions that require the customer to identify their own location and solutions that calculate a location by leveraging data available from the 911 caller’s device and the network.

61. We also seek comment on whether additional dispatchable location solutions can be implemented for MLTS. Are there technical elements necessary for supporting dispatchable location that are shared by these solutions? Do technical elements differ across dispatchable location solutions, and if so, how? Are the required technical elements consistent across types of MLTS solutions, including on-premises solutions, hosted cloud solutions, and over-the-top application-based solutions? Are the required technical elements shared by legacy MLTS and IP-based MLTS, and if not, should differing requirements be placed on them? In its comments on the *ECS NOI*, West Safety observed that “[l]egacy-based solutions may not be able to support E9-1-1 routing for users

accessing the ECS remotely.” We seek comment on that observation. Should we place differing requirements on premises-based, cloud-based, and over-the-top application-based solutions? Should we require MLTS to convey particular types of location information, such as room number or floor number, when it is available? If an MLTS handles calls initiated by remote users, *e.g.*, off-site workers, should we require it to convey the remote user’s location information?

62. We seek comment on whether the technical elements necessary for conveying dispatchable location with a 911 call are currently available in MLTS that are deployed today. We observe that several MLTS offered today provide 911 location solutions that are capable of conveying dispatchable location to PSAPs. Can currently-deployed MLTS that do not support provision of dispatchable location be upgraded to do so? If they can be upgraded, what would those upgrades entail, and what would they cost? For support of dispatchable location, what technical elements must be present in MLTS-related hardware, such as handsets, the device on which a softphone or voice application is installed, or other elements of the system? Which elements can be supported with updates to software or applications? If some MLTS in use today are not capable of supporting dispatchable location, we seek comment on whether those systems should be exempted from a dispatchable location requirement. For example, should we adopt compliance date provisions that track the provisions of Kari’s Law as discussed above? Should we adopt disclosure requirements for grandfathered MLTS that are not subject to the rules? What should such disclosure rules require?

63. We also seek comment on the steps that an MLTS manager or operator must take, if any, to ensure that dispatchable location is conveyed to the PSAP. What is the most effective, least burdensome means to ensure that this happens? For example, some commenters on the *ECS NOI* suggest that managers of cloud-based MLTS are in a unique position to administer, maintain, and update location information for the enterprise. Should we adopt rules requiring MLTS managers to provision location information for the enterprise to the MLTS operator? To what extent does our legal authority under these new statutes or our existing authority extend to such entities? What information should be initially provisioned and how frequently should we require that information to be updated? What are the

costs associated with such provisioning and updating? For situations in which MLTS operators are capable of calculating a dispatchable location by inputting one or more sources of device-generated location data into a location information server, what requirements, if any, should we place on (1) MLTS manufacturers and importers; (2) sellers and lessors; (3) MLTS installers, managers, and operators; and (4) communications service providers to ensure that this information or the resulting dispatchable location information is conveyed to the PSAP?

64. Although RAY BAUM’S Act directs the Commission to consider rules to ensure that dispatchable location is conveyed with 911 calls, there may be instances where location information that does not meet the definition of dispatchable location could still be useful to PSAPs and first responders, either as supplemental information to validate the dispatchable location or as an alternative in instances where dispatchable location information is not available. We therefore believe that our rules and policies should not preclude—and in fact should allow and encourage—potential alternatives to dispatchable location. We seek comment on this view. Could other types of location information (for example, x/y/z coordinates) be conveyed with a 911 call originating from MLTS? If we adopt dispatchable location requirements, should we allow provision of x/y/z/coordinates or other approaches to conveying location information to be alternatives to dispatchable location? We also seek comment on the usefulness of x/y/z coordinates to PSAPs and first responders for responding to MLTS 911 calls. Are they currently equipped to receive and use such information?

65. We also seek comment on whether there are other sources of location information, such as the National Emergency Address Database (NEAD), the location database being developed by the major mobile carriers to provide dispatchable location for indoor mobile 911 calls, that could potentially assist MLTS managers and operators in determining the dispatchable location of MLTS end users. Could MLTS managers and operators leverage these other sources of location information? What actions, if any, should we take to facilitate use of the NEAD and other location information sources for MLTS managers and operators? With respect to the NEAD in particular, are there obligations that should be placed on entities that seek to access the NEAD? As it has been contemplated that dispatchable location information from

third-party sources will be integrated into the NEAD, we seek comment on whether MLTS managers and operators are positioned to contribute dispatchable location reference points to the database. If they are capable of making such contributions, should they be required to do so as a condition of leveraging the NEAD? Similarly, should they be required to contribute to the operating costs of the NEAD as a condition of leveraging it?

2. Fixed Telephony Providers

66. Section 64.3001 of the Commission’s rules requires all telecommunications carriers, including fixed telephony providers, to transmit all 911 calls to a PSAP, to a designated statewide default answering point, or to an appropriate local emergency authority. Section 64.3001 does not require telecommunications carriers to convey the location of the caller with the call, and there is no Commission 911 location rule applicable to fixed telephony carriers. However, pursuant to applicable state law, fixed telephony carriers typically provide validated street address information in conjunction with their customers’ 911 calls.

67. We propose to amend our rules to require providers of fixed telephony services to provide dispatchable location with 911 calls. Fixed telephony carriers already provide validated street address information, which is likely sufficient in most cases, such as single family dwellings, to satisfy a dispatchable location requirement. However, dispatchable location as defined in RAY BAUM’S Act includes additional elements such as floor level and room number that may be necessary to locate the caller. We also believe that including fixed telephony carriers in our consideration of dispatchable location requirements at the federal level is consistent with the “all platforms” approach sought by Congress in the RAY BAUM’S Act, while omitting them could create the risk of gaps in the availability of location information. We seek comment on this approach.

68. We seek comment on whether it is technically feasible for fixed telephony carriers to convey dispatchable location with a 911 call. In many instances, as noted above, fixed telephony 911 calls from single family homes, feasibility appears to be established because fixed telephony carriers already provide validated street address information to the PSAP and first responders do not typically require additional room or floor level information. We seek comment on the extent to which fixed telephony carriers

also provide other information, such as floor level and room number, for 911 calls from multi-story buildings and similar environments. How frequently do fixed telephony 911 calls convey only street addresses where additional information would be needed to locate the caller? What obstacles exist, if any, to fixed telephony carriers conveying dispatchable location to PSAPs? If obstacles exist, how could they be overcome, and at what cost? Could the NEAD, similar databases, or other sources of location information assist fixed telephony carriers in providing dispatchable location with 911 calls? What obligations, if any, should be placed on fixed telephony carriers that seek to access the NEAD? If so, what steps could the Commission take, if any, to facilitate the use of such databases by fixed telephony providers? Are there any alternatives to dispatchable location that fixed telephony carriers could use to provide in-building location information beyond street addresses, e.g., coordinate-based information?

3. Mobile Carriers

69. The E911 location accuracy rules applicable to mobile 911 voice service, set forth in Section 20.18 of our rules, provide that mobile carriers can meet our accuracy requirements by either conveying dispatchable location or coordinate-based location information. Because we have already incorporated dispatchable location into our E911 rules for mobile voice service, and mobile carriers are developing dispatchable location solutions based on those rules, we do not consider further changes in this proceeding to existing dispatchable location requirements. We note that this is consistent with RAY BAUM'S Act, which states that the Commission is not required to "reconsider any information or conclusion" made in proceedings prior to the statute's enactment.

70. With respect to text-to-911, our rules require mobile carriers and other covered text providers to obtain location information sufficient to route text messages to the appropriate PSAP, but text providers are not required to convey location information to the PSAP for the purpose of locating the person sending the text. The Commission has previously asserted that this approach is only an interim solution, and that it intends to require the delivery of enhanced location information with texts to 911 as soon as it is technically feasible to do so.

71. The Commission has previously proposed a requirement that, no later than two years after the effective date of the adoption of final rules on enhanced

location for 911 texts, covered text providers must deliver enhanced location information (consisting of the best available location that covered text providers could obtain from any available location technology or combination of technologies, including device-based location) with texts to 911. We seek to refresh the record on how enhanced location information can be generated and delivered with text messages to 911. Is it technologically feasible today to convey a dispatchable location, or other types of enhanced location information, to the appropriate PSAP when a text message is sent to 911? If not, what is the likely timeframe for covered text providers to achieve such capability? Is there completed, ongoing, or anticipated future standards work that would facilitate delivery of dispatchable location information by covered text providers? If it is technologically feasible, should we apply dispatchable location requirements to text-to-911 consistent with requirements applied to other platforms? What would be the cost of such a requirement? To the extent that some text-to-911 dispatchable location requirement would be feasible but should differ from that applicable to other platforms, commenters should explain the basis for any distinctions, what alternative(s) could work for text-to-911 dispatchable location, and why.

4. Interconnected VoIP Providers

72. The Commission's rules require interconnected VoIP providers to transmit Automatic Number Identification (ANI) and the caller's Registered Location with each 911 call. Interconnected VoIP providers must obtain a Registered Location, which is the most recent information that identifies the physical location of an end user, from each customer prior to the initiation of service. In addition, providers must enable end users to update their Registered Location at will and in a timely manner. The Registered Location of such calls must be made available to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority from or through an appropriate automatic location information database. The Commission has also previously sought comment on the possibility of interconnected VoIP services providing real-time automatic location information to support 911 calls from consumers that use interconnected VoIP services from mobile or portable devices, such as smartphones or laptops.

73. The Commission adopted the Registered Location requirement in 2005

to support the provision of location information from 911 callers that typically use interconnected VoIP service from a single fixed location, such as a residence (fixed VoIP), or that move from one fixed location to another (nomadic VoIP). Although RAY BAUM'S Act provides that the Commission is not required to reconsider E911 location rules adopted in prior proceedings, as discussed below, we believe that it is appropriate to consider revising our E911 rules for interconnected VoIP to require the provision of dispatchable location.

74. *Fixed VoIP*. With respect to fixed VoIP, we believe it is feasible for 911 calls that originate from interconnected VoIP services to convey dispatchable location to the PSAP, in that the current Registered Location obligations are sufficient for this purpose. In this respect, we note that the Registered Location information that is already conveyed with such calls today typically includes street address information, which should be sufficient for dispatchable location in the case of single family homes and small buildings where the PSAP and first responders do not require additional room or floor level information. In addition, interconnected VoIP providers can also enable customers in multi-story buildings and similar environments to provide room or floor level information as part of the Registered Location when needed. We seek comment on this proposal.

75. *Nomadic VoIP*. With respect to nomadic VoIP, we seek comment on whether Registered Location satisfies a dispatchable location requirement. In particular, we note that a Registered Location that was recorded when service was initiated is less likely to accurately identify the real-time location of an end user that moves frequently between home, work, and other locations. Is Registered Location a sufficient proxy for dispatchable location in a nomadic environment, where the relevant device is able to prompt the user for an updated location when it has been moved? We seek comment on what technical elements would be required in the end user's device and/or the service provider's network to support the provision of real-time dispatchable location as proposed, and the degree to which those technical elements are already in place. For example, as we have noted in the discussion of MLTS location in Section B1 above, there appear to be IP-based solutions currently available for providing MLTS dispatchable location dynamically in buildings, campuses, and similar environments. We seek

comment on whether these solutions could also be leveraged by interconnected VoIP providers when their customers call 911 from such environments.

76. We note that in the Registered Location context the burden is on the end user to update the Registered Location whenever the end user moves from one location to another. We seek comment on whether nomadic interconnected VoIP providers have, or can develop in the near term, the means to provide automatic dispatchable location with 911 calls in lieu of conveying the customer's Registered Location. We believe that automatic provision of location is preferable because end users under stress in emergency situations may have difficulty providing manual updates and the updating process may delay the 911 call or subsequent location and dispatch. Therefore, we seek comment on the degree to which mechanisms exist for interconnected VoIP providers to dynamically determine the location of end users (1) when they are at home or their usual place of work, (2) when they move frequently between multiple locations, and (3) when they are at locations they do not regularly visit. How accurate is the location information acquired in these scenarios, and would it be sufficient to meet the proposed definition of dispatchable location? Are sources of reliable location information available to interconnected VoIP providers? Could the NEAD assist interconnected VoIP providers with dynamic determination of the location of end users? If so, what steps could the Commission take, if any, to facilitate the use of the NEAD by interconnected VoIP providers? What obligations, if any, should be placed on interconnected VoIP providers that seek to access the NEAD?

77. While we prefer to encourage the development of dispatchable location solutions that do not require manual end user updates, we recognize that such solutions may not be feasible or cost-effective in all circumstances. For example, as part of the 911 call session, if real-time dispatchable location information cannot be generated automatically, the VoIP provider may need to send an interactive query to the end user to confirm the location identified by the provider, and to correct the location if needed. To enable interconnected VoIP providers to appropriately balance technical feasibility, functionality, customer impact, and cost, we propose to allow providers flexibility in implementing dispatchable location solutions, and to fall back to Registered Location options

when dispatchable location is not feasible. Thus, solutions may include, but are not limited to, determining the customer's location dynamically, pre-populating a previously-supplied Registered Location based on the network attachment point, or requesting a new Registered Location from the customer when the customer initiates a new connection or attachment to the network. We seek comment on this approach.

78. Finally, we seek comment on any alternative approaches that would achieve the same aims as the proposed rules. Are there mechanisms or best practices for refreshing or validating location information that should be encouraged or required? Are there alternatives to dispatchable location that interconnected VoIP providers could use to provide location information, e.g., coordinate-based information? We seek comment on whether these, or other approaches, would provide the greatest likelihood of conveying an accurate location to the PSAP while minimizing the burdens on the interconnected VoIP service provider and the end user.

5. Telecommunications Relay Services

79. Section 64.604 requires Text Telephone-based (TTY-based) TRS providers to use a system for incoming emergency calls that, at a minimum, automatically and immediately transfers the caller to an appropriate PSAP. Section 64.605 generally requires internet-based TRS to deliver emergency calls to an appropriate PSAP and to provide the location of the emergency. For some of these services, the service provider is required to ask callers for their location information at the beginning of the emergency call. For other emergency calls (specifically those that use a Video Relay Service (VRS) or IP Relay), the service provider must transmit location information to the PSAP in the form of a Registered Location, including for devices capable of being moved to a different location. The Commission modeled these requirements after the 911 location requirements for interconnected VoIP services discussed above. We observe that internet-based TRS and interconnected VoIP service face similar concerns regarding the ability to accurately locate end users that use a mobile or portable device.

80. As in our discussion of interconnected VoIP above, although RAY BAUM'S Act does not require reconsideration of previously adopted E911 location rules, we believe it is appropriate as part of the Act's "all-platforms" approach to consider revising our TRS E911 rules.

Specifically, we seek comment on whether TRS providers can develop the means to provide updated dispatchable location. In particular, we seek comment on the feasibility of using existing Registered Location mechanisms to provide dispatchable location for fixed and nomadic VRS and IP Relay users, paralleling the rules we propose above for interconnected VoIP service. Is Registered Location sufficient in the fixed TRS environment? If a mechanism exists for manual updates by the user when a nomadic TRS device is used, is Registered Location sufficient to satisfy a dispatchable location requirement? As with VoIP, we also seek comment on the feasibility of having TRS devices and/or networks support the automatic provision of real-time dispatchable location without requiring registration or manual location updates by the end user. What technical elements would be required in the end user's device and/or the service provider's network to support this capability, and to what degree are such technical elements already in place? To what degree are TRS providers able to dynamically determine the location of end users (1) when they are at home or their usual place of work, (2) when they move frequently between multiple locations, and (3) when they are at locations they do not regularly visit? How accurate is the location information acquired in these scenarios, and would it be sufficient to meet the proposed definition of dispatchable location?

81. To enable TRS providers to balance technical feasibility, functionality, customer impact, and cost, we propose to allow TRS providers flexibility in implementing dispatchable location solutions, and to fall back to Registered Location options when real-time dispatchable location is not feasible. We seek comment on this approach. We also seek comment whether there are differences between internet-based TRS and interconnected VoIP that might require taking a different approach to TRS dispatchable location from the approach proposed for interconnected VoIP. As with interconnected VoIP, we seek comment on whether the NEAD or a similar database could assist TRS providers in implementing dispatchable location solutions. If so, what steps could the Commission take, if any, to facilitate the use of such databases by TRS providers? What obligations, if any, should be placed on TRS providers that seek to access the NEAD? Finally, we seek comment on any alternative approaches

that would achieve the same aims as our proposed rules for TRS.

6. Other 911-Capable Services

82. We seek comment on whether we should consider adopting 911 rules for any other communications services that are not covered by existing 911 rules but provide the capability for users to make a 911 call. RAY BAUM'S Act defines a "911 call" as a voice call that is placed, or a message that is sent by other means of communication, to a PSAP for the purpose of requesting emergency services. What communications services that are not covered by existing 911 rules are capable of making 911 calls that fall within this definition? Are there any services that provide one-way voice communications that are capable of making such a 911 call? How often do consumers use these services to call 911? How do these services complete calls to PSAPs? What kinds of information, including callback numbers and location information, is or could be conveyed to PSAPs with these calls? What are PSAPs' experiences in answering these calls? What do consumers using these services understand about the limitations on any 911 services provided? Are these 911 calls effective at conveying location information to the PSAP? Do any specific communication services from which these 911 calls originate create difficulties in locating the caller? Is there consistency in the way calls originating from a specific communication service are received and are presented to the PSAP? Would outcomes for 911 callers be improved if we adopted 911 rules for these communications services that parallel existing rules, including any requirements for conveying dispatchable location? Would new rules that are specifically tailored for those communications services be more effective at improving outcomes?

83. We observe that some outbound-only VoIP services partner with businesses that offer 911 smartphone applications that allow consumers to make calls to 911. Some 911 stakeholders have expressed concerns that calls received from these services may route to the incorrect PSAP, result in fraudulent calls, lack critical location information capabilities, and place the 911 caller at risk. Our current rules do not require outbound-only VoIP services to support 911 or convey dispatchable location with 911 calls. However, in 2011 the Commission sought comment on expanding 911 obligations to providers of outbound-only VoIP services. In that case, the Commission proposed to amend the definition of the

subject services to include any service that: (1) Enables real-time, two-way voice communications; (2) requires an internet connection from the user's location (as opposed to a broadband connection); (3) requires internet protocol-compatible customer premises equipment; and (4) permits users to terminate calls to all or substantially all United States E.164 telephone numbers.

84. Based on the concerns noted above and in light of our previous proposal, we seek comment on expanding the scope of those IP-based services subject to our 911 rules to include not only interconnected VoIP, but to also include "911 VoIP Services," defined as those services that enable real-time, two-way voice communications that require internet protocol-compatible customer premises equipment and permit users generally to initiate a 911 call, even if the service does not permit users generally to receive calls that originate on the PSTN. Is there any reason to exempt outbound-only VoIP services that allow 911 calls from our 911 requirements simply because the service is incapable of receiving an incoming call from the PSTN? Does the public expect all VoIP services that allow the completion of 911 calls to meet the same minimum standards, without regard to whether the service can receive an incoming call? We seek comment on our proposal.

7. Additional Considerations

85. For each of the communications service categories discussed above, we seek comment on common issues that are related to the implementation of dispatchable location requirements for 911 calls. We seek comment on how dispatchable location requirements for MLTS may interact with dispatchable location requirements for other 911-capable services. Are there situations in which the value of dispatchable location to first responders is diminished due to the availability of on-site notification to enterprises, or vice versa? In what situations, if any, should communications service providers be exempted from a dispatchable location requirement? Should providers be allowed or required to provide other types of location information, e.g., coordinate-based information, in addition to or as an alternative to satisfying a dispatchable location requirement? If communications services and/or certain types of providers (e.g., of a specific size, or with a specific number of consumers) are exempted from dispatchable location requirements, should we require them to provide consumer disclosure regarding the limitations of their 911

location capabilities? We also ask commenters to identify voluntary best practices that can improve the effectiveness of acquiring a 911 caller's dispatchable location.

86. As noted above, we believe MLTS installers, managers, and operators will be able to identify situations in which street address is sufficient for first responders to quickly and accurately find the calling party. We also expect that street address will suffice as a dispatchable location for the smallest enterprises. Accordingly, we do not propose size-based exceptions to the dispatchable location requirement. We seek comment on this approach.

8. Compliance Dates

87. For all communications platforms that are to be covered by the dispatchable location requirements proposed in this *NPRM*, we propose to require compliance on the same date as our proposed implementation of Kari's Law, *i.e.*, February 16, 2020. We tentatively conclude a uniform compliance date will promote efficiency by enabling MLTS manufacturers to implement dispatchable location upgrades on the same timeline as any upgrades needed to comply with the direct dial and notification requirements of Kari's Law. In addition, we tentatively conclude that applying the same compliance date to dispatchable location requirements across all platforms will encourage the development of common dispatchable location solutions that can support multiple platforms. We seek comment on this approach, as well as alternatives. With respect to MLTS, is it reasonable to anticipate that by the February 16, 2020 compliance date for Kari's Law, newly manufactured MLTS will be capable of conveying dispatchable location with 911 calls? Are there dispatchable location solutions that can be widely and inexpensively implemented into MLTS being manufactured today? Do technical standards currently exist that would be appropriate for governing conveyance of dispatchable location from MLTS, or do such standards need to be developed? If the latter, how much time is needed to develop those standards, and who should develop them?

88. We also seek comment on our proposal to apply the same February 2020 compliance date for our proposed dispatchable location requirements for fixed telephony, interconnected VoIP, and TRS. We also seek comment on alternatives. Is there any reason to establish a compliance date or dates for these services that is either earlier or later than the proposed compliance date

for implementation of Kari's Law? Should compliance for different service types be phased as a way to require greater accuracy over time or to provide additional time to small businesses to come into compliance? Will PSAPs be capable of receiving dispatchable location by February 16, 2020, or are there additional steps that either some or all PSAPs must take to achieve this capability? Are existing class of service definitions sufficient to support PSAP receipt of dispatchable location or must new ones be developed? Are there standards-based approaches that could be taken to improve the technological capabilities of emergency calling (particularly as it expands beyond PSTN calls) while also improving the economics of enabling effective emergency calling? Should international roaming scenarios be taken into consideration? Are other countries/regions of the world developing emergency calling standards that have addressed location accuracy, routing to the appropriate PSAP, and provision of dispatchable location in the context of interconnected VoIP and other new technologies?

9. Comparison of Benefits and Costs

89. We seek comment on whether providing dispatchable location for 911 calls from MLTS and other communications services would improve emergency response and the health and safety of the public, and whether this benefit would exceed the cost of providing it. Commenters to the *ECS NOI* argued that the life-saving benefits of adopting E911 requirements for MLTS are apparent. For example, NASNA asserted that just as E911 for landline, wireless, and VoIP has resulted in improvements in the speed at which emergency responders are able to reach the caller, so would E911 for ECS. NASNA stated, "The magnitude of this benefit would be analogous to the well-studied, documented and proven benefits of E911 in general."

90. The scale of any potential benefits depends on the magnitude of the problem we are facing. Currently, how common are 911 calls from MLTS and other communications platforms that fail to convey any location information or that convey location information that is too imprecise or inaccurate to assist PSAPs and first responders in timely locating the caller? What is the expected lifespan of such systems? Is there any reason to expect that this situation will improve by 2020? If so, by how much? What cost differential will our proposed rules impose on MLTS and other systems purchased beginning in 2020? How many systems, at what additional

cost, will be impacted? We seek comment on the 2013 decision attached to the California Public Utilities Commission (CPUC) comments on the *ECS NOI*, which found that potentially 70 percent of California's PBX MLTS systems were not at the time provisioned to display accurate caller location information to any PSAP and that only "350 of AT&T California's customers with PBX phone stations in 2007 had provisioned [PS/ALI] location information records in AT&T California's [E911] database." To what extent do these findings accurately reflect caller location information provided by MLTS? Could the results of these findings be extrapolated more broadly (e.g., outside of California)? How often are those calls routed to the wrong PSAPs due to poor or nonexistent location information?

91. We also seek comment on the length and impact of delays in emergency response due to a lack of location information. RedSky asserts that "[p]lacing a detailed, accurate location record in the hands of emergency responders can save 3–5 minutes in response time particularly in complex environments." Is 3–5 minutes a reasonable estimate of the improvement in response time? What are the consequences of those delays for a person needing emergency response? Can those consequences be quantified? Are there data on the speed of emergency response for calls that convey alternatives to dispatchable location, such as x/y/z coordinates? Are there other benefits that have accrued or could accrue in those systems and services that convey dispatchable location to PSAPs and first responders, such as reduced time spent on re-routing calls or arriving at the correct location? Are there any MLTS or other communications services (e.g., very small facilities) that would not benefit from conveying dispatchable location, or for whom the benefit would not exceed the cost?

92. We seek comment on the magnitude of the benefits to the public when dispatchable location is conveyed with a 911 call from MLTS and other communications services identified in this *NPRM*. We anticipate that the increase in location accuracy that results from the use of dispatchable location will reduce the arrival time of ambulances for some 911 callers at least as much as was accomplished by the mobile location rules adopted in the *Indoor Location Fourth Report and Order*. In that *Report and Order*, we found that the location accuracy improvements adopted for mobile 911 calls had the potential to save

approximately 10,120 lives annually for an annual benefit of approximately \$92 billion? Based on available 911 call volume data, we estimate that approximately 75% of 911 calls come from mobile phones, which already are required to convey a dispatchable location. However, we believe the remaining 25% of calls to which our proposed rules would apply will realize benefits. Because three times as many calls come from mobile phones as from non-mobile sources, we estimate that our proposed rules have the potential to save a maximum of one third of the 10,120 lives that were projected to be saved annually by the mobile location rules adopted in the *Indoor Location Fourth Report and Order*, or 3,373 lives annually. However, because some providers already convey location information that is equivalent to dispatchable location, we expect that our dispatchable location rules will save considerably fewer lives. Even if we were to assume our proposed rules would save only one twentieth of the lives that we projected would be saved by the mobile location rules, the proposed rules would save 506 lives annually. We rely on the U.S. Department of Transportation's estimate that the "Value of a Statistical Life" (VSL), defined as "the additional cost that individuals would be willing to bear for improvements in safety (that is, reductions in risks) that, in the aggregate, reduce the expected number of fatalities by one," is \$9.6 million. In doing so, we estimate that the 506 lives saved by the proposed rules multiplied by the VSL establishes a benefit floor of \$4.9 billion. We seek comment on whether our estimate is reasonable. What other benefits can be expected to accrue, such as (but not limited to) reduced complications from medical issues, reduced damage to property, increased likelihood of forestalling crime and apprehending suspects, increased confidence in the 911 system and emergency responders? How can we assign a dollar figure to evaluate the magnitude of these and other benefits? We seek estimates of the time-saving value of dispatchable location and data demonstrating the value of a reduction in emergency response time.

93. We observe that 911 location solutions that are capable of conveying dispatchable location to PSAPs are already offered by several MLTS market participants. Further, several states already place requirements on MLTS providers to obtain and convey location information that is more detailed than street address alone, and we therefore conclude that MLTS manufacturers are

producing and widely selling equipment that is capable of complying with our proposed rules. Are there any cases in which currently-available equipment will not be suitable? In addition, to comply with current rules, interconnected VoIP service providers and internet-based TRS providers today obtain customers' Registered Location, which we believe would likely be sufficient to satisfy our proposed dispatchable location requirements in many circumstances. Because these dispatchable location-capable solutions and equipment are already being widely offered by MLTS manufacturers, installers, and operators, we believe that the implementation costs of our proposed dispatchable location rules to these entities would be negligible in most respects. We also believe that our approach of granting flexibility in satisfying our proposed rules minimizes the potential cost of compliance. We seek comment on these observations and tentative conclusions.

94. We tentatively find that three aspects of our proposed rules may lead to additional implementation costs: (1) Implementation of the proposed dispatchable location requirement by MLTS managers; (2) implementation of the proposed requirement for interconnected VoIP, VRS, and IP Relay providers to identify when a customer uses the service from a new location and update the customer's location information; and (3) the proposed requirement for outbound-only VoIP service providers or other 911 VoIP service providers to comply with the Part 9 rules. First, we seek comment on any additional costs that our proposed rules may impose on MLTS managers. In comments responsive to the ECS NOI, for example, RedSky stated that it can provision its E911 system service for as little as a \$2,500.00 one-time service installation fee and \$100 per month. The service gives the ECS access to over 5,500 PSAPs in the U.S. and all regional ALI (Automatic Location Information) databases, as well as providing 911 call notifications to enterprise security personnel. West Safety stated that the 2010 MLTS workshop report of the California PUC concluded that third-party ECS 911 solutions "are going down in cost and are available for under \$5,000" with "[s]mall business solutions as low as \$1,250 for a one-time implementation fee and \$65 to \$100 per month in recurring fees." However, because our proposed dispatchable location rules would only apply to those MLTS managers that install MLTS after February 16, 2020, at which time all MLTS must be dispatchable location-

capable, we tentatively find that the only costs for which our rules would be responsible are marginal differences in MLTS price that are attributable to manufacturer efforts to comply with the rules. Because many MLTS manufacturers are producing and widely selling equipment that is capable of complying with our proposed rules, we anticipate that price increases will be minimal.

95. We seek comment on how our rules may affect the price of MLTS, especially recurring costs. We anticipate that the most significant costs would be for initial and recurring costs of provisioning location information to MLTS operators, but tentatively find that the cost of such provisioning will be significantly less than the benefits that arise from adopting the rule. Nearly 80% of businesses in the United States have fewer than ten employees. While we acknowledge that enterprises with few employees do not always have those employees work in close proximity to one another, we anticipate that a street address would likely satisfy the definition of dispatchable location for most of those businesses and would be available to the MLTS operator at no cost to the MLTS manager.

96. We expect larger companies to face some initial location provisioning costs. Because many MLTS manufacturers are producing and widely selling equipment that is capable of complying with our proposed rules, we tentatively find that the primary cost to MLTS managers is the cost of provisioning the location information in the MLTS. To estimate the cost to these enterprises, we seek to estimate the number of employees at the affected enterprises, determine the number of lines and the amount of time needed annually to provision dispatchable location for those lines, and finally determine the total cost for workers paid at an hourly wage to complete the task. We tentatively estimate the number of affected telephone lines in larger (>10) enterprises from Small Business Administration data, which indicates that there are approximately 109 million employees at larger firms. We initially estimate there are 1.1 employees per installed line, resulting in approximately 99.1 million lines. At an incremental effort of 1 minute per line and a \$30 per hour labor rate, this results in a maximum one-time cost of approximately \$49.6 million. Significantly, this cost assumes firms will need to create an employee phonebook database that duplicates that used in general enterprise systems, such as Microsoft Outlook. We expect that such duplication will be unnecessary

for many enterprises. We also expect that within a few years, this setup cost will become minimal because manufacturers of MLTS and general enterprise systems will increasingly connect their systems, setting up a single phonebook database and making duplication unnecessary. We seek comment on our proposed methodology and estimates, including on the existing and future availability to connect general enterprise systems to MLTS.

97. Larger businesses that use MLTS are likely to initially face recurring costs to maintain a separate location database. To estimate the cost to these enterprises, we seek to estimate the number of lines at the affected enterprises, determine the number of provisioning changes and the amount of time needed annually to make those changes for those lines, and finally determine the total cost for workers paid at an hourly wage to complete the task. We tentatively estimate that entering the dispatchable address for a move, add, or change to an MLTS endpoint will take 1 minute of a manager's time. An industry rule-of-thumb is that 5% of endpoints will require a change of provisioning (moves, adds, or changes) in a year. With 99.1 million total incremental lines subject to this rule, 5% of this figure is approximately 5 million changes per year. At 1 minute per modification and \$30 per hour labor rate, this results in a maximum annual cost of \$2.5 million to keep the location databases up to date. As noted above, we expect this incremental cost will become minimal over time as manufacturers of MLTS and general enterprise systems start connecting their systems. At that point, enterprise information technology staff will only need to provision a single line when an employee moves. In addition, as noted above, several states already place requirements on MLTS providers to obtain and convey location information that is more detailed than street address alone. For those states, the incremental cost of our rules is potentially zero. We seek comment on these estimates, including on the existing and future availability to connect general enterprise systems to MLTS.

98. RedSky discusses the costs for providing E911 for both legacy and IP-based ECS, stating that "IP-based systems have a cost advantage over legacy systems because of their ability to use [Emergency Response Location] ERLs and [Emergency Location Information Numbers] ELINs and segment their networks into logical subnets or zones." We seek comment on whether our proposed rules will hasten the ongoing transition to IP-based

MLTS, and whether this transition will reduce the costs to MLTS managers over time, including the costs of provisioning location information to MLTS operators. If so, by how much? We seek additional cost data relative to provisioning dispatchable location from MLTS and other communications services identified in this *NPRM*.

99. Second, we seek comment on the costs of implementing our proposed requirement that interconnected VoIP, VRS, and IP Relay services identify when a customer uses the service from a new location and update the customer's location information. To estimate the cost to these service providers, we seek to estimate the amount of time required to develop and test the necessary software number and determine the total cost for workers paid at hourly wages to complete the task. We tentatively estimate a maximum initial cost of \$8,280,000 industry-wide. We tentatively assume that eight months will be a sufficient time period for developing and testing and deploying the software modifications required for updating customer location information, as this would enable service providers to begin to comply with our proposed rules after their final adoption and finish before the February 16, 2020 compliance date. We estimate that six of the eight months will be devoted to software development and deployment, and two of the eight months will be devoted to testing and debugging. We estimate that the maximum cost of developing any software update necessary to comply with the rules we propose today for each interconnected VoIP-related entity, VRS provider, and IP Relay provider would be \$92,000, the cost of compensating one full-time software engineer for six months of labor. We estimate that the cost of testing these modifications (including integration testing, unit testing, and failure testing), which requires as many as 12 software engineers working for two months, will be \$368,000 for each interconnected VoIP-related entity, VRS provider, and IP Relay provider. Thus, we estimate that the total cost of software modifications for each interconnected VoIP-related entity, VRS provider, and IP Relay provider will be \$460,000. We estimate that this requirement will be implemented by 12 interconnected VoIP-related entities and 6 VRS providers and IP Relay providers. Therefore, the total cost to the industry will be \$8,280,000 (18 organizations times \$460,000 per organization).

100. We further observe that some VoIP-based MLTS will not need to implement this functionality, as they are already capable of obtaining the

customer's dispatchable location at the time a 911 call is initiated without requiring additional customer action. We seek comment on the extent to which interconnected VoIP, VRS, and IP Relay services already are able to identify when a customer uses the service from a new location and update the customer's location information. We seek comment on all of the assumptions upon which these cost estimates are based and on any recurring costs that interconnected VoIP, VRS, and IP Relay and service providers would incur in complying with our proposed rules.

101. Third, we seek comment on the prospective costs to outbound-only VoIP service providers or other 911 VoIP service providers for complying with the proposed Part 9 rules, including the proposed dispatchable location rules. We specifically seek comment on how the costs of compliance for these providers may differ from the costs to interconnected VoIP providers that the rules already cover, including increased costs that arise from unique technical obstacles and decreased costs that arise from technical solutions for complying with our rules being well-established and widely available.

102. We seek comment on any additional costs and benefits that arise from our proposed rules that we have not considered. For example, how would dispatchable location requirements for MLTS and other communications services affect PSAPs? How would such requirements affect customers of those services?

C. Consolidating the Commission's 911 Rules

103. Historically, the Commission has taken a service-by-service approach to establishing 911 obligations. As a result, our 911 rules are today scattered throughout different parts of Title 47. For example, our interconnected VoIP 911 rules are in Part 9, our 911 reliability rules are in Part 12, our mobile E911 rules are in Part 20, our emergency call center requirements for Mobile-Satellite Service (MSS) are in Part 25, and our telecommunications carrier obligations and emergency calling requirements for TRS providers are in Part 64. We believe that this siloed approach to the organization of our 911 rules does not adequately reflect that all of the individual services that enable 911 calls are functional parts of a single system. Moreover, we expect that the 911 system will become increasingly integrated as technology evolves and stakeholders migrate from legacy 911 to NG911.

104. Our initiation of this proceeding to develop 911 rules for MLTS and

dispatchable location requirements for all 911-capable platforms provides us with a unique opportunity to simplify and streamline our 911 rules in the process. Therefore, in addition to proposing adoption of MLTS and dispatchable location rules as discussed above, we propose to consolidate all of our existing 911 rules in a single rule part, *i.e.*, Part 9, to the extent practicable. We also propose to simplify and streamline the rules in some instances and to eliminate corresponding duplicative rules in other rule parts. We believe the proposed rule consolidation will help to minimize the burden on small entities subject to the Commission's 911 rules by making it easier to identify and comply with all 911 requirements.

105. As noted in Appendix A and described for reference in a chart in Appendix C of the *NPRM*, we propose to designate Part 9, which currently contains our interconnected VoIP 911 rules, as the rule part that would contain the consolidated 911 rules, and we propose to transfer and consolidate our existing 911 rules from Parts 12, 20, 25, and 64 to Part 9. The revised Part 9 will continue to differentiate between platforms where needed, but it will also enable service providers, PSAPs, and other stakeholders to refer to a single part of the Commission's rules to ascertain all 911 requirements. Specifically, we propose to consolidate our 911 rules as follows:

- Move relevant definitions for all services to Subpart A of Part 9;
- Move telecommunications carrier obligations (Sections 64.3001 *et seq.*) to Subpart B of Part 9;
- Move CMRS obligations (Section 20.18) to Subpart C of Part 9;
- Move interconnected VoIP obligations (current Part 9) to Subpart D of Part 9;
- Move emergency calling requirements for TRS providers (Sections 64.604(a)(4) and 64.605) to Subpart E of Part 9;
- Place proposed MLTS rules in Subpart F of Part 9;
- Move emergency call center requirements for MSS providers (Section 25.284) to Subpart G of Part 9; and
- Move 911 resiliency, redundancy, and reliability requirements (Part 12) to Subpart H of Part 9.

106. Aside from the proposed MLTS and dispatchable location rules discussed in preceding sections, our proposed rule revisions would mainly entail consolidating our existing 911 rules without making substantive changes, but there are some exceptions. Specifically, consolidating the rules will

entail making certain conforming and technical changes. For example, in instances where there are minor differences in the definitions of common 911-related terms in different rule parts, we propose to harmonize these definitions for purposes of providing a uniform definition in Part 9. In addition, we propose to remove a few obsolete 911 rules, *e.g.*, rules referencing one-time information collections that have been completed, rather than recodify them in Part 9. We also seek comment on whether we should move Section 22.921 of the rules, which addresses 911 call processing procedures for analog telephones in the Cellular Radiotelephone Service, into Part 9 or whether that rule has become obsolete and should be removed. Further, we propose to update cross-references in other rule parts as needed, and to correct erroneous internal cross-references that appear in our existing rules.

107. We explain these proposed changes in greater detail in Appendix C of the *NPRM*, which contains conversion tables that track the proposed disposition of each rule in the consolidation process. We have prepared a separate table for each current rule part that would be affected by the proposed rule consolidation. The table identifies the existing rule section, the section in Part 9 where it would be located after the consolidation, and whether the rule would also be removed from its current location. In addition, to help interested parties quickly identify the source of each rule in proposed Part 9, Appendix C of the *NPRM* also contains a conversion table that lists the proposed Part 9 rules in numerical order and lists the current rule or rules from which each proposed new rule is derived.

108. We do not include some 911-related rules in our consolidation proposal, where such rules either do not relate to core 911 obligations or are integrated with non-911-related rules in such a way that removing the 911-related rules and transferring them to Part 9 would be cumbersome and counterproductive. For example, Part 4 of our rules contains rules relating to network outage reporting, including some rules that specifically address outages affecting 911 facilities. Because the Part 4 rules constitute an integrated whole, we do not propose to transfer or consolidate the 911-specific rules currently contained in Part 4.

109. Finally, we invite commenters to identify any additional rules that they recommend for consolidation in Part 9, as well as any rules that should be updated in light of our proposal.

IV. Procedural Matters

110. *Ex Parte* Presentations. The proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

111. *Comment Filing Procedures*. Pursuant to §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments and reply comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers*: Comments may be filed electronically using the internet by

accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington DC 20554.

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

113. *Regulatory Flexibility Analysis*. As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in Appendix B of the *NPRM*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this *NPRM* as set forth herein, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

114. *Initial Paperwork Reduction Act Analysis.* This *NPRM* may contain proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

V. Initial Regulatory Flexibility Act

115. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in paragraph 113 of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

116. In this proceeding, the Commission takes steps to advance Congressional and Commission objectives to ensure that members of the public can successfully dial 911 to request emergency services and that Public Safety Answering Points (PSAPs) can quickly and accurately locate every 911 caller, regardless of the type of service that is used to make the call. The President recently signed into law two statutes directed to the improvement of 911: (1) Kari’s Law Act of 2017 (Kari’s Law), which requires implementation of direct 911 dialing and on-site notification capabilities in multi-line telephone systems (MLTS), and (2) Section 506 of RAY BAUM’S Act (RAY BAUM’S Act), which requires the Commission, within 18 months after March 23, 2018, the date of the legislation’s enactment, to “conclude a proceeding to consider adopting rules to ensure that the dispatchable location is

conveyed with a 9–1–1 call, regardless of the technological platform used and including with calls from [MLTS].”

117. The *NPRM* proposes to implement Kari’s Law by adopting direct dial and on-site notification rules governing calls to 911 made from MLTS. As required by RAY BAUM’S Act, the Commission also considers the feasibility of requiring dispatchable location for 911 calls from MLTS and other technological platforms that currently complete calls to 911. The *NPRM* proposes establishing a dispatchable location requirement for MLTS 911 calls, which would apply contemporaneously with the February 16, 2020 compliance date of Kari’s Law. Additionally, in keeping with the directive in RAY BAUM’S Act to address dispatchable location for 911 calls “regardless of the technological platform used,” the *NPRM* proposes to add dispatchable location requirements to the Commission’s existing 911 rules for fixed telephony providers, interconnected Voice over internet Protocol (VoIP) providers, and Telecommunications Relay Services (TRS). The *NPRM* also considers the feasibility of alternative location mechanisms for MLTS and other services that could be used as a complement to dispatchable location or as a substitute when dispatchable location is not available. Additionally, the *NPRM* considers whether dispatchable location rules should be extended to other communications services that are not covered by existing 911 rules but are capable of making a 911 call.

118. Finally, the *NPRM* proposes to take this opportunity to consolidate the Commission’s existing 911 rules, as well as the direct dialing and dispatchable location rules proposed in this *NPRM*, into a single rule part. The Commission historically has taken a service-specific approach to 911, with the result that 911 requirements for different services are scattered across different sections of the agency’s rules. We believe that consolidating our 911 rules from these various rule sections into a single rule part will further the goal of recognizing that all the components of 911 function as part of a single system and will enable service providers, emergency management officials, and other stakeholders to refer to a single part of the Commission’s rules to more easily ascertain all 911 requirements.

B. Legal Basis

119. The proposed action is authorized under sections 1, 4(i), 4(j), 4(o), 201(b), 251(e), 301, 303(b), 303(r), 307, 309, and 316, of the

Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(o), 201(b), 251(e), 301, 303(b), 303(r), 307, 309, 316, and pursuant to Kari’s Law Act of 2017, Public Law 115–127, 47 U.S.C. 623 and 623 note, Section 506 of the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018 (RAY BAUM’S Act), Public Law 115–141, 47 U.S.C. 615 note, Section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 47 U.S.C. 615c, Section 101 of the New and Emerging Technologies 911 Improvement Act of 2008, Public Law 110–283, 47 U.S.C. 615a–1, Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 47 U.S.C. 1471, and the Wireless Communications and Public Safety Act of 1999, Public Law 106–81, 47 U.S.C. 615 note, 615, 615a, 615b.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

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

121. *Multi-Line Telephone System Manufacturers, Importers, Sellers or Lessors.* Neither the Commission nor the SBA has developed a specific small business size standard for MLTS manufacturers, importers, sellers or lessors. The closest applicable SBA category for entities manufacturing MLTS equipment used to provide wire telephone and data communications equipment, interconnected VoIP, non-interconnected VoIP, is Telephone Apparatus Manufacturing. The SBA size standard for Telephone Apparatus Manufacturing consists of all such companies having 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that there were 266 establishments that operated that year. Of this total, 262 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

122. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be stand-alone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless and wire telephones (except cellular), PBX equipment, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways. The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which consists of all such companies having 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that there were 266 establishments that operated that year. Of this total, 262 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

123. *Multi-Line Telephone System Operators, Installers and Managers.* Neither the Commission nor the SBA has developed a specific small business size standard for MLTS operators, installers and managers. MLTS Operators, Installers and Managers cut across numerous industry segments and encompass all types of businesses and organization including for-profit, not-for-profit and government agencies. Thus for purposes of this IRFA, we group entities operating, installing, and managing MLTS in the Small Business, Small Organization and Small Government Jurisdiction description contained in paragraph 15 *infra*.

124. *All Other Telecommunications.* The "All Other Telecommunications" category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of \$ 32.5 million or less. For

this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than \$25 million and 42 firms had annual receipts of \$25 million to \$49,999,999. Thus, the Commission estimates that the majority of "All Other Telecommunications" firms potentially affected by our action can be considered small.

125. *Computer Facilities Management Services.* This industry comprises establishments primarily engaged in providing on-site management and operation of clients' computer systems and/or data processing facilities. Establishments providing computer systems or data processing facilities support services are included in this industry. The SBA has developed a small business size standard for Computer Facilities Management Services which consists of all such firms with annual receipts of \$27.5 million or less. U.S. Census Bureau data for 2012 indicate that 4,828 firms operated the entire year. Of this total, 4,743 had annual receipts less than \$25 million and 38 firms had annual receipts of \$25 million to \$49,999,999. Thus, under this size standard the majority of firms in this industry can be considered small.

126. *Other Computer Related Services (Except Information Technology Value Added Resellers).* This industry comprises establishments primarily engaged in providing computer related services (except custom programming, systems integration design, and facilities management services). Establishments providing computer disaster recovery services or software installation services are included in this industry. The SBA has developed a small business size standard for Other Computer Related Services, which consists of all such firms with annual receipts of \$27.5 million or less. For this category, U.S. Census Bureau data for 2012 indicate that 6,354 firms operated the entire year. Of this total, 6,266 had annual receipts less than \$25 million and 42 firms had annual receipts of \$25 million to \$49,999,999. Thus, the Commission estimates that the majority of Other Computer Related Services firms in this industry can be considered small.

127. *Information Technology Value Added Resellers.* Information Technology Value Added Resellers provide a total solution to information technology acquisitions by providing multi-vendor hardware and software along with significant value added services. Significant value added services consist of, but are not limited to, configuration consulting and design, systems integration, installation of

multi-vendor computer equipment, customization of hardware or software, training, product technical support, maintenance, and end user support. The SBA has developed a small business size standard for Information Technology Value Added Resellers which consists of all such companies having 150 or fewer employees. For this category, U.S. Census Bureau data for 2012 indicate that 6,354 firms operated the entire year. Of this total, 6, 241 had less than 100 employees and 113 had 100–1000 or more employees. Thus, the Commission estimates that the majority of Information Technology Value Added Resellers in this industry can be considered small.

128. *Data Processing, Hosting, and Related Services.* This industry comprises establishments primarily engaged in providing infrastructure for hosting or data processing services. These establishments may provide specialized hosting activities, such as Web hosting, streaming services, or application hosting (except software publishing), or they may provide general time-share mainframe facilities to clients. Data processing establishments provide complete processing and specialized reports from data supplied by clients or provide automated data processing and data entry services. The SBA has developed a small business size standard for Data Processing, Hosting, and Related Services which consists of all such firms with annual receipts of \$32.5 million or less. U.S. Census Bureau data for 2012 indicate that 8,252 firms operated the entire year. Of this total, 7,730 had annual receipts less than \$25 million and 228 firms had annual receipts of \$25 million to \$49,999,999. Thus, under this size standard the majority of firms in this industry are small businesses.

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

130. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise

which is independently owned and operated and is not dominant in its field.” Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

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

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

than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

133. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is for Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated for the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

134. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. According to U.S. Census data, 3,117 firms operated the year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus using the SBA’s size standard the majority of incumbent LECs can be considered small entities.

135. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-

Tenant Service Providers, and Other Local Service Providers are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by the adopted rules.

136. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers that may be affected are small entities.

137. *Local Resellers*. The SBA has developed a small business size standard for Telecommunications Resellers which includes Local Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA’s size standard, such a business is small if it has 1,500 or fewer employees. U.S.

Census Bureau data for 2012 show that 1,341 firms provided resale services for the entire year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of Local Resellers are small entities.

138. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

139. The Commission's own data—available in its Universal Licensing System—indicate that, as of August 31, 2018 there are 265 Cellular licensees that will be affected by our proposed actions. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

140. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications

services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards. In the Commission's auction for geographic area licenses in the WCS there were seven winning bidders that qualified as “very small business” entities, and one that qualified as a “small business” entity.

141. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite), and the appropriate size standard for this category under the SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees and 12 firms has 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

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

142. The *NPRM* proposes rules and seeks comment on rule changes that will affect the reporting, recordkeeping and/or other compliance requirements of small businesses and entities of all sizes that are engaged in the business of manufacturing, importing, selling, installing, managing or operating MLTS that are manufactured, imported, offered for first sale or lease, first sold or leased, or installed after February 16, 2020. The *NPRM* also proposes rules that will affect small businesses and entities of all sizes that are engaged in the business of offering fixed telephony service, wireless telecommunications, interconnected VoIP service, and TRS. The proposed changes are being implemented as a result of Congressional mandates in Kari's Law and RAY BAUM'S Act that require the Commission to address the inability of callers to directly dial 911 from MLTS

and a lack of accurate and critical location information necessary for a PSAP to dispatch emergency services to those in need because of the communications system used in making a 911 call. The specific proposals in the *NPRM* are described below.

1. Direct Dialing and Notification for MLTS

143. To implement and enforce Kari's Law, the *NPRM* proposes rules that interpret the law's direct dialing and notification requirements for MLTS. First, the *NPRM* proposes that a person engaged in the business of manufacturing, importing, selling, or leasing multi-line telephone systems may not manufacture or import for use in the United States, or sell or lease or offer to sell or lease in the United States, a multi-line telephone system, unless such system is pre-configured such that, when properly installed in accordance with the rules, a user may directly initiate a call to 911 from any station equipped with dialing facilities, without dialing any additional digit, code, prefix, or post-fix, including any trunk-access code such as the digit 9, regardless of whether the user is required to dial such a digit, code, prefix, or post-fix for other calls.

144. Second, the *NPRM* proposes that a person engaged in the business of installing, managing, or operating multi-line telephone systems may not install, manage, or operate for use in the United States such a system, unless such system is configured such that a user may directly initiate a call to 911 from any station equipped with dialing facilities, without dialing any additional digit, code, prefix, or post-fix, including any trunk-access code such as the digit 9, regardless of whether the user is required to dial such a digit, code, prefix, or post-fix for other calls. The *NPRM* also seeks comment on whether any additional elements should be included in the proposed regulations to facilitate compliance and enforcement.

145. Third, the *NPRM* proposes that a person engaged in the business of installing, managing, or operating multi-line telephone systems shall, in installing, managing, or operating such a system for use in the United States, configure the system to provide notification to a central location at the facility where the system is installed or to another person or organization regardless of location, if the system is able to be configured to provide the notification without an improvement to the hardware or software of the system. The *NPRM* also proposes to require that notification at a minimum (1) the fact that a 911 call has been made, (2) a valid

callback number, and (3) the information about the caller's location that the MLTS conveys to the public safety answering point (PSAP) with the call to 911. The notification must be contemporaneous with the 911 call and must not delay the placement of the call to 911. The *NPRM* also seeks comment on whether to require that a person be available on-site or off-site to receive the notification. The *NPRM* asks whether small businesses should be exempt from certain aspects of the notification requirement.

146. Fourth, Kari's Law applies only with respect to MLTS that are manufactured, imported, offered for first sale or lease, first sold or leased, or installed after February 16, 2020. Accordingly, the *NPRM* notes that MLTS manufactured, imported, offered for first sale or lease, first sold or leased, or installed on or before that date are grandfathered from compliance with the statute, and it seeks comment on whether the Commission should adopt transitional rules to inform consumers of the 911 capabilities of grandfathered MLTS.

147. The *NPRM* also proposes and seeks comment on definitions for the following terms contained in the proposed regulations: (1) Multi-line telephone system, (2) Pre-configured and configured, (3) Improvement to the hardware or software of the system, (4) A person engaged in the business of managing an MLTS, (5) A person engaged in the business of operating an MLTS, and (6) A person engaged in the business of installing an MLTS, (7) notification, and (8) MLTS notification. The proposed definitions are described below.

148. *Multi-line telephone system.* The *NPRM* proposes to define MLTS consistent with Kari's Law and RAY BAUM'S Act which define MLTS as "a system comprised of common control units, telephone sets, control hardware and software and adjunct systems, including network and premises based systems, such as Centrex and VoIP, as well as PBX, Hybrid, and Key Telephone Systems (as classified by the Commission under part 68 of title 47, Code of Federal Regulations), and includes systems owned or leased by governmental agencies and non-profit entities, as well as for profit businesses." The *NPRM* proposes to interpret this definition to include the full range of networked communications systems that serve enterprises, including circuit-switched and IP-based enterprise systems, as well as cloud-based IP technology and over-the-top applications. We further interpret this definition to include systems that allow

outbound calls to 911 without providing a way for the PSAP to place a return call.

149. *Pre-configured and configured.* The *NPRM* proposes to define "pre-configured" to mean that the MLTS is equipped with a default configuration or setting that enables users to dial 911 directly as required under the statute and rules, so long as the MLTS is installed and operated properly. However, if the system is configured with these additional dialing patterns, they must be in addition to the default direct dialing pattern. The *NPRM* proposes to include similar clarifying language in the definition of "pre-configure." The *NPRM* also proposes to define "configured" to mean that the MLTS must be fully capable when installed of dialing 911 directly and providing notification as required under the statute and rules.

150. *Improvement to the hardware or software of the system.* Kari's Law provides that the notification requirements of the statute apply only if the system can be configured to provide notification without an improvement to the hardware or software of the system. The *NPRM* proposes to define the term "improvement to the hardware or software of the system" to include upgrades to the core systems of an MLTS, as well as substantial upgrades to the software and any software upgrades requiring a significant purchase.

151. *A person engaged in the business of managing an MLTS.* The *NPRM* proposes to define a person engaged in the business of managing an MLTS as the entity that is responsible for controlling and overseeing implementation of the MLTS after installation. These responsibilities include determining how lines should be distributed (including the adding or moving of lines), assigning and reassigning telephone numbers, and ongoing network configuration.

152. *A person engaged in the business of operating an MLTS.* The *NPRM* proposes to define a person engaged in the business of operating an MLTS as an entity responsible for the day-to-day operations of the MLTS. The *NPRM's* proposed definition would specify that the MLTS operator may be the MLTS manager, or it may be a third-party acting on behalf of the manager. For example, an MLTS owner may contract with a third party to provide a total solution for MLTS, including acquiring the MLTS equipment, configuring the system, and providing services such as training, technical support, maintenance, and end user support.

153. *A person engaged in the business of installing an MLTS.* The *NPRM* proposes to define a person engaged in the business of installing an MLTS as a person who installs or configures the MLTS or performs other tasks involved in getting the system ready to operate. These tasks may include, but are not limited to, establishing the dialing pattern for emergency calls, determining how calls will route to the PSTN, and determining where the MLTS will interface with the PSTN. The MLTS installer may be the MLTS manager or a third-party acting on behalf of the manager.

154. *MLTS Notification.* The *NPRM* proposes to define MLTS notification as an MLTS feature that can send notice to a central location at the facility where the system is installed or to another person or organization regardless of location. Examples of notification include screen pops with audible alarms for security desk computers using a client application, text messages for smartphones, and email for administrators.

155. The *NPRM* observes that according to a Congressional Budget Office analysis, most MLTS systems already are configured to meet the direct dialing requirements of Kari's Law. In evaluating the Senate and House versions of Kari's Law, Cisco stated that it was not aware of any technological barriers to the implementation of Kari's Law as applied to MLTS. In addition, eight states and one local government already have laws that require direct dialing for 911 from MLTS. The *NPRM* also tentatively finds that there should be no immediate costs or stranded investment with respect to existing MLTS or systems that first come into service on or before February 16, 2020. Therefore, the Commission tentatively concludes that there will be no immediate costs or benefits associated with meeting the requirements of its rules. For systems coming into service after February 16, 2020, the *NPRM* seeks comment on the costs and benefits of satisfying its proposed rules. The *NPRM* also seeks comment on the expected lifespan of existing MLTS that are not currently able to meet the requirements of our proposed rules and the costs of upgrading to an MLTS that meets the requirements. The Commission seeks comment on its tentative conclusion that its rules will impose no incremental costs to those who replace their MLTS as they come to the end of their useful life.

2. Dispatchable Location for Other 911-Capable Communications Services

156. To facilitate the provisioning of dispatchable location by other communications services as contemplated by RAY BAUM'S Act, the *NPRM* generally proposes to amend existing location requirements with dispatchable location requirements. In addition to MLTS, the *NPRM* examines four types of communications services that are currently required under Commission rules to provide 911 service to their customers: (1) Fixed telephony, (2) mobile telecommunications, (3) interconnected VoIP service, and (4)

Telecommunications Relay Services (TRS). In addition, we examine whether we should adopt dispatchable location rules for other 911-capable services that are not currently subject to 911 rules.

157. The *NPRM* proposes to proscribe the manufacture, import, sale, or leasing of MLTS unless the system is pre-configured such that, when properly installed, the dispatchable location of the caller is conveyed to the PSAP with 911 calls. Further, the *NPRM* proposes to proscribe the installation, management, or operation of MLTS in the United States unless the system is configured such that the dispatchable location of the caller is conveyed to the PSAP with 911 calls. The *NPRM* does not propose specific location technologies or solutions but, rather, seeks comment on implementing general dispatchable location requirements that would give participants in the MLTS marketplace flexibility. This approach will allow the entities affected by the proposed rules to implement them in a manner that is appropriate for them in terms of cost, enterprise size, site layout, and technical sophistication. The *NPRM* seeks comment on whether the dispatchable location requirement for MLTS should apply to the same entities subject to the MLTS direct dialing and notification requirements. Finally, the *NPRM* seeks comment on the technical feasibility of 911 calls that originate from MLTS to convey dispatchable location to the appropriate PSAP as well as alternatives for conveying dispatchable location such as the use of x/y/z coordinates to be conveyed with 911 calls originating from MLTS. The *NPRM* also seeks comment on alternative compliance timeframes for dispatchable location requirements for MLTS.

158. The *NPRM* proposes to define "dispatchable location" as "the street address of the calling party, and additional information such as room

number, floor number, or similar information necessary to adequately identify the location of the calling party." Given the substantial similarity between the statutory definition and the definition of dispatchable location in the FCC's wireless E911 rules, the *NPRM* proposes to construe them as functionally identical, aside from the specification of the technological platform to which each definition applies. The *NPRM* also seeks comment on whether to require validation for dispatchable location information associated with MLTS 911 calls. The *NPRM* also seeks comment on whether to define "additional information" that may be necessary in an MLTS context to "adequately identify the location of the calling party." The *NPRM* also seeks comment on whether the National Emergency Address Database (NEAD), the location database being developed by the major mobile carriers to provide dispatchable location for indoor mobile 911 calls, could potentially assist MLTS managers and operators in determining the dispatchable location of MLTS end users

159. The *NPRM* proposes to amend the rules to require fixed telephony providers to provide dispatchable location with 911 calls. Although fixed telephony providers already provide validated street address information, dispatchable location includes additional elements such as floor level and room number that may be necessary to locate the caller. The *NPRM* also seeks comment on whether the NEAD or similar database could assist fixed telephony carriers in providing dispatchable location with 911 calls. The *NPRM* seeks comment on whether there are any alternatives to dispatchable location that fixed telephony could use to provide in-building location information beyond street addresses, e.g., coordinate-based information.

160. The *NPRM* proposes to amend the Commission's rules to require interconnected VoIP providers to develop the means to provide updated dispatchable location with 911 calls in lieu of conveying the customer's Registered Location. Regarding Fixed VoIP, the *NPRM* observes that it is feasible for 911 calls that originate from interconnected VoIP services to convey dispatchable location to the PSAP. In a Nomadic VoIP context, the *NPRM* seeks comment on whether Registered Location represents sufficient proxy for dispatchable location in a nomadic environment, where the relevant device is able to prompt the user for an updated location when it has been moved. The *NPRM* also seeks to encourage having interconnected VoIP

devices and/or networks support the automatic provision of real-time dispatchable location without requiring a manual location update by the end user.

161. The *NPRM* proposes to amend the Commission's rules to require TRS providers to develop the means to provide updated dispatchable location, paralleling the rules the *NPRM* proposes for interconnected VoIP service. The *NPRM* seeks comment on the feasibility of using existing Registered Location mechanisms to provide dispatchable location for fixed and nomadic TRS users. The *NPRM* also seeks comment on the feasibility of having TRS devices and/or networks support the dynamic provision of real-time dispatchable location without requiring registration or manual location updates by the end user.

162. The *NPRM* seeks comment on whether providing dispatchable location for 911 calls from MLTS and other communications services would improve emergency response and the health and safety of the public, and whether this benefit would exceed the cost of providing it. The *NPRM* seeks comment on the magnitude of the benefits to the public when dispatchable location is conveyed with a 911 call from MLTS and other communications services identified in this *NPRM*. The *NPRM* anticipates that the increase in location accuracy that results from the use of dispatchable location will reduce the arrival time of ambulances for some 911 callers at least as much as was accomplished by the mobile location rules adopted in the *Indoor Location Fourth Report and Order*.

163. The *NPRM* tentatively concludes that the benefits of adopting proposed dispatchable location rules for MLTS, fixed telephony providers, interconnected VoIP service providers, and TRS providers will outweigh the costs. The *NPRM* observes that 911 location solutions that are capable of conveying dispatchable location to PSAPs are already offered by several MLTS market participants. Further, several states already place requirements on MLTS providers to obtain and convey location information that is more detailed than street address alone, and we therefore conclude that MLTS manufacturers are producing and widely selling equipment that are capable of complying with our proposed rules. In addition, we observe that interconnected VoIP service providers and internet-based TRS providers today obtain customers' Registered Location, which would satisfy our proposed dispatchable location requirements. Because these dispatchable location-

capable solutions and equipment are already widely available, the implementation costs of our proposed dispatchable rules to MLTS manufacturers, installers, and operators would be negligible in most respects. The *NPRM* also proposes to provide flexibility in how to satisfy the proposed dispatchable location requirements and should minimize the potential cost of compliance.

164. The *NPRM* identifies several aspects of the proposed rules that may lead to additional implementation costs. To assist the Commission in identifying and quantifying the additional costs that may impact small as well large entities, the Commission requests cost information from the parties. First, the *NPRM* seeks comment on any additional costs that our proposed rules may impose on MLTS managers. Second, the *NPRM* seeks comment on the costs of implementing our proposed requirement that interconnected VoIP and TRS services identify when a customer uses the service from a new location and update the customer's location information. Third, the *NPRM* seeks comment on the costs to outbound-only VoIP service providers of complying with the Part 9 rules, including the proposed dispatchable location rules. Finally, the *NPRM* seeks comment on any additional costs that arise from our proposed rules that we have not considered.

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

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

166. To assist the Commission's evaluation of the economic impact on small entities as a result of actions that have been proposed in this *NPRM* and

to better explore options and alternatives, the Commission seeks comment from the parties. With respect to direct dialing and notification under Kari's Law, the *NPRM* seeks comment on alternatives to reduce the burden and minimize the costs of compliance on small entities. The *NPRM* observes that notification can be particularly important in large buildings such as hotels, hospitals, and schools, where on-site personnel are uniquely suited to provide information about the building and its occupants. The *NPRM* asks whether commenters agree that notification is more important for larger enterprises and, if so, whether small businesses should be exempt from certain aspects of the notification requirement, such as a requirement to staff the notification point. The *NPRM* also seeks comment on what entities should fall within an exception for small businesses. The *NPRM* asks whether the criterion should be the size of the business or the number of stations in the MLTS. In addition, the *NPRM* asks whether instead of specifying the content of the notification, the Commission should allow enterprises the flexibility to customize it as they see fit.

167. Regarding dispatchable location, the *NPRM* asks whether some MLTS in use today are not capable of supporting dispatchable location and whether such systems should be exempted from a dispatchable location requirement. The *NPRM* invites commenters to offer alternatives to reduce the cost burdens on MLTS entities and other communications services, including whether to allow the entity to pick the location methodology that works best. As mentioned above, giving participants in the MLTS marketplace the flexibility to choose how to implement the proposed rules will mitigate their cost of compliance. The *NPRM* also asks what steps an MLTS manager must take, if any, to ensure that dispatchable location is conveyed to the PSAP, what are the most effective, least burdensome means to ensure that these steps are taken.

168. The *NPRM* asks whether there are situations in which communications service providers should be exempted from a dispatchable location requirement. In addition, the *NPRM* asks whether there are any MLTS or other communications services (*e.g.*, very small facilities) that would not benefit from conveying dispatchable

location, or for whom the benefit would not exceed the cost. The *NPRM* also asks whether any communications services that are exempted from dispatchable location requirements should be required to provide consumer disclosure regarding the limitations of their 911 location capabilities. In addition, the *NPRM* asks whether dispatchable location requirements for different service types should become effective in phases to require greater accuracy over time or to provide additional time to small businesses to come into compliance.

169. The *NPRM* also proposes to consolidate all of the existing 911 rules into a single rule part, *i.e.*, Part 9, to the extent practicable. As part of this consolidation, the Commission proposes to simplify and streamline the rules in some instances and to eliminate corresponding duplicative rules in other rule parts. In addition, the *NPRM* invites commenters to identify additional 911 service rules that should be consolidated under Part 9. We believe the proposed rule consolidation will help to minimize the burden on small entities subject to the Commission's 911 rules because it will simplify and streamline the rules, making it easier for small entities to identify and comply with all 911 requirements.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

170. None.

G. Paperwork Reduction Act

171. This document may contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees."

VI. Conversion Tables

Appendix C

CONVERSION TABLE A

Proposed Rule	Source Rule(s)	Comment(s)
Subpart A—Purpose and Definitions §9.1 Purpose. §9.2 Reserved. §9.3 Definitions	47 CFR 9.3, 20.3, 25.103, 64.601(a), and 64.3000.	Certain definitions from source rules added to §9.3; some definitions revised; some definitions new.
Subpart B—Telecommunications Carriers. §9.4 Obligation to transmit 911 calls. §9.5 Transition to 911 as the universal emergency telephone number. §9.6 Obligation for providing a permissive dialing period. §9.7 Obligation for providing an intercept message. §9.8 Obligation to convey dispatchable location.	47 CFR 64.3001 47 CFR 64.3002 47 CFR 64.3003 47 CFR 64.3004	Part 64, subpart AA (Universal Emergency Telephone Number) is removed and reserved. Source rule moved to §9.4 and subpart AA removed and reserved in Part 64. Source rule moved to §9.5 and subpart AA removed and reserved in Part 64. Source rule moved to §9.6 and subpart AA removed and reserved in Part 64. Source rule moved to §9.7 and subpart AA removed and reserved in Part 64. New provision.
Subpart C—Commercial Mobile Radio Service §9.9 Definitions	47 CFR 20.3	Certain definitions from source rule added to §9.9.
§9.10 911 Service Requirements.	47 CFR 20.18	Source rule moved to §9.10 and removed and reserved in Part 20.
Subpart D—Interconnected Voice over Internet Protocol Services and 911 VoIP Services §9.11 E911 Service	47 CFR 9.5	Source rule moved to §9.11 and revised except for §9.5(f), which is omitted.
§9.12 Access to 911 and E911 service capabilities.	47 CFR 9.7	Source rule moved to §9.12 and revised.
Subpart E—Telecommunications Relay Services for Persons With Disabilities §9.13 Jurisdiction	47 CFR 64.601(b) and 64.602	Source rules added to §9.13.
§9.14 Emergency Calling Requirements.	47 CFR 64.604(a)(4) and 64.605 ..	Source rules moved to §9.14 and revised; §64.605 removed and reserved in Part 64.
Subpart F—Multi Line Telephone Systems. §9.15 Applicability. §9.16 General obligations—direct 911 dialing, notification and dispatchable location. §9.17 Enforcement, compliance date, State law.	New provision.
Subpart G—Mobile-Satellite Service §9.18 Emergency Call Center Service.	47 CFR 25.284	Source rule moved to §9.18 and removed and reserved in Part 25.
Subpart H—Resiliency, redundancy and reliability of 911 communications. §9.19 Reliability of covered 911 service providers. §9.20 Backup power obligations. 47 CFR 12.4 47 CFR 12.5	Part 12 is consolidated under Part 9, Subpart H and is removed and reserved. Source rule moved to §9.19 and removed and reserved in Part 12. Source rule moved to §9.20 and removed and reserved in Part 12.

Conversion Table B

PART 9—INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICES, PROPOSED RULE CHANGES

Current rule No.	Subject	Proposed changes
9.1	Purposes	Revised.
9.3	Definitions	Definition of “Registered Location” moved to 9.3 and revised. <i>All other definitions remain in 9.3:</i> ANI. Appropriate local emergency authority. Automatic Location Information (ALI). CMRS. Interconnected VoIP service.

PART 9—INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICES, PROPOSED RULE CHANGES—Continued

Current rule No.	Subject	Proposed changes
9.5	E911 Service	PSAP. Pseudo Automatic Number Identification (Pseudo-ANI). Statewide default answering point. Wireline E911 Network. Moved to 9.11 and revised, except for 9.5(f), which is a one-time information collection that has been completed. Propose to remove the obligation in 9.5(f).
9.7	Access to 911 and E911 service capabilities.	Moved to 9.12 and revised.

PART 12—RESILIENCY, REDUNDANCY AND RELIABILITY OF COMMUNICATIONS, PROPOSED RULE CHANGES

Current rule No.	Subject	Proposed changes
12.1	Purpose	Removed.
12.3	911 and E911 analyses and reports.	Removed (one-time reporting requirement has been completed).
12.4	Reliability of covered 911 service providers.	Moved to 9.19; corrected internal cross-references.
12.5	Backup power obligations	Moved to 9.20; corrected internal cross-references.

PART 20—COMMERCIAL MOBILE SERVICES, PROPOSED RULE CHANGES

Current rule No.	Subject	Proposed changes
20.2	Other applicable rule parts	Section 20.2 specifies other FCC rule parts applicable to licensees in the commercial mobile radio services. Revised 20.2 by adding a reference to compliance with the 911 requirements in part 9 of this chapter.
20.3	Definitions	<i>Definitions of the following terms added to 9.3 and removed from 20.3:</i> Appropriate local emergency authority. Automatic Number Identification (ANI) (The version in 9.3 is revised slightly to harmonize it with the definition of ANI from 64.601). Designated PSAP. Handset-based location technology. Location-capable handsets. Network-based Location Technology. Pseudo Automatic Number Identification (Pseudo-ANI). Public safety answering point (PSAP) (The version in 9.3 is revised slightly for clarity by adding the word “answering” before “point”). Statewide default answering point. <i>Definitions of the following terms added to 9.3 (but not removed from 20.3).</i> Commercial mobile radio service (acronym CMRS added to definition for clarity). Mobile Service. Public Switched Network. Private Mobile Radio Service. <i>Definitions of the following terms added to 9.9 (but not removed from 20.3).</i> Interconnection or Interconnected. Interconnected Service.
20.18	911 Service	Moved to 9.10; corrected internal cross-references. Corrected certain internal references to paragraph (j), which was previously redesignated as paragraph (m). Corrected certain internal references to paragraph (n), which was previously redesignated as paragraph (q).

PART 25—SATELLITE COMMUNICATIONS, PROPOSED RULE CHANGES

Current rule No.	Subject	Proposed changes
25.103	Definitions	<i>Definitions of the following terms added to 9.3 (but not removed from 25.103):</i> Earth station. Feeder link. Fixed-Satellite Service (FSS). Mobile Earth Station.

PART 25—SATELLITE COMMUNICATIONS, PROPOSED RULE CHANGES—Continued

Current rule No.	Subject	Proposed changes
25.109	Cross-reference	Mobile-Satellite Service (MSS). Space station. <i>Definition of the following term added to 9.3 and removed from 25.103:</i> Emergency Call Center. Added new (e) to 25.109 stating that “Mobile-Satellite Service providers must comply with the emergency call center service requirements under 47 CFR part 9.”
25.284	Emergency Call Center Service	Moved to 9.18; section 25.284 removed and reserved.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS, PROPOSED RULE CHANGES

Current rule No.	Subject	Proposed changes
64.601	Definitions and provisions of general applicability.	64.601(b), which states that “For purposes of this subpart, all regulations and requirements applicable to common carriers shall also be applicable to providers of interconnected VoIP service,” is added to 9.13, with reference to the definition of interconnected VoIP in 9.3. 64.601(a), which lists several terms and defines them by cross-referencing other rule sections, is revised to include references to definitions in 9.3. Definition of ANI added to 9.3 but not removed from 64.601. Definition of Registered Location added to 9.3 and revised. Definition of Real-Time Text (RTT) is added to 9.3 and revised to include definition from 67.1 (rather than cross-reference to 67.1). <i>Definition of the following terms added to 9.3 (but not removed from 64.601):</i> Common carrier or carrier Communications assistant (CA) Internet-based TRS (iTRS) IP Relay access technology iTRS access technology Internet-based TRS (iTRS) Internet Protocol Relay Service (IP Relay) Non-English language relay service Speech-to-speech relay service Telecommunications relay services (TRS) Text telephone (TTY) Video relay service (VRS) VRS access technology
64.602	Jurisdiction	64.602, which states that “Any violation of this subpart F by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of the Act by a common carrier engaged in interstate communication,” is added to 9.13 (with reference to subpart E of part 9).
64.603	Provision of services	Section 64.603(a) requires common carriers providing telephone voice transmission services to provide telecommunications relay services in compliance with the regulations prescribed in subpart F of part 64. Revised 64.603(a) so that it also refers to compliance with the emergency calling requirements prescribed in part 9, subpart E of this chapter.
64.604(a)(4)	Emergency call handling requirements for TTY-based TRS providers.	Moved to 9.14(a); Section 64.604(a)(4) and (d) revised to contain cross-reference to 9.14(a).
64.605	Emergency calling requirements ...	Moved to 9.14(b) and (c); section 64.605 removed and reserved.
64.3000	Definitions	Moved to 9.3 and removed from Part 64 as subpart AA. (Universal Emergency Telephone Number) is removed and reserved. <i>Definition of the following terms added to 9.3 (and removed from Part 64 as subpart AA is removed and reserved):</i> 911 calls. Appropriate local emergency authority. Public safety answering point (PSAP) (The version in 9.3 is revised slightly for consistency with the version from 20.3 and for clarity; “facility” changed to “answering point.”). Statewide default answering point.
64.3001	Obligation to transmit 911 calls	Moved to 9.4 and removed from Part 64 as subpart AA (Universal Emergency Telephone Number) is removed and reserved.
64.3002	Transition to 911 as the universal emergency telephone number.	Moved to 9.5 and removed from Part 64 as subpart AA (Universal Emergency Telephone Number) is removed and reserved.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS, PROPOSED RULE CHANGES—Continued

Current rule No.	Subject	Proposed changes
64.3003	Obligation for providing a permissive dialing period.	Moved to 9.6 and removed from Part 64 as subpart AA (Universal Emergency Telephone Number) is removed and reserved.
64.3004	Obligation for providing an intercept message.	Moved to 9.7 and removed from Part 64 as subpart AA (Universal Emergency Telephone Number) is removed and reserved.

VII. Ordering Clauses

172. Accordingly, *it is ordered*, pursuant to sections 1, 4(i), 4(j), 4(o), 201(b), 251(e), 301, 303(b), 303(r), 307, 309, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(o), 201(b), 251(e), 301, 303(b), 303(r), 307, 309, 316 and pursuant to Kari's Law Act of 2017, Public Law 115–127, 47 U.S.C. 623 and 623 note, Section 506 of the Repack Airways Yielding Better Access for Users of Modern Services Act of 2018 (RAY BAUM'S Act), Public Law 115–141, 47 U.S.C. 615 note, Section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 47 U.S.C. 615c, Section 101 of the New and Emerging Technologies 911 Improvement Act of 2008, Public Law 110–283, 47 U.S.C. 615a-1, Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 47 U.S.C. 1471, and the Wireless Communications and Public Safety Act of 1999, Public Law 106–81, 47 U.S.C. 615 note, 615, 615a, 615b, that this Notice of Proposed Rulemaking is *hereby adopted*.

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

List of Subjects in 47 CFR Parts 9, 12, 20, 25, 64

Communications, Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Security measures, Satellites, Securities, Telecommunications, Telephone. Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 9, 12, 20, 25, and 64 as follows:

- 1. Part 9 is revised to read as follows:

PART 9—911 REQUIREMENTS

Sec.

Subpart A—Purpose and Definitions

- 9.1 Purpose
- 9.2 Reserved
- 9.3 Definitions

Subpart B—Telecommunications Carriers

- 9.4 Obligation to transmit 911 calls
- 9.5 Transition to 911 as the universal emergency telephone number
- 9.6 Obligation for providing a permissive dialing period
- 9.7 Obligation for providing an intercept message
- 9.8 Obligation to convey dispatchable location

Subpart C—Commercial Mobile Radio Service

- 9.9 Definitions
- 9.10 911 Service Requirements

Subpart D—Interconnected Voice over Internet Protocol Services and 911 VoIP Services

- 9.11 E911 Service
- 9.12 Access to 911 and E911 service capabilities

Subpart E—Telecommunications Relay Services for Persons With Disabilities

- 9.13 Jurisdiction
- 9.14 Emergency Calling Requirements

Subpart F—Multi Line Telephone Systems

- 9.15 Applicability
- 9.16 General obligations—direct 911 dialing, notification and dispatchable location
- 9.17 Enforcement, compliance date, State law

Subpart G—Mobile-Satellite Service

- 9.18 Emergency Call Center

Subpart H—Resiliency, redundancy and reliability of 911 communications

- 9.19 Reliability of covered 911 service providers
- 9.20 Backup power obligations

Authority: 47 U.S.C. 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a–1, 616, 620, 621, 623, 623 note, 721, and 1471, unless otherwise noted.

§9.1 Purpose

The purpose of this part is to set forth the 911 and E911 service requirements and conditions applicable to telecommunications carriers (subpart B);

commercial mobile radio service (CMRS) providers (subpart C); interconnected Voice over internet Protocol (VoIP) providers (subpart D); providers of telecommunications relay services (TRS) for persons with disabilities (subpart E); multi-line telephone systems (MLTS) (subpart F); and Mobile-Satellite Service (MSS) providers (subpart G). The rules in this part also include requirements to help ensure the resiliency, redundancy, and reliability of communications systems, particularly 911 and E911 networks and/or systems (subpart H).

§9.2 [Reserved]**§9.3 Definitions.**

Terms with definitions including the “(RR)” designation are defined in the same way in § 2.1 of this chapter and in the Radio Regulations of the International Telecommunication Union.

911 calls. Any call initiated by an end user by dialing 911 for the purpose of accessing an emergency service provider. For wireless carriers, all 911 calls include those they are required to transmit pursuant to subpart C of this part.

911 VoIP Service. A 911 VoIP service is a service that:

- (1) Enables real-time, two-way voice communications;
- (2) Requires a broadband connection from the user's location;
- (3) Requires internet protocol-compatible customer premises equipment (CPE); and
- (4) Permits users generally to initiate a 911 call.

Appropriate local emergency authority. An emergency answering point that has not been officially designated as a Public Safety Answering Point (PSAP), but has the capability of receiving 911 calls and either dispatching emergency services personnel or, if necessary, relaying the call to another emergency service provider. An appropriate local emergency authority may include, but is not limited to, an existing local law enforcement authority, such as the police, county sheriff, local emergency medical services provider, or fire department.

Automatic Location Information (ALI). Information transmitted while providing E911 service that permits emergency service providers to identify the geographic location of the calling party.

Automatic Number Identification (ANI). For 911 systems, the Automatic Number Identification (ANI) identifies the calling party and may be used as the callback number.

Commercial mobile radio service (CMRS). A mobile service that is:

(1)(i) Provided for profit, *i.e.*, with the intent of receiving compensation or monetary gain;

(ii) An interconnected service; and

(iii) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or

(2) The functional equivalent of such a mobile service described in paragraph (1) of this definition.

(3) A variety of factors may be evaluated to make a determination whether the mobile service in question is the functional equivalent of a commercial mobile radio service, including: Consumer demand for the service to determine whether the service is closely substitutable for a commercial mobile radio service; whether changes in price for the service under examination, or for the comparable commercial mobile radio service, would prompt customers to change from one service to the other; and market research information identifying the targeted market for the service under review.

(4) Unlicensed radio frequency devices under part 15 of this chapter are excluded from this definition of Commercial mobile radio service.

Common carrier or carrier. Any common carrier engaged in interstate Communication by wire or radio as defined in section 3(h) of the Communications Act of 1934, as amended (the Act), and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b) of the Act.

Communications assistant (CA). A person who transliterates or interprets conversation between two or more end users of TRS. CA supersedes the term "TDD operator."

Configured. The settings or configurations for a particular MLTS installation have been implemented so that the MLTS is fully capable when installed of dialing 911 directly and providing notification as required under the statute and rules. This does not preclude the inclusion of additional dialing patterns to reach 911. However, if the system is configured with these

additional dialing patterns, they must be in addition to the default direct dialing pattern.

Designated PSAP. The Public Safety Answering Point (PSAP) designated by the local or state entity that has the authority and responsibility to designate the PSAP to receive wireless 911 calls.

Dispatchable location. A location delivered to the PSAP with a 911 call that consists of the street address of the calling party, plus additional information such as suite, apartment or similar information necessary to adequately identify the location of the calling party.

Earth station. A station located either on the Earth's surface or within the major portion of the Earth's atmosphere intended for communication:

(1) With one or more space stations; or

(2) With one or more stations of the same kind by means of one or more reflecting satellites or other objects in space. (RR)

Emergency Call Center. A facility that subscribers of satellite commercial mobile radio services call when in need of emergency assistance by dialing "911" on their mobile earth station terminals.

Feeder link. A radio link from a fixed earth station at a given location to a space station, or vice versa, conveying information for a space radiocommunication service other than the Fixed-Satellite Service. The given location may be at a specified fixed point or at any fixed point within specified areas. (RR)

Fixed-Satellite Service (FSS). A radiocommunication service between earth stations at given positions, when one or more satellites are used; the given position may be a specified fixed point or any fixed point within specified areas; in some cases this service includes satellite-to-satellite links, which may also be operated in the inter-satellite service; the Fixed-Satellite Service may also include feeder links of other space radiocommunication services. (RR)

Handset-based location technology. A method of providing the location of wireless 911 callers that requires the use of special location-determining hardware and/or software in a portable or mobile phone. Handset-based location technology may also employ additional location-determining hardware and/or software in the CMRS network and/or another fixed infrastructure.

IP Relay access technology. Any equipment, software, or other technology issued, leased, or provided by an internet-based TRS provider that

can be used to make and receive an IP Relay call.

iTRS access technology. Any equipment, software, or other technology issued, leased, or provided by an internet-based TRS provider that can be used to make and receive an internet-based TRS call.

Improvement to the hardware or software of the system. An improvement to the hardware or software of the MLTS, including upgrades to the core systems of the MLTS, as well as substantial upgrades to the software and any software upgrades requiring a significant purchase.

Interconnected VoIP service. An interconnected Voice over internet protocol (VoIP) service is a service that:

(1) Enables real-time, two-way voice communications;

(2) Requires a broadband connection from the user's location;

(3) Requires internet protocol-compatible customer premises equipment (CPE); and

(4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

Internet-based TRS (iTRS). A telecommunications relay service (TRS) in which an individual with a hearing or a speech disability connects to a TRS communications assistant using an internet Protocol-enabled device via the internet, rather than the public switched telephone network. Except as authorized or required by the Commission, internet-based TRS does not include the use of a text telephone (TTY) or RTT over an interconnected voice over internet Protocol service.

Internet Protocol Relay Service (IP Relay). A telecommunications relay service that permits an individual with a hearing or a speech disability to communicate in text using an internet Protocol-enabled device via the internet, rather than using a text telephone (TTY) and the public switched telephone network.

Location-capable handsets. Portable or mobile phones that contain special location-determining hardware and/or software, which is used by a licensee to locate 911 calls.

MLTS Notification. An MLTS feature that can send notice to a central location at the facility where the system is installed or to another person or organization regardless of location. Examples of notification include screen pops with audible alarms for security desk computers using a client application, text messages for smartphones, and email for administrators. Notification shall

include, at a minimum, the following information:

- (1) The fact that a 911 call has been made,
- (2) A valid callback number, and
- (3) The information about the caller's location that the MLTS conveys to the public safety answering point (PSAP) with the call to 911.

Mobile Earth Station. An earth station in the Mobile-Satellite Service intended to be used while in motion or during halts at unspecified points. (RR)

Mobile-Satellite Service (MSS). (1) A radiocommunication service:

- (i) Between mobile earth stations and one or more space stations, or between space stations used by this service; or
- (ii) Between mobile earth stations, by means of one or more space stations.

(2) This service may also include feeder links necessary for its operation. (RR)

Mobile Service. A radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes:

- (1) Both one-way and two-way radio communications services;
- (2) A mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and

(3) Any service for which a license is required in a personal communications service under part 24 of this chapter.

Network-based Location Technology. A method of providing the location of wireless 911 callers that employs hardware and/or software in the CMRS network and/or another fixed infrastructure, and does not require the use of special location-determining hardware and/or software in the caller's portable or mobile phone.

Multi-line telephone system or MLTS. A system comprised of common control units, telephone sets, control hardware and software and adjunct systems, including network and premises based systems, such as Centrex and VoIP, as well as PBX, Hybrid, and Key Telephone Systems (as classified by the Commission under part 68 of title 47, Code of Federal Regulations), and includes systems owned or leased by governmental agencies and non-profit entities, as well as for profit businesses.

Non-English language relay service. A telecommunications relay service that allows persons with hearing or speech disabilities who use languages other

than English to communicate with voice telephone users in a shared language other than English, through a CA who is fluent in that language.

Person engaged in the business of installing an MLTS. A person that configures the MLTS or performs other tasks involved in getting the system ready to operate. These tasks may include, but are not limited to, establishing the dialing pattern for emergency calls, determining how calls will route to the Public Switched Telephone Network (PSTN), and determining where the MLTS will interface with the PSTN. These tasks are performed when the system is initially installed, but they may also be performed on a more or less regular basis by the MLTS operator as the communications needs of the enterprise change. The MLTS installer may be the MLTS manager or a third party acting on behalf of the manager.

Person engaged in the business of managing an MLTS. The entity that is responsible for controlling and overseeing implementation of the MLTS after installation. These responsibilities include determining how lines should be distributed (including the adding or moving of lines), assigning and reassigning telephone numbers, and ongoing network configuration.

Person engaged in the business of manufacturing, importing, selling, or leasing an MLTS. A person that manufactures, imports, sells, or leases an MLTS.

Person engaged in the business of operating an MLTS. A person responsible for the day-to-day operations of the MLTS.

Pre-configured. An MLTS that comes equipped with a default configuration or setting that enables users to dial 911 directly as required under the statute and rules, so long as the MLTS is installed and operated properly. This does not preclude the inclusion of additional dialing patterns to reach 911. However, if the system is configured with these additional dialing patterns, they must be in addition to the default direct dialing pattern.

Private Mobile Radio Service. A mobile service that meets neither paragraph (1) nor (2) of the definition of *commercial mobile radio service* in this section. A mobile service that does not meet the paragraph (1) definition of *commercial mobile radio service* in this section is presumed to be a private mobile radio service. Private mobile radio service includes the following:

- (1) Not-for-profit land mobile radio and paging services that serve the licensee's internal communications needs as defined in part 90 of this

chapter. Shared-use, cost-sharing, or cooperative arrangements, multiple licensed systems that use third party managers or users combining resources to meet compatible needs for specialized internal communications facilities in compliance with the safeguards of § 90.179 of this chapter are presumptively private mobile radio services;

(2) Mobile radio service offered to restricted classes of eligible users. This includes entities eligible in the Public Safety Radio Pool and Radiolocation service.

(3) 220–222 MHz land mobile service and Automatic Vehicle Monitoring systems (part 90 of this chapter) that do not offer interconnected service or that are not-for-profit; and

(4) Personal Radio Services under part 95 of this chapter (General Mobile Services, Radio Control Radio Services, and Citizens Band Radio Services); Maritime Service Stations (excluding Public Coast stations) (part 80 of this chapter); and Aviation Service Stations (part 87 of this chapter).

Pseudo Automatic Number Identification (Pseudo-ANI). A number, consisting of the same number of digits as ANI, that is not a North American Numbering Plan telephone directory number and may be used in place of an ANI to convey special meaning. The special meaning assigned to the pseudo-ANI is determined by agreements, as necessary, between the system originating the call, intermediate systems handling and routing the call, and the destination system.

Public safety answering point or PSAP. An answering point that has been designated to receive 911 calls and route them to emergency services personnel.

Public Switched Network. Any common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile service providers, that uses the North American Numbering Plan in connection with the provision of switched services.

Real-Time Text (RTT). Text communications that are transmitted over internet Protocol (IP) networks immediately as they are created, e.g., on a character-by-character basis.

Registered internet-based TRS user. An individual that has registered with a VRS or IP Relay provider as described in § 64.611.

Registered Location. Before February 16, 2020: The most recent information obtained by a provider of interconnected VoIP service or telecommunications relay services (TRS), as applicable, that identifies the physical location of an end user. *On or*

after February 16, 2020: The most recent information obtained by a provider of interconnected VoIP service, 911 VoIP service, or telecommunications relay services (TRS), as applicable, that identifies the dispatchable location of an end user.

Space station. A station located on an object which is beyond, is intended to go beyond, or has been beyond, the major portion of the Earth's atmosphere. (RR)

Speech-to-speech relay service (STS). A telecommunications relay service that allows individuals with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by that person.

Statewide default answering point. An emergency answering point designated by the State to receive 911 calls for either the entire State or those portions of the State not otherwise served by a local PSAP.

Station. A station equipped to engage in radio communication or radio transmission of energy (47 U.S.C. 153(k)).

Telecommunications relay services (TRS). Telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a text telephone or other nonvoice terminal device and an individual who does not use such a device, speech-to-speech services, video relay services and non-English relay services. TRS supersedes the terms "dual party relay system," "message relay services," and "TDD Relay."

Text telephone (TTY). A machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system. TTY supersedes the term "TDD" or "telecommunications device for the deaf," and TT.

Video relay service (VRS). A telecommunications relay service that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the CA to view and interpret the party's signed conversation

and relay the conversation back and forth with a voice caller.

VRS access technology. Any equipment, software, or other technology issued, leased, or provided by an internet-based TRS provider that can be used to make and receive a VRS call.

Wireline E911 Network. A dedicated wireline network that:

(1) Is interconnected with but largely separate from the public switched telephone network;

(2) Includes a selective router; and

(3) Is used to route emergency calls and related information to PSAPs, designated statewide default answering points, appropriate local emergency authorities or other emergency answering points.

Subpart B—Telecommunications Carriers

§ 9.4 Obligation to transmit 911 calls.

All telecommunications carriers shall transmit all 911 calls to a PSAP, to a designated statewide default answering point, or to an appropriate local emergency authority as set forth in § 9.5.

§ 9.5 Transition to 911 as the universal emergency telephone number.

As of December 11, 2001, except where 911 is already established as the exclusive emergency number to reach a PSAP within a given jurisdiction, telecommunications carriers shall comply with the following transition periods:

(a) Where a PSAP has been designated, telecommunications carriers shall complete all translation and routing necessary to deliver 911 calls to a PSAP no later than September 11, 2002.

(b) Where no PSAP has been designated, telecommunications carriers shall complete all translation and routing necessary to deliver 911 calls to the statewide default answering point no later than September 11, 2002.

(c) Where neither a PSAP nor a statewide default answering point has been designated, telecommunications carriers shall complete the translation and routing necessary to deliver 911 calls to an appropriate local emergency authority, within nine months of a request by the State or locality.

(d) Where no PSAP nor statewide default answering point has been designated, and no appropriate local emergency authority has been selected by an authorized state or local entity, telecommunications carriers shall identify an appropriate local emergency authority, based on the exercise of reasonable judgment, and complete all

translation and routing necessary to deliver 911 calls to such appropriate local emergency authority no later than September 11, 2002.

(e) Once a PSAP is designated for an area where none had existed as of December 11, 2001, telecommunications carriers shall complete the translation and routing necessary to deliver 911 calls to that PSAP within nine months of that designation.

§ 9.6 Obligation for providing a permissive dialing period.

Upon completion of translation and routing of 911 calls to a PSAP, a statewide default answering point, to an appropriate local emergency authority, or, where no PSAP nor statewide default answering point has been designated and no appropriate local emergency authority has been selected by an authorized state or local entity, to an appropriate local emergency authority, identified by a telecommunications carrier based on the exercise of reasonable judgment, the telecommunications carrier shall provide permissive dialing between 911 and any other seven-or ten-digit emergency number or an abbreviated dialing code other than 911 that the public has previously used to reach emergency service providers until the appropriate State or local jurisdiction determines to phase out the use of such seven-or ten-digit number entirely and use 911 exclusively.

§ 9.7 Obligation for providing an intercept message.

Upon termination of permissive dialing, as provided under § 9.6, telecommunications carriers shall provide a standard intercept message announcement that interrupts calls placed to the emergency service provider using either a seven-or ten-digit emergency number or an abbreviated dialing code other than 911 and informs the caller of the dialing code change.

§ 9.8 Obligation to convey dispatchable location.

All telecommunications carriers shall convey the dispatchable location of the caller to the PSAP with 911 calls, except for wireless carriers, which shall convey the location information required by subpart C of this part.

Subpart C—Commercial Mobile Radio Service

§ 9.9 Definitions.

Interconnection or Interconnected. Direct or indirect connection through automatic or manual means (by wire, microwave, or other technologies such

as store and forward) to permit the transmission or reception of messages or signals to or from points in the public switched network.

Interconnected Service. A service:

(1) That is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, that gives subscribers the capability to communicate to or receive communication from all other users on the public switched network; or

(2) For which a request for such interconnection is pending pursuant to section 332(c)(1)(B) of the Communications Act, 47 U.S.C. 332(c)(1)(B). A mobile service offers interconnected service even if the service allows subscribers to access the public switched network only during specified hours of the day, or if the service provides general access to points on the public switched network but also restricts access in certain limited ways. Interconnected service does not include any interface between a licensee's facilities and the public switched network exclusively for a licensee's internal control purposes.

§ 9.10 911 Service.

(a) *Scope of section.* Except as described in paragraph (r) of this section, the following requirements are only applicable to CMRS providers, excluding mobile satellite service (MSS) operators, to the extent that they:

(1) Offer real-time, two way switched voice service that is interconnected with the public switched network; and

(2) Use an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. These requirements are applicable to entities that offer voice service to consumers by purchasing airtime or capacity at wholesale rates from CMRS licensees.

(b) *Basic 911 Service.* CMRS providers subject to this section must transmit all wireless 911 calls without respect to their call validation process to a Public Safety Answering Point, or, where no Public Safety Answering Point has been designated, to a designated statewide default answering point or appropriate local emergency authority pursuant to § 9.4 of this chapter, provided that "all wireless 911 calls" is defined as "any call initiated by a wireless user dialing 911 on a phone using a compliant radio frequency protocol of the serving carrier."

(c) *Access to 911 services.* CMRS providers subject to this section must be capable of transmitting 911 calls from

individuals with speech or hearing disabilities through means other than mobile radio handsets, e.g., through the use of Text Telephone Devices (TTY). CMRS providers that provide voice communications over IP facilities are not required to support 911 access via TTYs if they provide 911 access via real-time text (RTT) communications, in accordance with 47 CFR part 67, except that RTT support is not required to the extent that it is not achievable for a particular manufacturer to support RTT on the provider's network.

(d) *Phase I enhanced 911 services.* (1) As of April 1, 1998, or within six months of a request by the designated Public Safety Answering Point as set forth in paragraph (j) of this section, whichever is later, licensees subject to this section must provide the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems to the designated Public Safety Answering Point through the use of ANI and Pseudo-ANI.

(2) When the directory number of the handset used to originate a 911 call is not available to the serving carrier, such carrier's obligations under paragraph (d)(1) of this section extend only to delivering 911 calls and available call party information, including that prescribed in paragraph (l) of this section, to the designated Public Safety Answering Point.

Note to paragraph (d): With respect to 911 calls accessing their systems through the use of TTYs, licensees subject to this section must comply with the requirements in paragraphs (d)(1) and (d)(2) of this section, as to calls made using a digital wireless system, as of October 1, 1998.

(e) *Phase II enhanced 911 service.* Licensees subject to this section must provide to the designated Public Safety Answering Point Phase II enhanced 911 service, i.e., the location of all 911 calls by longitude and latitude in conformance with Phase II accuracy requirements (see paragraph (h) of this section).

(f) *Phase-in for network-based location technologies.* Licensees subject to this section who employ a network-based location technology shall provide Phase II 911 enhanced service to at least 50 percent of their coverage area or 50 percent of their population beginning October 1, 2001, or within 6 months of a PSAP request, whichever is later; and to 100 percent of their coverage area or 100 percent of their population within 18 months of such a request or by October 1, 2002, whichever is later.

(g) *Phase-in for handset-based location technologies.* Licensees subject

to this section who employ a handset-based location technology may phase in deployment of Phase II enhanced 911 service, subject to the following requirements:

(1) Without respect to any PSAP request for deployment of Phase II 911 enhanced service, the licensee shall:

(i) Begin selling and activating location-capable handsets no later than October 1, 2001;

(ii) Ensure that at least 25 percent of all new handsets activated are location-capable no later than December 31, 2001;

(iii) Ensure that at least 50 percent of all new handsets activated are location-capable no later than June 30, 2002; and

(iv) Ensure that 100 percent of all new digital handsets activated are location-capable no later than December 31, 2002, and thereafter.

(v) By December 31, 2005, achieve 95 percent penetration of location-capable handsets among its subscribers.

(vi) Licensees that meet the enhanced 911 compliance obligations through GPS-enabled handsets and have commercial agreements with resellers will not be required to include the resellers' handset counts in their compliance percentages.

(2) Once a PSAP request is received, the licensee shall, in the area served by the PSAP, within six months or by October 1, 2001, whichever is later:

(i) Install any hardware and/or software in the CMRS network and/or other fixed infrastructure, as needed, to enable the provision of Phase II enhanced 911 service; and

(ii) Begin delivering Phase II enhanced 911 service to the PSAP.

(3) For all 911 calls from portable or mobile phones that do not contain the hardware and/or software needed to enable the licensee to provide Phase II enhanced 911 service, the licensee shall, after a PSAP request is received, support, in the area served by the PSAP, Phase I location for 911 calls or other available best practice method of providing the location of the portable or mobile phone to the PSAP.

(4) Licensees employing handset-based location technologies shall ensure that location-capable portable or mobile phones shall conform to industry interoperability standards designed to enable the location of such phones by multiple licensees.

(h) *Phase II accuracy.* Licensees subject to this section shall comply with the following standards for Phase II location accuracy and reliability, to be tested and measured either at the county or at the PSAP service area geographic level, based on outdoor measurements only:

(1) *Network-based technologies*: (i) 100 meters for 67 percent of calls, consistent with the following benchmarks:

(A) One year from January 18, 2011, carriers shall comply with this standard in 60 percent of counties or PSAP service areas. These counties or PSAP service areas must cover at least 70 percent of the population covered by the carrier across its entire network.

Compliance will be measured on a per-county or per-PSAP basis using, at the carrier's election, either

(1) Network-based accuracy data, or

(2) Blended reporting as provided in paragraph (h)(1)(iv) of this section.

(B) Three years from January 18, 2011, carriers shall comply with this standard in 70 percent of counties or PSAP service areas. These counties or PSAP service areas must cover at least 80 percent of the population covered by the carrier across its entire network.

Compliance will be measured on a per-county or per-PSAP basis using, at the carrier's election, either

(1) Network-based accuracy data, or

(2) Blended reporting as provided in paragraph (h)(1)(iv) of this section.

(C) Five years from January 18, 2011, carriers shall comply with this standard in 100% of counties or PSAP service areas covered by the carrier. Compliance will be measured on a per-county or per-PSAP basis, using, at the carrier's election, either

(1) Network-based accuracy data,

(2) Blended reporting as provided in paragraph (h)(1)(iv) of this section, or

(3) Handset-based accuracy data as provided in paragraph (h)(1)(v) of this section.

(ii) 300 meters for 90 percent of calls, consistent with the following benchmarks:

(A) Three years from January 18, 2011, carriers shall comply with this standard in 60 percent of counties or PSAP service areas. These counties or PSAP service areas must cover at least 70 percent of the population covered by the carrier across its entire network.

Compliance will be measured on a per-county or per-PSAP basis using, at the carrier's election, either

(1) Network-based accuracy data, or

(2) Blended reporting as provided in paragraph (h)(1)(iv) of this section.

(B) Five years from January 18, 2011, carriers shall comply in 70 percent of counties or PSAP service areas. These counties or PSAP service areas must cover at least 80 percent of the population covered by the carrier across its entire network. Compliance will be measured on a per-county or per-PSAP basis using, at the carrier's election, either

(1) Network-based accuracy data, or
(2) Blended reporting as provided in paragraph (h)(1)(iv) of this section.

(C) Eight years from January 18, 2011, carriers shall comply in 85 percent of counties or PSAP service areas.

Compliance will be measured on a per-county or per-PSAP basis using, at the carrier's election, either

(1) Network-based accuracy data,

(2) Blended reporting as provided in paragraph (h)(1)(iv) of this section, or

(3) Handset-based accuracy data as provided in paragraph (h)(1)(v) of this section.

(iii) County-level or PSAP-level location accuracy standards for network-based technologies will be applicable to those counties or PSAP service areas, on an individual basis, in which a network-based carrier has deployed Phase II in at least one cell site located within a county's or PSAP service area's boundary. Compliance with the requirements of paragraph (h)(1)(i) and paragraph (h)(1)(ii) of this section shall be measured and reported independently.

(iv) Accuracy data from both network-based solutions and handset-based solutions may be blended to measure compliance with the accuracy requirements of paragraph (h)(1)(i)(A) through (C) and paragraph (h)(1)(ii)(A) through (C) of this section. Such blending shall be based on weighting accuracy data in the ratio of assisted GPS ("A-GPS") handsets to non-A-GPS handsets in the carrier's subscriber base. The weighting ratio shall be applied to the accuracy data from each solution and measured against the network-based accuracy requirements of paragraph (h)(1) of this section.

(v) A carrier may rely solely on handset-based accuracy data in any county or PSAP service area if at least 85 percent of its subscribers, network-wide, use A-GPS handsets, or if it offers A-GPS handsets to subscribers in that county or PSAP service area at no cost to the subscriber.

(vi) A carrier may exclude from compliance particular counties, or portions of counties, where triangulation is not technically possible, such as locations where at least three cell sites are not sufficiently visible to a handset. Carriers must file a list of the specific counties or portions of counties where they are using this exclusion within 90 days following approval from the Office of Management and Budget for the related information collection. This list must be submitted electronically into PS Docket No. 07-114, and copies must be sent to the National Emergency Number Association, the Association of Public-

Safety Communications Officials-International, and the National Association of State 9-1-1 Administrators. Further, carriers must submit in the same manner any changes to their exclusion lists within thirty days of discovering such changes. This exclusion will sunset on [8 years after effective date].

(2) *Handset-based technologies*: (i) Two years from January 18, 2011, 50 meters for 67 percent of calls, and 150 meters for 80 percent of calls, on a per-county or per-PSAP basis. However, a carrier may exclude up to 15 percent of counties or PSAP service areas from the 150 meter requirement based upon heavy forestation that limits handset-based technology accuracy in those counties or PSAP service areas.

(ii) Eight years from January 18, 2011, 50 meters for 67 percent of calls, and 150 meters for 90 percent of calls, on a per-county or per-PSAP basis. However, a carrier may exclude up to 15 percent of counties or PSAP service areas from the 150 meter requirement based upon heavy forestation that limits handset-based technology accuracy in those counties or PSAP service areas.

(iii) Carriers must file a list of the specific counties or PSAP service areas where they are using the exclusion for heavy forestation within 90 days following approval from the Office of Management and Budget for the related information collection. This list must be submitted electronically into PS Docket No. 07-114, and copies must be sent to the National Emergency Number Association, the Association of Public-Safety Communications Officials-International, and the National Association of State 9-1-1 Administrators. Further, carriers must submit in the same manner any changes to their exclusion lists within thirty days of discovering such changes.

(iv) Providers of new CMRS networks that meet the definition of covered CMRS providers under paragraph (a) of this section must comply with the requirements of paragraphs (h)(2)(i) through (iii) of this section. For this purpose, a "new CMRS network" is a CMRS network that is newly deployed subsequent to the effective date of the Third Report and Order in PS Docket No. 07-114 and that is not an expansion or upgrade of an existing CMRS network.

(3) *Latency (Time to First Fix)*. For purposes of measuring compliance with the location accuracy standards of this paragraph, a call will be deemed to satisfy the standard only if it provides the specified degree of location accuracy within a maximum latency period of 30 seconds, as measured from the time the

user initiates the 911 call to the time the location fix appears at the location information center: Provided, however, that the CMRS provider may elect not to include for purposes of measuring compliance therewith any calls lasting less than 30 seconds.

(i) *Indoor location accuracy for 911 and testing requirements*—(1)

Definitions: The terms as used in this section have the following meaning:

(i) *Dispatchable location:* A location delivered to the PSAP by the CMRS provider with a 911 call that consists of the street address of the calling party, plus additional information such as suite, apartment or similar information necessary to adequately identify the location of the calling party. The street address of the calling party must be validated and, to the extent possible, corroborated against other location information prior to delivery of dispatchable location information by the CMRS provider to the PSAP.

(ii) *Media Access Control (MAC) Address.* A location identifier of a Wi-Fi access point.

(iii) *National Emergency Address Database (NEAD).* A database that uses MAC address information to identify a dispatchable location for nearby wireless devices within the CMRS provider's coverage footprint.

(iv) *Nationwide CMRS provider:* A CMRS provider whose service extends to a majority of the population and land area of the United States.

(v) *Non-nationwide CMRS provider:* Any CMRS provider other than a nationwide CMRS provider.

(vi) *Test Cities.* The six cities (San Francisco, Chicago, Atlanta, Denver/Front Range, Philadelphia, and Manhattan Borough) and surrounding geographic areas that correspond to the six geographic regions specified by the February 7, 2014 ATIS Document, "Considerations in Selecting Indoor Test Regions," for testing of indoor location technologies.

(2) *Indoor location accuracy standards:* CMRS providers subject to this section shall meet the following requirements:

(i) *Horizontal location.* (A) Nationwide CMRS providers shall provide; dispatchable location, or; x/y location within 50 meters, for the following percentages of wireless 911 calls within the following timeframes, measured from the effective date of the adoption of this rule:

(1) Within 2 years: 40 percent of all wireless 911 calls.

(2) Within 3 years: 50 percent of all wireless 911 calls.

(3) Within 5 years: 70 percent of all wireless 911 calls.

(4) Within 6 years: 80 percent of all wireless 911 calls.

(B) Non-nationwide CMRS providers shall provide; dispatchable location or; x/y location within 50 meters, for the following percentages of wireless 911 calls within the following timeframes, measured from the effective date of the adoption of this rule:

(1) Within 2 years: 40 percent of all wireless 911 calls.

(2) Within 3 years: 50 percent of all wireless 911 calls.

(3) Within 5 years or within six months of deploying a commercially-operating VoLTE platform in their network, whichever is later: 70 percent of all wireless 911 calls.

(4) Within 6 years or within one year of deploying a commercially-operating VoLTE platform in their network, whichever is later: 80 percent of all wireless 911 calls.

(ii) *Vertical location.* CMRS providers shall provide vertical location information with wireless 911 calls as described in this section within the following timeframes measured from the effective date of the adoption of this rule:

(A) *Within 3 years:* All CMRS providers shall make uncompensated barometric data available to PSAPs with respect to any 911 call placed from any handset that has the capability to deliver barometric sensor information.

(B) *Within 3 years:* Nationwide CMRS providers shall develop one or more z-axis accuracy metrics validated by an independently administered and transparent test bed process as described in paragraph (i)(3)(i) of this section, and shall submit the proposed metric or metrics, supported by a report of the results of such development and testing, to the Commission for approval.

(C) Within 6 years: In each of the top 25 CMAs, nationwide CMRS providers shall deploy either; dispatchable location, or; z-axis technology in compliance with any z-axis accuracy metric that has been approved by the Commission,

(1) In each CMA where dispatchable location is used: Nationwide CMRS providers must ensure that the NEAD is populated with a sufficient number of total dispatchable location reference points to equal 25 percent of the CMA population.

(2) In each CMA where z-axis technology is used: Nationwide CMRS providers must deploy z-axis technology to cover 80 percent of the CMA population.

(D) Within 8 years: In each of the top 50 CMAs, nationwide CMRS providers shall deploy either

(1) Dispatchable location or;

(2) Such z-axis technology in compliance with any z-axis accuracy metric that has been approved by the Commission.

(E) Non-nationwide CMRS providers that serve any of the top 25 or 50 CMAs will have an additional year to meet each of the benchmarks in paragraphs (i)(2)(ii)(C) and (D) of this section.

(iii) *Compliance.* Within 60 days after each benchmark date specified in paragraphs (i)(2)(i) and (ii) of this section, CMRS providers must certify that they are in compliance with the location accuracy requirements applicable to them as of that date. CMRS providers shall be presumed to be in compliance by certifying that they have complied with the test bed and live call data provisions described in paragraph (i)(3) of this section.

(A) All CMRS providers must certify that the indoor location technology (or technologies) used in their networks are deployed consistently with the manner in which they have been tested in the test bed. A CMRS provider must update certification whenever it introduces a new technology into its network or otherwise modifies its network, such that previous performance in the test bed would no longer be consistent with the technology's modified deployment.

(B) CMRS providers that provide quarterly reports of live call data in one or more of the six test cities specified in paragraph (i)(1)(vi) of this section must certify that their deployment of location technologies throughout their coverage area is consistent with their deployment of the same technologies in the areas that are used for live call data reporting.

(C) Non-nationwide CMRS providers that do not provide service or report quarterly live call data in any of the six test cities specified in paragraph (i)(1)(vi) of this section must certify that they have verified based on their own live call data that they are in compliance with the requirements of paragraphs (i)(2)(i)(B) and (ii) of this section.

(iv) *Enforcement.* PSAPs may seek Commission enforcement within their geographic service area of the requirements of paragraphs (i)(2)(i) and (ii) of this section, but only so long as they have implemented policies that are designed to obtain all location information made available by CMRS providers when initiating and delivering 911 calls to the PSAP. Prior to seeking Commission enforcement, a PSAP must provide the CMRS provider with [30] days written notice, and the CMRS provider shall have an opportunity to address the issue informally. If the issue has not been addressed to the PSAP's

satisfaction within 90 days, the PSAP may seek enforcement relief.

(3) *Indoor location accuracy testing and live call data reporting*—(i) *Indoor location accuracy test bed*. CMRS providers must establish the test bed described in this section within 12 months of the effective date of this rule. CMRS providers must validate technologies intended for indoor location, including dispatchable location technologies and technologies that deliver horizontal and/or vertical coordinates, through an independently administered and transparent test bed process, in order for such technologies to be presumed to comply with the location accuracy requirements of this paragraph. The test bed shall meet the following minimal requirements in order for the test results to be considered valid for compliance purposes:

(A) Include testing in representative indoor environments, including dense urban, urban, suburban and rural morphologies;

(B) Test for performance attributes including location accuracy (ground truth as measured in the test bed), latency (Time to First Fix), and reliability (yield); and

(C) Each test call (or equivalent) shall be independent from prior calls and accuracy will be based on the first location delivered after the call is initiated.

(D) In complying with paragraph (i)(3)(i)(B) of this section, CMRS providers shall measure yield separately for each individual indoor location morphology (dense urban, urban, suburban, and rural) in the test bed, and based upon the specific type of location technology that the provider intends to deploy in real-world areas represented by that particular morphology. CMRS providers must base the yield percentage based on the number of test calls that deliver a location in compliance with any applicable indoor location accuracy requirements, compared to the total number of calls that successfully connect to the testing network. CMRS providers may exclude test calls that are dropped or otherwise disconnected in 10 seconds or less from calculation of the yield percentage (both the denominator and numerator).

(ii) *Collection and reporting of aggregate live 911 call location data*. CMRS providers providing service in any of the Test Cities or portions thereof must collect and report aggregate data on the location technologies used for live 911 calls in those areas.

(A) CMRS providers subject to this section shall identify and collect information regarding the location

technology or technologies used for each 911 call in the reporting area during the calling period.

(B) CMRS providers subject to this section shall report Test City call location data on a quarterly basis to the Commission, the National Emergency Number Association, the Association of Public Safety Communications Officials, and the National Association of State 911 Administrators, with the first report due 18 months from the effective date of rules adopted in this proceeding.

(C) CMRS providers subject to this section shall also provide quarterly live call data on a more granular basis that allows evaluation of the performance of individual location technologies within different morphologies (e.g., dense urban, urban, suburban, rural). To the extent available, live call data for all CMRS providers shall delineate based on a per technology basis accumulated and so identified for:

(1) Each of the ATIS ESIF morphologies;

(2) On a reasonable community level basis; or

(3) By census block. This more granular data will be used for evaluation and not for compliance purposes.

(D) Non-nationwide CMRS providers that operate in a single Test City need only report live 911 call data from that city or portion thereof that they cover. Non-nationwide CMRS providers that operate in more than one Test City must report live 911 call data only in half of the regions (as selected by the provider). In the event a non-nationwide CMRS provider begins coverage in a Test City it previously did not serve, it must update its certification pursuant to paragraph (i)(2)(iii)(C) of this section to reflect this change in its network and begin reporting data from the appropriate areas. All non-nationwide CMRS providers must report their Test City live call data every 6 months, beginning 18 months from the effective date of rules adopted in this proceeding.

(E) Non-nationwide CMRS providers that do not provide coverage in any of the Test Cities can satisfy the requirement of paragraph (i)(3)(ii) of this section by collecting and reporting data based on the largest county within its footprint. In addition, where a non-nationwide CMRS provider serves more than one of the ATIS ESIF morphologies, it must include a sufficient number of representative counties to cover each morphology.

(iii) *Data retention*. CMRS providers shall retain testing and live call data gathered pursuant to this section for a period of 2 years.

(4) *Submission of plans and reports*. The following reporting and

certification obligations apply to all CMRS providers subject to this section, which may be filed electronically in PS Docket No. 07–114:

(i) *Initial implementation plan*. No later than 18 months from the effective date of the adoption of this rule, nationwide CMRS providers shall report to the Commission on their plans for meeting the indoor location accuracy requirements of paragraph (i)(2) of this section. Non-nationwide CMRS providers will have an additional 6 months to submit their implementation plans.

(ii) *Progress reports*. No later than 18 months from the effective date of the adoption of this rule, each CMRS provider shall file a progress report on implementation of indoor location accuracy requirements. Non-nationwide CMRS providers will have an additional 6 months to submit their progress reports. All CMRS providers shall provide an additional progress report no later than 36 months from the effective date of the adoption of this rule. The 36-month reports shall indicate what progress the provider has made consistent with its implementation plan, and the nationwide CMRS providers shall include an assessment of their deployment of dispatchable location solutions. For any CMRS provider participating in the development of the NEAD database, this progress report must include detail as to the implementation of the NEAD database described in paragraphs (i)(4)(iii) and (iv) of this section.

(iii) *NEAD privacy and security plan*. Prior to activation of the NEAD but no later than 18 months from the effective date of the adoption of this rule, the nationwide CMRS providers shall file with the Commission and request approval for a security and privacy plan for the administration and operation of the NEAD. The plan must include the identity of an administrator for the NEAD, who will serve as a point of contact for the Commission and shall be accountable for the effectiveness of the security, privacy, and resiliency measures.

(iv) *NEAD use certification*. Prior to use of the NEAD or any information contained therein to meet such requirements, CMRS providers must certify that they will not use the NEAD or associated data for any non-911 purpose, except as otherwise required by law.

(j) *Confidence and uncertainty data*. (1) Except as provided in paragraphs (j)(2)–(3) of this section, CMRS providers subject to this section shall provide for all wireless 911 calls, whether from outdoor or indoor

locations, x- and y-axis (latitude, longitude) confidence and uncertainty information (C/U data) on a per-call basis upon the request of a PSAP. The data shall specify

(i) The caller's location with a uniform confidence level of 90 percent, and;

(ii) The radius in meters from the reported position at that same confidence level. All entities responsible for transporting confidence and uncertainty between CMRS providers and PSAPs, including LECs, CLECs, owners of E911 networks, and emergency service providers, must enable the transmission of confidence and uncertainty data provided by CMRS providers to the requesting PSAP.

(2) Upon meeting the 3-year timeframe pursuant to paragraph (i)(2)(i) of this section, CMRS providers shall provide with wireless 911 calls that have a dispatchable location the C/U data for the x- and y-axis (latitude, longitude) required under paragraph (j)(1) of this section.

(3) Upon meeting the 6-year timeframe pursuant to paragraph (i)(2)(i) of this section, CMRS providers shall provide with wireless 911 calls that have a dispatchable location the C/U data for the x- and y-axis (latitude, longitude) required under paragraph (j)(1) of this section.

(k) *Provision of live 911 call data for PSAPs.* Notwithstanding other 911 call data collection and reporting requirements in paragraph (i) of this section, CMRS providers must record information on all live 911 calls, including, but not limited to, the positioning source method used to provide a location fix associated with the call. CMRS providers must also record the confidence and uncertainty data that they provide pursuant to paragraphs (j)(1) through (3) of this section. This information must be made available to PSAPs upon request, and shall be retained for a period of two years.

(l) *Reports on Phase II plans.* Licensees subject to this section shall report to the Commission their plans for implementing Phase II enhanced 911 service, including the location-determination technology they plan to employ and the procedure they intend to use to verify conformance with the Phase II accuracy requirements by November 9, 2000. Licensees are required to update these plans within thirty days of the adoption of any change. These reports and updates may be filed electronically in a manner to be designated by the Commission.

(m) *Conditions for enhanced 911 services—(1) Generally.* The

requirements set forth in paragraphs (d) through (h)(2) and in paragraph (j) of this section shall be applicable only to the extent that the administrator of the applicable designated PSAP has requested the services required under those paragraphs and such PSAP is capable of receiving and using the requested data elements and has a mechanism for recovering the PSAP's costs associated with them.

(2) *Commencement of six-month period.* (i) Except as provided in paragraph (ii) of this section, for purposes of commencing the six-month period for carrier implementation specified in paragraphs (d), (f) and (g) of this section, a PSAP will be deemed capable of receiving and using the data elements associated with the service requested, if it can demonstrate that it has:

(A) Ordered the necessary equipment and has commitments from suppliers to have it installed and operational within such six-month period; and

(B) Made a timely request to the appropriate local exchange carrier for the necessary trunking, upgrades, and other facilities.

(ii) For purposes of commencing the six-month period for carrier implementation specified in paragraphs (f) and (g) of this section, a PSAP that is Phase I-capable using a Non-Call Path Associated Signaling (NCAS) technology will be deemed capable of receiving and using the data elements associated with Phase II service if it can demonstrate that it has made a timely request to the appropriate local exchange carrier for the ALI database upgrade necessary to receive the Phase II information.

(3) *Tolling of six-month period.* Where a wireless carrier has served a written request for documentation on the PSAP within 15 days of receiving the PSAP's request for Phase I or Phase II enhanced 911 service, and the PSAP fails to respond to such request within 15 days of such service, the six-month period for carrier implementation specified in paragraphs (d), (f), and (g) of this section will be tolled until the PSAP provides the carrier with such documentation.

(4) *Carrier certification regarding PSAP readiness issues.* At the end of the six-month period for carrier implementation specified in paragraphs (d), (f), and (g) of this section, a wireless carrier that believes that the PSAP is not capable of receiving and using the data elements associated with the service requested may file a certification with the Commission. Upon filing and service of such certification, the carrier may suspend further implementation

efforts, except as provided in paragraph (m)(4)(x) of this section.

(i) As a prerequisite to filing such certification, no later than 21 days prior to such filing, the wireless carrier must notify the affected PSAP, in writing, of its intent to file such certification. Any response that the carrier receives from the PSAP must be included with the carrier's certification filing.

(ii) The certification process shall be subject to the procedural requirements set forth in sections 1.45 and 1.47 of this chapter.

(iii) The certification must be in the form of an affidavit signed by a director or officer of the carrier, documenting:

(A) The basis for the carrier's determination that the PSAP will not be ready;

(B) Each of the specific steps the carrier has taken to provide the E911 service requested;

(C) The reasons why further implementation efforts cannot be made until the PSAP becomes capable of receiving and using the data elements associated with the E911 service requested; and

(D) The specific steps that remain to be completed by the wireless carrier and, to the extent known, the PSAP or other parties before the carrier can provide the E911 service requested.

(iv) All affidavits must be correct. The carrier must ensure that its affidavit is correct, and the certifying director or officer has the duty to personally determine that the affidavit is correct.

(v) A carrier may not engage in a practice of filing inadequate or incomplete certifications for the purpose of delaying its responsibilities.

(vi) To be eligible to make a certification, the wireless carrier must have completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness.

(vii) A copy of the certification must be served on the PSAP in accordance with § 1.47 of this chapter. The PSAP may challenge in writing the accuracy of the carrier's certification and shall serve a copy of such challenge on the carrier. See §§ 1.45 and 1.47 and §§ 1.720 through 1.740 of this chapter.

(viii) If a wireless carrier's certification is facially inadequate, the six-month implementation period specified in paragraphs (d), (f) and (g) of this section will not be suspended as provided for in paragraph (m)(4) of this section.

(ix) If a wireless carrier's certification is inaccurate, the wireless carrier will be liable for noncompliance as if the certification had not been filed.

(x) A carrier that files a certification under paragraph (m)(4) of this section

shall have 90 days from receipt of the PSAP's written notice that it is capable of receiving and using the data elements associated with the service requested to provide such service in accordance with the requirements of paragraphs (d) through (h) of this section.

(5) *Modification of deadlines by agreement.* Nothing in this section shall prevent Public Safety Answering Points and carriers from establishing, by mutual consent, deadlines different from those imposed for carrier and PSAP compliance in paragraphs (d), (f), and (g)(2) of this section.

(n) *Dispatch service.* A service provider covered by this section who offers dispatch service to customers may meet the requirements of this section with respect to customers who use dispatch service either by complying with the requirements set forth in paragraphs (b) through (e) of this section, or by routing the customer's emergency calls through a dispatcher. If the service provider chooses the latter alternative, it must make every reasonable effort to explicitly notify its current and potential dispatch customers and their users that they are not able to directly reach a PSAP by calling 911 and that, in the event of an emergency, the dispatcher should be contacted.

(o) *Non-service-initialized handsets.* (1) Licensees subject to this section that donate a non-service-initialized handset for purposes of providing access to 911 services are required to:

(i) Program each handset with 911 plus the decimal representation of the seven least significant digits of the Electronic Serial Number, International Mobile Equipment Identifier, or any other identifier unique to that handset;

(ii) Affix to each handset a label which is designed to withstand the length of service expected for a non-service-initialized phone, and which notifies the user that the handset can only be used to dial 911, that the 911 operator will not be able to call the user back, and that the user should convey the exact location of the emergency as soon as possible; and

(iii) Institute a public education program to provide the users of such handsets with information regarding the limitations of non-service-initialized handsets.

(2) Manufacturers of 911-only handsets that are manufactured on or after May 3, 2004, are required to:

(i) Program each handset with 911 plus the decimal representation of the seven least significant digits of the Electronic Serial Number, International Mobile Equipment Identifier, or any other identifier unique to that handset;

(ii) Affix to each handset a label which is designed to withstand the length of service expected for a non-service-initialized phone, and which notifies the user that the handset can only be used to dial 911, that the 911 operator will not be able to call the user back, and that the user should convey the exact location of the emergency as soon as possible; and

(iii) Institute a public education program to provide the users of such handsets with information regarding the limitations of 911-only handsets.

(3) *Definitions.* The following definitions apply for purposes of this paragraph.

(i) *Non-service-initialized handset.* A handset for which there is no valid service contract with a provider of the services enumerated in paragraph (a) of this section.

(ii) *911-only handset.* A non-service-initialized handset that is manufactured with the capability of dialing 911 only and that cannot receive incoming calls.

(p) *Reseller obligation.* (1) Beginning December 31, 2006, resellers have an obligation, independent of the underlying licensee, to provide access to basic and enhanced 911 service to the extent that the underlying licensee of the facilities the reseller uses to provide access to the public switched network complies with sections 9.10(d)–(g).

(2) Resellers have an independent obligation to ensure that all handsets or other devices offered to their customers for voice communications and sold after December 31, 2006 are capable of transmitting enhanced 911 information to the appropriate PSAP, in accordance with the accuracy requirements of section 9.10(i).

(q) *Text-to-911 Requirements*—(1) *Covered Text Provider:* Notwithstanding any other provisions in this section, for purposes of this paragraph (q) of this section, a “covered text provider” includes all CMRS providers as well as all providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages from all or substantially all text-capable U.S. telephone numbers, including through the use of applications downloaded or otherwise installed on mobile phones.

(2) *Automatic Bounce-back Message:* An automatic text message delivered to a consumer by a covered text provider in response to the consumer's attempt to send a text message to 911 when the consumer is located in an area where text-to-911 service is unavailable or the covered text provider does not support text-to-911 service generally or in the area where the consumer is located at the time.

(3) No later than September 30, 2013, all covered text providers shall provide an automatic bounce-back message under the following circumstances:

(i) A consumer attempts to send a text message to a Public Safety Answering Point (PSAP) by means of the three-digit short code “911”; and

(ii) The covered text provider cannot deliver the text because the consumer is located in an area where:

(A) Text-to-911 service is unavailable; or

(B) The covered text provider does not support text-to-911 service at the time.

(4)(i) A covered text provider is not required to provide an automatic bounce-back message when:

(A) Transmission of the text message is not controlled by the provider;

(B) A consumer is attempting to text 911, through a text messaging application that requires CMRS service, from a non-service initialized handset;

(C) When the text-to-911 message cannot be delivered to a PSAP due to failure in the PSAP network that has not been reported to the provider; or

(D) A consumer is attempting to text 911 through a device that is incapable of sending texts via three digit short codes, provided the software for the device cannot be upgraded over the air to allow text-to-911.

(ii) The provider of a preinstalled or downloadable interconnected text application is considered to have “control” over transmission of text messages for purposes of paragraph (q)(4)(i)(A) of this section. However, if a user or a third party modifies or manipulates the application after it is installed or downloaded so that it no longer supports bounce-back messaging, the application provider will be presumed not to have control.

(5) The automatic bounce-back message shall, at a minimum, inform the consumer that text-to-911 service is not available and advise the consumer or texting program user to use another means to contact emergency services.

(6) Covered text providers that support text-to-911 must provide a mechanism to allow PSAPs that accept text-to-911 to request temporary suspension of text-to-911 service for any reason, including, but not limited to, network congestion, call taker overload, PSAP failure, or security breach, and to request resumption of text-to-911 service after such temporary suspension. During any period of suspension of text-to-911 service, the covered text provider must provide an automatic bounce-back message to any consumer attempting to text to 911 in the area subject to the temporary suspension.

(7) Notwithstanding any other provisions in this section, when a consumer is roaming on a covered text provider's host network pursuant to § 20.12, the covered text provider operating the consumer's home network shall have the obligation to originate an automatic bounce-back message to such consumer when the consumer is located in an area where text-to-911 service is unavailable, or the home provider does not support text-to-911 service in that area at the time. The host provider shall not impede the consumer's 911 text message to the home provider and/or any automatic bounce-back message originated by the home provider to the consumer roaming on the host network.

(8) A software application provider that transmits text messages directly into the SMS network of the consumer's underlying CMRS provider satisfies the obligations of paragraph (q)(3) of this section provided it does not prevent or inhibit delivery of the CMRS provider's automatic bounce-back message to the consumer.

(9) *911 text message.* A 911 text message is a message, consisting of text characters, sent to the short code "911" and intended to be delivered to a PSAP by a covered text provider, regardless of the text messaging platform used.

(10) *Delivery of 911 text messages.* (i) No later than December 31, 2014, all covered text providers must have the capability to route a 911 text message to a PSAP. In complying with this requirement, covered text providers must obtain location information sufficient to route text messages to the same PSAP to which a 911 voice call would be routed, unless the responsible local or state entity designates a different PSAP to receive 911 text messages and informs the covered text provider of that change. All covered text providers using device-based location information that requires consumer activation must clearly inform consumers that they must grant permission for the text messaging application to access the wireless device's location information in order to enable text-to-911. If a consumer does not permit this access, the covered text provider's text application must provide an automated bounce-back message as set forth in paragraph (q)(3) of this section.

(ii) Covered text providers must begin routing all 911 text messages to a PSAP by June 30, 2015, or within six months of the PSAP's valid request for text-to-911 service, whichever is later, unless an alternate timeframe is agreed to by both the PSAP and the covered text provider. The covered text provider must notify the Commission of the dates

and terms of the alternate timeframe within 30 days of the parties' agreement.

(iii) *Valid Request* means that:

(A) The requesting PSAP is, and certifies that it is, technically ready to receive 911 text messages in the format requested;

(B) The appropriate local or state 911 service governing authority has specifically authorized the PSAP to accept and, by extension, the covered text provider to provide, text-to-911 service; and

(C) The requesting PSAP has provided notification to the covered text provider that it meets the foregoing requirements. Registration by the PSAP in a database made available by the Commission in accordance with requirements established in connection therewith, or any other written notification reasonably acceptable to the covered text provider, shall constitute sufficient notification for purposes of this paragraph.

(iv) The requirements set forth in paragraphs (q)(10)(i) through (iii) of this section do not apply to in-flight text messaging providers, MSS providers, or IP Relay service providers, or to 911 text messages that originate from Wi-Fi only locations or that are transmitted from devices that cannot access the CMRS network.

(11) *Access to SMS networks for 911 text messages.* To the extent that CMRS providers offer Short Message Service (SMS), they shall allow access by any other covered text provider to the capabilities necessary for transmission of 911 text messages originating on such other covered text providers' application services. Covered text providers using the CMRS network to deliver 911 text messages must clearly inform consumers that, absent an SMS plan with the consumer's underlying CMRS provider, the covered text provider may be unable to deliver 911 text messages. CMRS providers may migrate to other technologies and need not retain SMS networks solely for other covered text providers' 911 use, but must notify the affected covered text providers not less than 90 days before the migration is to occur.

(r) *Contraband Interdiction System (CIS) requirement.* CIS providers regulated as private mobile radio service (see § 9.3) must transmit all wireless 911 calls without respect to their call validation process to a Public Safety Answering Point, or, where no Public Safety Answering Point has been designated, to a designated statewide default answering point or appropriate local emergency authority pursuant to § 9.4 of this chapter, provided that "all wireless 911 calls" is defined as "any

call initiated by a wireless user dialing 911 on a phone using a compliant radio frequency protocol of the serving carrier." This requirement shall not apply if the Public Safety Answering Point or emergency authority informs the CIS provider that it does not wish to receive 911 calls from the CIS provider.

Subpart D—Interconnected Voice Over Internet Protocol Services and 911 VoIP Services

§ 9.11 E911 Service.

(a) *Before February 16, 2020.* (1) *Scope of Section.* The following requirements are only applicable to providers of interconnected VoIP services. Further, the following requirements apply only to 911 calls placed by users whose Registered Location is in a geographic area served by a Wireline E911 Network (which, as defined in § 9.3, includes a selective router).

(2) *E911 Service.* As of November 28, 2005:

(i) Interconnected VoIP service providers must, as a condition of providing service to a consumer, provide that consumer with E911 service as described in this section;

(ii) Interconnected VoIP service providers must transmit all 911 calls, as well as ANI and the caller's Registered Location for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location and that has been designated for telecommunications carriers pursuant to § 9.4 of this chapter, provided that "all 911 calls" is defined as "any voice communication initiated by an interconnected VoIP user dialing 911;"

(iii) All 911 calls must be routed through the use of ANI and, if necessary, pseudo-ANI, via the dedicated Wireline E911 Network; and

(iv) The Registered Location must be available to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority from or through the appropriate automatic location information (ALI) database.

(3) *Service Level Obligation.*

Notwithstanding the provisions in paragraph (a)(2) of this section, if a PSAP, designated statewide default answering point, or appropriate local emergency authority is not capable of receiving and processing either ANI or location information, an interconnected VoIP service provider need not provide such ANI or location information; however, nothing in this paragraph

affects the obligation under paragraph (a)(2)(iii) of this section of an interconnected VoIP service provider to transmit via the Wireline E911 Network all 911 calls to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location and that has been designated for telecommunications carriers pursuant to § 9.4 of this chapter.

(4) *Registered Location Requirement.* As of November 28, 2005, interconnected VoIP service providers must:

(i) Obtain from each customer, prior to the initiation of service, the physical location at which the service will first be used; and

(ii) Provide their end users one or more methods of updating their Registered Location, including at least one option that requires use only of the CPE necessary to access the interconnected VoIP service. Any method used must allow an end user to update the Registered Location at will and in a timely manner.

(5) *Customer Notification.* Each interconnected VoIP service provider shall:

(i) Specifically advise every subscriber, both new and existing, prominently and in plain language, of the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service. Such circumstances include, but are not limited to, relocation of the end user's IP-compatible CPE, use by the end user of a non-native telephone number, broadband connection failure, loss of electrical power, and delays that may occur in making a Registered Location available in or through the ALI database;

(ii) Obtain and keep a record of affirmative acknowledgement by every subscriber, both new and existing, of having received and understood the advisory described in paragraph (a)(5)(i) of this section; and

(iii) Distribute to its existing subscribers warning stickers or other appropriate labels warning subscribers if E911 service may be limited or not available and instructing the subscriber to place them on or near the equipment used in conjunction with the interconnected VoIP service. Each interconnected VoIP provider shall distribute such warning stickers or other appropriate labels to each new subscriber prior to the initiation of that subscriber's service.

(b) *On or after February 16, 2020.* (1) *Scope of Section.* The following requirements are only applicable to

providers of interconnected VoIP services and 911 VoIP services. Further, the following requirements apply only to 911 calls placed by users whose dispatchable location is in a geographic area served by a Wireline E911 Network (which, as defined in § 9.3, includes a selective router).

(2) *E911 Service.* (i) Interconnected VoIP service providers and 911 VoIP service providers must, as a condition of providing service to a consumer, provide that consumer with E911 service as described in this section;

(ii) Interconnected VoIP service providers and 911 VoIP service providers must transmit all 911 calls, as well as ANI and the caller's dispatchable location for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's dispatchable location and that has been designated for telecommunications carriers pursuant to § 9.4 of this chapter, provided that "all 911 calls" is defined as "any voice communication initiated by an interconnected VoIP user dialing 911;"

(iii) All 911 calls must be routed through the use of ANI and, if necessary, pseudo-ANI, via the dedicated Wireline E911 Network; and

(iv) The dispatchable location must be available to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority from or through the appropriate automatic location information (ALI) database.

(3) *Service Level Obligation.* Notwithstanding the provisions in paragraph (b)(2) of this section, if a PSAP, designated statewide default answering point, or appropriate local emergency authority is not capable of receiving and processing either ANI or location information, an interconnected VoIP service provider need not provide such ANI or location information; however, nothing in this paragraph affects the obligation under paragraph (b)(2)(iii) of this section of an interconnected VoIP service provider to transmit via the Wireline E911 Network all 911 calls to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's dispatchable location and that has been designated for telecommunications carriers pursuant to § 9.4 of this chapter.

(4) *Dispatchable Location Requirement.* Interconnected VoIP service providers and 911 VoIP service providers must comply with either subparagraph (4)(i) or (4)(ii) below.

(i)(A) Obtain from each customer, prior to the initiation of service, the

Registered Location at which the service will first be used;

(B) Provide their end users one or more methods of updating their Registered Location, including at least one option that requires use only of the CPE necessary to access the interconnected VoIP service or 911 VoIP service. Any method used must allow an end user to update the Registered Location at will and in a timely manner; and

(C) For interconnected VoIP service or 911 VoIP service that is capable of being used from more than one location, identify whether the service is being used from a different location than the Registered Location, and if so, either:

(1) Prompt the customer to provide a new Registered Location; or

(2) Update the Registered Location without requiring additional action by the customer.

(ii) Obtain the customer's dispatchable location at the time the customer initiates a 911 call without requiring additional action by the customer.

(5) *Customer Notification.* Each interconnected VoIP service provider and 911 service provider shall:

(i) Specifically advise every subscriber, both new and existing, prominently and in plain language, of the circumstances under which E911 service may not be available through the interconnected VoIP service (or 911 VoIP service) or may be in some way limited by comparison to traditional E911 service. Such circumstances include, but are not limited to, relocation of the end user's IP-compatible CPE, use by the end user of a non-native telephone number, broadband connection failure, loss of electrical power, and delays that may occur in making a dispatchable location available in or through the ALI database;

(ii) Obtain and keep a record of affirmative acknowledgement by every subscriber, both new and existing, of having received and understood the advisory described in paragraph (b)(5)(i) of this section; and

(iii) Distribute to its existing subscribers warning stickers or other appropriate labels warning subscribers if E911 service may be limited or not available and instructing the subscriber to place them on or near the equipment used in conjunction with the interconnected VoIP service or 911 VoIP service. Each interconnected VoIP provider or 911 VoIP service provider shall distribute such warning stickers or other appropriate labels to each new subscriber prior to the initiation of that subscriber's service.

§ 9.12 Access to 911 and E911 service capabilities.

(a) *Access.* Subject to the other requirements of this part, an owner or controller of a capability that can be used for 911 or E911 service shall make that capability available to a requesting interconnected VoIP provider or 911 VoIP service provider as set forth in paragraphs (a)(1) and (a)(2) of this section.

(1) If the owner or controller makes the requested capability available to a CMRS provider, the owner or controller must make that capability available to the interconnected VoIP provider or 911 VoIP service provider. An owner or controller makes a capability available to a CMRS provider if the owner or controller offers that capability to any CMRS provider.

(2) If the owner or controller does not make the requested capability available to a CMRS provider within the meaning of paragraph (a)(1) of this section, the owner or controller must make that capability available to a requesting interconnected VoIP provider or 911 VoIP service provider only if that capability is necessary to enable the interconnected VoIP provider or 911 VoIP service provider to provide 911 or E911 service in compliance with the Commission's rules.

(b) *Rates, terms, and conditions.* The rates, terms, and conditions on which a capability is provided to an interconnected VoIP provider or 911 VoIP service provider under paragraph (a) of this section shall be reasonable. For purposes of this paragraph, it is evidence that rates, terms, and conditions are reasonable if they are:

(1) The same as the rates, terms, and conditions that are made available to CMRS providers, or

(2) In the event such capability is not made available to CMRS providers, the same rates, terms, and conditions that are made available to any telecommunications carrier or other entity for the provision of 911 or E911 service.

(c) *Permissible use.* An interconnected VoIP provider or 911 VoIP service provider that obtains access to a capability pursuant to this section may use that capability only for the purpose of providing 911 or E911 service in accordance with the Commission's rules.

Subpart E—Telecommunications Relay Services for Persons With Disabilities**§ 9.13 Jurisdiction.**

Any violation of this subpart E by any common carrier engaged in intrastate communication shall be subject to the

same remedies, penalties, and procedures as are applicable to a violation of the Act by a common carrier engaged in interstate communication.

For purposes of this subpart, all regulations and requirements applicable to common carriers shall also be applicable to providers of interconnected VoIP service as defined in § 9.2.

§ 9.14 Emergency calling requirements.

(a) *Emergency call handling requirements for TTY-based TRS providers.* (1) *Before February 16, 2020.*

TTY-based TRS providers must use a system for incoming emergency calls that, at a minimum, automatically and immediately transfers the caller to an appropriate Public Safety Answering Point (PSAP). An appropriate PSAP is either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner.

(2) *On or after February 16, 2020.* TTY-based TRS providers must use a system for incoming emergency calls that, at a minimum, automatically and immediately transfers the caller to an appropriate Public Safety Answering Point (PSAP) and transmits the caller's dispatchable location to the PSAP. An appropriate PSAP is either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner.

(b) *Additional emergency calling requirements applicable to internet-based TRS providers.* (1) As of December 31, 2008, the requirements of paragraphs (b)(2)(i) and (b)(2)(v) of this section shall not apply to providers of VRS and IP Relay to which §§ 9.14(c) and 9.14(d) apply.

(2) Each provider of internet-based TRS shall:

(i) Accept and handle emergency calls and access, either directly or via a third party, a commercially available database that will allow the provider to determine an appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority that corresponds to the caller's location, and to relay the call to that entity;

(ii) Implement a system that ensures that the provider answers an incoming emergency call before other non-emergency calls (*i.e.*, prioritize emergency calls and move them to the top of the queue);

(iii) *Before February 16, 2020.* Request, at the beginning of each emergency call, the caller's name and

location information, unless the internet-based TRS provider already has, or has access to, a Registered Location for the caller;

(iv) *On or after February 16, 2020.* Request, at the beginning of each emergency call, the caller's name and dispatchable location, unless the internet-based TRS provider already has, or has access to, a dispatchable location for the caller;

(v) Deliver to the PSAP, designated statewide default answering point, or appropriate local emergency authority, at the outset of the outbound leg of an emergency call, at a minimum, the name of the relay user and location of the emergency, as well as the name of the relay provider, the CA's callback number, and the CA's identification number, thereby enabling the PSAP, designated statewide default answering point, or appropriate local emergency authority to re-establish contact with the CA in the event the call is disconnected;

(vi) In the event one or both legs of an emergency call are disconnected (*i.e.*, either the call between the TRS user and the CA, or the outbound voice telephone call between the CA and the PSAP, designated statewide default answering point, or appropriate local emergency authority), immediately re-establish contact with the TRS user and/or the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority and resume handling the call; and

(vii) Ensure that information obtained as a result of this section is limited to that needed to facilitate 911 services, is made available only to emergency call handlers and emergency response or law enforcement personnel, and is used for the sole purpose of ascertaining a user's location in an emergency situation or for other emergency or law enforcement purposes.

(c) *E911 Service for VRS and IP Relay before February 16, 2020.* (1) *Scope.* The following requirements are only applicable to providers of VRS or IP Relay. Further, the following requirements apply only to 911 calls placed by registered users whose Registered Location is in a geographic area served by a Wireline E911 Network and is available to the provider handling the call.

(2) *E911 Service.* (i) VRS or IP Relay providers must, as a condition of providing service to a user, provide that user with E911 service as described in this section;

(ii) VRS or IP Relay providers must transmit all 911 calls, as well as ANI, the caller's Registered Location, the name of the VRS or IP Relay provider, and the CA's identification number for

each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location and that has been designated for telecommunications carriers pursuant to § 9.4 of this chapter, provided that "all 911 calls" is defined as "any communication initiated by an VRS or IP Relay user dialing 911";

(iii) All 911 calls must be routed through the use of ANI and, if necessary, pseudo-ANI, via the dedicated Wireline E911 Network; and

(iv) The Registered Location, the name of the VRS or IP Relay provider, and the CA's identification number must be available to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority from or through the appropriate automatic location information (ALI) database.

(3) *Service level obligation.*

Notwithstanding the provisions in paragraph (c)(2) of this section, if a PSAP, designated statewide default answering point, or appropriate local emergency authority is not capable of receiving and processing either ANI or location information, a VRS or IP Relay provider need not provide such ANI or location information; however, nothing in this paragraph affects the obligation under paragraph (c)(2)(iii) of this section of a VRS or IP Relay provider to transmit via the Wireline E911 Network all 911 calls to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location and that has been designated for telecommunications carriers pursuant to § 64.3001 of this chapter.

(4) *Registered location requirement.* As of December 31, 2008, VRS and IP Relay providers must:

(i) Obtain from each Registered internet-based TRS User, prior to the initiation of service, the physical location at which the service will first be used; and

(ii) If the VRS or IP Relay is capable of being used from more than one location, provide their registered internet-based TRS users one or more methods of updating their Registered Location, including at least one option that requires use only of the iTRS access technology necessary to access the VRS or IP Relay. Any method used must allow a registered internet-based TRS user to update the Registered Location at will and in a timely manner.

(d) *E911 Service for VRS and IP Relay on or after February 16, 2020.* (1) *Scope.* The following requirements are only applicable to providers of VRS or IP Relay. Further, the following

requirements apply only to 911 calls placed by registered users whose dispatchable location is in a geographic area served by a Wireline E911 Network and is available to the provider handling the call.

(2) *E911 Service.* (i) VRS or IP Relay providers must, as a condition of providing service to a user, provide that user with E911 service as described in this section;

(ii) VRS or IP Relay providers must transmit all 911 calls, as well as ANI, the caller's dispatchable location, the name of the VRS or IP Relay provider, and the CA's identification number for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's dispatchable location and that has been designated for telecommunications carriers pursuant to § 9.4 of this chapter, provided that "all 911 calls" is defined as "any communication initiated by an VRS or IP Relay user dialing 911";

(iii) All 911 calls must be routed through the use of ANI and, if necessary, pseudo-ANI, via the dedicated Wireline E911 Network; and

(iv) The dispatchable location, the name of the VRS or IP Relay provider, and the CA's identification number must be available to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority from or through the appropriate automatic location information (ALI) database.

(3) *Service level obligation.*

Notwithstanding the provisions in paragraph (d)(2) of this section, if a PSAP, designated statewide default answering point, or appropriate local emergency authority is not capable of receiving and processing either ANI or location information, a VRS or IP Relay provider need not provide such ANI or location information; however, nothing in this paragraph affects the obligation under paragraph (d)(2)(iii) of this section of a VRS or IP Relay provider to transmit via the Wireline E911 Network all 911 calls to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's dispatchable location and that has been designated for telecommunications carriers pursuant to § 9.4 of this chapter.

(4) *Dispatchable location requirement.* VRS and IP Relay providers must comply with either paragraphs (4)(i) or (4)(ii) of this section.

(i)(A) Obtain from each Registered internet-based TRS User, prior to the initiation of service, the Registered Location at which the service will first be used; and

(B) If the VRS or IP Relay is capable of being used from more than one location, provide their registered internet-based TRS users one or more methods of updating their Registered Location, including at least one option that requires use only of the internet-based TRS access technology necessary to access the VRS or IP Relay. Any method used must allow a registered internet-based TRS user to update the Registered Location at will and in a timely manner; and

(C) If the VRS or IP Relay is capable of being used from more than one location, identify whether the service is being used from a different location than the Registered Location, and if so, either:

(1) Prompt the Registered internet-based TRS User to provide a new Registered Location; or

(2) Update the Registered Location without requiring additional action by the Registered internet-based TRS User.

(ii) Obtain the Registered internet-based TRS User's dispatchable location at the time they initiate a 911 call without requiring additional action by the Registered internet-based TRS User.

Subpart F—Multi-Line Telephone Systems

§ 9.15 Applicability.

The rules in this subpart F apply to:

(a) A person engaged in the business of manufacturing, importing, selling, or leasing multi-line telephone systems;

(b) A person engaged in the business of installing, managing, or operating multi-line telephone systems;

(c) Any multi-line telephone system that is manufactured, imported, offered for first sale or lease, first sold or leased, or installed after February 16, 2020.

§ 9.16 General Obligations—direct 911 dialing, notification and dispatchable location.

(a) *Obligation of manufacturers, importers, sellers and lessors.* (1) A person engaged in the business of manufacturing, importing, selling, or leasing multi-line telephone systems may not manufacture or import for use in the United States, or sell or lease or offer to sell or lease in the United States, a multi-line telephone system, unless such system is pre-configured such that, when properly installed in accordance with paragraph (b) of this section, a user may directly initiate a call to 911 from any station equipped with dialing facilities, without dialing any additional digit, code, prefix, or post-fix, including any trunk-access code such as the digit 9, regardless of whether the user is required to dial such a digit, code, prefix, or post-fix for other calls.

(2) A person engaged in the business of manufacturing, importing, selling, or leasing multi-line telephone systems may not manufacture or import for use in the United States, or sell or lease or offer to sell or lease in the United States, a multi-line telephone system, unless such system is pre-configured such that, when properly installed in accordance with subsection (b), the dispatchable location of the caller is conveyed to the PSAP with 911 calls.

(b) *Obligation of installers, operators and managers.* (1) A person engaged in the business of installing, managing, or operating multi-line telephone systems may not install, manage, or operate for use in the United States such a system, unless such system is configured such that a user may directly initiate a call to 911 from any station equipped with dialing facilities, without dialing any additional digit, code, prefix, or post-fix, including any trunk-access code such as the digit 9, regardless of whether the user is required to dial such a digit, code, prefix, or post-fix for other calls.

(2) A person engaged in the business of installing, managing, or operating multi-line telephone systems shall, in installing, managing, or operating such a system for use in the United States, configure the system to provide a notification to a central location at the facility where the system is installed or to another person or organization regardless of location, if the system is able to be configured to provide the notification without an improvement to the hardware or software of the system. The MLTS notification must be contemporaneous with the 911 call and must not delay the call to 9–1–1.

(3) A person engaged in the business of installing, managing, or operating multi-line telephone systems may not install, manage, or operate such a system in the United States unless it is configured such that the dispatchable location of the caller is conveyed to the PSAP with 911 calls.

§ 9.17 Enforcement, Compliance date, State law.

(a) *Enforcement.* Sections 9.16(a)(1) and 9.16(b)(1) and (2) of this subpart shall be enforced under title V of the Communications Act of 1934, as amended, 5 U.S.C. 501 *et seq.*, except that section 501 applies only to the extent that such section provides for the punishment of a fine.

(b) *Compliance date.* The compliance date for this subpart F is February 16, 2020. Accordingly, the requirements in this subpart apply to MLTS that are manufactured, imported, offered for first sale or lease, first sold or leased, or installed after February 16, 2020.

(c) *Effect on State law.* Nothing in this subpart is intended to alter the authority of State commissions or other State or local agencies with jurisdiction over emergency communications, if the exercise of such authority is not inconsistent with this subpart.

Subpart G—Mobile-Satellite Service

§ 9.18 Emergency Call Center Service.

(a) Providers of Mobile-Satellite Service to end-user customers (part 25, subparts A–D) must provide Emergency Call Center service to the extent that they offer real-time, two way switched voice service that is interconnected with the public switched network and use an in-network switching facility which enables the provider to reuse frequencies and/or accomplish seamless hand-offs of subscriber calls. Emergency Call Center personnel must determine the emergency caller's phone number and location and then transfer or otherwise redirect the call to an appropriate public safety answering point. Providers of Mobile-Satellite Services that use earth terminals that are not capable of use while in motion are exempt from providing Emergency Call Center service for such terminals.

(b) Each Mobile-Satellite Service carrier that is subject to the provisions of paragraph (a) of this section must maintain records of all 911 calls received at its emergency call center. By October 15, of each year, Mobile-Satellite Service carriers providing service in the 1.6/2.4 GHz and 2 GHz bands must submit a report to the Commission regarding their call center data, current as of September 30 of that year. By June 30, of each year, Mobile-Satellite Service carriers providing service in bands other than 1.6/2.4 GHz and 2 GHz must submit a report to the Commission regarding their call center data, current as of May 31 of that year. These reports must include, at a minimum, the following:

(1) The name and address of the carrier, the address of the carrier's emergency call center, and emergency call center contact information;

(2) The aggregate number of calls received by the call center each month during the relevant reporting period;

(3) An indication of how many calls received by the call center each month during the relevant reporting period required forwarding to a public safety answering point and how many did not require forwarding to a public safety answering point.

Subpart H—Resiliency, redundancy and reliability of 911 communications

§ 9.19 Reliability of covered 911 service providers.

(a) *Definitions.* Terms in this section shall have the following meanings:

(1) *Aggregation point.* A point at which network monitoring data for a 911 service area is collected and routed to a network operations center (NOC) or other location for monitoring and analyzing network status and performance.

(2) *Certification.* An attestation by a certifying official, under penalty of perjury, that a covered 911 service provider:

(i) Has satisfied the obligations of paragraph (c) of this section.

(ii) Has adequate internal controls to bring material information regarding network architecture, operations, and maintenance to the certifying official's attention.

(iii) Has made the certifying official aware of all material information reasonably necessary to complete the certification.

(iv) The term "certification" shall include both an annual reliability certification under paragraph (c) of this section and an initial reliability certification under paragraph (d)(1) of this section, to the extent provided under paragraph (d)(1) of this section.

(3) *Certifying official.* A corporate officer of a covered 911 service provider with supervisory and budgetary authority over network operations in all relevant service areas.

(4) *Covered 911 service provider.*

(i) Any entity that:

(A) Provides 911, E911, or NG911 capabilities such as call routing, automatic location information (ALI), automatic number identification (ANI), or the functional equivalent of those capabilities, directly to a public safety answering point (PSAP), statewide default answering point, or appropriate local emergency authority as defined in § 9.3 of this chapter; and/or

(B) Operates one or more central offices that directly serve a PSAP. For purposes of this section, a central office directly serves a PSAP if it hosts a selective router or ALI/ANI database, provides equivalent NG911 capabilities, or is the last service-provider facility through which a 911 trunk or administrative line passes before connecting to a PSAP.

(ii) The term "covered 911 service provider" shall not include any entity that:

(A) Constitutes a PSAP or governmental authority to the extent that it provides 911 capabilities; or

(B) Offers the capability to originate 911 calls where another service provider delivers those calls and associated number or location information to the appropriate PSAP.

(5) *Critical 911 circuits.* 911 facilities that originate at a selective router or its functional equivalent and terminate in the central office that serves the PSAP(s) to which the selective router or its functional equivalent delivers 911 calls, including all equipment in the serving central office necessary for the delivery of 911 calls to the PSAP(s). Critical 911 circuits also include ALI and ANI facilities that originate at the ALI or ANI database and terminate in the central office that serves the PSAP(s) to which the ALI or ANI databases deliver 911 caller information, including all equipment in the serving central office necessary for the delivery of such information to the PSAP(s).

(6) *Diversity audit.* A periodic analysis of the geographic routing of network components to determine whether they are physically diverse. Diversity audits may be performed through manual or automated means, or through a review of paper or electronic records, as long as they reflect whether critical 911 circuits are physically diverse.

(7) *Monitoring links.* Facilities that collect and transmit network monitoring data to a NOC or other location for monitoring and analyzing network status and performance.

(8) *Physically diverse.* Circuits or equivalent data paths are Physically Diverse if they provide more than one physical route between end points with no common points where a single failure at that point would cause both circuits to fail. Circuits that share a common segment such as a fiber-optic cable or circuit board are not Physically diverse even if they are logically diverse for purposes of transmitting data.

(9) *911 service area.* The metropolitan area or geographic region in which a covered 911 service provider operates a selective router or the functional equivalent to route 911 calls to the geographically appropriate PSAP.

(10) *Selective router.* A 911 network component that selects the appropriate destination PSAP for each 911 call based on the location of the caller.

(11) *Tagging.* An inventory management process whereby critical 911 circuits are labeled in circuit inventory databases to make it less likely that circuit rearrangements will compromise diversity. A covered 911 service provider may use any system it wishes to tag circuits so long as it tracks whether critical 911 circuits are physically diverse and identifies

changes that would compromise such diversity.

(b) *Provision of reliable 911 service.* All covered 911 service providers shall take reasonable measures to provide reliable 911 service with respect to circuit diversity, central-office backup power, and diverse network monitoring. Performance of the elements of the certification set forth in paragraphs (c)(1)(i), (c)(2)(i), and (c)(3)(i) of this section shall be deemed to satisfy the requirements of this paragraph. If a covered 911 service provider cannot certify that it has performed a given element, the Commission may determine that such provider nevertheless satisfies the requirements of this paragraph based upon a showing in accordance with paragraph (c) of this section that it is taking alternative measures with respect to that element that are reasonably sufficient to mitigate the risk of failure, or that one or more certification elements are not applicable to its network.

(c) *Annual reliability certification.* One year after the initial reliability certification described in paragraph (d)(1) of this section and every year thereafter, a certifying official of every covered 911 service provider shall submit a certification to the Commission as follows.

(1) *Circuit auditing.* (i) A covered 911 service provider shall certify whether it has, within the past year:

(A) Conducted diversity audits of critical 911 circuits or equivalent data paths to any PSAP served;

(B) Tagged such critical 911 circuits to reduce the probability of inadvertent loss of diversity in the period between audits; and

(C) Eliminated all single points of failure in critical 911 circuits or equivalent data paths serving each PSAP.

(ii) If a Covered 911 Service Provider does not conform with all of the elements in paragraph (c)(1)(i) of this section with respect to the 911 service provided to one or more PSAPs, it must certify with respect to each such PSAP:

(A) Whether it has taken alternative measures to mitigate the risk of critical 911 circuits that are not physically diverse or is taking steps to remediate any issues that it has identified with respect to 911 service to the PSAP, in which case it shall provide a brief explanation of such alternative measures or such remediation steps, the date by which it anticipates such remediation will be completed, and why it believes those measures are reasonably sufficient to mitigate such risk; or

(B) Whether it believes that one or more of the requirements of this paragraph are not applicable to its network, in which case it shall provide a brief explanation of why it believes any such requirement does not apply.

(2) *Backup power.* (i) With respect to any central office it operates that directly serves a PSAP, a covered 911 service provider shall certify whether it:

(A) Provisions backup power through fixed generators, portable generators, batteries, fuel cells, or a combination of these or other such sources to maintain full-service functionality, including network monitoring capabilities, for at least 24 hours at full office load or, if the central office hosts a selective router, at least 72 hours at full office load; provided, however, that any such portable generators shall be readily available within the time it takes the batteries to drain, notwithstanding potential demand for such generators elsewhere in the service provider's network.

(B) Tests and maintains all backup power equipment in such central offices in accordance with the manufacturer's specifications;

(C) Designs backup generators in such central offices for fully automatic operation and for ease of manual operation, when required;

(D) Designs, installs, and maintains each generator in any central office that is served by more than one backup generator as a stand-alone unit that does not depend on the operation of another generator for proper functioning.

(ii) If a covered 911 service provider does not conform with all of the elements in paragraph (c)(2)(i) of this section, it must certify with respect to each such central office:

(A) Whether it has taken alternative measures to mitigate the risk of a loss of service in that office due to a loss of power or is taking steps to remediate any issues that it has identified with respect to backup power in that office, in which case it shall provide a brief explanation of such alternative measures or such remediation steps, the date by which it anticipates such remediation will be completed, and why it believes those measures are reasonably sufficient to mitigate such risk; or

(B) Whether it believes that one or more of the requirements of this paragraph are not applicable to its network, in which case it shall provide a brief explanation of why it believes any such requirement does not apply.

(3) *Network monitoring.* (i) A covered 911 service provider shall certify whether it has, within the past year:

(A) Conducted diversity audits of the aggregation points that it uses to gather network monitoring data in each 911 service area;

(B) Conducted diversity audits of monitoring links between aggregation points and NOCs for each 911 service area in which it operates; and

(C) Implemented physically diverse aggregation points for network monitoring data in each 911 service area and physically diverse monitoring links from such aggregation points to at least one NOC.

(ii) If a Covered 911 Service Provider does not conform with all of the elements in paragraph (c)(3)(i) of this section, it must certify with respect to each such 911 Service Area:

(A) Whether it has taken alternative measures to mitigate the risk of network monitoring facilities that are not physically diverse or is taking steps to remediate any issues that it has identified with respect to diverse network monitoring in that 911 service area, in which case it shall provide a brief explanation of such alternative measures or such remediation steps, the date by which it anticipates such remediation will be completed, and why it believes those measures are reasonably sufficient to mitigate such risk; or

(B) Whether it believes that one or more of the requirements of this paragraph are not applicable to its network, in which case it shall provide a brief explanation of why it believes any such requirement does not apply.

(d) *Other matters.* —(1) *Initial reliability certification.* One year after October 15, 2014, a certifying official of every covered 911 service provider shall certify to the Commission that it has made substantial progress toward meeting the standards of the annual reliability certification described in paragraph (c) of this section. Substantial progress in each element of the certification shall be defined as compliance with standards of the full certification in at least 50 percent of the covered 911 service provider's critical 911 circuits, central offices that directly serve PSAPs, and independently monitored 911 service areas.

(2) *Confidential treatment.* (i) The fact of filing or not filing an annual reliability certification or initial reliability certification and the responses on the face of such certification forms shall not be treated as confidential.

(ii) Information submitted with or in addition to such certifications shall be presumed confidential to the extent that it consists of descriptions and documentation of alternative measures

to mitigate the risks of nonconformance with certification elements, information detailing specific corrective actions taken with respect to certification elements, or supplemental information requested by the Commission or Bureau with respect to a certification.

(2) *Record retention.* A covered 911 service provider shall retain records supporting the responses in a certification for two years from the date of such certification, and shall make such records available to the Commission upon request. To the extent that a covered 911 service provider maintains records in electronic format, records supporting a certification hereunder shall be maintained and supplied in an electronic format.

(i) With respect to diversity audits of critical 911 circuits, such records shall include, at a minimum, audit records separately addressing each such circuit, any internal report(s) generated as a result of such audits, records of actions taken pursuant to the audit results, and records regarding any alternative measures taken to mitigate the risk of critical 911 circuits that are not physically diverse.

(ii) With respect to backup power at central offices, such records shall include, at a minimum, records regarding the nature and extent of backup power at each central office that directly serves a PSAP, testing and maintenance records for backup power equipment in each such central office, and records regarding any alternative measures taken to mitigate the risk of insufficient backup power.

(iii) With respect to network monitoring, such records shall include, at a minimum, records of diversity audits of monitoring links, any internal report(s) generated as a result of such audits, records of actions taken pursuant to the audit results, and records regarding any alternative measures taken to mitigate the risk of aggregation points and/or monitoring links that are not physically diverse.

§ 9.20 Backup power obligations

(a) *Covered service.* For purposes of this section, a Covered Service is any facilities-based, fixed voice service offered as residential service, including fixed applications of wireless service offered as a residential service, that is not line powered.

(b) *Obligations of providers of a Covered Service to offer backup power.* Providers of a Covered Service shall, at the point of sale for a Covered Service, offer subscribers the option to purchase backup power for the Covered Service as follows:

(1) *Eight hours.* Providers shall offer for sale at least one option with a minimum of eight hours of standby backup power.

(2) *Twenty-four hours.* By February 13, 2019, providers of a Covered Service shall offer for sale also at least one option that provides a minimum of twenty-four hours of standby backup power.

(3) At the provider's discretion, the options in paragraphs (b)(1) and (2) of this section may be either:

(i) A complete solution including battery or other power source; or

(ii) Installation by the provider of a component that accepts or enables the use of a battery or other backup power source that the subscriber obtains separately. If the provider does not offer a complete solution, the provider shall install a compatible battery or other power source if the subscriber makes it available at the time of installation and so requests. After service has been initiated, the provider may, but is not required to, offer to sell any such options directly to subscribers.

(c) *Backup power required.* The backup power offered for purchase under paragraph (b) of this section must include power for all provider-furnished equipment and devices installed and operated on the customer premises that must remain powered in order for the service to provide 911 access.

(d) *Subscriber disclosure.* (1) The provider of a Covered Service shall disclose to each new subscriber at the point of sale and to all subscribers to a Covered Service annually thereafter:

(i) Capability of the service to accept backup power, and if so, the availability of at least one backup power solution available directly from the provider, or after the initiation of service, available from either the provider or a third party. After the obligation to offer for purchase a solution for twenty-four hours of standby backup power becomes effective, providers must disclose this information also for the twenty-four-hour solution;

(ii) Service limitations with and without backup power;

(iii) Purchase and replacement information, including cost;

(iv) Expected backup power duration;

(v) Proper usage and storage conditions, including the impact on duration of failing to adhere to proper usage and storage;

(vi) Subscriber backup power self-testing and -monitoring instructions; and

(vii) Backup power warranty details, if any.

(2) *Disclosure reasonably calculated to reach each subscriber.* A provider of

a Covered Service shall make disclosures required by this rule in a manner reasonably calculated to reach individual subscribers, with due consideration for subscriber preferences. Information posted on a provider's public website and/or within a subscriber portal accessed by logging through the provider's website are not sufficient to comply with these requirements.

(3) The disclosures required under this paragraph are in addition to, but may be combined with, any disclosures required under § 9.11(e) of this chapter.

(e) *Obligation with respect to existing subscribers.* Providers are not obligated to offer for sale backup power options to or retrofit equipment for those who are subscribers as of the effective date listed in paragraph (f) of this section for the obligations in paragraph (b)(1) of this section, but shall provide such subscribers with the annual disclosures required by paragraph (d) of this section.

(f) *Effective dates of obligations.* (1) Except as noted in paragraphs (b)(2) and (f)(2) of this section, the obligations under paragraph (b) of this section are effective February 16, 2016, and the obligations under paragraph (d) of this section are effective 120 days after the Commission announces approval from the Office of Management and Budget.

(2) For a provider of a Covered Service that (together with any entities under common control with such provider) has fewer than 100,000 domestic retail subscriber lines, the obligations in paragraph (b)(1) of this section are effective August 11, 2016, the obligations in paragraph (b)(2) of this section are effective as prescribed therein, and the obligations under paragraph (d) of this section are effective 300 days after the Commission announces approval from the Office of Management and Budget.

(g) *Sunset date.* The requirements of this section shall no longer be in effect as of September 1, 2025.

PART 12—[REMOVED AND RESERVED]

■ 2. Under the authority of 47 U.S.C. 151, 154(i), 154 (j), 154 (o), 155(c), 201(b), 214(d), 218, 219, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 316, 332, 403, 405, 615a-1, 615c, 621(b)(3), and 621(d)), 47 CFR chapter I is amended by removing and reserving part 12.

PART 20—COMMERCIAL MOBILE SERVICES

■ 3. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a) 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615a, 615b, 615c, unless otherwise noted.

■ 4. Section 20.2 is amended by adding paragraph (c) to read as follows:

§ 20.2 Other applicable rule parts.

* * * * *

(c) *Part 9.* This part contains 911 and E911 requirements applicable to telecommunications carriers and commercial mobile radio service (CMRS) providers.

§ 20.3 [Amended]

■ 5. Section 20.3 is amended by removing the definitions of “Appropriate local emergency authority,” “Automatic Number Identification (ANI),” “Designated PSAP,” “Handset-based location technology,” “Location-capable handsets,” “Network-based Location Technology,” “Pseudo Automatic Number Identification (Pseudo-ANI),” “Public safety answering point (PSAP),” and “Statewide default answering point.”

§ 20.18 [Removed and Reserved]

■ 6. Remove and reserve § 20.18.

PART 25—SATELLITE COMMUNICATIONS

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

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

§ 25.103 [Amended]

■ 8. Section 25.103 is amended by removing the definition of “Emergency Call Center.”

■ 9. Section 25.109 is amended by adding paragraph (e) to read as follows:

§ 25.109 Cross-reference

* * * * *

(e) Mobile-Satellite Service providers must comply with the emergency call center service requirements under 47 CFR part 9.

§ 25.284 [Removed and Reserved]

■ 10. Remove and reserve § 25.284.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 228, 251(a), 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, 1401–1473, unless otherwise noted.

■ 12. Section 64.601 is amended by revising paragraph (a) to read as follows:

§ 64.601 Definitions and provisions of general applicability

(a) For purposes of this subpart, the terms Public Safety Answering Point (PSAP), statewide default answering point, and appropriate local emergency authority are defined in 47 CFR 9.3; the term affiliate is defined in 47 CFR 52.12(a)(1)(i), and the terms majority and debt are defined in 47 CFR 52.12(a)(1)(ii).

* * * * *

■ 13. Section 64.603 is amended by revising paragraph (a) to read as follows:

§ 64.603 Provision of services

(a) Each common carrier providing telephone voice transmission services shall provide, in compliance with the regulations prescribed herein and the emergency calling requirements in part 9, subpart E of this chapter, throughout the area in which it offers services, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. Interstate Spanish language relay service shall be provided. Speech-to-speech relay service also shall be provided, except that speech-to-speech relay service need not be provided by IP Relay providers, VRS providers, captioned telephone relay service providers, and IP CTS providers. In addition, each common carrier providing telephone voice transmission services shall provide access via the 711 dialing code to all relay services as a toll free call. CMRS providers subject to this 711 access requirement are not required to provide 711 dialing code access to TTY users if they provide 711 dialing code access via real-time text communications, in accordance with 47 CFR part 67.

* * * * *

■ 14. Section 64.604 is amended by revising paragraphs (a)(4) and (d) to read as follows:

§ 64.604 Mandatory minimum standards.

(a) * * *

(4) Emergency call handling requirements for TTY-based TRS providers. TTY-based TRS providers are subject to the emergency call handling requirements in § 9.14(a).

* * * * *

(d) Other standards. The applicable requirements of §§ 9.14, 64.611, 64.615, 64.617, 64.621, 64.631, 64.632, 64.5105, 64.5107, 64.5108, 64.5109, and 64.5110 of this part are to be considered mandatory minimum standards.

§ 64.605 [Removed and Reserved]

■ 15. Remove and reserve § 64.605.

Subpart AA [Removed and reserved]

■ 16. Remove and reserve Subpart AA, consisting of §§ 64.3000 through 64.3004.

[FR Doc. 2018-21888 Filed 10-25-18; 8:45 am]

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Part III

The President

Notice of October 25, 2018—Continuation of the National Emergency With Respect to the Democratic Republic of the Congo

Presidential Documents

Title 3—

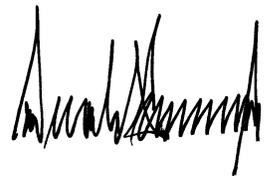
Notice of October 25, 2018

The President**Continuation of the National Emergency With Respect to the Democratic Republic of the Congo**

On October 27, 2006, by Executive Order 13413, the President declared a national emergency with respect to the situation in or in relation to the Democratic Republic of the Congo and pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), ordered related measures blocking the property of certain persons contributing to the conflict in that country. The President took this action to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the situation in or in relation to the Democratic Republic of the Congo, which has been marked by widespread violence and atrocities and continues to threaten regional stability. The President took additional steps to address this national emergency in Executive Order 13671 of July 8, 2014.

The situation in or in relation to the Democratic Republic of the Congo continues to pose an unusual and extraordinary threat to the foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13413 of October 27, 2006, as amended by Executive Order 13671 of July 8, 2014, and the measures adopted to deal with that emergency, must continue in effect beyond October 27, 2018. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the situation in or in relation to the Democratic Republic of the Congo declared in Executive Order 13413, as amended by Executive Order 13671.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
October 25, 2018.

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The text of laws is not published in the **Federal Register** but may be ordered

in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at <http://www.gpo.gov/fdsys>. Some laws may not yet be available.

H.R. 6/P.L. 115-271
Substance Use-Disorder Prevention that Promotes

Opioid Recovery and Treatment for Patients and Communities Act (Oct. 24, 2018; 132 Stat. 3894)

Last List October 25, 2018

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