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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. FAA-2018-0477; Special Conditions No. 25-738-SC]

#### Special Conditions: Textron Aviation Inc. Model 700 Airplane; Operation Without Normal Electrical Power

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

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

**SUMMARY:** These special conditions are issued for the Textron Aviation Inc. (Textron) Model 700 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. These design features are electrical and electronic systems that perform critical functions, the loss of which could be catastrophic to the airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** This action is effective on Textron on December 5, 2018. We must receive your comments by January 22, 2019.

**ADDRESSES:** Send comments identified by docket number FAA-2018-0477 using any of the following methods:

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

- *Mail:* Send comments to Docket Operations, M-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12-140, West

Building Ground Floor, Washington, DC 20590-0001.

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

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

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

*Docket:* Background documents or comments received may be read at <http://www.regulations.gov/> at any time. Follow the online instructions for accessing the docket or go to 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:** Stephen Slotte, FAA, Airplane and Flight Crew Interface Section, AIR-671, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, 2200 S 216th St., Des Moines, Washington 98198; telephone and fax 206-231-3163; email [steve.slotte@faa.gov](mailto:steve.slotte@faa.gov).

**SUPPLEMENTARY INFORMATION:** The substance of these special conditions previously has been published in the **Federal Register** for public comment. These special conditions have been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

### Comments Invited

The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to prior opportunities for comment described above. We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

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

### Background

On November 20, 2014, Textron applied for a type certificate for their new Model 700 airplane. The Model 700 airplane is a turboprop-powered executive-jet airplane with seating for 2 crewmembers and 12 passengers. This airplane will have a maximum takeoff weight of 39,500 pounds.

### Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Textron must show that the Model 700 airplane meets the applicable provisions of part 25, as amended by Amendments 25-1 through 25-139, 25-141, and 25-143.

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

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

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

certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

#### Novel or Unusual Design Features

The Textron Model 700 airplane will incorporate the following novel or unusual design feature: A fly-by-wire rudder-control system that requires a continuous source of electrical power to maintain an operable rudder flight-control system. The loss of this system may result in loss of flight control and may be catastrophic to the airplane.

#### Discussion

The Textron Model 700 airplane has a fly-by-wire rudder-control system that requires a continuous source of electrical power to maintain an operable flight-control system. Section 25.1351(d), operation without normal electrical power, requires safe operation in visual flight rule (VFR) conditions for at least 5 minutes after loss of normal electrical power, excluding the battery. This rule is structured around traditional designs that use mechanical control cables and linkages for flight control. These manual controls allow the crew to maintain aerodynamic control of the airplane for an indefinite time after loss of all electrical power. Under these conditions, a mechanical flight-control system provides the crew with the ability to fly the airplane while attempting to identify the cause of the electrical failure, restart engine(s) if necessary, and attempt to re-establish some of the electrical-power-generation capability.

A critical assumption in § 25.1351(d) is that the airplane is in VFR conditions at the time of an electrical failure. This is not a valid assumption in today's airline operating environment, where airplanes fly much of the time in instrument-meteorological conditions on air-traffic-control-defined flight paths. Another assumption in the existing rule is that the loss of all normal electrical power is the result of the loss of all engines. The 5-minute period in the rule is to allow at least one engine to be restarted, following an all-engines power loss, to continue the flight to a safe landing. However, service experience on airplanes with similar electrical-power-system architecture as the Textron Model 700 airplane has shown that at least the temporary loss of all electrical power for causes other than all-engine failure is not extremely improbable.

To maintain the same level of safety envisioned by the existing rule with traditional mechanical flight controls, the Textron Model 700 airplane design must not be time-limited in its operation under all reasonably foreseeable conditions, including loss of all normal sources of engine or auxiliary power unit (APU)-generated electrical power. Textron must demonstrate that the airplane can maintain safe flight and landing (including rollout and brake control through full stop) with the use of its emergency/alternate electrical-power systems. These electrical-power systems, or the minimum restorable electrical-power sources, must be able to power loads that are essential for continued safe flight and landing, including those required for the maximum length of approved flight diversion.

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

#### Applicability

As discussed above, these special conditions are applicable to the Textron Model 700 airplane. Should Textron apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

#### Conclusion

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

#### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

#### Authority Citation

The authority citation for these special conditions is as follows:

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

#### The Special Conditions

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

In lieu of 14 CFR 25.1351(d), the following special condition applies:

Textron must show, by test or combination of test and analysis that the airplane is capable of continued safe flight and landing with all normal

sources of engine- and APU-generated electrical power inoperative (electrical power sources excluding the battery and any other standby electrical sources). The airplane operation should be considered at the critical phase of flight, and should include the ability to restart the engines and maintain flight for the maximum diversion-time capability being certified.

Issued in Des Moines, Washington, on November 30, 2018.

**Paul Siegmund,**

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

[FR Doc. 2018-26455 Filed 12-4-18; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2018-0512; Product Identifier 2017-NM-170-AD; Amendment 39-19513; AD 2018-25-02]

RIN 2120-AA64

#### Airworthiness Directives; Airbus SAS Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Airbus SAS Model A318, A319, A320, and A321 series airplanes. This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the principal structural elements and certain life-limited parts are subject to widespread fatigue damage (WFD). This AD requires revising the existing maintenance or inspection program to incorporate new or more restrictive airworthiness limitations. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective January 10, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 10, 2019.

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

[www.airbus.com](http://www.airbus.com). You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0512.

### 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-2018-0512; 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:** Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3223.

### SUPPLEMENTARY INFORMATION:

#### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A318, A319, A320 and A321 series airplanes. The NPRM published in the **Federal Register** on June 14, 2018 (83 FR 27724). The NPRM was prompted by an evaluation by the DAH indicating that the principal structural elements and certain life-limited parts are subject to WFD. The NPRM proposed to require revising the existing maintenance or inspection program to incorporate new or more restrictive airworthiness limitations.

We are issuing this AD to address prevent fatigue cracking, accidental damage, or corrosion in principal structural elements, and WFD, which could result in reduced structural integrity of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2017-0231, dated November 21, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct

an unsafe condition for all Airbus SAS Model A318, A319, A320 and A321 series airplanes. The MCAI states:

The airworthiness limitations for the A320 family aeroplanes are currently defined and published in the Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) document(s). The Damage Tolerant Airworthiness Limitation Items are published in ALS Part 2, approved by EASA. The instructions contained in the ALS Part 2 have been identified as mandatory actions for continued airworthiness.

Failure to comply with these instructions could result in an unsafe condition.

Previously, EASA issued AD 2016-0239 [which corresponds to FAA AD 2017-22-03, Amendment 39-19083 (82 FR 49091, October 24, 2017) (“AD 2017-22-03”)] to require accomplishment of all maintenance tasks as described in ALS Part 2 at Revision 05, and [EASA] AD 2015-0038 (later revised) [which corresponds to FAA AD 2016-09-06, Amendment 39-18504 (81 FR 26113, May 2, 2016) (“AD 2016-09-06”)] to require the implementation of reduced thresholds and intervals for the detailed inspection of the forward engine mount on both right hand and left hand sides of aeroplanes equipped with CFM56-5A/5B engines, as specified in the ALS task 712111-01.

Since those [EASA] ADs were issued, Airbus published Revision 06 of the ALS Part 2, and variations up to 6.3, including new and/or more restrictive items, and new A320 family models were certified and added to the Applicability of the ALS. The ALS Part 2 Revision 06 also includes the reduced threshold and intervals required by EASA AD 2015-0038R1.

For the reason described above, this [EASA] AD retains the requirements of EASA AD 2016-0239 and EASA AD 2015-0038R1, which are superseded, requires accomplishment of all maintenance tasks as described in the ALS Part 2 Revision 06, and ALS Part 2 variations 6.1, 6.2 and 6.3 (hereafter collectively referred to as “the ALS” in this [EASA] AD), and maintains specific compliance times for ALS task 572021-01-1 (Wide Spread Fatigue Damage related).

You may examine the MCAI in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0512.

### Comments

We gave the public the opportunity to participate in developing this final rule. The following presents the comment received on the NPRM and the FAA’s response to that comment.

### Request To Use the Latest Service Information

Lufthansa Technik requested that we use the latest service information in the NPRM. Lufthansa Technik stated that Airbus issued A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness

Limitation Items (DT-ALI), Revision 07, dated June 13, 2018, which is the latest revision of the document.

We disagree with the commenter’s request. We, along with the EASA, have not determined that Airbus A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT-ALI), Revision 07, dated June 13, 2018, is required for airplanes that do not include Revision 07 as part of the type design. In the future, should we determine that Revision 07 is required, we would consider issuing additional rulemaking at that time. However, operators may request approval to incorporate Revision 07 as an alternative method of compliance (AMOC) under the provisions of paragraph (j) of this AD. We have not changed this AD in this regard.

### Change to Language for Previous Approved AMOCs

We have revised paragraph (j)(1)(ii) of this AD to state that AMOCs previously approved for AD 2015-05-02, Amendment 39-18112 (80 FR 15152, March 23, 2015) (“AD 2015-05-02”), as applicable to ALS Part 2, are approved as AMOCs for the corresponding provisions of this AD. In paragraphs (j)(1)(ii)(A), (j)(1)(ii)(B), (j)(1)(ii)(C), and (j)(1)(ii)(D) of the proposed AD, we had identified specific ALS documents. However, any previously approved AMOC for AD 2015-05-02, as applicable to ALS Part 2, is acceptable for the corresponding requirements of this AD.

### Removal of Terminating Action for AD 2016-09-06

We have removed paragraph (i)(1) of the proposed AD, which specified that accomplishing the action required by paragraph (g) of this AD terminates the requirements of paragraphs (g) and (j) of AD 2016-09-06. However, we have determined that the actions required by this AD, do not terminate the requirements specified in AD 2016-09-06. The actions specified in paragraph (g) of AD 2016-09-06 were not incorporated into Airbus A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT-ALI), Revision 06, dated April 10, 2017, which is specified in paragraph (g) of this AD. We have coordinated this issue with EASA.

### Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this

final rule with the changes described previously and 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.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

#### Related Service Information Under 14 CFR Part 51

Airbus has issued A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT—ALI), Revision 06, dated April 10, 2017. This service information describes damage tolerant airworthiness limitations.

Airbus has also issued the following variations to A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT—ALI), Revision 06, dated April 10, 2017.

- A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT—ALI), Variation 6.1, dated May 18, 2017. The service information describes ALI tasks applicable to certain Model A320–200 and A321–200 airplane configurations.

• A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT—ALI), Variation 6.2, dated May 24, 2017. This service information describes ALI tasks applicable to Model A321–271N and –272N airplanes.

- A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT—ALI), Variation 6.3, dated October 24, 2017. This service information describes ALI tasks associated with door stops for certain Model A318, A319, A320, and A321 series airplanes.

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

#### Costs of Compliance

We estimate that this AD affects 1,180 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

We have determined that revising the existing maintenance or inspection program takes an average of 90 work-

hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be \$7,650 (90 work-hours × \$85 per work-hour).

#### Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

#### Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under the DOT Regulatory Policies and

Procedures (44 FR 11034, February 26, 1979),

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

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

#### List of Subjects in 14 CFR Part 39

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**2018–25–02 Airbus SAS:** Amendment 39–19513; Docket No. FAA–2018–0512; Product Identifier 2017–NM–170–AD.

#### (a) Effective Date

This AD is effective January 10, 2019.

#### (b) Affected ADs

This AD affects AD 2017–22–03, Amendment 39–19083 (82 FR 49091, October 24, 2017) ("AD 2017–22–03").

#### (c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD; certificated in any category; with an original certificate of airworthiness or original export certificate of airworthiness issued on or before October 24, 2017.

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

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

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

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –253N, –271N, and –272N airplanes.

#### (d) Subject

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

#### (e) Reason

This AD was prompted by an evaluation by the design approval holder, which indicates that principal structural elements and certain life-limited parts are subject to widespread

fatigue damage (WFD). We are issuing this AD to prevent fatigue cracking, accidental damage, or corrosion in principal structural elements, and WFD, which could result in reduced structural integrity of the airplane.

#### (f) Compliance

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

#### (g) New Maintenance or Inspection Program Revision

(1) Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the airworthiness limitations (ALIs) specified in Airbus A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT—ALI), Revision 06, dated April 10, 2017; and Airbus A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT—ALI), Variation 6.3, dated October 24, 2017. Except for ALIs identified in paragraphs (g)(2) and (g)(3) of this AD, the initial compliance time for accomplishing the actions is at the applicable time identified in the ALIs specified in Airbus A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT—ALI), Revision 06, dated April 10, 2017, and Airbus A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT—ALI), Variation 6.3, dated October 24, 2017; or within 90 days after the effective date of this AD; whichever occurs later, without exceeding the inspection intervals in the ALIs required by paragraph (i) of AD 2017–22–03.

(2) For airplanes identified in Airbus A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT—ALI), Variation 6.1, dated May 18, 2017: Concurrently with the revision required by paragraph (g)(1) of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the ALIs specified in Airbus A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT—ALI), Variation 6.1, dated May 18, 2017. The initial compliance time for accomplishing the actions is at the applicable time identified in the ALIs specified in Airbus A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT—ALI), Variation 6.1, dated May 18, 2017; or within 90 days after the effective date of this AD; whichever occurs later, without exceeding the inspection intervals in the ALIs required by paragraph (i) of AD 2017–22–03.

(3) For airplanes identified in Airbus A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT—ALI), Variation 6.2, dated May 24, 2017: Concurrently with the revision required by paragraph (g)(1) of this AD, revise the existing maintenance or inspection program,

as applicable, to incorporate the ALIs specified in Airbus A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT—ALI), Variation 6.2, dated May 24, 2017. The initial compliance time for accomplishing the actions is at the applicable time identified in the ALIs specified in Airbus A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT—ALI), Variation 6.2, dated May 24, 2017; or within 90 days after the effective date of this AD; whichever occurs later, without exceeding the inspection intervals in the ALIs required by paragraph (i) of AD 2017–22–03.

#### (h) No Alternative Actions or Intervals

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

#### (i) Terminating Action for AD 2017–22–03

Accomplishing the applicable actions required by paragraph (g) of this AD terminates the requirements of paragraphs (g)(2) and (i) of AD 2017–22–03.

#### (j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: [9-ANM-116-AMOC-REQUESTS@faa.gov](mailto:9-ANM-116-AMOC-REQUESTS@faa.gov).

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

(ii) AMOCs previously approved for AD 2015–05–02, Amendment 39–18112 (80 FR 15152, March 23, 2015), as applicable to Airworthiness Limitations Section (ALS) Part 2, are approved as AMOCs for the corresponding provisions of this AD.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

#### (k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0231, dated November 21, 2017, for related information. This MCAI may be found in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2018–0512.

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

#### (l) Material Incorporated by Reference

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

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

(i) Airbus A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT—ALI), Revision 06, dated April 10, 2017.

(ii) Airbus A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT—ALI), Variation 6.1, dated May 18, 2017.

(iii) Airbus A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT—ALI), Variation 6.2, dated May 24, 2017.

(iv) Airbus A318/A319/A320/A321 Airworthiness Limitation Section Part 2—Damage Tolerant Airworthiness Limitation Items (DT—ALI), Variation 6.3, dated October 24, 2017.

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

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

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

#### John P. Piccola,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–26362 Filed 12–4–18; 8:45 am]

BILLING CODE 4910–13–P

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

[Docket No. FAA-2018-0871; Product Identifier 2018-NE-24-AD; Amendment 39-19511; AD 2018-25-01]

RIN 2120-AA64

**Airworthiness Directives; Rolls-Royce plc Turbofan Engines**

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

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

**SUMMARY:** We are superseding airworthiness directive (AD) 2018-13-07 for all Rolls-Royce plc (RR) Trent 1000-A, Trent 1000-C, Trent 1000-D, Trent 1000-E, Trent 1000-G, and Trent 1000-H turbofan engine models. AD 2018-13-07 required initial inspections of the intermediate-pressure compressor (IPC) stage 1 rotor blades, IPC stage 2 rotor blades, and IPC shaft stage 2 dovetail posts, and removing any cracked parts from service. This AD requires initial inspections and adds repetitive inspections of the IPC stage 1 rotor blades, IPC stage 2 rotor blades, and IPC shaft stage 2 dovetail posts, and removing any cracked parts from service. This AD was prompted by the manufacturer determining the need for repetitive inspections of the IPC stage 1 rotor blades, IPC stage 2 rotor blades, and IPC shaft stage 2 dovetail posts. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective December 21, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 21, 2018.

We must receive any comments on this AD by January 22, 2019.

**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 Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011-44-1332-242424; fax: 011-44-1332-249936; email: [corporate.care@rolls-royce.com](mailto:corporate.care@rolls-royce.com); internet: <https://customers.rolls-royce.com/public/rollsroycecare>. You may view this service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781-238-7759. It is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0871.

**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-2018-0871; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information, regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800-647-5527) is listed above. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7088; fax: 781-238-7199; email: [kevin.m.clark@faa.gov](mailto:kevin.m.clark@faa.gov).

**SUPPLEMENTARY INFORMATION:****Discussion**

We issued AD 2018-13-07, Amendment 39-19319 (83 FR 34758, July 23, 2018), (“AD 2018-13-07”), for all RR Trent 1000-A, Trent 1000-C, Trent 1000-D, Trent 1000-E, Trent 1000-G, and Trent 1000-H turbofan engine models. AD 2018-13-07 required inspecting the IPC stage 1 rotor blades, IPC stage 2 rotor blades, and IPC shaft stage 2 dovetail posts, and removing any cracked parts from service. AD 2018-13-07 resulted from crack findings on the IPC rotor blades and IPC shaft stage 2 dovetail posts, which could lead to rotor blade separations resulting in engine failures. We issued AD 2018-13-07 to prevent failure of the IPC, which could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

**Actions Since AD 2018-13-07 Was Issued**

Since we issued AD 2018-13-07, the manufacturer determined the need for repetitive inspections of the IPC stage 1 rotor blades, IPC stage 2 rotor blades, and IPC shaft stage 2 dovetail posts. Also, since we issued AD 2018-13-07, the European Aviation Safety Agency (EASA) issued AD 2018-0167R2, dated October 16, 2018, which requires initial and repetitive inspections of the IPC stage 1 rotor blades, IPC stage 2 rotor blades, and IPC shaft stage 2 dovetail posts. We are issuing this AD to address the unsafe condition on these products.

**Related Service Information Under 14 CFR Part 51**

We reviewed RR Alert Non-Modification Service Bulletin (NMSB) Trent 1000 72-AK130, Revision 2, dated July 26, 2018, and RR Alert NMSB Trent 1000 72-K132, dated June 29, 2018. RR Alert NMSB Trent 1000 72-AK130 describes procedures for performing initial and repetitive inspections of the IPC stage 1 rotor blades, IPC stage 2 rotor blades, and IPC shaft stage 2 dovetail posts, and lists engine serial numbers. RR Alert NMSB Trent 1000 72-K132, describes procedures for replacement of the IPC stage 1 rotor blades, IPC stage 2 rotor blades, and the IP compressor drum during refurbishment. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Other Related Service Information**

We reviewed RR NMSB Trent 1000 72-K099, Initial Issue, dated June 11, 2018; RR NMSB Trent 1000 72-K099, Revision 1, dated July 3, 2018; RR NMSB Trent 1000 72-K100, Initial Issue, dated June 11, 2018; RR NMSB Trent 1000 72-K129, Initial Issue, dated June 11, 2018; and RR NMSB Trent 1000 72-K129, Revision 1, dated July 2, 2018. RR NMSB Trent 1000 72-K099, Initial Issue, and RR NMSB Trent 1000 72-K099, Revision 1, describe procedure for an ultrasonic inspection of the IPC stage 1 rotor blades. RR NMSB Trent 1000 72-K100 Initial Issue describes procedures for a visual borescope inspection of the IPC stage 2 rotor blades and IPC shaft stage 2 dovetail posts. RR NMSB Trent 1000 72-K129, Initial Issue, and RR NMSB Trent 1000 72-K129, Revision 1, describe procedures for an ultrasonic inspection of the IPC stage 2 rotor blades.

**FAA’s Determination**

This product has been approved by EASA and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are 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 initial and repetitive inspections of the IPC stage 1 rotor blades, IPC stage 2 rotor blades, and IPC shaft stage 2 dovetail posts, and removing any cracked parts from service.

**Differences Between This AD and the MCAI or Service Information**

This AD allows inspections of any affected IPC part to be completed within 15 days of the effective date of this AD. EASA AD 2018–0167R2, dated October

16, 2018, and RR Alert NMSB Trent 1000 72–AK130, Revision 2, dated July 26, 2018, allow certain affected IPC parts to be completed within 45 days of the effective date of EASA AD 2018–0167R1. We expect most operators to have already complied with EASA AD and find that completing the inspections within 15 days of the effective date of this AD provides an appropriate level of safety.

**Interim Action**

We consider this AD interim action. The manufacturer is still reviewing this unsafe condition and may develop follow-on actions.

**FAA’s Justification and Determination of the Effective Date**

No domestic operators use this product. Therefore, we find that notice and opportunity for prior public comment are unnecessary and 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 we did not provide you with notice and

an opportunity to provide your comments before it becomes effective. 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–2018–0871 and product identifier 2018–NE–24–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 0 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
Inspect IPC blades and dovetail post .....	20 work-hours × \$85 per hour = \$1,700 .....	\$0	\$1,700	\$0

We estimate the following costs to do any necessary replacements that would

be required based on the results of the inspection. We have no way of

determining the number of aircraft that might need these replacements:

**ON-CONDITION COSTS**

Action	Labor cost	Parts cost	Cost per product
Replace IPC Stage 1 Rotor blade .....	0 work-hours × \$85 per hour = \$0 .....	\$1,528	\$1,528
Replace IPC Stage 2 Rotor blade .....	0 work-hours × \$85 per hour = \$0 .....	993	993
Replace IPC 1–8 drum .....	0 work-hours × \$85 per hour = \$0 .....	1,365,219	1,365,219

**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 part 39 of the Federal Aviation Regulations (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) 2018–13–07, Amendment 39–19319 (83 FR 34758, July 23, 2018), and adding the following new AD:

**2018–25–01 Rolls-Royce plc:** Amendment 39–19511; Docket No. FAA–2018–0871; Product Identifier 2018–NE–24–AD.

#### (a) Effective Date

This AD is effective December 21, 2018.

#### (b) Affected ADs

This AD replaces AD 2018–13–07, Amendment 39–19319 (83 FR 34758, July 23, 2018).

#### (c) Applicability

This AD applies to all Rolls Royce plc (RR) Trent 1000–A, Trent 1000–C, Trent 1000–D, Trent 1000–E, Trent 1000–G, and Trent 1000–H turbofan engine models.

#### (d) Subject

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

#### (e) Unsafe Condition

This AD was prompted by reports of intermediate-pressure compressor (IPC) rotor blade cracks, which could lead to rotor blade separations resulting in engine failures. We are issuing this AD to prevent failure of the IPC. The unsafe condition, if not addressed, could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

#### (f) Compliance

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

#### (g) Required Actions

(1) Within 15 days of the effective date of this AD, or within the compliance times specified in Table 1 of RR Alert Non-Modification Service Bulletin (NMSB) Trent 1000 72–AK130, Revision 2, dated July 26, 2018, whichever occurs later, perform on-wing inspection of the IPC stage 1 rotor blades in accordance with paragraph 3.A.(1) of RR Alert NMSB Trent 1000 72–AK130.

(2) Repeat the on-wing inspection of the IPC stage 1 rotor blades in accordance with paragraph 3.A.(1) of RR Alert NMSB Trent 1000 72–AK130, Revision 2, dated July 26, 2018, and within the compliance times specified in Table 1 of that NMSB.

(3) Within 15 days of the effective date of this AD, or within the compliance times specified in Table 1 of RR Alert NMSB Trent 1000 72–AK130 Revision 2, dated July 26, 2018, whichever occurs later, perform on-wing inspection of the IPC stage 2 rotor blades and IPC shaft stage 2 dovetail posts in accordance with paragraph 3.B.(1) and 3.C.(1) of RR Alert NMSB Trent 1000 72–AK130.

(4) Repeat the on-wing inspection of the IPC stage 2 rotor blades and IPC shaft stage 2 dovetail posts in accordance with paragraphs 3.B.(1) and 3.C.(1) of RR Alert NMSB Trent 1000 72–AK130, Revision 2, dated July 26, 2018, and within the compliance times specified in Table 1 of RR Alert NMSB Trent 1000 72–AK130.

(5) For the on-wing inspection required by paragraphs (g)(1) through (4) of this AD, provided the stated thresholds and intervals are not exceeded, you may substitute:

- (i) An in-shop inspection of an engine or module performed in accordance with the instructions of paragraphs 3.A.2, 3.B.2, and 3.C.2 of the RR Alert NMSB Trent 1000 72–AK130, Revision 2, dated July 26, 2018; or
- (ii) an in-shop piece part inspection during refurbishment in accordance with the Accomplishment Instructions, paragraphs 3.B.(2)(f)(vi), 3.B.(2)(g)(v), and 3.B.(3)(d)(iii) of RR Trent 1000 NMSB 72–K132, dated June 29, 2018.

(6) If any IPC stage 1 rotor blade, IPC stage 2 rotor blade, or an IPC shaft stage 2 dovetail post is found cracked during any inspection required by this AD, remove the part from service and replace the part with a part eligible for installation before further flight.

#### (h) Inspection After Operation Under Asymmetric Power

As of the effective date of this AD, before the next flight after each occurrence where engine operation in asymmetric power conditions was sustained for more than 30 minutes at less than 25,000 feet, either resulting from engine power reduction, or from engine in-flight shut-down (IFSD), inspect the IPC stage 1 rotor blades, stage 2 rotor blades and IPC shaft stage 2 dovetail posts in accordance with the paragraphs 3.A.(1), 3.B.(1), and 3.C.(1) of the RR Alert NMSB Trent1000 72–AK130, Revision 2, dated July 26, 2018 on the engine that did not experience the power reduction or IFSD installed on the airplane.

#### (i) Credit for Previous Actions

You may take credit for the inspections required by paragraph (g)(1) and (3) of this AD if you performed these inspections before the effective date of this AD using RR Alert NMSB Trent 1000 72–AK130, Revision 1, dated June 29, 2018, or RR Alert NMSB Trent 1000 72–AK130, Initial Issue, dated June 11, 2018.

#### (j) Special Flight Permits

(1) Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are subject to the requirements of paragraph (k)(1)(i) of this AD.

(i) Operators who are prohibited from further flight due to an IPC stage 1 rotor blade, IPC stage 2 rotor blade, or an IPC shaft stage 2 dovetail post being found cracked, may perform a one-time non-revenue ferry flight to a location where the engine can be removed from service. This ferry flight must be performed without passengers, involve non-extended operations (ETOPS), and consume no more than three flight cycles.

- (ii) [Reserved]
- (2) [Reserved]

#### (k) 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 (l)(1) of this AD. You may email your request to: [ANE-AD-AMOC@faa.gov](mailto:ANE-AD-AMOC@faa.gov).

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

#### (l) Related Information

(1) For more information about this AD, contact Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7088; fax: 781–238–7199; email: [kevin.m.clark@faa.gov](mailto:kevin.m.clark@faa.gov).

(2) Refer to European Aviation Safety Agency (EASA) AD 2018–0167R2, dated October 16, 2018, for more information. You may examine the EASA AD in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating it in Docket No. FAA–2018–0871.

#### (m) Material Incorporated by Reference

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

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

(i) Rolls-Royce plc (RR) Alert Non-Modification Service Bulletin (NMSB) Trent 1000 72–AK130, Revision 2, dated July 26, 2018.



(ii) RR Alert NMSB Trent 1000 72–K132, dated June 29, 2018.

(3) For RR service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: [corporate.care@rolls-royce.com](mailto:corporate.care@rolls-royce.com); internet: <https://customers.rolls-royce.com/public/rollroycecare>.

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

(5) You may view this service information 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 November 28, 2018.

**Robert J. Ganley,**

*Manager, Engine & Propeller Standards Branch, Aircraft Certification Service.*

[FR Doc. 2018–26393 Filed 12–4–18; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2018–0960; Product Identifier 2018–NM–151–AD; Amendment 39–19512; AD 2018–23–51]

RIN 2120–AA64

#### Airworthiness Directives; The Boeing Company Airplanes

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

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

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 737–8 and –9 airplanes. This emergency AD was sent previously to all known U.S. owners and operators of these airplanes. This AD requires revising certificate limitations and operating procedures of the airplane flight manual (AFM) to provide the flight crew with runaway horizontal stabilizer trim procedures to follow under certain conditions. This AD was prompted by analysis performed by the manufacturer showing that if an erroneously high single angle of attack (AOA) sensor input is received by the flight control system, there is a potential for repeated nose-down trim commands of the horizontal stabilizer. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective December 21, 2018 to all persons except those persons to whom it was made immediately effective by Emergency AD 2018–23–51, issued on November 7, 2018, which contained the requirements of this amendment.

We must receive comments on this AD by January 22, 2019.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### 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–2018–0960; 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 Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

#### FOR FURTHER INFORMATION CONTACT:

Douglas Tsuji, Senior Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3548; email: [Douglas.Tsuji@faa.gov](mailto:Douglas.Tsuji@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Discussion

On November 7, 2018, we issued Emergency AD 2018–23–51, which requires revising certificate limitations and operating procedures of the AFM to provide the flight crew with runaway horizontal stabilizer trim procedures to follow under certain conditions. This emergency AD was sent previously to all known U.S. owners and operators of these airplanes. This action was prompted by analysis performed by the manufacturer showing that if an erroneously high single AOA sensor input is received by the flight control system, there is a potential for repeated

nose-down trim commands of the horizontal stabilizer. This condition, if not addressed, could cause the flight crew to have difficulty controlling the airplane, and lead to excessive nose-down attitude, significant altitude loss, and possible impact with terrain.

#### 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 revising certificate limitations and operating procedures of the AFM to provide the flight crew with runaway horizontal stabilizer trim procedures to follow under certain conditions.

#### Interim Action

We consider this AD interim action. If final action is later identified, we might consider further rulemaking then.

#### FAA’s Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of Emergency AD 2018–23–51, issued on November 7, 2018, to all known U.S. owners and operators of these airplanes. The FAA found that the risk to the flying public justified waiving notice and comment prior to adoption of this rule because an erroneously high single AOA sensor input received by the flight control system can result in a potential for repeated nose-down trim commands of the horizontal stabilizer, which could cause the flight crew to have difficulty controlling the airplane, and lead to excessive nose-down attitude, significant altitude loss, and possible impact with terrain. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason(s) 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-2018-0960 and Product Identifier 2018-NM-151-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 45 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

**ESTIMATED COSTS FOR REQUIRED ACTIONS**

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revising the AFM .....	1 work-hour × \$85 per hour = \$85 .....	\$0	\$85	\$3,825

**Authority for This Rulemaking**

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

**Regulatory Findings**

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Is not a “significant rule” under 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):

**2018-23-51 The Boeing Company:**  
Amendment 39-19512; Docket No. FAA-2018-0960; Product Identifier 2018-NM-151-AD.

**(a) Effective Date**

This AD is effective December 21, 2018 to all persons except those persons to whom it was made immediately effective by Emergency AD 2018-23-51, issued on November 7, 2018, which contained the requirements of this amendment.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all The Boeing Company Model 737-8 and -9 airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 27, Flight controls.

**(e) Unsafe Condition**

This AD was prompted by analysis performed by the manufacturer showing that if an erroneously high single angle of attack (AOA) sensor input is received by the flight control system, there is a potential for repeated nose-down trim commands of the horizontal stabilizer. We are issuing this AD to address this potential resulting nose-down trim, which could cause the flight crew to have difficulty controlling the airplane, and lead to excessive nose-down attitude, significant altitude loss, and possible impact with terrain.

**(f) Compliance**

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

**(g) Revision of Airplane Flight Manual (AFM): Certificate Limitations**

Within 3 days after the effective date of this AD, revise the Certificate Limitations chapter of the applicable AFM to include the information in figure 1 to paragraph (g) of this AD.

**Figure 1 to paragraph (g) of this AD – Certificate Limitations****Required by AD 2018-23-51****Runaway Stabilizer**

In the event of an uncommanded horizontal stabilizer trim movement, combined with any of the following potential effects or indications resulting from an erroneous Angle of Attack (AOA) input, the flight crew must comply with the Runaway Stabilizer procedure in the Operating Procedures chapter of this manual:

- Continuous or intermittent stick shaker on the affected side only.
- Minimum speed bar (red and black) on the affected side only.
- Increasing nose down control forces.
- IAS DISAGREE alert.
- ALT DISAGREE alert.
- AOA DISAGREE alert (if the option is installed).
- FEEL DIFF PRESS light.
- Autopilot may disengage.
- Inability to engage autopilot.

**(h) AFM Revision: Operating Procedures**

Within 3 days after the effective date of this AD, revise the Operating Procedures

chapter of the applicable AFM to include the information in figure 2 to paragraph (h) of this AD.

**Figure 2 to paragraph (h) of this AD – Operating Procedures****Required by AD 2018-23-51****Runaway Stabilizer**

Disengage autopilot and control airplane pitch attitude with control column and main electric trim as required. If relaxing the column causes the trim to move, set stabilizer trim switches to CUTOOUT. If runaway continues, hold the stabilizer trim wheel against rotation and trim the airplane manually.

Note: The 737-8/-9 uses a Flight Control Computer command of pitch trim to improve longitudinal handling characteristics. In the event of erroneous Angle of Attack (AOA) input, the pitch trim system can trim the stabilizer nose down in increments lasting up to 10 seconds.

In the event an uncommanded nose down stabilizer trim is experienced on the 737-8/-9, in conjunction with one or more of the indications or effects listed below, do the existing AFM Runaway Stabilizer procedure above, ensuring that the STAB TRIM CUTOOUT switches are set to CUTOOUT and stay in the CUTOOUT position for the remainder of the flight.

An erroneous AOA input can cause some or all of the following indications and effects:

- Continuous or intermittent stick shaker on the affected side only.
- Minimum speed bar (red and black) on the affected side only.
- Increasing nose down control forces.
- IAS DISAGREE alert.
- ALT DISAGREE alert.
- AOA DISAGREE alert (if the option is installed).
- FEEL DIFF PRESS light.
- Autopilot may disengage.
- Inability to engage autopilot.

Initially, higher control forces may be needed to overcome any stabilizer nose down trim already applied. Electric stabilizer trim can be used to neutralize control column pitch forces before moving the STAB TRIM CUTOOUT switches to CUTOOUT. Manual stabilizer trim can be used before and after the STAB TRIM CUTOOUT switches are moved

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

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

AD. Information may be emailed to: [9-ANM-Seattle-ACO-AMOC-Requests@faa.gov](mailto:9-ANM-Seattle-ACO-AMOC-Requests@faa.gov).

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

**(j) Related Information**

For more information about this AD, contact Douglas Tsuji, Senior Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th

St., Des Moines, WA 98198; phone and fax: 206-231-3548; email: [Douglas.Tsuji@faa.gov](mailto:Douglas.Tsuji@faa.gov).

**(k) Material Incorporated by Reference**

None.

Issued in Des Moines, Washington, on November 21, 2018.

**Michael Kaszycki,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2018-26365 Filed 12-4-18; 8:45 am]

**BILLING CODE 4910-13-P**

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

[Docket No. FAA-2018-0371; Product Identifier 2018-CE-005-AD; Amendment 39-19504; AD 2018-23-16]

RIN 2120-AA64

**Airworthiness Directives; Pacific Aerospace Limited Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for Pacific Aerospace Limited Model 750XL airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as insufficient clearance between the pitot tubes and the primary support at the flame arrester intersection. We are issuing this AD to require actions to address the unsafe condition on these products.

**DATES:** This AD is effective January 10, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 10, 2019.

**ADDRESSES:** You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0371; or in person at Docket Operations, 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 service information identified in this AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; phone: +64 7843 6144; fax: +64 843 6134; email: [pacific@aerospace.co.nz](mailto:pacific@aerospace.co.nz); internet: [www.aerospace.co.nz](http://www.aerospace.co.nz). You may view this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148. It is also available on the internet at <http://www.regulations.gov> by searching for Docket No. FAA-2018-0371.

**FOR FURTHER INFORMATION CONTACT:** Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4144; fax: (816) 329-4090; email: [mike.kiesov@faa.gov](mailto:mike.kiesov@faa.gov).

**SUPPLEMENTARY INFORMATION:****Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Pacific Aerospace Limited Model 750XL airplanes. The NPRM was published in the *Federal Register* on May 11, 2018 (83 FR 21962). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by the Civil Aviation Authority of New Zealand (CAA). The MCAI states:

Pacific Aerospace SB PACSB/XL/094 issue 2, dated 20 March 2018 revised to include inspection information, and DCA/750XL/24A updated to introduce the revised SB.

The [CAA] AD is prompted by a production inspection of installed pitot static plumbing which identified insufficient clearance between the pitot tubes and the primary support at the flame arrester intersection.

This AD requires inspecting the pitot static tubes for chafing damage, replacing tubing as necessary, installing an additional clamp for pitot static tube support, protecting plumbing with spiralwrap, and ensuring proper clearance between the pitot tubes and the primary support at the flame arrester intersection. The MCAI can be found in the AD docket on the internet at: <https://www.regulations.gov/document?D=FAA-2018-0371-0002>.

**Comments**

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

**Conclusion**

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes and changes to clarify the reference to the service information. We have determined that these minor changes:

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

**Related Service Information Under 1 CFR Part 51**

We reviewed Pacific Aerospace Service Bulletin PACSB/XL/094, Issue 2, dated March 20, 2018. The service information contains procedures for inspecting the pitot static tubing for chafing, replacing tubing as necessary, installing an additional clamp for pitot static tube support, protecting plumbing with spiralwrap, and ensuring proper clearance between the pitot tubes and the primary support at the flame arrester intersection. 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 will affect 22 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the pitot static tubing inspection and installation of support clamps and spiral wrap required by this AD. The average labor rate is \$85 per work-hour. Required parts would cost about \$25 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be \$2,420, or \$110 per product.

In addition, we estimate that any necessary follow-on actions to replace damaged tubing would take about 1 work-hour and require parts costing \$25, for a cost of \$110 per product. We have no way of determining the number of products that may need these actions.

**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 small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

### Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**2018–23–16 Pacific Aerospace Limited:** Amendment 39–19504; Docket No. FAA–2018–0371; Product Identifier 2018–CE–005–AD.

#### (a) Effective Date

This AD becomes effective January 10, 2019.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to Pacific Aerospace Limited Model 750XL airplanes, serial numbers up to and including 200, certificated in any category.

#### (d) Subject

Air Transport Association of America (ATA) Code 34: Navigation.

#### (e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and address an unsafe condition on an aviation product. The MCAI describes the unsafe condition as insufficient clearance between the pitot tubes and the primary support at the flame arrester intersection. We are issuing this AD to prevent chafing between the pitot-static plumbing and the flame arrester, which could lead to damage of the pitot-static lines.

#### (f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (3) of this AD.

(1) Within 100 hours time-in-service (TIS) after January 10, 2019 (the effective date of this AD) or within 60 days after January 10, 2019 (the effective date of this AD), whichever occurs first, inspect the pitot static tubing adjacent to the flame arrester for chafing damage.

(2) If any chafing damage is found during the inspection required in paragraph (f)(1) of this AD, before further flight, repair or replace any damaged tubing and conduct a pitot and static leak check.

(3) Within 100 hours TIS after January 10, 2019 (the effective date of this AD) or within 60 days after January 10, 2019 (the effective date of this AD), whichever occurs first, install an additional support clamp, protect plumbing with spiralwrap, and ensure proper clearance between the pitot tubes and the primary support at the flame arrester intersection. Follow paragraphs (3) through (6) of the Accomplishment Instructions in Pacific Aerospace Service Bulletin PACSB/XL/094, Issue 2, dated March 20, 2018.

#### (g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Small Airplane Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone:

(816) 329–4144; fax: (816) 329–4090; email: [mike.kiesov@faa.gov](mailto:mike.kiesov@faa.gov). Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must instead be accomplished using a method approved by the Manager, Small Airplane Standards Branch, FAA; or Civil Aviation Authority of New Zealand (CAA).

#### (h) Related Information

Refer to MCAI CAA AD DCA/750XL/24A, dated March 22, 2018, for related information. The MCAI can be found in the AD docket on the internet at: <https://www.regulations.gov/document?D=FAA-2018-0371-0002>.

#### (i) 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) Pacific Aerospace Service Bulletin PACSB/XL/094, Issue 2, dated March 20, 2018.

(ii) [Reserved]

(3) For service information identified in this AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; phone: +64 7843 6144; fax: +64 843 6134; email: [pacific@aerospace.co.nz](mailto:pacific@aerospace.co.nz); internet: [www.aerospace.co.nz](http://www.aerospace.co.nz).

(4) You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2018–0371.

(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 Kansas City, Missouri, on November 27, 2018.

**Melvin J. Johnson,**

*Aircraft Certification Service, Deputy Director, Policy and Innovation Division, AIR–601.*

[FR Doc. 2018–26364 Filed 12–4–18; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

[Docket No. 31225; Amdt. No. 3828]

**Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

**SUMMARY:** This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective December 6, 2018. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 6, 2018.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

**For Examination**

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC, 20590-0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**Availability**

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at [nfdc.faa.gov](http://nfdc.faa.gov) to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:**

Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg 29, Room 104, Oklahoma City, OK 73125. Telephone: (405) 954-4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P-NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

**Availability and Summary of Material Incorporated by Reference**

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

**The Rule**

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on November 16, 2018.

**Rick Domingo,**

*Executive Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and

ODPs, effective at 0901 UTC on the dates specified, as follows:

**PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES**

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

\* \* \* *Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
3-Jan-19	TN	Knoxville	Knoxville Downtown Island.	8/0373	11/6/18	VOR/DME–B, Amdt 7.
3-Jan-19	TN	Knoxville	Knoxville Downtown Island.	8/0386	11/6/18	LOC RWY 26, Amdt 4A.
3-Jan-19	TN	Knoxville	Knoxville Downtown Island.	8/0387	11/6/18	RNAV (GPS) RWY 26, Orig-C.
3-Jan-19	NE	Harvard	Harvard State	8/0416	10/31/18	RNAV (GPS) RWY 35, Amdt 1A.
3-Jan-19	NE	Harvard	Harvard State	8/0424	11/6/18	RNAV (GPS) RWY 17, Orig-B.
3-Jan-19	WA	Hoquiam	Bowerman	8/0508	10/31/18	RNAV (GPS) RWY 6, Amdt 1A.
3-Jan-19	FL	West Palm Beach	Palm Beach Intl	8/0515	11/1/18	RNAV (RNP) Z RWY 10L, Amdt 1A.
3-Jan-19	ND	Kenmare	Kenmare Muni	8/0686	10/31/18	RNAV (GPS) RWY 26, Orig.
3-Jan-19	LA	Eunice	Eunice	8/1301	11/1/18	VOR/DME–A, Amdt 3.
3-Jan-19	LA	Eunice	Eunice	8/1310	11/1/18	NDB RWY 16, Amdt 1.
3-Jan-19	LA	Eunice	Eunice	8/1312	11/1/18	RNAV (GPS) RWY 16, Orig.
3-Jan-19	WI	Madison	Dane County Rgnl-Truax Field.	8/1327	11/9/18	RNAV (GPS) RWY 3, Orig-D.
3-Jan-19	CQ	Saipan Island	Francisco C Ada/Saipan Intl.	8/1534	10/31/18	NDB RWY 25, Amdt 3.
3-Jan-19	WI	La Crosse	La Crosse Rgnl	8/2228	10/31/18	RNAV (GPS) RWY 18, Orig-D.
3-Jan-19	WI	La Crosse	La Crosse Rgnl	8/2229	10/31/18	RNAV (GPS) RWY 36, Orig-C.
3-Jan-19	VA	Charlottesville	Charlottesville-Albemarle.	8/2275	11/9/18	ILS OR LOC RWY 3, Amdt 1A.
3-Jan-19	TX	Palestine	Palestine Muni	8/2360	10/31/18	NDB RWY 36, Amdt 8.
3-Jan-19	TX	Palestine	Palestine Muni	8/2361	10/31/18	RNAV (GPS) RWY 18, Orig-A.
3-Jan-19	TX	Palestine	Palestine Muni	8/2363	10/31/18	RNAV (GPS) RWY 36, Amdt 1A.
3-Jan-19	MO	Fulton	Elton Hensley Memorial	8/2539	11/7/18	RNAV (GPS) RWY 24, Amdt 1A.
3-Jan-19	MO	Fulton	Elton Hensley Memorial	8/2540	11/7/18	RNAV (GPS) RWY 6, Amdt 1A.
3-Jan-19	MO	Fulton	Elton Hensley Memorial	8/2541	11/7/18	VOR–A, Amdt 5.
3-Jan-19	IA	Mapleton	James G Whiting Memorial Field.	8/3071	11/6/18	RNAV (GPS) RWY 20, Orig-A.
3-Jan-19	NJ	Andover	Aeroflex-Andover	8/3213	11/1/18	VOR–A, Amdt 8.
3-Jan-19	NJ	Andover	Aeroflex-Andover	8/3219	11/1/18	RNAV (GPS) RWY 3, Amdt 1A.
3-Jan-19	AR	Batesville	Batesville Rgnl	8/3237	11/1/18	RNAV (GPS) RWY 8, Amdt 1B.
3-Jan-19	AR	Batesville	Batesville Rgnl	8/3239	11/1/18	RNAV (GPS) RWY 26, Amdt 1A.
3-Jan-19	AR	Batesville	Batesville Rgnl	8/3242	11/1/18	LOC RWY 8, Amdt 1A.
3-Jan-19	ND	Tioga	Tioga Muni	8/3473	11/9/18	RNAV (GPS) RWY 30, Amdt 1A.
3-Jan-19	WI	Hartford	Hartford Muni	8/3951	10/31/18	Takeoff Minimums and Obstacle DP, Orig.
3-Jan-19	NJ	Pedricktown	Spitfire Aerodrome	8/4245	10/31/18	RNAV (GPS) RWY 7, Orig.
3-Jan-19	IN	Seymour	Freeman Muni	8/4573	11/7/18	RNAV (GPS) RWY 32, Amdt 1A.
3-Jan-19	TX	Bryan	Coulter Field	8/4654	11/9/18	VOR/DME–A, Amdt 3.
3-Jan-19	TX	Bryan	Coulter Field	8/4655	11/9/18	RNAV (GPS) RWY 15, Amdt 1A.
3-Jan-19	NC	Winston Salem	Smith Reynolds	8/4714	11/1/18	RNAV (GPS) RWY 15, Amdt 1B.
3-Jan-19	MS	Tupelo	Tupelo Rgnl	8/4747	10/31/18	ILS Y OR LOC Y RWY 36, Orig.
3-Jan-19	MS	Tupelo	Tupelo Rgnl	8/4748	10/31/18	RNAV (GPS) RWY 18, Amdt 1.
3-Jan-19	MS	Tupelo	Tupelo Rgnl	8/4749	10/31/18	RNAV (GPS) RWY 36, Amdt 1.
3-Jan-19	GA	Thomson	Thomson-Mcduffie County.	8/5347	11/6/18	RNAV (GPS) RWY 10, Orig-A.
3-Jan-19	GA	Thomson	Thomson-Mcduffie County.	8/5350	11/6/18	ILS OR LOC/NDB RWY 10, Amdt 1A.
3-Jan-19	GA	Thomson	Thomson-Mcduffie County.	8/5351	11/6/18	RNAV (GPS) RWY 28, Orig-A.
3-Jan-19	TX	Palacios	Palacios Muni	8/5602	11/9/18	VOR RWY 13, Amdt 10D.
3-Jan-19	KY	Louisville	Louisville Intl–Standiford Field.	8/5830	11/9/18	RNAV (RNP) Z RWY 17L, Orig-D.
3-Jan-19	NE	Nebraska City	Nebraska City Muni	8/6328	11/6/18	NDB RWY 15, Amdt 1A.
3-Jan-19	NE	Nebraska City	Nebraska City Muni	8/6337	11/6/18	RNAV (GPS) RWY 15, Orig-A.
3-Jan-19	NE	Nebraska City	Nebraska City Muni	8/6344	11/6/18	RNAV (GPS) RWY 33, Orig-A.



AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
3-Jan-19	IA	Corning	Corning Muni	8/6394	11/6/18	RNAV (GPS) RWY 18, Orig.
3-Jan-19	ND	Fargo	Hector Intl	8/6518	11/1/18	ILS OR LOC RWY 18, Orig-C.
3-Jan-19	ND	Fargo	Hector Intl	8/6519	11/1/18	VOR RWY 36, Orig-D.
3-Jan-19	ND	Fargo	Hector Intl	8/6520	11/1/18	ILS OR LOC RWY 36, Amdt 2.
3-Jan-19	ND	Fargo	Hector Intl	8/6521	11/1/18	RNAV (GPS) RWY 9, Amdt 1B.
3-Jan-19	ND	Fargo	Hector Intl	8/6522	11/1/18	RNAV (GPS) RWY 18, Amdt 1B.
3-Jan-19	ND	Fargo	Hector Intl	8/6523	11/1/18	RNAV (GPS) RWY 27, Amdt 1B.
3-Jan-19	ND	Fargo	Hector Intl	8/6524	11/1/18	RNAV (GPS) RWY 36, Orig-B.
3-Jan-19	MA	Hopedale	Hopedale Industrial Park.	8/7084	11/1/18	RNAV (GPS)—A, Orig-A.
3-Jan-19	GA	Atlanta	Cobb County Intl-Mccollum Field.	8/7151	11/9/18	Takeoff Minimums and Obstacle DP, Amdt 2A.
3-Jan-19	ND	Crosby	Crosby Muni	8/7266	11/6/18	RNAV (GPS) RWY 30, Orig.
3-Jan-19	OH	Caldwell	Noble County	8/7353	10/31/18	VOR—A, Amdt 1A.
3-Jan-19	MD	Cumberland	Greater Cumberland Rgnl.	8/7497	11/1/18	RNAV (GPS) RWY 5, Amdt 2.
3-Jan-19	PA	Pittsburgh	Pittsburgh Intl	8/7526	11/9/18	RNAV (RNP) Z RWY 10R, Orig-D.
3-Jan-19	IL	Decatur	Decatur	8/7779	10/31/18	RNAV (GPS) RWY 18, Amdt 1.
3-Jan-19	IL	Decatur	Decatur	8/7780	10/31/18	RNAV (GPS) RWY 24, Amdt 1.
3-Jan-19	GA	Savannah	Savannah/Hilton Head Intl.	8/7859	11/1/18	RNAV (GPS) RWY 1, Amdt 2.
3-Jan-19	GA	Savannah	Savannah/Hilton Head Intl.	8/7860	11/1/18	RNAV (GPS) Z RWY 28, Amdt 2A.
3-Jan-19	GA	Savannah	Savannah/Hilton Head Intl.	8/7879	11/1/18	VOR/DME OR TACAN RWY 1, Orig-C.
3-Jan-19	IN	Goshen	Goshen Muni	8/7974	11/1/18	VOR RWY 9, Amdt 12B.
3-Jan-19	OH	Millersburg	Holmes County	8/7978	10/31/18	RNAV (GPS) RWY 27, Orig.
3-Jan-19	OK	Tulsa	Tulsa Intl	8/8001	10/31/18	VOR OR TACAN RWY 26, Amdt 24D.
3-Jan-19	AZ	Sedona	Sedona	8/8047	11/9/18	GPS RWY 3, Orig-A.
3-Jan-19	MN	Hallock	Hallock Muni	8/8357	11/7/18	RNAV (GPS) RWY 13, Orig-A.
3-Jan-19	MN	Hallock	Hallock Muni	8/8360	11/7/18	RNAV (GPS) RWY 31, Amdt 1A.
3-Jan-19	MN	Hallock	Hallock Muni	8/8364	11/7/18	VOR/DME RWY 31, Amdt 7.
3-Jan-19	MO	Sullivan	Sullivan Rgnl	8/8430	11/9/18	Takeoff Minimums and Obstacle DP, Orig.
3-Jan-19	MN	Minneapolis	Airlake	8/8517	11/7/18	RNAV (GPS) RWY 30, Orig-A.
3-Jan-19	MN	Minneapolis	Airlake	8/8518	11/7/18	ILS OR LOC RWY 30, Orig-F.
3-Jan-19	TX	Grand Prairie	Grand Prairie Muni	8/8658	11/9/18	RNAV (GPS) RWY 35, Orig.
3-Jan-19	OK	Mc Alester	Mc Alester Rgnl	8/8662	11/9/18	VOR RWY 20, Amdt 2G.
3-Jan-19	VA	Martinsville	Blue Ridge	8/8668	11/9/18	RNAV (GPS) RWY 30, Amdt 2A.
3-Jan-19	VA	Martinsville	Blue Ridge	8/8669	11/9/18	LOC RWY 30, Amdt 1C.
3-Jan-19	IL	Jacksonville	Jacksonville Muni	8/9249	10/31/18	RNAV (GPS) RWY 22, Orig-A.
3-Jan-19	IL	Jacksonville	Jacksonville Muni	8/9257	10/31/18	RNAV (GPS) RWY 4, Orig-A.
3-Jan-19	IL	Jacksonville	Jacksonville Muni	8/9265	10/31/18	RNAV (GPS) RWY 31, Orig-A.
3-Jan-19	IL	Jacksonville	Jacksonville Muni	8/9268	10/31/18	RNAV (GPS) RWY 13, Orig-A.
3-Jan-19	AR	Nashville	Howard County	8/9338	10/31/18	RNAV (GPS) RWY 1, Orig-A.
3-Jan-19	AR	Nashville	Howard County	8/9339	10/31/18	RNAV (GPS) RWY 19, Orig-A.
3-Jan-19	IN	Goshen	Goshen Muni	8/9744	11/1/18	RNAV (GPS) RWY 27, Orig.
3-Jan-19	NE	Alliance	Alliance Muni	8/9997	11/9/18	VOR RWY 12, Amdt 3B.

[FR Doc. 2018-26244 Filed 12-4-18; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 97**

[Docket No. 31224; Amdt. No. 3827]

**Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments**

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight

operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective December 6, 2018. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of December 6, 2018.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

**For Examination**

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey

Avenue SE, West Bldg., Ground Floor, Washington, DC 20590-0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; or,

4. 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/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

#### Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at [nfdc.faa.gov](http://nfdc.faa.gov) to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

#### FOR FURTHER INFORMATION CONTACT:

Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg 29, Room 104, Oklahoma City, OK 73125. Telephone: (405) 954-4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPs, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260-3, 8260-4, 8260-5, 8260-15A, and 8260-15B when required by an entry on 8260-15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete

description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

#### Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

#### The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on November 16, 2018.

**Rick Domingo,**

*Executive Director, Flight Standards Service.*

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

#### PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721-44722.

■ 2. Part 97 is amended to read as follows:

\* \* \* *Effective 3 January 2019*

Anchorage, AK, Merrill Field, RNAV (GPS)-A, Amdt 1A  
 Valdez, AK, Valdez Pioneer Field, LDA-H, Amdt 2B  
 Colorado City, AZ, Colorado City Muni, Takeoff Minimums and Obstacle DP, Orig-A  
 Prescott, AZ, Ernest A Love Field, PRESCOTT TWO, GRAPHIC DP  
 Prescott, AZ, Ernest A Love Field, Takeoff Minimums and Obstacle DP, Amdt 5  
 Modesto, CA, Modesto City-Co-Harry Sham Fld, ILS OR LOC RWY 28R, Amdt 14C  
 Modesto, CA, Modesto City-Co-Harry Sham Fld, VOR RWY 28R, Orig-B  
 Ontario, CA, Ontario Intl, ILS OR LOC RWY 26L, ILS RWY 26L CAT II, ILS RWY 26L CAT III, Amdt 8A  
 Milford, IA, Fuller, RNAV (GPS)-B, Orig  
 Milford, IA, Fuller, Takeoff Minimums and Obstacle DP, Amdt 1  
 Milford, IA, Fuller, VOR-A, Amdt 1  
 Rexburg, ID, Rexburg-Madison County, VOR RWY 35, Amdt 4B  
 Chicago/Rockford, IL, Chicago/Rockford Intl, ILS OR LOC RWY 1, Amdt 28D

Chicago/Rockford, IL, Chicago/Rockford Intl, ILS OR LOC RWY 7, ILS RWY 7 SA CAT I, ILS RWY 7 CAT II, ILS RWY 7 CAT III, Amdt 1E

Chicago/Rockford, IL, Chicago/Rockford Intl, LOC BC RWY 19, Amdt 15C

Chicago/Rockford, IL, Chicago/Rockford Intl, RADAR-1, Amdt 10B

Chicago/Rockford, IL, Chicago/Rockford Intl, RNAV (GPS) RWY 1, Amdt 1C

Chicago/Rockford, IL, Chicago/Rockford Intl, RNAV (GPS) RWY 7, Amdt 1C

Chicago/Rockford, IL, Chicago/Rockford Intl, RNAV (GPS) RWY 19, Amdt 2B

Chicago/Rockford, IL, Chicago/Rockford Intl, RNAV (GPS) RWY 25, Amdt 1B

Chicago, IL, Chicago O'Hare Intl, ILS OR LOC RWY 4R, Amdt 7A

Chicago, IL, Chicago O'Hare Intl, ILS OR LOC RWY 10C, ILS RWY 10C SA CAT I, ILS RWY 10C CAT II, ILS RWY 10C CAT III, Amdt 2A

Chicago, IL, Chicago O'Hare Intl, ILS OR LOC RWY 10L, ILS RWY 10L SA CAT I, ILS RWY 10L CAT II, ILS RWY 10L CAT III, Amdt 19A

Chicago, IL, Chicago O'Hare Intl, ILS OR LOC RWY 22L, Amdt 6A

Chicago, IL, Chicago O'Hare Intl, ILS OR LOC RWY 22R, Amdt 9B

Chicago, IL, Chicago O'Hare Intl, ILS PRM RWY 10C (CLOSE PARALLEL), ILS PRM RWY 10C (CLOSE PARALLEL) SA CAT I, ILS PRM RWY 10C (CLOSE PARALLEL) CAT II, ILS PRM RWY 10C (CLOSE PARALLEL) CAT III, Amdt 1A

Chicago, IL, Chicago O'Hare Intl, ILS PRM Y RWY 10R (CLOSE PARALLEL), Orig-C

Chicago, IL, Chicago O'Hare Intl, ILS Y OR LOC Y RWY 10R, Orig-C

Chicago, IL, Chicago O'Hare Intl, ILS Z OR LOC Z RWY 10R, ILS Z RWY 10R SA CAT I, ILS Z RWY 10R CAT II, ILS Z RWY 10R CAT III, Orig-B

Lake Charles, LA, Chennault Intl, ILS OR LOC RWY 15, Amdt 6

Lake Charles, LA, Chennault Intl, RNAV (GPS) RWY 15, Amdt 1

Lawrence, MA, Lawrence Muni, Takeoff Minimums and Obstacle DP, Amdt 5

Fulton, MO, Elton Hensley Memorial, RNAV (GPS) RWY 18, Orig-B

Madison, MS, Bruce Campbell Field, RNAV (GPS) RWY 17, Amdt 2

Madison, MS, Bruce Campbell Field, RNAV (GPS) RWY 35, Amdt 1

Madison, MS, Bruce Campbell Field, VOR RWY 17, Orig-C

Williston, ND, Sloulin Field Intl, Takeoff Minimums and Obstacle DP, Amdt 6

Lincoln Park, NJ, Lincoln Park, Takeoff Minimums and Obstacle DP, Amdt 1

Belen, NM, Belen Rgnl, RNAV (GPS) RWY 21, Amdt 1

Fulton, NY, Oswego County, RNAV (GPS) RWY 15, Orig-C

Massena, NY, Massena Intl—Richards Field, RNAV (GPS) RWY 5, Amdt 2B

Massena, NY, Massena Intl—Richards Field, RNAV (GPS) RWY 9, Amdt 1D

Massena, NY, Massena Intl—Richards Field, RNAV (GPS) RWY 23, Amdt 1C

Massena, NY, Massena Intl—Richards Field, RNAV (GPS) RWY 27, Amdt 1C

Montgomery, NY, Orange County, Takeoff Minimums and Obstacle DP, Amdt 3

Wellsville, NY, Wellsville Muni Arprt, Tarantone Fld, RNAV (GPS) RWY 28, Amdt 1A

Dayton, OH, Greene County—Lewis A Jackson Rgnl, RNAV (GPS) RWY 7, Amdt 1

Dayton, OH, Greene County—Lewis A Jackson Rgnl, RNAV (GPS) RWY 25, Amdt 1

Dayton, OH, Greene County—Lewis A Jackson Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2

Hamilton, OH, Butler Co Rgnl—Hogan Field, ILS OR LOC RWY 29, Amdt 2

Hamilton, OH, Butler Co Rgnl—Hogan Field, RNAV (GPS) RWY 11, Amdt 1

Hamilton, OH, Butler Co Rgnl—Hogan Field, RNAV (GPS) RWY 29, Amdt 1

Hamilton, OH, Butler Co Rgnl—Hogan Field, Takeoff Minimums and Obstacle DP, Amdt 5

Mc Alester, OK, Mc Alester Rgnl, LOC RWY 2, Amdt 4B, CANCELED

Mc Alester, OK, Mc Alester Rgnl, RNAV (GPS) RWY 2, Amdt 1

Mc Alester, OK, Mc Alester Rgnl, RNAV (GPS) RWY 20, Amdt 1

Stigler, OK, Stigler Rgnl, RNAV (GPS) RWY 17, Orig-B

Creswell, OR, Hobby Field, HOBBY TWO, GRAPHIC DP

Allentown, PA, Allentown Queen City Muni, RNAV (GPS) RWY 7, Amdt 1E

Allentown, PA, Lehigh Valley Intl, ILS OR LOC RWY 6, ILS RWY 6 SA CAT I, ILS RWY 6 SA CAT II, Amdt 24

Danville, PA, Danville, RNAV (GPS) RWY 9, Orig-B

Spearfish, SD, Black Hills—Clyde Ice Field, SWUNG TWO, GRAPHIC DP

Austin, TX, Austin Executive, RNAV (GPS) RWY 31, Amdt 1

Eagle Pass, TX, Maverick County Memorial Intl, RNAV (GPS) RWY 13, Amdt 1

Kountze/Silsbee, TX, Hawthorne Field, RNAV (GPS) RWY 13, Amdt 1B

Eau Claire, WI, Chippewa Valley Rgnl, ILS OR LOC RWY 22, Amdt 10

Eau Claire, WI, Chippewa Valley Rgnl, RNAV (GPS) RWY 22, Amdt 2

Charleston, WV, Yeager, ILS OR LOC RWY 5, Orig

Charleston, WV, Yeager, ILS OR LOC RWY 23, Amdt 31

Charleston, WV, Yeager, LOC RWY 5, ORIG, CANCELED

Charleston, WV, Yeager, RNAV (GPS) Y RWY 5, Amdt 3

Charleston, WV, Yeager, RNAV (RNP) Z RWY 5, Amdt 2

Charleston, WV, Yeager, RNAV (RNP) Z RWY 23, Orig-B

Charleston, WV, Yeager, VOR-A, Amdt 14

*Rescinded:* On November 8, 2018 (83 FR 55821), the FAA published an Amendment in Docket No. 31220, Amdt No. 3823, to Part 97 of the Federal Aviation Regulations under section 97.23, and 97.37. The following entries for New Smyrna Beach, FL, New Smyrna Beach Muni and College Station, TX, Easterwood Field, effective January 3, 2019, are hereby rescinded in their entirety:

New Smyrna Beach, FL, New Smyrna Beach Muni, Takeoff Minimums and Obstacle DP,

Amdt 3 College Station, TX, Easterwood Field, VOR OR TACAN RWY 11, Amdt 19E

[FR Doc. 2018–26246 Filed 12–4–18; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Part 9

[Docket No. TTB–2018–0005; T.D. TTB–152; Ref: Notice No. 174]

RIN 1513–AC38

#### Establishment of the Upper Hudson Viticultural Area

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 1,500-square mile “Upper Hudson” viticultural area in all or portions of Albany, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, and Washington Counties in New York. The Upper Hudson viticultural area is not located within any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** This final rule is effective January 7, 2019.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

#### SUPPLEMENTARY INFORMATION:

##### Background on Viticultural Areas

##### TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002,

codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these laws.

Part 4 of the TTB regulations (27 CFR part 4) authorizes the establishment of definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

#### Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

#### Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation,

that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;

- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

#### Upper Hudson Petition

TTB received a petition from Andrew and Kathleen Weber, owners of Northern Cross Vineyard, on behalf of local grape growers and vintners, proposing to establish the “Upper Hudson” AVA in all or portions of Albany, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, and Washington Counties in New York. The proposed Upper Hudson AVA covers approximately 1,500-square miles and is not located within any other AVA. There are 19 commercial vineyards with attached wineries covering approximately 67.5 acres within the proposed AVA. According to the petition, several vineyard owners are planning to expand their vineyards by a total of an additional 14 acres in the near future, and 4 new vineyards are also planned.

According to the petition, the distinguishing feature of the proposed AVA is its climate, relying on the USDA plant hardiness zone map and the growing degree day accumulations (GDDs)<sup>1</sup> for the proposed AVA and the surrounding areas.

#### Plant Hardiness Zones

According to the USDA plant hardiness zone map, which ranges from the coolest zone 1 to the warmest zone 13, the proposed Upper Hudson AVA falls into zones 5a and 5b. Average minimum temperatures in these zones range from –20 to –15 degrees F. The petition states that these average minimum winter temperatures are cold enough to damage or even kill many varieties of grapes. Therefore, vineyard owners within the proposed AVA plant cold hardy varieties such as Marquette, Frontenac, La Crescent, and La Crosse, which have been developed to withstand temperatures as low as –30

<sup>1</sup> In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual growing degree days (GDDs), defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, the minimum temperature required for grapevine growth. See Albert J. Winkler, *General Viticulture* (Berkeley: University of California Press, 2d ed. 1974), pages 61–64.

degrees F. Regions to the immediate east and west of the proposed Upper Hudson AVA are also classified as zones 5a and 5b. Regions farther to the west and northwest of the proposed AVA are classified as zones 3b, 4a, and 4b, with average minimum temperatures between –35 and –25 degrees F. The region to the south of the proposed AVA is classified as zones 6a and 6b with average minimum temperatures between –10 and 0 degrees F, and able to grow a wider variety of grapes.

#### Growing Degree Days

The petition states that the locations within the proposed AVA achieved GDD accumulations ranging between 2,300 and 2,700. A GDD accumulation of over 2,500 is generally considered to be the minimum GDD accumulations needed to ripen most varieties of grapes.<sup>2</sup> According to the petition, the locations within the proposed AVA reach 2,500 GDDs late in September, meaning that the fruit typically has only a few weeks to continue maturing before the first frost sets in. The petition states that, as a result, wineries often must work with tart fruit and remove the tartness as part of the winemaking process through the use of malolactic fermentation, pH adjustment, or residual sugars.

Locations to the north and south of the proposed AVA have GDD accumulations over 2,700 due to the warming effects of Lake Champlain and the tidal portion of the Hudson River respectively. The petition states that grapes in these warmer regions have more time to mature before the first frost, so the grapes “have the tartness removed in the vineyard.”

The remaining locations, to the east, southeast, southwest, and west of the proposed Upper Hudson AVA, all have lower GDD accumulations than the proposed AVA. The petition claims that viticulture in these regions would be difficult because the GDD accumulations would not reach the levels necessary to reliably ripen most varieties of grapes.

As a result of its climate, the proposed Upper Hudson AVA is suitable for growing cold-hardy grape hybrids, but not the grape varieties that are commonly grown farther south within the established Hudson River Region AVA.

#### Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 174 in the *Federal Register* on April 9, 2018 (83 FR 15091), proposing to establish the Upper

<sup>2</sup> *Id.* at 61–64, 143.

Hudson AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also compared the distinguishing features of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 174. In Notice No. 174, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. The comment period closed on June 8, 2018.

#### Comments Received

In response to Notice No. 174, TTB received seven comments, all of which expressed support for the proposed AVA. Some of the commenters suggested that the proposed AVA will increase tourism and provide economic benefits to the region. Others suggested that the establishment of the proposed Upper Hudson AVA will help to showcase the uniqueness of this area based on its climate. TTB did not receive any comments opposing the proposed AVA.

#### TTB Determination

After careful review of the petition and the comments received in response to Notice No. 174, TTB finds that the evidence provided by the petitioner supports the establishment of the Upper Hudson AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the "Upper Hudson" AVA in in all or portions of Albany, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, and Washington Counties in New York, effective 30 days from the publication date of this document.

#### Boundary Description

See the narrative description of the boundary of the Upper Hudson AVA in the regulatory text published at the end of this final rule.

#### Maps

The petitioner provided the required maps, and they are listed below in the regulatory text.

#### Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than

the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of this AVA, its name, "Upper Hudson," will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulation clarifies this point. Consequently, wine bottlers using the name "Upper Hudson" in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin. The establishment of the Upper Hudson AVA will not affect any existing AVA. The establishment of the Upper Hudson AVA will allow vintners to use "Upper Hudson" as an appellation of origin for wines made primarily from grapes grown within the Upper Hudson AVA if the wines meet the eligibility requirements for the appellation.

#### Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant adverse economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

#### Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

#### Drafting Information

Caroline Hermann of the Regulations and Rulings Division drafted this final rule.

#### List of Subjects in 27 CFR Part 9

Wine.

#### The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

#### PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

#### Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.264 to read as follows:

##### § 9.264 Upper Hudson.

(a) *Name*. The name of the viticultural area described in this section is "Upper Hudson". For purposes of part 4 of this chapter, "Upper Hudson" is a term of viticultural significance.

(b) *Approved maps*. The four United States Geological Survey (USGS) 1:100,000 scale topographic maps used to determine the boundary of the Upper Hudson viticultural area are titled:

- (1) Glens Falls, New York—Vermont, 1989;
- (2) Albany, New York—Massachusetts—Vermont, 1989;
- (3) Amsterdam, New York, 1985; photoinspected 1990; and
- (4) Gloversville, New York, 1985; photoinspected 1992.

(c) *Boundary*. The Upper Hudson viticultural area is located in Albany, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, and Washington Counties in New York. The boundary of the Upper Hudson viticultural area is as described below:

- (1) The point of the beginning is on the Glens Falls map at the intersection of U.S. Highway 9 and State Highway 32, in Glens Falls. From the beginning point, proceed east on State Highway 32 to its intersection with State Highway 254; then
  - (2) Proceed southeasterly along State Highway 254 to its intersection with U.S. Highway 4 in Hudson Falls; then
  - (3) Proceed south along U.S. Highway 4 to its intersection with State Highway 197 in Fort Edward; then
  - (4) Proceed east, then southeast along State Highway 197 to its intersection with State Highway 40 in Argyle; then

(5) Proceed southeast in a straight line to the intersection of State Highway 29 and State Highway 22 in Greenwich Junction; then

(6) Proceed south along State Highway 22, crossing onto the Albany map, to the highway's intersection with State Highway 7 in Hoosick; then

(7) Proceed southwest along State Highway 7, crossing the Hudson River, to the highway's intersection with State Highway 32 in Green Island; then

(8) Proceed south on State Highway 32 to its intersection with U.S. Highway 20 in Albany; then

(9) Proceed west on U.S. Highway 20 its intersection with U.S. Highway 9; then

(10) Proceed southwest along U.S. Highway 9 to its intersection with State Highway 443; then

(11) Proceed southwest, then westerly along State Highway 443, crossing onto the Amsterdam map, to the highway's intersection with an unnamed state highway known locally as State Highway 30 in Vroman Corners; then

(12) Proceed northwesterly along State Highway 30 to its intersection with State Highway 30A in Sidney Corners; then

(13) Proceed north along State Highway 30A, crossing over the Mohawk River, to the highway's intersection with State Highway 5 in Fonda; then

(14) Proceed east along State Highway 5 to its intersection with State Highway 67 in Amsterdam; then

(15) Proceed east along State Highway 67 to its intersection with an unnamed light-duty road known locally as Morrow Road; then

(16) Proceed northeast in a straight line, crossing over the southeastern corner of the Gloversville map and onto the Glens Falls map, to the point where Daly Creek empties into Great Sacandaga Lake; then

(17) Proceed northeast, then east along the southern shore of Great Sacandaga Lake to its confluence with the Hudson River in the town of Lake Luzerne; then

(18) Proceed south, then easterly along the southern bank of the Hudson River to its intersection with U.S. Highway 9 in South Glens Falls; then

(19) Proceed northwest along U.S. Highway 9, crossing the Hudson River, and returning to the beginning point.

Signed: September 10, 2018.

**John J. Manfreda,**  
*Administrator.*

Approved: November 13, 2018.

**Timothy E. Skud,**  
*Deputy Assistant Secretary, (Tax, Trade, and Tariff Policy).*

[FR Doc. 2018-26320 Filed 12-4-18; 8:45 am]

**BILLING CODE 4810-31-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2018-1038]

RIN 1625-AA00

#### Safety Zone; Sausalito Lighted Boat Parade Fireworks Display; Richardson Bay, Sausalito, CA

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard will enforce the safety zone for the Sausalito Lighted Boat Parade Fireworks Display in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect personnel, vessels, and the marine environment from the dangers associated with pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

**DATES:** The regulations in 33 CFR 165.1191, Table 1, Item number 30, will be enforced from 10 a.m. to 8:10 p.m. on December 8, 2018.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Lieutenant Junior Grade Jennae Cotton, U.S. Coast Guard Sector San Francisco; telephone (415) 399-3585 or email at [SFWaterways@uscg.mil](mailto:SFWaterways@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone established in 33 CFR 165.1191, Table 1, Item number 30, on December 8, 2018. The Coast Guard will enforce a 100-foot safety zone around the fireworks barge during the loading, transit, and arrival of the fireworks barge from the loading location to the display location and until the start of the fireworks display. From 10 a.m. until 4 p.m. on December 8, 2018, the fireworks barge will be loading pyrotechnics at Pier 50 in San

Francisco, CA. The fireworks barge will remain at the loading location until its transit to the display location. From 5 p.m. to 6 p.m. on December 8, 2018 the loaded fireworks barge will transit from Pier 50 to the launch site near Sausalito Point in approximate position 37°51'29.23" N, 122°28'25" W (NAD 83) where it will remain until the conclusion of the fireworks display. At 7 p.m. on December 8, 2018, 30 minutes prior to the commencement of the 10-minute fireworks display, the safety zone will encompass the navigable waters surrounding the fireworks barge near Sausalito Point in Sausalito, CA within a radius of 1,000 feet from approximate position 37°51'29.23"N, 122° 28'25" W (NAD 83) for the Sausalito Lighted Boat Parade Fireworks Display in 33 CFR 165.1191, Table 1, Item number 30. The safety zone shall terminate at 8:10 p.m. on December 8, 2018.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order or direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of the safety zone and its enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: November 28, 2018.

**Rebecca W. Deakin,**

*Lieutenant Commander, U.S. Coast Guard, Chief, Waterways Management Division.*

[FR Doc. 2018-26366 Filed 12-4-18; 8:45 am]

**BILLING CODE 9110-04-P**

**DEPARTMENT OF COMMERCE****Patent and Trademark Office****37 CFR Part 6**

[Docket No. PTO–T–2018–0063]

RIN 0651–AD32

**International Trademark Classification Changes****AGENCY:** United States Patent and Trademark Office, Commerce.**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) issues a final rule to incorporate classification changes adopted by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Agreement). These changes are effective January 1, 2019, and are listed in the International Classification of Goods and Services for the Purposes of the Registration of Marks (11th ed., ver. 2019), which is published by the World Intellectual Property Organization (WIPO).

**DATES:** This rule is effective on January 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, (571) 272–8946, [TMFRNotices@uspto.gov](mailto:TMFRNotices@uspto.gov).

**SUPPLEMENTARY INFORMATION:**

*Purpose:* As noted above, this final rule incorporates classification changes adopted by the Nice Agreement that will become effective on January 1, 2019. This rule benefits the public by providing notice regarding these changes.

*Summary of Major Provisions:* The USPTO is revising § 6.1 in part 6 of title 37 of the Code of Federal Regulations to incorporate classification changes and modifications that will become effective January 1, 2019, as listed in the International Classification of Goods and Services for the Purposes of the Registration of Marks (11th ed., 2019) (Nice Classification), published by WIPO.

The Nice Agreement is a multilateral treaty, administered by WIPO, which establishes the international classification of goods and services for the purposes of registering trademarks and service marks. As of September 1, 1973, this international classification system is the controlling system used by the United States, and it applies to all applications filed on or after September 1, 1973, and their resulting registrations, for all statutory purposes. See 37 CFR

2.85(a). Every signatory to the Nice Agreement must utilize the international classification system.

Each state party to the Nice Agreement is represented in the Committee of Experts of the Nice Union (Committee of Experts), which meets annually to vote on proposed changes to the Nice Classification. Any state that is a party to the Nice Agreement may submit proposals for consideration by the other members in accordance with agreed-upon rules of procedure. Proposals are currently submitted on an annual basis to an electronic forum on the WIPO website, commented upon, modified, and compiled by WIPO for further discussion and voting at the annual Committee of Experts meeting.

In 2013, the Committee of Experts began annual revisions to the Nice Classification. The annual revisions, which are published electronically and enter into force on January 1 each year, are referred to as versions and identified by edition number and year of the effective date (e.g., “Nice Classification, 10th edition, version 2013” or “NCL 10–2013”). Each annual version includes all changes adopted by the Committee of Experts since the adoption of the previous version. The changes consist of the addition of new goods and services to, and deletion of goods and services from, the Alphabetical List, and any modifications to the wording in the Alphabetical List, the class headings, and the explanatory notes that do not involve the transfer of goods or services from one class to another. New editions of the Nice Classification continue to be published electronically and include all changes adopted annually since the previous version, as well as goods or services transferred from one class to another or new classes that are created.

The annual revisions contained in this final rule consist of modifications to the class headings that were incorporated into the Nice Agreement during the 28th Session of the Committee of Experts, from April 30, 2018 through May 4, 2018. Under the Nice Classification, there are 34 classes of goods and 11 classes of services, each with a class heading. Class headings generally indicate the fields to which goods and services belong. Specifically, this rule adds new, or deletes existing, goods and services from 15 class headings. The changes to the class headings further define the types of goods and/or services appropriate to the class. As a signatory to the Nice Agreement, the United States adopts these revisions pursuant to Article 1.

**Discussion of Regulatory Changes**

The USPTO is revising § 6.1 as follows:

In Class 5, the wording “dietary supplements for humans and animals” is amended to “dietary supplements for human beings and animals.”

In Class 9, the wording “Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments” is amended to add “research” after “scientific,” amend “nautical” to “navigation,” add “audiovisual” after “cinematographic,” and amend “checking (supervision)” to “detecting, testing, inspecting.” The wording “apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity” is amended to add “the distribution or use of” after “controlling.” The wording “apparatus for recording, transmission or reproduction of sound or images” is amended to add “and instruments” after “apparatus,” amend “transmission or reproduction of” to “transmitting, reproducing or processing,” and amend “sound or images” to “sound, images or data.” The wording “magnetic data carriers, recording discs” is deleted and replaced with “recorded and downloadable media, computer software, blank digital or analogue recording or storage media.” The wording “compact discs, DVDs and other digital recording media” is deleted. The wording “cash registers, calculating machines, data processing equipment, computers” is amended to “cash registers, calculating devices.” The wording “computers and computer peripheral devices” is added thereafter. The wording “computer software” is deleted. The wording “diving suits, divers’ masks, ear plugs for divers, nose clips for diver sand swimmers, gloves for divers, breathing apparatus for underwater swimming” is added thereafter.

In Class 11, “Apparatus for lighting” is amended to “Apparatus and installations for lighting,” and “cooling” is added before the wording “steam generating.” “Refrigerating” is deleted.

In Class 15, the wording “music stands and stands for musical instruments; conductors’ batons” is added.

In Class 19, “Building materials (non-metallic)” is amended to “Materials, not of metal, for building and construction.” The wording “non-metallic rigid pipes for building” is amended to “rigid pipes, not of metal, for building.” The wording “asphalt, pitch and bitumen” is

amended to add a comma after “pitch” and the wording “tar” thereafter. The wording “non-metallic transportable buildings” is amended to “transportable buildings, not of metal.”

In Class 23, “yarns and threads, for textile use,” is amended to delete the comma after “threads.”

In Class 25, the wording “headgear” is amended to “headwear.”

In Class 26, the wording “Lace and embroidery, ribbons and braid” is amended to add a comma after “Lace” and the wording “braid” thereafter, add “and haberdashery” before “ribbons,” and amend “braid” to “bows.”

In Class 27, the wording “wall hangings (non-textile)” is amended to “wall hangings, not of textile.”

In Class 29, “milk and milk products” is amended to “milk, cheese, butter, yoghurt and other milk products.”

In Class 30, “rice” is amended to add a comma and the wording “pasta and noodles” thereafter. The wording “chocolate;” is added after “bread, pastries and confectionery.” The wording “ice cream, sorbets and other” is added before “edible ices.” The wording “salt;” is amended to replace the semi-colon with a comma and add the wording “seasonings, spices, preserved herbs;” thereafter. The wording “mustard;” is deleted. The wording “vinegar, sauces (condiments);” is amended to add the wording “and other” before “condiments” and delete the parentheses. The wording “spices;” is deleted where it appears as a separate clause.

In Class 32, the wording “non-alcoholic beverages;” is added after “Beers.” The wording “mineral and aerated water and other non-alcoholic beverages” is amended to delete “and other non-alcoholic beverages.” The wording “syrups and other preparations for making beverages” is amended to add “non-alcoholic” before “preparations.”

In Class 33, the wording “Alcoholic beverages (except beers)” is amended to add a comma after “beverages” and delete the parentheses. The wording “alcoholic preparations for making beverages” is added thereafter.

In Class 34, “Tobacco” is amended to add “and tobacco substitutes” thereafter. The wording “cigarettes and cigars; electronic cigarettes and oral vaporizers for smokers;” is added before “smokers’ articles.”

In Class 42, the wording “industrial analysis and research services” is amended to add “industrial” before “research.”

## Rulemaking Requirements

*A. Administrative Procedure Act:* The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Perez v. Mortg. Bankers Ass’n*, 135 S. Ct. 1199, 1204 (2015) (Interpretive rules “advise the public of the agency’s construction of the statutes and rules which it administers.” (citation and internal quotation marks omitted)); *Nat’l Org. of Veterans’ Advocates v. Sec’y of Veterans Affairs*, 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Rule that clarifies interpretation of a statute is interpretive.); *Bachow Commc’ns Inc. v. FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp. v. Shalala*, 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims.).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Perez*, 135 S. Ct. at 1206 (Notice-and-comment procedures are required neither when an agency “issue[s] an initial interpretive rule” nor “when it amends or repeals that interpretive rule.”); *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for “interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice” (quoting 5 U.S.C. 553(b)(A))).

The 30-day delay in effectiveness is not applicable because this rule is not a substantive rule as the changes in this rule have no impact on the standard for reviewing trademark applications. As discussed above, the changes in this rulemaking involve rules of agency practice and procedure, and consist of modifications to the class headings that are used to classify goods and services in the trademark application process. These changes are administrative in nature and will have no substantive impact on the evaluation of a trademark application. The purpose of a delay in effectiveness is to allow affected parties time to modify their behaviors, businesses, or practices to come into compliance with new regulations. This rule imposes no additional requirements on the affected entities. Therefore, the requirement for a 30-day delay in effectiveness is not applicable, and the rule is made effective January 1, 2019.

*B. Regulatory Flexibility Act:* As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a Regulatory Flexibility Act analysis, nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), is required. *See* 5 U.S.C. 603.

*C. Executive Order 12866 (Regulatory Planning and Review):* This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

*D. Executive Order 13563 (Improving Regulation and Regulatory Review):* The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

*E. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs):* This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

*F. Executive Order 13132 (Federalism):* This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

*G. Executive Order 13175 (Tribal Consultation):* This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).



*H. Executive Order 13211 (Energy Effects):* This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

*I. Executive Order 12988 (Civil Justice Reform):* This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

*J. Executive Order 13045 (Protection of Children):* This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

*K. Executive Order 12630 (Taking of Private Property):* This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

*L. Congressional Review Act:* Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a "major rule" as defined in 5 U.S.C. 804(2).

*M. Unfunded Mandates Reform Act of 1995:* The changes set forth in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the

Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

*N. National Environmental Policy Act:* This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

*O. National Technology Transfer and Advancement Act:* The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

*P. Paperwork Reduction Act:* This final rule does not involve information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 37 CFR Part 6

Administrative practice and procedure, Classification, Trademarks.

For the reasons given in the preamble and under the authority contained in 15 U.S.C. 1112, 1123 and 35 U.S.C. 2, as amended, the USPTO is amending part 6 of title 37 as follows:

#### PART 6—CLASSIFICATION OF GOODS AND SERVICES UNDER THE TRADEMARK ACT

■ 1. The authority citation for 37 CFR part 6 continues to read as follows:

**Authority:** Secs. 30, 41, 60 Stat. 436, 440; 15 U.S.C. 1112, 1123; 35 U.S.C. 2, unless otherwise noted.

■ 2. Revise § 6.1 to read as follows:

##### § 6.1 International schedule of classes of goods and services.

###### Goods

Chemicals for use in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; fire extinguishing and fire prevention compositions; tempering and soldering preparations; substances for tanning animal skins and hides; adhesives for use in industry; putties and other paste fillers; compost, manures, fertilizers; biological preparations for use in industry and science.

2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants, dyes; inks for printing, marking and engraving; raw natural resins; metals in foil and powder form for use in painting, decorating, printing and art.

3. Non-medicated cosmetics and toiletry preparations; non-medicated dentifrices; perfumery, essential oils; bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations.

4. Industrial oils and greases, wax; lubricants; dust absorbing, wetting and binding compositions; fuels and illuminants; candles and wicks for lighting.

5. Pharmaceuticals, medical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use, food for babies; dietary supplements for human beings and animals; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

6. Common metals and their alloys, ores; metal materials for building and construction; transportable buildings of metal; non-electric cables and wires of common metal; small items of metal hardware; metal containers for storage or transport; safes.

7. Machines, machine tools, power-operated tools; motors and engines, except for land vehicles; machine coupling and transmission components, except for land vehicles; agricultural implements, other than hand-operated hand tools; incubators for eggs; automatic vending machines.

8. Hand tools and implements, hand-operated; cutlery; side arms, except firearms; razors.

9. Scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling the distribution or use of electricity; apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data; recorded and downloadable media, computer software, blank digital or analogue recording and storage media; mechanisms for coin-operated apparatus; cash registers, calculating devices; computers and computer peripheral devices; diving suits, divers' masks, ear plugs for divers, nose clips for divers and swimmers, gloves for divers, breathing apparatus for underwater swimming; fire-extinguishing apparatus.

10. Surgical, medical, dental and veterinary apparatus and instruments; artificial limbs, eyes and teeth;

orthopaedic articles; suture materials; therapeutic and assistive devices adapted for the disabled; massage apparatus; apparatus, devices and articles for nursing infants; sexual activity apparatus, devices and articles.

11. Apparatus and installations for lighting, heating, cooling, steam generating, cooking, drying, ventilating, water supply and sanitary purposes.

12. Vehicles; apparatus for locomotion by land, air or water.

13. Firearms; ammunition and projectiles; explosives; fireworks.

14. Precious metals and their alloys; jewellery, precious and semi-precious stones; horological and chronometric instruments.

15. Musical instruments; music stands and stands for musical instruments; conductors' batons.

16. Paper and cardboard; printed matter; bookbinding material; photographs; stationery and office requisites, except furniture; adhesives for stationery or household purposes; drawing materials and materials for artists; paintbrushes; instructional and teaching materials; plastic sheets, films and bags for wrapping and packaging; printers' type, printing blocks.

17. Unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials; plastics and resins in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, tubes and hoses, not of metal.

18. Leather and imitations of leather; animal skins and hides; luggage and carrying bags; umbrellas and parasols; walking sticks; whips, harness and saddlery; collars, leashes and clothing for animals.

19. Materials, not of metal, for building and construction; rigid pipes, not of metal, for building; asphalt, pitch, tar and bitumen; transportable buildings, not of metal; monuments, not of metal.

20. Furniture, mirrors, picture frames; containers, not of metal, for storage or transport; unworked or semi-worked bone, horn, whalebone or mother-of-pearl; shells; meerschaum; yellow amber.

21. Household or kitchen utensils and containers; cookware and tableware, except forks, knives and spoons; combs and sponges; brushes, except paintbrushes; brush-making materials; articles for cleaning purposes; unworked or semi-worked glass, except building glass; glassware, porcelain and earthenware.

22. Ropes and string; nets; tents and tarpaulins; awnings of textile or synthetic materials; sails; sacks for the

transport and storage of materials in bulk; padding, cushioning and stuffing materials, except of paper, cardboard, rubber or plastics; raw fibrous textile materials and substitutes therefor.

23. Yarns and threads for textile use.

24. Textiles and substitutes for textiles; household linen; curtains of textile or plastic.

25. Clothing, footwear, headwear.

26. Lace, braid and embroidery, and haberdashery ribbons and bows; buttons, hooks and eyes, pins and needles; artificial flowers; hair decorations; false hair.

27. Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings, not of textile.

28. Games, toys and playthings; video game apparatus; gymnastic and sporting articles; decorations for Christmas trees.

29. Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk, cheese, butter, yoghurt and other milk products; oils and fats for food.

30. Coffee, tea, cocoa and artificial coffee; rice, pasta and noodles; tapioca and sago; flour and preparations made from cereals; bread, pastries and confectionery; chocolate; ice cream, sorbets and other edible ices; sugar, honey, treacle; yeast, baking-powder; salt, seasonings, spices, preserved herbs; vinegar, sauces and other condiments; ice (frozen water).

31. Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds; fresh fruits and vegetables, fresh herbs; natural plants and flowers; bulbs, seedlings and seeds for planting; live animals; foodstuffs and beverages for animals; malt.

32. Beers; non-alcoholic beverages; mineral and aerated waters; fruit beverages and fruit juices; syrups and other non-alcoholic preparations for making beverages.

33. Alcoholic beverages, except beers; alcoholic preparations for making beverages.

34. Tobacco and tobacco substitutes; cigarettes and cigars; electronic cigarettes and oral vaporizers for smokers; smokers' articles; matches.

#### Services

35. Advertising; business management; business administration; office functions.

36. Insurance; financial affairs; monetary affairs; real estate affairs.

37. Building construction; repair; installation services.

38. Telecommunications.

39. Transport; packaging and storage of goods; travel arrangement.

40. Treatment of materials.

41. Education; providing of training; entertainment; sporting and cultural activities.

42. Scientific and technological services and research and design relating thereto; industrial analysis and industrial research services; design and development of computer hardware and software.

43. Services for providing food and drink; temporary accommodation.

44. Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.

45. Legal services; security services for the physical protection of tangible property and individuals; personal and social services rendered by others to meet the needs of individuals.

Dated: November 28, 2018.

**Andrei Iancu,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2018-26373 Filed 12-4-18; 8:45 am]

**BILLING CODE 3510-16-P**

## LIBRARY OF CONGRESS

### Copyright Royalty Board

#### 37 CFR Part 387

[Docket No. 15-CRB-0010-CA-S]

### Adjustment of Cable Statutory License Royalty Rates

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Royalty Judges (Judges) publish a final rule requiring affected cable systems to pay a separate per-telecast royalty (a Sports Surcharge) in addition to the other royalties that those cable systems must pay under Section 111 of the Copyright Act.

#### **DATES:**

*Effective date:* December 6, 2018.

*Applicability date:* January 1, 2019.

**ADDRESSES:** *Docket:* For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at <https://app.crb.gov/> and search for docket number 15-CRB-0010-CA-S.

#### **FOR FURTHER INFORMATION CONTACT:**

Anita Blaine, CRB Program Specialist, by telephone at (202) 707-7658 or email at [crb@loc.gov](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:** On July 30, 2018, the Copyright Royalty Judges

(Judges) published a modified proposed rule that establishes affected cable operators' obligation to pay a Sports Surcharge royalty. 83 FR 36509.

The Judges solicited general comments for or against the proposal and specific comments on the following questions: Could the proposed provision in section 387.2 (e)(9) ("Nothing herein shall preclude any copyright owner of a live television broadcast, the secondary transmission of which would have been subject to deletion under the FCC Sports Blackout Rule, from receiving a share of royalties paid pursuant to this paragraph.") apply to the secondary transmissions of the live television broadcasts of any entity *other than* a current member of the Joint Sports Claimants (JSC)?<sup>1</sup> If the answer is yes, which entities' transmissions would qualify for a share? If the answer is no (*i.e.*, only JSC members could qualify), then is the current proposal nevertheless consistent with the section 111 license? If so, why? *Id.* at 36511.

The Judges received joint comments from the JSC, NCTA-The Internet & Television Association, and American Cable Association stating support for the modified proposed rule as consistent with the section 111 license, answering the question in the affirmative, and specifying that "non-JSC members (*e.g.*, MLS)"<sup>2</sup> might qualify for a share of the royalties. Joint Comments of the Moving Parties at 5. The Judges received no other comments.

The joint commenters point out that the focus of the proposed rule is to specify the circumstances in which cable systems will owe and make Sports Surcharge royalty payments, *i.e.*, a "pay-in" methodology. *Id.* at 4. The modified proposed language applies to Surcharge payments for events of JSC members *and other entities*, if any, who sought protection under the Sports Blackout Rule in the two years prior to its repeal. The joint commenters are not aware of any other protected entities, but they proposed removing the reference to the JSC in the rule to address the Judges' concern that the language in the rule as originally proposed appeared limiting and exclusionary. Although JSC members may be the only entities that invoked the protection, even entities who did not invoke the protection may be entitled to receive a share of the Surcharge funds in the future. *Id.* at 5–6. The modified proposed rule also

eliminates the reference to "eligible" sports events as it only included by definition JSC-member events. *Id.* at 3–4.

The joint commenters believe the original proposed rule did not implicate any of the concerns the Judges expressed because distribution of shares is not a subject of this rule. Distribution of royalty fees will be determined by the Judges or by agreement of interested parties. The modified proposed rule nonetheless states expressly that copyright owners are not precluded from sharing in future payments for the regulated secondary transmissions. *Id.* at 4, 6.

The removal of the references to JSC-member events in the proposed rule and the addition of the section clarifying that no entity will be precluded from receiving shares based on this rule allay the concerns of the Judges.

#### List of Subjects in 37 CFR Part 387

Copyright, Cable television, Royalties.

For the reasons set forth in the preamble, and under the authority of chapter 8, title 17, United States Code, the Copyright Royalty Judges amend 37 CFR chapter III as follows:

#### PART 387—ADJUSTMENT OF ROYALTY FEE FOR CABLE COMPULSORY LICENSE

■ 1. The authority citation for part 387 continues to read as follows:

**Authority:** 17 U.S.C. 801(b)(2), 803(b)(6).

■ 2. Amend § 387.2 by redesignating paragraph (e) as paragraph (f) and adding a new paragraph (e) to read as follows:

#### § 387.2 Royalty fee for compulsory license for secondary transmission by cable systems.

\* \* \* \* \*

(e) *Sports programming surcharge.* Commencing with the first semiannual accounting period of 2019 and for each semiannual accounting period thereafter, in the case of an affected cable system filing Form SA3 as referenced in 37 CFR 201.17(d)(2)(ii) (2014), the royalty rate shall be, in addition to the amounts specified in paragraphs (a), (c), and (d) of this section, a surcharge of 0.025 percent of the affected cable system's gross receipts for the secondary transmission to subscribers of each live television broadcast of a sports event where the secondary transmission of that broadcast would have been subject to deletion under the FCC Sports Blackout Rule. For purposes of this paragraph:

(1) The term "cable system" shall have the same meaning as in 17 U.S.C. 111(f)(3);

(2) An "affected cable system"—

(i) Is a "community unit," as the comparable term is defined or interpreted in accordance with § 76.5(dd) of the rules and regulations of the Federal Communications Commission, in effect as of November 23, 2014, 47 CFR 76.5(dd) (2014);

(ii) That is located in whole or in part within the 35-mile specified zone of a television broadcast station licensed to a community in which a sports event is taking place, provided that if there is no television broadcast station licensed to the community in which a sports event is taking place, the applicable specified zone shall be that of the television broadcast station licensed to the community with which the sports event or team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed; and

(iii) Whose royalty fee is specified by 17 U.S.C. 111(d)(1)(B);

(3) A "television broadcast" of a sports event must qualify as a "non-network television program" within the meaning of 17 U.S.C. 111(d)(3)(A);

(4) The term "specified zone" shall be defined as the comparable term is defined or interpreted in accordance with § 76.5(e) of the rules and regulations of the Federal Communications Commission in effect as of November 23, 2014, 47 CFR 76.5(e) (2014);

(5) The term "gross receipts" shall have the same meaning as in 17 U.S.C. 111(d)(1)(B) and shall include all gross receipts of the affected cable system during the semiannual accounting period except those from the affected cable system's subscribers who reside in:

(i) The local service area of the primary transmitter, as defined in 17 U.S.C. 111(f)(4);

(ii) Any community where the cable system has fewer than 1000 subscribers;

(iii) Any community located wholly outside the specified zone referenced in paragraph (e)(4) of this section; and

(iv) Any community where the primary transmitter was lawfully carried prior to March 31, 1972;

(6) The term "FCC Sports Blackout Rule" refers to § 76.111 of the rules and regulations of the Federal Communications Commission in effect as of November 23, 2014, 47 CFR 76.111 (2014);

(7) Subject to paragraph (e)(8) of this section, the surcharge will apply to the secondary transmission of a primary

<sup>1</sup> The Joint Sports Claimants are the Office of the Commissioner of Baseball, the National Football League, the National Basketball Association, the Women's National Basketball Association, the National Hockey League, and the National Collegiate Athletic Association.

<sup>2</sup> Major League Soccer.

transmission of a live television broadcast of a sports event only where the holder of the broadcast rights to the sports event or its agent has provided the affected cable system—

(i) Advance written notice regarding the secondary transmission as required by § 76.111(b) and (c) of the FCC Sports Blackout Rule; and

(ii) Documentary evidence that the specific team on whose behalf the notice is given had invoked the protection afforded by the FCC Sports Blackout Rule during the period from January 1, 2012, through November 23, 2014;

(8) In the case of collegiate sports events, the number of events involving a specific team as to which an affected cable system must pay the surcharge will be no greater than the largest number of events as to which the FCC Sports Blackout Rule was invoked in a particular geographic area by that team during any one of the accounting periods occurring between January 1, 2012, and November 23, 2014;

(9) Nothing herein shall preclude any copyright owner of a live television broadcast, the secondary transmission of which would have been subject to deletion under the FCC Sports Blackout Rule, from receiving a share of royalties paid pursuant to this paragraph (e).

\* \* \* \* \*

Dated: October 1, 2018.

David R. Strickler,  
Copyright Royalty Judge.

Jesse M. Feder,  
Copyright Royalty Judge.

Suzanne M. Barnett,  
Chief Copyright Royalty Judge.

Approved by:

Carla D. Hayden,  
Librarian of Congress.

[FR Doc. 2018-26275 Filed 12-4-18; 8:45 am]

BILLING CODE 1410-72-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 16**

[EPA-HQ-OEI-2014-0849; FRL-9941-44-OEI]

**Revision of the Agency’s Privacy Act Regulations for EPA-63**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action on revisions to the Agency’s Privacy Act regulations in order to exempt a new system of records, EPA-

63, the eDiscovery Enterprise Tool Suite, from certain requirements of the Privacy Act because records in EPA’s eDiscovery Enterprise Tool Suite are maintained for use in civil and criminal actions. A notice has been published in the **Federal Register** on July 27, 2018 for the creation of this new system of records that will contain information collected using the Agency’s suite of tools that search and preserve electronically stored information (ESI) in support of the Agency’s eDiscovery (electronic discovery) and Freedom of Information Act processes.

**DATES:** This rule is effective on March 6, 2019 without further notice, unless EPA receives adverse comment by January 7, 2019. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OEI-2014-0849, at <https://www.regulations.gov/>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Brian K. Thompson, Acting Director, eDiscovery Division, Office of Enterprise Information Programs, U.S. Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Avenue NW, Washington, DC 20460; email: [thompson.briank@epa.gov](mailto:thompson.briank@epa.gov); telephone number: 202-564-4256.

**SUPPLEMENTARY INFORMATION:**

**I. Why is EPA using a direct final rule?**

The EPA is publishing this rule without a prior proposed rule because

we view this as a noncontroversial action and anticipate no adverse comment. However, in the “Proposed Rules” section of the **Federal Register**, we are publishing a separate document that will serve as the proposed rule to exempt a new system of records, EPA-63, the eDiscovery Enterprise Tool Suite, from certain requirements of the Privacy Act if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

**II. General Information**

The EPA published a Privacy Act system of records notice for information collected using the eDiscovery Enterprise Tool Suite. Depending on the specific need, the Agency will use a combination of several electronic tools that together assist with the preservation, search, processing, review and production of electronically stored information (ESI). The tool suite will be used to preserve, search, collect, sort and review ESI including email messages, word processing documents, media files, spreadsheets, presentations, scanned documents and data sets in support of legal discovery. The Agency will also use these tools to search for ESI that is responsive to requests for information submitted under the Freedom of Information Act (FOIA), or other formal information requests.

The records in EPA’s eDiscovery Enterprise Tool Suite are maintained for use in civil and criminal actions. The Agency’s system of records, EPA-63, is maintained by the Office of Environmental Information, Office of Enterprise Information Programs, eDiscovery Division, on behalf of Agency offices that will require use of the eDiscovery tool suite for both civil and criminal actions. When information is maintained for the purpose of civil actions, the relevant provision of the Privacy Act is 5 U.S.C. 552a(d)(5) which states “nothing in this [Act] shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.” 5 U.S.C. 552a(d)(5).

The system is also maintained for support of criminal enforcement activity by the EPA. In those cases, the system

is maintained on behalf of the Criminal Investigation Division, Office of Criminal Enforcement, Forensics, and Training, Office of Enforcement and Compliance Assurance—a component of EPA that performs as its principal function, activities pertaining to the enforcement of criminal laws. When information is maintained for the purpose of criminal cases, the relevant provision of the Privacy Act is 5 U.S.C. 552a(j)(2), which states that the head of an agency may promulgate regulations to exempt the system from certain provisions of the Act if the system is “maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of: (A) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.” 5 U.S.C. 552a(j)(2). Accordingly the EPA-63 is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8) and (f)(2)–(f)(5) and (g):

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her could reveal investigative interest on the part of EPA and/or the Department of Justice. This would permit record subjects to impede the investigation, *e.g.*, destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel. Further, making available to a record subject the accounting of disclosures could reveal the identity of a confidential source.

(2) From subsection (c)(4) because no access to these records is available under subsection (d) of the Privacy Act.

(3) From subsection (d) because the records contained in these systems relate to official federal investigations. Individual access to these records could compromise ongoing investigations,

reveal confidential informants and/or sensitive investigative techniques used in particular investigations, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records in either of these systems would interfere with ongoing law enforcement proceedings and impose an unworkable administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (e)(5) because in the course of law enforcement investigations information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede any investigative process, whether civil or criminal, if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(5) From subsection (e)(2) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsections (e)(4)(G) and (H) because no access to these records is available under subsection (d) of the Privacy Act.

(8) From subsection (e)(8) because complying with this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(9) From subsection (f)(2), (f)(3), (f)(4) and (f)(5) because this system is exempt from the access and amendment provisions of subsection (d).

(10) From subsection (g) because EPA is claiming that this system of records is exempt from subsections (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) and (H), (5), and (8), and (f)(2), (3), (4) and (5) of the Act, the provisions of subsection (g) of the Act are inapplicable and are exempted to the extent that this system of records is exempted from those subsections of the Act.

A final relevant provision of the Privacy Act is 5 U.S.C. 552a (k)(2), which states that the head of an agency may promulgate regulations to exempt

the system from certain provisions of the Act if the system “contains investigatory material compiled for law enforcement purposes other than material within the scope of subsection (j)(2)” of 5 U.S.C. 552a. Accordingly EPA-63 is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H) and (f)(2)–(f)(5):

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her could reveal investigative interest on the part of EPA and/or the Department of Justice. This would permit record subjects to impede the investigation, *e.g.*, destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel. Further, making available to a record subject the accounting of disclosures could reveal the identity of a confidential source.

(2) From subsection (d) because the records contained in these systems relate to official Federal investigations. Individual access to these records could compromise ongoing investigations, reveal confidential informants and/or sensitive investigative techniques used in particular investigations, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records in either of these systems would interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(3) From subsection (e)(1) because in the course of law enforcement investigations information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede any investigative process, whether civil or criminal, if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(4) From subsections (e)(4) (G) and (H), because no access to these records is available under subsection (d) of the Privacy Act.

(5) From subsection (f)(2), (f)(3), (f)(4) and (f)(5) because this system is exempt from the access and amendment provisions of subsection (d).

### III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

#### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

#### B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

#### C. Paperwork Reduction Act

This action does not impose an information collection burden under the PRA. This action contains no provisions constituting a collection of information under the PRA.

#### D. Regulatory Flexibility Act

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.

#### E. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

#### F. Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

#### G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

#### H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those

regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

#### I. Executive Order 13211: Actions 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.

#### 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).

#### L. The Congressional Review Act

This rule is exempt from the CRA because it is a rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties.

#### List of Subjects in 40 CFR Part 16

Environmental protection, Administrative practice and procedure, Confidential business information, Privacy, Government employees.

Dated: November 14, 2018.

Vaughn Noga,

Principal Deputy Assistant Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 16 of the Code of Federal Regulations is amended as follows:

### PART 16—IMPLEMENTATION OF PRIVACY ACT OF 1974

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

**Authority:** 5 U.S.C. 301, 552a (as revised).

■ 2. Amend § 16.11 by:

■ a. Adding the system number and name, EPA–63 eDiscovery Enterprise Tool Suite, at the end of the list in paragraph (a);

■ b. Adding paragraph (c)(4);

■ c. Revising the first two sentences of paragraph (d); and

■ d. Revising the introductory text of paragraph (e).

The additions and revisions read as follows:

#### § 16.11 General exemptions.

(a) \* \* \*

EPA–63 eDiscovery Enterprise Tool Suite.

\* \* \* \* \*

(c) \* \* \*

(4) The Agency’s system of records, EPA–63 system of records is maintained by the Office of Environmental Information, Office of Enterprise Information Programs, on behalf of the Criminal Investigation Division, Office of Criminal Enforcement, Forensics, and Training, a component of EPA which performs as its principal function activities pertaining to the enforcement of criminal laws. Authority for the Division’s criminal law enforcement activities comes from Powers of Environmental Protection Agency, 18 U.S.C. 3063; Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9603; Resource Conservation and Recovery Act, 42 U.S.C. 6928; Federal Water Pollution Control Act, 33 U.S.C. 1319, 1321; Toxic Substances Control Act, 15 U.S.C. 2614, 2615; Clean Air Act, 42 U.S.C. 7413; Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136j, 136l; Safe Drinking Water Act, 42 U.S.C. 300h–2, 300i–1; Noise Control Act of 1972, 42 U.S.C. 4912; Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. 11045; and the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. 1415.

(d) *Scope of Exemption.* EPA systems of records 17, 40, 46 and 63 are exempted from the following provisions of the PA: 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (2), (3), (4)(G), and (H), (5), and (8); (f)(2) through (5); and (g). To the extent that the exemption for EPA systems of records 17, 40, 46 and 63 claimed under 5 U.S.C. 552a(j)(2) of the Act is held to be invalid, then an exemption under 5 U.S.C. 552a(k)(2) is claimed for these systems of records from (c)(3), (d), (e)(1), (e)(4)(G), (H), and (f)(2) through (5). \* \* \*

(e) *Reasons for exemption.* EPA systems of records 17, 40, 46 and 63 are exempted from the above provisions of the PA for the following reasons:

\* \* \* \* \*

■ 3. Amend § 16.12 by:

■ a. Adding the system number and name, EPA–63 eDiscovery Enterprise Tool Suite, at the end of the list in paragraph (a)(1);

- b. Revising the first sentence in paragraph (a)(4)(i); and
- c. Revising the introductory text in paragraph (a)(5).

The addition and revisions read as follows:

**§ 16.12 Specific exemptions.**

- (a) \* \* \*
- (1) \* \* \*

EPA-63 eDiscovery Enterprise Tool Suite.

\* \* \* \* \*

(4) \* \* \* (i) EPA systems of records 17, 30, 40, 41, 46 and 63 are exempted from the following provisions of the PA, subject to the limitations set forth in 5 U.S.C. 552a(k)(2); 5 U.S.C. 552a(c)(3); (d); (e)(1), (4)(G) and (4)(H); and (f)(2) through (5). \* \* \*

\* \* \* \* \*

(5) *Reasons for exemption.* EPA systems of records 17, 21, 30, 40, 41, 46 and 63 are exempted from the above provisions of the PA for the following reasons:

\* \* \* \* \*

[FR Doc. 2018-26355 Filed 12-4-18; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2008-0408; FRL-9986-64-Region 6]

### Air Plan Approval; Texas; Interstate Transport Requirements for the 1997 Ozone National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving portions of two Texas State Implementation Plan (SIP) submittals that pertain to the good neighbor and interstate transport requirements of the CAA with respect to the 1997 ozone National Ambient Air Quality Standards (NAAQS). The good neighbor provision requires each state, in its SIP, to prohibit emissions that will significantly contribute to nonattainment, or interfere with maintenance, of a NAAQS in other states. In this action, EPA is approving the Texas SIP submittals as having met the requirements of the good neighbor provision for the 1997 ozone NAAQS in accordance with section 110 of the CAA.

**DATES:** This rule is effective on January 7, 2019.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2008-0408. 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 or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

**FOR FURTHER INFORMATION CONTACT:** Carl Young, 214-665-6645, [young.carl@epa.gov](mailto:young.carl@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document “we,” “us,” and “our” means the EPA.

### I. Background

The background for this action is discussed in detail in our October 3, 2018 proposal (83 FR 49894). In that document we proposed to (1) approve the portions of the April 4, 2008 and May 1, 2008 Texas SIP submittals as they pertain to the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS, and (2) find that the conclusion in the state’s SIP submittals is consistent with EPA’s conclusion regarding Texas’s good neighbor obligation, that emissions from Texas will not significantly contribute to nonattainment or interfere with maintenance of the 1997 ozone NAAQS in any other state.

We did not receive any adverse comments regarding our proposal. We received two supportive comments regarding the proposal. The first was a comment from the Texas Commission on Environmental Quality which supported the proposal; and the second comment was an anonymous comment stating general support for clean air regulations. The comments are available in the electronic docket for this action.

### II. Final Action

We are approving the portions of the April 4, 2008 and May 1, 2008 Texas SIP submittals as they pertain to the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS. We find that the conclusion in the state’s SIP submittals is consistent with EPA’s conclusion regarding the good neighbor obligation, that emissions from Texas will not

significantly contribute to nonattainment or interfere with maintenance of the 1997 ozone NAAQS in any other state. This action is being taken under section 110 of the Act.

### III. 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. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Air pollution control, Incorporation by reference, Ozone.

Dated: November 26, 2018.  
**Anne Idsal,**  
*Regional Administrator, Region 6.*

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 SS—Texas**

■ 2. In § 52.2270(e) the second table titled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by revising the entry for “Infrastructure and Interstate Transport for the 1997 Ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS” to read as follows:

**§ 52.2270 Identification of plan**

\* \* \* \* \*  
 (e) \* \* \*

**EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP**

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
* Infrastructure and Interstate Transport for the 1997 Ozone and the 1997 and 2006 PM <sub>2.5</sub> NAAQS..	* Statewide .....	* 12/12/2007, 3/11/2008, 4/4/2008, 5/1/2008, 11/23/2009.	* 12/28/2011, 76 FR 81371 ....	* Approval for CAA elements 110(a)(2)(A), (B), (E), (F), (G), (H), (K), (L), and (M). Full approval for CAA elements 110(a)(2)(C), (D)(i)(II), (D)(ii) and (J) with approval of the GHG PSD revision (11/10/2014, 79 FR66626). 1997 and 2006 PM <sub>2.5</sub> element D(i)(I) approved 5/14/2018, 83 FR 22208. 1997 ozone element D(i)(I) approved 12/6/2018, [Insert <b>Federal Register</b> citation].

[FR Doc. 2018–26287 Filed 12–4–18; 8:45 am]  
 BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R09–OAR–2018–0778; FRL–9987–38–Region 9]

**Findings of Failure To Submit Complete State Implementation Plans Required for the 1997, 2006, and 2012 PM<sub>2.5</sub> NAAQS; California; San Joaquin Valley**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to find that California has failed to submit

complete state implementation plans (SIPs) required under the Clean Air Act (CAA or “Act”) to implement the 1997, 2006, and 2012 national ambient air quality standards (NAAQS or “standards”) for fine particulate matter (PM<sub>2.5</sub>) in the San Joaquin Valley. For the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS, California was required to submit by December 31, 2016, a SIP submission that provides for, among other things, annual reductions in emissions of direct PM<sub>2.5</sub> or a PM<sub>2.5</sub> plan precursor pollutant within the area of not less than five percent of the amount of such emissions as reported in the most recent inventory for the area. For the 2006 24-hour PM<sub>2.5</sub> NAAQS, California was required to submit by August 21, 2017, a SIP submission that meets the requirements for Serious PM<sub>2.5</sub> nonattainment areas, including the requirement for best available

control measures (BACM). For the 2012 annual PM<sub>2.5</sub> NAAQS, California was required to submit by October 15, 2016, a SIP submission that meets the requirements for Moderate PM<sub>2.5</sub> nonattainment areas, including the requirement for reasonably available control measures (RACM). California submitted substantial portions of each of these required SIP submissions as part of an integrated plan on November 16, 2018, but each of these submissions fails to meet the EPA’s minimum criteria for completeness.

If the EPA has not affirmatively found that the State has submitted complete SIPs that correct the deficiencies in each of these SIP submissions within 18 months of this finding, the offset sanction will apply in the area. If within 6 additional months the EPA still has not affirmatively determined that the State has submitted complete SIPs that



correct the deficiencies, the highway funding sanction will apply in the area. No later than 2 years after the EPA makes these findings, if the State has not submitted, and the EPA has not approved, each of the required SIP submissions, the EPA must promulgate a federal implementation plan (FIP) to address any remaining requirements.

**DATES:** This action will be effective on January 7, 2019.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2018-0778. Generally, documents in the docket are listed and publicly available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available in hard copy form. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Wienke Tax, EPA Region IX, (415) 947-4192, [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

### Notice and Comment Under the Administrative Procedure Act (APA)

Section 553 of the APA, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for taking this final agency action without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit complete SIPs, or elements of SIPs, required by the CAA, where a state has made incomplete submissions, to meet the requirement. Thus, notice and public procedures are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

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- III. Final Action
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### I. Background

#### A. Statutory Requirements

##### 1. 1997 PM<sub>2.5</sub> NAAQS

The EPA first promulgated NAAQS for PM<sub>2.5</sub> on July 18, 1997, setting the primary and secondary annual standards at 15 micrograms per cubic meter (µg/m<sup>3</sup>) and the primary and secondary 24-hour standards at 65 µg/m<sup>3</sup>.<sup>1</sup> Effective April 5, 2005, the EPA designated the San Joaquin Valley as nonattainment for the 1997 PM<sub>2.5</sub> NAAQS.<sup>2</sup> Following a January 4, 2013 decision of the U.S. Court of Appeals for the D.C. Circuit (“D.C. Circuit”) remanding the EPA’s 2007 PM<sub>2.5</sub> Implementation Rule for the 1997 PM<sub>2.5</sub> NAAQS,<sup>3</sup> the EPA published a final rule on June 2, 2014, classifying the San Joaquin Valley, among other areas, as a “Moderate” nonattainment area for the 1997 PM<sub>2.5</sub> NAAQS under subpart 4, part D of title I of the Act.<sup>4</sup>

Effective May 7, 2015, the EPA reclassified the San Joaquin Valley as a “Serious” nonattainment area for the 1997 PM<sub>2.5</sub> NAAQS.<sup>5</sup> Upon reclassification as a Serious Area, the San Joaquin Valley became subject to a December 31, 2015 deadline under CAA section 188(c)(2) for attaining the 1997 PM<sub>2.5</sub> NAAQS. On February 9, 2016, the EPA proposed to grant the State’s request for extensions of the December 31, 2015 attainment date under CAA section 188(e), to December 31, 2018, for the 1997 24-hour PM<sub>2.5</sub> NAAQS and to December 31, 2020, for the 1997 annual PM<sub>2.5</sub> NAAQS in the San Joaquin

<sup>1</sup> 62 FR 38652 (July 18, 1997) (codified at 40 CFR 50.7).

<sup>2</sup> 70 FR 944 (January 5, 2005).

<sup>3</sup> *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (DC Cir. 2013) (“*NRDC*”). In *NRDC*, the court held that the EPA erred in implementing the 1997 PM<sub>2.5</sub> standards solely pursuant to the general implementation requirements of subpart 1, without also considering the requirements specific to nonattainment areas for particles less than or equal to 10 µm in diameter (PM<sub>10</sub>) in subpart 4, part D of title I of the CAA. The court reasoned that the plain meaning of the CAA requires implementation of the 1997 PM<sub>2.5</sub> standards under subpart 4 because PM<sub>2.5</sub> falls within the statutory definition of PM<sub>10</sub> and is thus subject to the same statutory requirements as PM<sub>10</sub>. The court remanded the rule, without vacatur, and instructed the EPA “to repromulgate these rules pursuant to Subpart 4 consistent with this opinion.”

<sup>4</sup> 79 FR 31566.

<sup>5</sup> 80 FR 18528 (April 7, 2015).

Valley.<sup>6</sup> On October 6, 2016, after considering public comments, the EPA denied California’s request for these extensions of the attainment date.<sup>7</sup> Consequently, on November 23, 2016, the EPA determined that the San Joaquin Valley had failed to attain the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS by the December 31, 2015 Serious Area attainment date.<sup>8</sup> This determination triggered a requirement for California to submit, by December 31, 2016, a revised PM<sub>2.5</sub> attainment plan that satisfies the requirements of CAA section 189(d).<sup>9</sup>

The section 189(d) plan must, among other things, demonstrate expeditious attainment of the 1997 PM<sub>2.5</sub> NAAQS within the time period provided under CAA section 179(d) and provide for annual reductions in emissions of direct PM<sub>2.5</sub> or a PM<sub>2.5</sub> plan precursor pollutant within the area of not less than five percent per year from the most recent emissions inventory for the area until attainment.<sup>10</sup> The section 189(d) plan must also include, among other things:

1. A comprehensive, accurate, current inventory of actual emissions from all sources of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors in the area (CAA section 172(c)(3));

2. plan provisions that require reasonable further progress (RFP) (CAA 172(c)(2));

3. quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP toward attainment by the applicable date (CAA section 189(c)); and

4. contingency measures to be implemented if the area fails to meet RFP or to attain by the applicable attainment date (CAA section 172(c)(9)).

##### 2. 2006 PM<sub>2.5</sub> NAAQS

On October 17, 2006, the EPA revised the 24-hour PM<sub>2.5</sub> NAAQS by lowering it from 65 µg/m<sup>3</sup> to 35 µg/m<sup>3</sup>.<sup>11</sup> Effective December 14, 2009, the EPA designated the San Joaquin Valley as nonattainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS. The EPA initially classified the San Joaquin Valley area as a Moderate Area effective July 2, 2014, and reclassified the area as

<sup>6</sup> 81 FR 6936. California’s request for extension of the Serious Area attainment date for the San Joaquin Valley accompanied its Serious Area attainment plan for the 1997 PM<sub>2.5</sub> NAAQS and related motor vehicle emission budgets, submitted June 25, 2015 and August 13, 2015, respectively.

<sup>7</sup> 81 FR 69396.

<sup>8</sup> 81 FR 84481.

<sup>9</sup> CAA section 189(d).

<sup>10</sup> *Id.* and 40 CFR 51.1010(c).

<sup>11</sup> 71 FR 61144 (October 17, 2006) (codified at 40 CFR 50.13).

a Serious Area for the 2006 PM<sub>2.5</sub> NAAQS effective February 19, 2016.<sup>12</sup>

Upon the area's reclassification as a Serious Area for the 2006 PM<sub>2.5</sub> NAAQS, California was required to submit additional SIP revisions by August 21, 2017, to satisfy the statutory requirements that apply to Serious PM<sub>2.5</sub> nonattainment areas, including the requirements of subpart 4 of part D, title I of the Act.<sup>13</sup>

The Serious Area plan must include, among other things:

1. A comprehensive, accurate, current inventory of actual emissions from all sources of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors in the area (CAA section 172(c)(3));

2. provisions for the implementation of BACM, including best available control technology (BACT), for sources of direct PM<sub>2.5</sub> and all PM<sub>2.5</sub> plan precursors no later than 4 years after the area is reclassified (CAA section 189(b)(1)(B));

3. a demonstration (including air quality modeling) that the plan provides for attainment as expeditiously as practicable but no later than December 31, 2019, or where the State is seeking an extension of the attainment date under section 188(e), a demonstration that attainment by December 31, 2019, is impracticable and that the plan provides for attainment by the most expeditious alternative date practicable and no later than December 31, 2024, (CAA sections 188(c)(2) and 189(b)(1)(A));<sup>14</sup>

4. plan provisions that require RFP (CAA 172(c)(2));

5. quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP toward attainment by the applicable date (CAA section 189(c));

6. provisions to assure that control requirements applicable to major stationary sources of PM<sub>2.5</sub> also apply to major stationary sources of PM<sub>2.5</sub> precursors, except where the state demonstrates to the EPA's satisfaction that such sources do not contribute significantly to PM<sub>2.5</sub> levels that exceed the standard in the area (CAA section 189(e));

<sup>12</sup> 79 FR 31566 (June 2, 2014), 81 FR 2993 (January 20, 2016), and 81 FR 42263 (June 29, 2016) (correcting amendment).

<sup>13</sup> Id.

<sup>14</sup> A state seeking an extension of a Serious Area attainment date under section 188(e) must also meet additional requirements under that provision, including the requirement to demonstrate that the SIP for the area includes the most stringent measures that are included in any SIP or are achieved in practice in any state, and can feasibly be implemented in the area. CAA section 188(e).

7. contingency measures to be implemented if the area fails to meet RFP or to attain by the applicable attainment date (CAA section 172(c)(9)); and

8. a revision to the nonattainment NSR program to lower the applicable "major stationary source" thresholds from 100 tpy to 70 tpy (CAA section 189(b)(3)).

### 3. 2012 PM<sub>2.5</sub> NAAQS

On December 14, 2012, the EPA revised the primary annual PM<sub>2.5</sub> standard by lowering it from 15.0 to 12.0 µg/m<sup>3</sup>.<sup>15</sup> Effective April 15, 2015, the EPA designated and classified the San Joaquin Valley as a Moderate nonattainment area for the 2012 annual PM<sub>2.5</sub> NAAQS.<sup>16</sup> This designation and classification triggered a requirement for California to submit a Moderate Area plan addressing attainment of the 2012 annual PM<sub>2.5</sub> NAAQS in the San Joaquin Valley no later than 18 months after the designation, *i.e.*, by October 15, 2016.<sup>17</sup>

The Moderate Area plan must include, among other things:

1. A comprehensive, accurate, current inventory of actual emissions from all sources of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors in the area (CAA section 172(c)(3));

2. provisions for the implementation of RACM, including reasonably available control technology (RACT), for sources of direct PM<sub>2.5</sub> and all PM<sub>2.5</sub> plan precursors no later than 4 years after designation (CAA section 189(a)(1)(C));

3. a demonstration (including air quality modeling) that the plan provides for attainment as expeditiously as practicable but no later than December 31, 2021, or a demonstration that attainment by that date is impracticable (CAA section 189(a)(1)(B));

4. plan provisions that require RFP (CAA 172(c)(2));

5. quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP toward attainment by the applicable date (CAA section 189(c));

6. provisions to assure that control requirements applicable to major stationary sources of PM<sub>2.5</sub> also apply to major stationary sources of PM<sub>2.5</sub> precursors, except where the state demonstrates to the EPA's satisfaction that such sources do not contribute significantly to PM<sub>2.5</sub> levels that exceed the standard in the area (CAA section 189(e));

7. contingency measures to be implemented if the area fails to meet

<sup>15</sup> 78 FR 3086 (January 15, 2013) (codified at 40 CFR 50.18).

<sup>16</sup> 80 FR 2206 (January 15, 2015).

<sup>17</sup> CAA section 189(a)(2)(B).

RFP or to attain by the applicable attainment date (CAA section 172(c)(9)); and

8. Any revisions to the nonattainment NSR program necessary to implement the requirements of CAA section 189(a)(1)(A) for the 2012 PM<sub>2.5</sub> NAAQS.

### B. Minimum Criteria for Completeness of a SIP Submission

Section 110(k)(1)(A) of the CAA requires that the EPA promulgate minimum criteria that any plan submission must meet before the EPA is required to act on such submission. The EPA has promulgated these criteria at 40 CFR part 51, appendix V. We refer to these requirements as the "completeness criteria." Section 2.1 of the completeness criteria requires that each plan submission include, among other things: (1) Evidence that the State has adopted the plan in the State code or body of regulations, including the date of adoption or final issuance as well as the effective date of the plan, if different from the adoption/issuance date, and (2) evidence that the State followed all of the procedural requirements of the State's laws and constitution in conducting and completing the adoption/issuance of the plan. Section 2.2 of the completeness criteria requires that each plan submission contain certain technical support, including (1) a demonstration that the SIP will protect RFP if approved, and (2) modeling to support the proposed revision. The completeness criteria also identify other administrative materials and technical support documentation that must be included in each plan submission.<sup>18</sup>

Section 110(k)(2) of the CAA requires the EPA to act on a SIP submission only after the State has submitted a SIP submission (or part thereof) that meets the completeness criteria, either by EPA determination or by operation of law under CAA section 110(k)(1)(B).

### C. California's SIP Submissions

On November 16, 2018, California submitted to the EPA a draft of the "2018 Plan for the 1997, 2006, and 2012 PM<sub>2.5</sub> Standards" ("2018 PM<sub>2.5</sub> Plan"), a comprehensive plan for attainment of the PM<sub>2.5</sub> NAAQS in the San Joaquin Valley. This submission includes substantial portions of a section 189(d) plan addressing attainment of the 1997 PM<sub>2.5</sub> NAAQS, a Serious Area plan addressing attainment of the 2006 PM<sub>2.5</sub> NAAQS, and a Moderate Area plan addressing attainment of the 2012 PM<sub>2.5</sub> NAAQS in the San Joaquin Valley. The

<sup>18</sup> See generally 40 CFR part 51, appendix V, sections 2.1 and 2.2.

San Joaquin Valley Air Pollution Control District adopted the 2018 PM<sub>2.5</sub> Plan on November 15, 2018.

As a threshold matter, however, the California Air Resources Board (CARB) noted in its letter transmitting the SIP submission to the EPA that CARB had not yet presented the 2018 PM<sub>2.5</sub> Plan to its Board or adopted it for submission to the EPA as a revision to the California SIP. CARB stated that it was providing the submission to the EPA now so that EPA staff can begin its review while CARB completes the final step in plan development when it considers approval of the 2018 PM<sub>2.5</sub> Plan at its hearing scheduled for January 24–25, 2019.<sup>19</sup>

Accordingly, the EPA cannot at this time find that California has submitted the required complete PM<sub>2.5</sub> SIP revisions for the San Joaquin Valley nonattainment area. CARB's November 16, 2018 SIP submission does not include evidence that the State has adopted the plan in the State code or body of regulations or evidence that the State followed all of the procedural requirements of the State's laws and constitution in conducting and completing the adoption/issuance of the plan, as required by 40 CFR part 51, appendix V, section 2.1. Based on these deficiencies alone, the SIP submission fails to meet the EPA's minimum completeness criteria. In addition, until we receive the formal SIP submission, we cannot determine whether the plan that CARB ultimately adopts will contain all of the necessary components of the required PM<sub>2.5</sub> attainment plans for the San Joaquin Valley and the associated technical support required for each submission under 40 CFR part 51, appendix V, section 2.2.

We note, however, that CARB's submission represents a significant step in the State's and District's multi-year effort to address the Act's attainment planning requirements for the PM<sub>2.5</sub> NAAQS in the San Joaquin Valley, and we commit to continue working closely with both agencies as they implement and enforce the requirements of these plans going forward.

## II. Consequences of Findings of Failure To Submit Complete SIPs

Under section 110(k)(1)(C) of the Act, where the EPA determines that a SIP submission (or part thereof) does not meet the EPA's minimum completeness criteria established in 40 CFR part 51, appendix V, the state shall be treated as not having made the submission (or part

thereof). Sections 179(a) and 110(c) of the CAA establish specific consequences for failure to submit complete SIP submissions or SIP elements required under part D of title I of the Act, including the eventual imposition of mandatory sanctions in the affected area.

In accordance with the EPA's sanctions sequencing rule in 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) would apply in the San Joaquin Valley area 18 months after the effective date of these findings, if the EPA has not affirmatively determined by that date that the State has submitted a complete SIP addressing the deficiency that is the basis for these findings. If, within 6 months after the offset sanction applies, the EPA still has not affirmatively determined that the State has submitted a complete SIP addressing the deficiency that is the basis for the findings, the highway funding sanction identified in CAA section 179(b)(1) would also apply in the San Joaquin Valley. Under 40 CFR 52.31(d)(5), neither sanction would apply if the EPA determines within 18 months after the effective date of these findings that the State has submitted a complete SIP submission addressing the deficiency that is the basis for these findings.

Additionally, a finding of failure to submit a complete SIP submission triggers an obligation under CAA section 110(c) for the EPA to promulgate a FIP no later than 2 years after the finding, unless the state has submitted, and the EPA has approved, the required SIP submittal. Thus, the EPA would be required to promulgate a PM<sub>2.5</sub> FIP for the San Joaquin Valley, in relevant part, if California does not submit and the EPA does not approve all of the necessary SIP submissions within 2 years after the effective date of these findings.

## III. Final Action

The EPA is finding that California has failed to submit complete SIP revisions for implementation of the 1997, 2006, and 2012 PM<sub>2.5</sub> NAAQS in the San Joaquin Valley as required under subparts 1 and 4 of part D, title I of the CAA and the PM<sub>2.5</sub> SIP Requirements Rule. The consequences of these findings are discussed above in section II of this notice.

## IV. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

### B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

### C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA. This final rule does not establish any new information collection requirement apart from what is already required by law. This rule relates to the requirements in the CAA for states to submit SIPs under sections 172, 188 and 189 which address the statutory requirements that apply to areas designated as nonattainment for the PM<sub>2.5</sub> NAAQS.

### D. Regulatory Flexibility Act (RFA)

I certify that this rule 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. The rule is a finding that California has not submitted the necessary SIP revisions.

### E. Unfunded Mandates Reform Act of 1995 (UMRA)

This action does not contain any unfunded mandate as described in UMR 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

### F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

### G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive

<sup>19</sup> Letter dated November 16, 2018, from Kurt Karperos, Deputy Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX.

Order 13175. This rule finds that California has failed to submit SIP revisions that satisfy certain nonattainment area planning requirements under sections 172, 188 and 189 of the CAA for the 1997, 2006, and 2012 PM<sub>2.5</sub> NAAQS for the San Joaquin Valley nonattainment area. No tribe is subject to the requirement to submit an implementation plan under section 172 or under subpart 4 of part D of Title I of the CAA. Thus, Executive Order 13175 does not apply to this action.

*H. Executive Order 13045: Protection of Children From Environmental Health 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 is a finding that California has failed to submit certain SIP revisions that satisfy the nonattainment area planning requirements under sections 172, 188 and 189 of the CAA for the 1997, 2006, and 2012 PM<sub>2.5</sub> NAAQS for the San Joaquin Valley nonattainment area and does not directly or disproportionately affect children.

*I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

*K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. In finding that California has failed to submit SIP revisions that satisfy certain nonattainment area planning requirements under sections 172, 188 and 189 of the CAA for the 1997, 2006, and 2012 PM<sub>2.5</sub> NAAQS for the San Joaquin Valley nonattainment area, this action does not

directly affect the level of protection provided to human health or the environment.

*L. Congressional Review Act (CRA)*

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

*M. Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Administrative practice and procedures, Air pollution control, Approval and promulgation of implementation plans, Administrative practice and procedures, Incorporation by reference, Intergovernmental relations, Particulate matter, and Reporting and recordkeeping requirements.

Dated: November 19, 2018.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2018–26359 Filed 12–4–18; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA–HQ–OPP–2017–0372; FRL–9985–83]

**Clomazone; Pesticide Tolerances**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of clomazone in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project No. 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective December 6, 2018. Objections and requests for hearings must be received on or before February 4, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (*see also* Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0372, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

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

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

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

determine whether this document applies to them. Potentially affected entities may include:

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at [http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl).

To access the OCSPP test guidelines referenced in this document electronically, please go to <https://www.epa.gov/aboutepa/about-office-chemical-safety-and-pollution-prevention-ocspp> and select "Test Methods and Guidelines."

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2017-0372 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 4, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2017-0372, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or

other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <https://www.epa.gov/dockets/where-send-comments-epa-dockets>.

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

## II. Summary of Petitioned-For Tolerance

In the *Federal Register* of October 23, 2017 (82 FR 49020) (FRL-9967-37), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E8581) by IR-4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.425 be amended by establishing tolerances for residues of the herbicide clomazone, 2-[(2-chlorophenyl)methyl]-4,4-dimethyl-3-isoxazolidinone, in or on Bean, dry at 0.05 parts per million (ppm); Bean, succulent at 0.05 ppm; Broccoli, Chinese at 0.10 ppm; Cilantro, dried leaves at 0.3 ppm; Cilantro, fresh leaves at 0.05 ppm; Coriander, seed at 0.05 ppm; Cottonseed subgroup 20C at 0.05 ppm; Dill, dried leaves at 0.4 ppm; Dill, fresh leaves at 0.08 ppm; Dill, oil at 0.06 ppm; Dill, seed at 0.05 ppm; Kohlrabi at 0.10 ppm; Rapeseed subgroup 20A at 0.05 ppm; Stalk and stem vegetable subgroup 22A, except kohlrabi at 0.05 ppm; Vegetable, brassica, head and stem, group 5-16 at 0.10 ppm; and Vegetable, cucurbit, group 9 at 0.1 ppm.

The petitioner also proposed to remove the following established tolerances Asparagus at 0.05 ppm; Bean, snap, succulent at 0.05 ppm; Brassica, head and stem, subgroup 5A at 0.10 ppm; Cotton, undelinted seed at 0.05 ppm; Cucumber at 0.1 ppm; Pea, southern, dry seed at 0.05 ppm; Pea, southern, succulent seed at 0.05 ppm; Pumpkin at 0.1 ppm; Squash, summer at 0.1 ppm; Squash, winter at 0.1 ppm; Sweet potato, roots at 0.05 ppm; Vegetable, cucurbit, group 9 at 0.05 ppm. That document referenced a summary of the petition prepared by FMC Corporation, the registrant, which is available in the docket, <http://www.regulations.gov>. EPA received one comment the notice of filing. EPA's

response to this comment is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA is establishing tolerances that vary from the levels requested. The reasons for these changes are explained in Unit IV.D.

## III. Aggregate Risk Assessment and Determination of Safety

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

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

### A. Toxicological Profile

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

The primary target of clomazone is the liver, with hepatocellular cytomegaly and increased liver weight noted in the sub-chronic rat study. There were no effects up to the limit dose in the chronic dog study. The 28-day dermal toxicity study in rats showed no effects up to the limit dose.

There was no quantitative or qualitative evidence of susceptibility in the developmental toxicity study in rabbits or in the 2-generation reproduction toxicity study in rats. In the developmental toxicity study in rabbits, no developmental effects were seen at the highest dose tested where maternal effects, including mortality, abortions, decreased body weight gain and decreased defecation or no feces, occurred. In the 2-generation reproduction study, decreased body weight was seen at the same dose in both parents and offspring. Qualitative susceptibility was observed in the developmental toxicity study in rats. Developmental effects, including delayed ossification in the form of either partial ossification or the absence of the manubrium sternebrae 3–4, xiphoid, caudal vertebrae and metacarpals, occurred at the same dose as maternal effects, which included chromorhinorrhea and abdominogenital staining. The concern is low since there are clear NOAELs and LOAELs in this study and the study was used for risk assessment, and, therefore, is protective of the developmental effects. Using a weight of evidence approach, the Agency concluded that the acute and sub-chronic neurotoxicity studies, mouse carcinogenicity study, inhalation study, and immunotoxicity study are not required at this time. There are no dermal absorption studies available for clomazone. An acceptable dermal toxicity study is available to assess hazard through the dermal route therefore, a dermal absorption study is not required at this time.

In the rat and mouse carcinogenicity studies, there was no evidence of carcinogenicity. The mouse carcinogenicity study was classified as unacceptable/guideline since no systemic toxicity was observed at the highest dose tested, however, the study was considered adequate to assess the carcinogenicity in mice. The Agency has determined that an additional mouse carcinogenicity study is not needed. This finding is based upon the following conclusions: (1) The rat is more sensitive than the mouse for the chronic assessment; (2) the consistent effect in rats (decreased body weight and increased liver weight) has been used as the point of departure for the chronic assessment; (3) a new mouse study would only use doses well above the current POD for the chronic assessment; and (4) even if a new mouse study identified positive carcinogenicity effects, that finding would not result in the adoption of a quantitative linear assessment of cancer risk due to the

negative carcinogenicity finding in the rat study and the lack of a positive finding for genotoxicity. Clomazone is classified as “Not Likely to be Carcinogenic to Humans”. Quantification of cancer risk is not required.

Clomazone has low acute toxicity (Category III and IV) via the oral, dermal and inhalation routes. It is non-irritating to the eyes and mildly irritating to the skin. It is not a dermal sensitizer. Clomazone is absorbed, metabolized (16 metabolites identified) and rapidly excreted in urine and feces in rats following oral administration. Most of the administered dose (48–85%) is eliminated within 24 hours, mostly in urine. The quantities of metabolites varied with dose regimen, sex and route of administration, but were the same qualitatively in urine and feces. The total recovery after 48 hours was 91–100%.

Specific information on the studies received and the nature of the adverse effects caused by clomazone as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.regulations.gov> in document *Clomazone: Human Health Risk Assessment for Proposed (1) New Uses on Cilantro, Dill, and Rapeseed Subgroup 20A; (2) Tolerance Revisions of Cucurbit Vegetable Group 9; (3) Tolerance Expansions of Representative Commodities to (i) Cottonseed Subgroup 20C, (ii) Stalk and Stem Vegetable Subgroup 22A, except Kohlrabi, (iii) Dry Bean, and (iv) Succulent Bean; and (4) Tolerance Conversions from Crop Subgroup 5A (Head and Stem Brassica) to Crop Group 5–16 (Brassica, Head and Stem Vegetable), Chinese Broccoli and Kohlrabi* at page 35 in docket ID number EPA–HQ–OPP–2017–0372.

#### B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide’s toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction

with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks>.

A summary of the toxicological endpoints for clomazone used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of November 10, 2016 (Vol. 81 FR 78914) (FRL–9953–88).

#### C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to clomazone, EPA considered exposure under the petitioned-for tolerances as well as all existing clomazone tolerances in 40 CFR 180.425. EPA assessed dietary exposures from clomazone in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for clomazone. In estimating acute dietary exposure, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 3.16, which incorporates 2003–2008 food consumption data from the U.S. Department of Agriculture’s (USDA) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA incorporated tolerance level residues, assumed 100% crop treated, and used DEEM default processing factors.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the DEEM–FCID Version 3.16, which incorporates 2003–2008 food consumption data from USDA’s NHANES/WWEIA. As to residue levels in food, EPA incorporated tolerance level residues, assumed 100% crop treated, and used DEEM default processing factors.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has

concluded that clomazone does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for clomazone. Tolerance level residues and/or 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for clomazone in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of clomazone. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide>.

Based on the Food Quality Protection Act (FQPA) Index Reservoir Screening Tool (FIRST), Tier 1 Rice Model and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of clomazone and its degradate, FMC 65317 (N-[(2-chlorophenyl)methyl]-3-hydroxy-2,2-dimethylpropanamide), for acute exposures are estimated to be 550 parts per billion (ppb) for surface water and 85.7 ppb for ground water.

The EDWCs of clomazone plus FMC 65317 for chronic exposures for non-cancer assessments are estimated to be 550 ppb for surface water and 77.4 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 550 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration value of 550 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Clomazone is not registered for any specific use patterns that would result in residential exposure. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard->

*operating-procedures-residential-pesticide.*

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

#### D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There was no evidence of increased quantitative or qualitative susceptibility in the prenatal developmental toxicity study in rabbits or in the reproductive toxicity study in rats with clomazone. In the developmental toxicity study in rats, delayed ossification occurred at doses that produced maternal effects (chromorhinorrhea and abdominogenital staining). Although qualitative susceptibility was observed in the developmental toxicity study in rats, the concern is low since there are clear NOAELs and LOAELs and the PODs selected for risk assessment are

protective of the qualitative susceptibility.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for clomazone is complete.

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

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

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

#### E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure analysis, the risk estimate for acute dietary exposure from food and water to clomazone is at 3.0% of the aPAD for females 13–49 years old, the only population group for which an acute dietary endpoint was selected. The acute dietary risk for females 13–49 years old is not of concern (<100% of aPAD).

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure analysis, EPA has concluded that the risk estimates for chronic exposure to clomazone from food and water are not of concern (<100% of cPAD) with a risk estimate at 3.6% of the cPAD for all infants less

than 1 year of age, the population group receiving the greatest exposure.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Currently, there are no registered or proposed residential uses for clomazone, therefore, a short-term aggregate risk is the same as the chronic risk, which does not exceed the Agency's level of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Currently, there are no registered or proposed residential uses for clomazone, therefore, an intermediate-term aggregate risk is the same as the chronic risk, which does not exceed the Agency's level of concern.

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

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

#### IV. Other Considerations

##### A. Analytical Enforcement Methodology

Adequate enforcement methodology, gas chromatography (GC) using a nitrogen phosphorus detector (NPD) or mass spectrometer (MS), is available. A confirmatory procedure (GC/MS-SIM: Gas Chromatography/Mass Spectroscopy-Selected Ion Monitoring) is also available (Method I, PAM [Pesticide Analytical Manual] II) to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; email address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

##### B. International Residue Limits

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

Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established any MRLs for clomazone.

##### C. Response to Comments

One comment was received on the Notice of Filing expressing concern about the effects of wind turbines on bats. The comment did not raise any issue related to the Agency's safety determination for clomazone tolerances. The receipt of this comment is acknowledged; however, this comment is not relevant to this action.

##### D. Revisions to Petitioned-For Tolerances

For dill oil, the Agency is establishing a tolerance at 0.07 ppm rather than 0.06 ppm due to rounding based on the available data. Although the petitioner requested a tolerance for vegetable, cucurbit, group 9 at 0.1 ppm, the Agency is maintaining the established tolerance of 0.05 ppm for cucurbit vegetable group 9 and setting an expiration date for the existing tolerances on the individual commodities of cucumber, summer squash, winter squash and pumpkin at 0.1 ppm. Available residue data demonstrates that the 0.05 ppm tolerance value is sufficient to cover residues on the commodities in this group so there is no need to maintain the separate higher tolerances. Moreover, setting these tolerances at 0.05 ppm would harmonize tolerance values with Canada. In addition, the Agency is adding significant figures to the tolerances requested for cilantro, dried leaves and dill, dried leaves to conform to Agency practice.

The petitioner requested tolerances on "bean, dry" and "bean, succulent". Although those terms are defined in 40 CFR 180.1(g), the Agency is establishing individual tolerances for each of the dry and succulent forms of the beans contained in that definition to more accurately reflect the commodities as distributed in interstate commerce: asparagus bean, chickpea, kidney bean, mung bean, navy bean, pinto bean, grain lupin, sweet lupin, white lupin, and

white sweet lupin come in the dry bean form only; snap bean and wax bean come in succulent form only; and broad bean, lima bean, and southern pea come in both the dry and succulent forms. Tolerances for snap bean (succulent) and southern pea (dry and succulent) are already established and are being maintained.

##### E. International Trade Considerations

In this Final Rule, EPA is reducing the existing tolerances for the commodities of cucumber, pumpkin, and summer and winter squash from 0.1 ppm to 0.05 ppm as part of vegetable, cucurbit, group 9. The Agency is reducing these tolerances to harmonize with Canadian tolerances on cucurbit vegetables and available residue data demonstrates that tolerances at 0.05 ppm are sufficient to cover residues on these commodities.

In accordance with the World Trade Organization's (WTO) Sanitary and Phytosanitary Measures (SPS) Agreement, EPA intends to notify the WTO of this revision in order to satisfy its obligation. In addition, the SPS Agreement requires that Members provide a "reasonable interval" between the publication of a regulation subject to the Agreement and its entry into force to allow time for producers in exporting Member countries to adapt to the new requirement. At this time, EPA is establishing an expiration date for the existing tolerances to allow those tolerances to remain in effect for a period of six months after the effective date of this final rule, in order to address this requirement. After the six-month period expires, residues of clomazone on cucumber, pumpkin, and summer and winter squash cannot exceed the vegetable, cucurbit, group 9 tolerance of 0.05 ppm.

This reduction in tolerance levels is not discriminatory; the same food safety standard contained in the FFDCA applies equally to domestically produced and imported foods. The new tolerance levels are supported by available residue data.

#### V. Conclusion

Therefore, tolerances are established for residues of clomazone, 2-[(2-chlorophenyl)methyl]-4,4-dimethyl-3-isoxazolidinone, in or on Bean, asparagus, dry seed at 0.05 parts per million (ppm); Bean, broad, dry seed at 0.05 ppm; Bean, broad, succulent seed at 0.05 ppm; Bean, kidney, dry seed at 0.05 ppm; Bean, lima, dry seed at 0.05 ppm; Bean, lima, succulent seed at 0.05 ppm; Bean, mung, dry seed at 0.05 ppm; Bean, navy, dry seed at 0.05 ppm; Bean, pinto, dry seed at 0.05 ppm; Bean, wax, succulent seed at 0.05 ppm; Broccoli,



Chinese at 0.10 ppm; Chickpea, dry seed at 0.05 ppm; Cilantro, dried leaves at 0.30 ppm; Cilantro, fresh leaves at 0.05 ppm; Coriander, seed at 0.05 ppm; Cottonseed subgroup 20C at 0.05 ppm; Dill, dried leaves at 0.40 ppm; Dill, fresh leaves at 0.08 ppm; Dill, oil at 0.07 ppm; Dill, seed at 0.05 ppm; Grain, lupin, dry seed at 0.05 ppm; Kohlrabi at 0.10 ppm; Rapeseed subgroup 20A at 0.05 ppm; Stalk and stem vegetable subgroup 22A, except kohlrabi at 0.05 ppm; Sweet, lupin, dry seed at 0.05 ppm; Vegetable, *Brassica*, head and stem, group 5–16 at 0.10 ppm; White lupin, dry seed at 0.05 ppm; and White sweet lupin, dry seed at 0.05 ppm. Upon the establishment of the tolerances referenced above, the following tolerances for residues of the herbicide clomazone, 2-[(2-chlorophenyl)methyl]-4,4-dimethyl-3-isoxazolidinone in or on the raw agricultural commodities should be removed: Asparagus at 0.05 parts per million (ppm); *Brassica*, head and stem, subgroup 5A at 0.10 ppm; Cotton, undelinted seed at 0.05 ppm; and Sweet potato, roots at 0.05 ppm. In addition, EPA is imposing an expiration date on the tolerances for Cucumber at 0.1 ppm; Pumpkin at 0.1 ppm; Squash, summer at 0.1 ppm; and Squash, winter at 0.1 ppm, so that they will expire six months after the publication of this rule.

## VI. Statutory and Executive Order Reviews

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

under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

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

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

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

## VII. Congressional Review Act

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

## List of Subjects in 40 CFR Part 180

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

Dated: November 14, 2018.

**Donna S. Davis**,

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

### PART 180—[AMENDED]

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

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

■ 2. In § 180.425, amend the table in paragraph (a) by:

■ a. Removing the commodities:

“Asparagus”; “*Brassica*, head and stem, subgroup 5A”; “Cotton, undelinted seed”; and “Sweet potato, roots”.

■ b. Adding alphabetically the commodities: “Bean, asparagus, dry seed” at 0.05 ppm; “Bean, broad, dry seed” at 0.05 ppm; “Bean, broad, succulent seed” at 0.05 ppm; “Bean, kidney, dry seed” at 0.05 ppm; “Bean, lima, dry seed” at 0.05 ppm; “Bean, lima, succulent seed” at 0.05 ppm; “Bean, mung, dry seed” at 0.05 ppm; “Bean, navy, dry seed” at 0.05 ppm; “Bean, pinto, dry seed” at 0.05 ppm; “Bean, wax, succulent seed” at 0.05 ppm; “Broccoli, Chinese” at 0.10 ppm; “Chickpea, dry seed” at 0.05 ppm; “Cilantro, dried leaves” at 0.30 ppm; “Cilantro, fresh leaves” at 0.05 ppm; “Coriander, seed” at 0.05 ppm; “Cottonseed subgroup 20C” at 0.05 ppm; “Dill, dried leaves” at 0.40 ppm; “Dill, fresh leaves” at 0.08 ppm; “Dill, oil” at 0.07 ppm; “Dill, seed” at 0.05 ppm; “Grain, lupin, dry seed” at 0.05 ppm; “Kohlrabi” at 0.10 ppm; “Rapeseed subgroup 20A” at 0.05 ppm; “Stalk and stem vegetable subgroup 22A, except kohlrabi” at 0.05 ppm; “Sweet, lupin, dry seed” at 0.05 ppm; “Vegetable, *Brassica*, head and stem, group 5–16” at 0.10 ppm; “White lupin, dry seed” at 0.05 ppm; and “White sweet lupin, dry seed” at 0.05 ppm.

■ c. Revise the entries for “Cucumber”; “Pumpkin”; “Squash, summer”; and “Squash, winter” by adding a footnote.

The additions and revisions read as follows:

#### § 180.425 Clomazone; tolerances for residues.

(a) \* \* \*

Commodity	Parts per million
Bean, asparagus, dry seed .....	0.05
Bean, broad, dry seed .....	0.05
Bean, broad, succulent seed .....	0.05
Bean, kidney, dry seed .....	0.05
Bean, lima, dry seed .....	0.05
Bean, lima, succulent seed .....	0.05
Bean, mung, dry seed .....	0.05
Bean, navy, dry seed .....	0.05
Bean, pinto, dry seed .....	0.05
* * * * *	
Bean, wax, succulent seed .....	0.05
Broccoli, Chinese .....	0.10
Chickpea, dry seed .....	0.05
Cilantro, dried leaves .....	0.30
Cilantro, fresh leaves .....	0.05
Coriander, seed .....	0.05
Cottonseed subgroup 20C .....	0.05
* * * * *	
Cucumber * .....	0.1
Dill, dried leaves .....	0.40
Dill, fresh leaves .....	0.08
Dill, oil .....	0.07
Dill, seed .....	0.05
Grain lupin, dry seed .....	0.05
Kohlrabi .....	0.10
* * * * *	
Pumpkin * .....	0.1
Rapeseed subgroup 20A .....	0.05
* * * * *	
Squash, summer * .....	0.1
Squash, winter * .....	0.1
Stalk and stem vegetable subgroup 22A, except kohlrabi .....	0.05
* * * * *	
Sweet lupin, dry seed .....	0.05
Vegetable, <i>Brassica</i> , head and stem, group 5–16 .....	0.10
* * * * *	
White lupin, dry seed .....	0.05
White sweet lupin, dry seed .....	0.05

\* This tolerance expires on June 5, 2019.

\* \* \* \* \*  
 [FR Doc. 2018–26345 Filed 12–4–18; 8:45 am]  
 BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA–HQ–OPP–2018–0717; FRL–9985–77]

**Extension of Tolerances for Emergency Exemptions (Multiple Chemicals)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation extends time-limited tolerances for the pesticides listed in this document. These actions are in response to EPA’s granting of

emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. In addition, the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

**DATES:** This regulation is effective December 6, 2018. Objections and requests for hearings must be received on or before February 4, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID)

number EPA–HQ–OPP–2018–0717, is available at <https://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200

Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: [RDfRNNotices@epa.gov](mailto:RDfRNNotices@epa.gov).

#### SUPPLEMENTARY INFORMATION:

### I. General Information

#### A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at [http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl). To access the OCSPP test guidelines referenced in this document electronically, please go to <https://www.epa.gov/aboutepa/about-office-chemical-safety-and-pollution-prevention-ocspp> and select "Test Guidelines for Pesticides and Toxic Substances."

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2018-0717 in the subject line on the first page of your submission. All requests must be in writing, and must be received by the Hearing Clerk on or before February 4, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding

any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2018-0717, by one of the following methods:

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

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

### II. Background and Statutory Findings

EPA previously published final rules in the **Federal Register** for each chemical/commodity combination listed, establishing time-limited tolerances under FFDCA section 408, 21 U.S.C. 346a.

EPA established the tolerances because FFDCA section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established on EPA's own initiative and without providing notice or time for public comment.

EPA received requests to extend the uses of these chemicals for this year's growing season. After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each chemical in the listed commodities. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18.

The data and other relevant material have been evaluated and discussed in the final rules originally published to

support these uses. Based on those data and information considered, the Agency reaffirms that extension of these time-limited tolerances will continue to meet the requirements of FFDCA section 408(l)(6). Therefore, the time-limited tolerances are extended until the dates listed. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on the date listed, under FFDCA section 408(l)(5), residues of the pesticides not in excess of the amounts specified in the tolerances remaining in or on the named commodities after that date will not be unlawful, provided the residues are present as a result of an application or use of the pesticides at a time and in a manner that was lawful under FIFRA, the tolerances were in place at the time of the application, and the residues do not exceed the levels that were authorized by the tolerances. EPA will act to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Tolerances for the uses of the following pesticide chemicals on specific commodities are being extended:

**Bifenthrin.** EPA has authorized under FIFRA section 18 the use of bifenthrin on apple, peach, and nectarine for control of the brown marmorated stinkbug in multiple states. This regulation extends existing time-limited tolerances for residues of the insecticide bifenthrin, including its metabolites and degradates, in or on apple, peach, and nectarine at 0.5 part per million (ppm) for an additional three-year period. These tolerances will expire and are revoked on December 31, 2021. Time-limited tolerances originally published in the **Federal Register** of September 14, 2012 (77 FR 56782) (FRL-9361-6).

**Dinotefuran.** EPA has authorized under FIFRA section 18 the use of dinotefuran on pome fruit and stone fruit for control of the brown marmorated stinkbug in multiple states. This regulation extends existing time-limited tolerances for residues of the insecticide dinotefuran, including its metabolites and degradates in or on fruit, pome, group 11 and fruit, stone, group 12 at 2.0 ppm for an additional three-year period. These tolerances will expire and are revoked on December 31, 2021. Time-limited tolerances originally published in the **Federal Register** of November 9, 2012 (77 FR 67282) (FRL-9366-3); and were revised in the **Federal Register** of January 22, 2014 (79 FR 3508) (FRL-9402-8).

**III. International Residue Limits**

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established MRLs for bifenthrin in/on apple, peach, or nectarine; nor dinotefuran in/on pome fruit or stone fruit.

**IV. Statutory and Executive Order Reviews**

This action establishes tolerances under FFDCA section 408(d) in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled “Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory

Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

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

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

**V. Congressional Review Act**

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

**List of Subjects in 40 CFR Part 180**

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

Dated: November 9, 2018.

**Michael Goodis,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

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

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

■ 2. In § 180.442, in the table in paragraph (b), revise entries for “Apple”, “Nectarine” and “Peach” to read as follows:

**§ 180.442 Bifenthrin; tolerances for residues.**

\* \* \* \* \*

(b) \* \* \*

Commodity	Parts per million	Expiration/revocation date
Apple .....	0.5	12/31/21
* * *	*	*
Nectarine .....	0.5	12/31/21
Peach .....	0.5	12/31/21
* * *	*	*

\* \* \* \* \*

■ 3. In § 180.603, revise the table in paragraph (b) to read as follows:

**§ 180.603 Dinotefuran; tolerances for residues.**

\* \* \* \* \*

(b) \* \* \*

Commodity	Parts per million	Expiration/revocation date
Fruit, pome, Group 11 ...	2.0	12/31/21
Fruit, stone, Group 12 ...	2.0	12/31/21

\* \* \* \* \*

[FR Doc. 2018-26346 Filed 12-4-18; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 300**

[Docket No. 180716668-8668-01]

RIN 0648-BI37

**International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions for Fish Aggregating Devices in the Eastern Pacific Ocean**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is issuing regulations under the Tuna Conventions Act to implement Resolution C-18-05 (*Amendment of Resolution C-16-01 on the Collection and Analysis of Data on*

*Fish-Aggregating Devices*), which was adopted at the 93rd Meeting of the Inter-American Tropical Tuna Commission (IATTC) in August 2018. The Resolution includes construction standards for fish aggregating devices (FADs) intended to reduce entanglements of marine life when fishing for tropical tuna (*i.e.*, bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*)) in the eastern Pacific Ocean (EPO). This final rule will revise the existing regulations for consistency with the new Resolution. In addition, this rule revises the definition of “Active FAD” and regulations related to activating FADs at sea that were codified in the April 2018 rule. This final rule is necessary for the conservation of living marine resources in the EPO and for the United States to satisfy its obligations as a member of the IATTC.

**DATES:** This rule is effective January 7, 2019.

**ADDRESSES:** Copies of the Regulatory Impact Review, and other supporting documents are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA–NMFS–2018–0124, or by contacting the Highly Migratory Species Branch Chief, Heidi Taylor, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90208, [wcr.hms@noaa.gov](mailto:wcr.hms@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Rachael Wadsworth, NMFS at 562–980–4036.

**SUPPLEMENTARY INFORMATION:**

**Background**

The final rule is implemented under the Tuna Conventions Act (16 U.S.C. 951 *et seq.*). This final rule applies to U.S. purse seine vessels fishing for tropical tunas in the IATTC Convention Area. The IATTC Convention Area is defined as waters of the EPO bounded by the west coast of the Americas and by 50° N latitude, 150° W longitude, and 50° S latitude.

**Changes From Final Rule Published in April 2018**

Resolution C–18–05 imposes new restrictions on FAD design standards. NMFS implemented FAD construction standards adopted by the IATTC in a final rule published on April 11, 2018, in the **Federal Register** (83 FR 15503) which implemented Resolution C–17–02 (*Conservation Measures for Tropical Tunas in the Eastern Pacific Ocean During 2018–2020 and Amendment to Resolution C–17–01*). These regulations are set to become effective January 1, 2019.

Although Resolution C–17–02 included broadly worded restrictions on the use of entangling material on FADs, NMFS opted to establish standards that were more specific than the Resolution in the April 2018 final rule. NMFS did this to aid with compliance and enforcement and to further the intent of the Resolution that member nations require owners and operators of their vessels ensure FADs designed and deployed reduce entanglements of sharks, sea turtles, and other species.

Under the April 2018 final rule, U.S. vessel owners, operators, or crew must ensure any netting used in the subsurface structure of the FAD is tightly tied into bundles (“sausages”). In addition, if the FAD design includes a covered raft (*e.g.*, flat raft or rolls of material) and if mesh netting is used for the cover, the mesh netting must be tightly wrapped around the entire raft such that no loose netting hangs below.

**New Regulations Beginning in 2019**

This final rule implements provisions in Resolution C–18–05 that specifies materials and designs that must be used to reduce entanglement on FADs; those specifications are only partially consistent with the April 2018 final rule. In accordance with Resolution C–18–05, this final rule gives fishermen an additional option for netting that hangs beneath a FAD, *i.e.*, netting with small mesh (stretched mesh size less than 7 centimeters) in a panel that is weighted on the lower end with at least enough weight to keep the netting taut in the water column. In addition, also in accordance with Resolution C–18–05, this final rule also requires that if mesh netting is used as part of the raft (*e.g.*, flat raft or rolls of material) then the mesh netting must be small mesh and must be tightly wrapped such that no netting hangs below the FAD when deployed. This final rule also includes a definition for mesh as the distance between the inside of one knot to the inside of the opposing knot when the mesh is stretched, regardless of twine size.

These requirements are intended to prohibit FAD designs that are most dangerous for bycatch species, such as sharks. As stated in the preamble of the April 2018 final rule, NMFS recognizes that any netting used in a FAD may become loose over time. However, to achieve the intent of Resolution C–18–05, the netting must remain secure and tight whenever deployed. Therefore, NMFS reminds the fleet that in order to keep FADs in compliance with these regulations, the purse seine operators must remain vigilant in maintaining and securing all mesh net used in FADs.

Furthermore, NMFS recognizes that the IATTC may continue to conduct more work to define non-entangling FADs and to develop more specific guidance on materials and designs for FADs. The United States intends to continue working with the IATTC FAD Working Group and the IATTC on methods to reduce entanglements in FADs. These regulations are likely to be amended again in the next few years as the IATTC refines FAD design requirements.

Although Resolution C–17–02 does not specifically define an “Active FAD,” paragraph 10 of Resolution C–17–02 states that for the purposes of this resolution, a FAD is considered active when it: (a) Is deployed at sea; and (b) starts transmitting its location and is being tracked by the vessel, its owner, or operator. The April 2018 Final rule codified a definition of “Active FAD” at 50 CFR 300.21 as a FAD that is equipped with gear capable of tracking location, such as radio or satellite buoys. A FAD with this equipment attached shall be considered an Active FAD unless/until the equipment is removed and the vessel owner or operator notifies the IATTC or HMS Branch that the FAD is no longer active (*i.e.*, deactivated). After publication of that rule, information became available to NMFS from both industry and the IATTC FAD Working Group meetings that revealed U.S. vessels and vessels from other countries often stop tracking the location of FADs, while the FAD is deployed on the high seas, but typically do not remove the tracking equipment from FADs. Sometimes vessel owners or operators sell the information or the right to access the existing tracking equipment to other vessel owners or operators; the new owners/operators then assume ownership and start tracking the FAD. The owner of the FAD also, at times, stop tracking the location of a FAD for a period of time and then “reactivate” and begin to track the location of the FAD again at a later time.

In re-evaluating the meaning of “Active FAD” in Resolution C–17–02, NMFS interprets paragraph 10(b) to mean that an Active FAD is a FAD that is being “tracked” by a vessel owner or operator. Therefore, in this rule, NMFS revises the definition of Active FAD to clarify that a FAD that a FAD is considered Active when its location is being tracked by the vessel owner or operator using tracking equipment, such as radio or satellite buoys. A FAD shall be considered an Active FAD unless/until (i) the vessel is no longer tracking it, and (ii) the vessel owner or operator notifies the IATTC that the FAD is no longer active (*i.e.*, deactivated). In

addition, NMFS is revising the prohibition at § 300.24 (kk) and FAD restrictions at § 300.28 (b) to clarify that “when deploying a FAD” the tracking equipment must be turned on. This revision is necessary to clarify that FADs already deployed at sea may be reactivated if they were previously deactivated.

**Classification**

After consultation with the Departments of State and Homeland Security, the NMFS Assistant Administrator has determined that this final rule is consistent with the Tuna Conventions Act of 1950, as amended, and other applicable laws, subject to further consideration after public comment.

This rule has been determined to be not significant for purposes of Executive Order 12866.

This rule does not require new collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The existing information collection approval requirements under Office of Management and Business (OMB) Control No. 0648–0148 (West Coast Region Pacific Tuna Fisheries Logbook and Fish Aggregating Device Form) covers the collections of information as amended by this rule. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. All currently approved NOAA collections of information may be viewed at: [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

The Assistant Administrator for Fisheries has determined that the need to comply by January 2019 with the international obligations of the United States under a binding resolution adopted by the IATTC under the Antigua Convention constitutes good cause, under 5 U.S.C. 553(b)(B), to waive the requirement for providing advance notice and comment.

Good cause exists because the IATTC adopted Resolution C–18–05 at the end of August, effective January 2019, rather than adopting the resolution in June or early July, which is the typical timing of the IATTC annual meeting. If the effectiveness of this rule were delayed pending publication of a proposed rule, consideration of additional public comments, and a 30-day delay in effectiveness, the U.S. would likely miss the January 2019 deadline and be out of compliance with a binding resolution.

Additionally, the purse seine industry would be delayed in being allowed the option of using small mesh hanging in a panel beneath FADs, which we understand industry prefers to the current requirement that it be tied in a bundle.

Further rationale for finding good cause to waive advance notice and comment is that the proposed rule published on November 14, 2017, in the **Federal Register** (82 FR 52700) to implement Resolution C–17–02 (*Conservation Measures for Tropical Tunas in the Eastern Pacific Ocean During 2018–2020 and Amendment to Resolution C–17–01*), gave the public notice that the FAD design requirements were likely to be further refined. The revised requirements in Resolution C–18–05 are within the scope of the alternatives for FAD design discussed in that proposed rule. NMFS had initially proposed more stringent FAD construction requirements than those that were promulgated in the final rule. The changes between the proposed and final rule were made in consideration of a comment from the American Tunaboat Association (ATA) that proposed FAD design regulation went beyond the requirements in Resolution C–17–02 and would disadvantage the U.S. fleet.

The revisions to the Active FAD definition and regulations related to activating a FAD before deploying in the water will relieve restrictions, as explained in the preamble of this rule.

The owners and operators of the sixteen U.S. large purse seine vessels registered to fish in the EPO that would be impacted by the rule are already familiar with the measures adopted by the IATTC. In addition to sending professional representatives and lobbyists, many owners and operators personally attended the 2017 and 2018 IATTC meetings when Resolution C–17–02 and C–18–05 were adopted and were closely involved in briefings and discussions with U.S. State Department and NOAA leadership and staff. This action is necessary for the United States to satisfy its international obligations as a member of the IATTC.

As soon as the rule is published, NMFS will send a notice of this rule to owners of vessels that are affected by this rule. The Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), requires a Regulatory Flexibility Analysis only for rules promulgated through notice and comment rulemaking under Section 553(b) of the Administrative Procedure Act or any other law. Because there is good cause to waive notice and comment for this final rule, an RFA Analysis was not prepared for this rule.

**List of Subjects in 50 CFR Part 300**

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: November 29, 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 300, subpart C, is amended as follows:

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

**Subpart C—Eastern Pacific Tuna Fisheries**

■ 1. The authority citation for part 300, subpart C, continues to read as follows:

**Authority:** 16 U.S.C. 951 *et seq.*

■ 2. In § 300.21, revise the definition of “Active FAD” and add a definition for “Mesh size” in alphabetical order to read as follows:

**§ 300.21 Definitions.**

\* \* \* \* \*

*Active FAD* means a FAD whose location is being tracked by the vessel owner or operator using tracking equipment, such as radio or satellite buoys. A FAD shall be considered an Active FAD unless/until the vessel is no longer tracking its location and the vessel owner or operator notifies the IATTC that the FAD is no longer active (*i.e.*, deactivated).

\* \* \* \* \*

*Mesh size* means the distance between the inside of one knot to the inside of the opposing knot when the mesh is stretched, regardless of twine size.

\* \* \* \* \*

■ 3. In § 300.24, revise paragraph (kk) to read as follows:

**§ 300.24 Prohibitions.**

\* \* \* \* \*

(kk) When deploying a FAD, activate the transmission equipment attached to a FAD in a location other than on a purse seine vessel at sea as required in § 300.28(b).

\* \* \* \* \*

■ 4. In § 300.28, revise paragraph (b) and (e), added by the final rule at 83 FR 15510, April 11, 2018, to read as follows:

**§ 300.28 FAD restrictions.**

\* \* \* \* \*

(b) *Activating FADs for purse seine vessels.* When deploying a FAD, a vessel owner, operator, or crew shall turn on

the tracking equipment while the FAD is onboard the purse seine vessel and before it is deployed in the water.

\* \* \* \* \*

(e) *FAD design requirements to reduce entanglements.* All FADs onboard or deployed by U.S. vessel owners, operators, or crew, must comply with the following design requirements:

(1) *Raft:* If the FAD design includes a raft (e.g., flat raft or rolls of material) and if mesh netting is used as part of the structure, the mesh netting shall have a mesh size less than 7 centimeters and the mesh net must be tightly wrapped such that no netting hangs below the FAD when deployed; and,

(2) *Subsurface:* Any netting used in the subsurface structure of the FAD must be tightly tied into bundles ("sausages"), or have stretched mesh size less than 7 centimeters in a panel that is weighted on the lower end with at least enough weight to keep the netting taut in the water column.

[FR Doc. 2018-26387 Filed 12-4-18; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 1710319998630-02]

RIN 0648-XG652

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Re-Opening of Commercial Harvest for South Atlantic Red Snapper

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

**ACTION:** Temporary rule; re-opening.

**SUMMARY:** NMFS announces the re-opening of the commercial sector for red snapper in the exclusive economic zone (EEZ) of the South Atlantic through this temporary rule. The most recent commercial landings of red snapper indicate that the commercial annual catch limit (ACL) for the 2018 fishing year has not yet been reached. Therefore, NMFS re-opens the commercial sector for red snapper in the South Atlantic EEZ for 10 calendar days to allow the commercial ACL to be

reached, while minimizing the risk of the commercial ACL being exceeded.

**DATES:** This rule is effective 12:01 a.m., local time, December 5, 2018, until 12:01 a.m., local time, December 15, 2018.

**FOR FURTHER INFORMATION CONTACT:** Mary Vara, NMFS Southeast Regional Office, telephone: 727-824-5305, email: [mary.vara@noaa.gov](mailto:mary.vara@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic includes red snapper and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial ACL for red snapper in the South Atlantic is 124,815 lb (56,615 kg), round weight. Under 50 CFR 622.193(y)(1), NMFS is required to close the commercial sector for red snapper when landings reach, or are projected to reach, the commercial ACL by filing a notification to that effect with the Office of the Federal Register.

NMFS previously projected that the commercial ACL for South Atlantic red snapper for the 2018 fishing year would be reached by November 7, 2018. Accordingly, NMFS published a temporary rule in the **Federal Register** to implement accountability measures (AMs) to close the commercial sector for red snapper in the South Atlantic EEZ effective November 7, 2018 (83 FR 55292; November 5, 2018).

However, recent landings data for red snapper indicate that the commercial ACL has not been yet been reached. Consequently, and in accordance with 50 CFR 622.8(c), NMFS temporarily re-opens the commercial sector for red snapper effective at 12:01 a.m. on December 5, 2018. The commercial sector will remain open for 10 calendar days and will close at 12:01 a.m. on December 15, 2018. Re-opening the commercial sector for 10 days allows an additional opportunity to commercially harvest the red snapper ACL while minimizing the risk of exceeding the commercial ACL. For the 2019 fishing year, NMFS will announce the

commercial season opening date in the **Federal Register**.

#### Classification

The Regional Administrator, NMFS Southeast Region, has determined this temporary rule is necessary for the conservation and management of red snapper and the South Atlantic snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.8(c) and is exempt from review under Executive Order 12866.

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

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA), finds that the need to immediately implement this action to temporarily re-open the commercial sector for red snapper constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the commercial ACL and AMs for red snapper has already been subject to notice and comment, and all that remains is to notify the public of the re-opening. Such procedures are contrary to the public interest because of the need to immediately implement this action to allow commercial fishers to further harvest the commercial ACL of red snapper from the South Atlantic EEZ, while minimizing the risk of exceeding the commercial ACL. Prior notice and opportunity for public comment would require time and would delay the re-opening of the commercial sector.

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

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

Dated: November 30, 2018.

**Alan D. Risenhoover,**  
Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.

[FR Doc. 2018-26433 Filed 11-30-18; 4:15 pm]

BILLING CODE 3510-22-P

# Proposed Rules

Federal Register

Vol. 83, No. 234

Thursday, December 6, 2018

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2018-0977; Product Identifier 2018-CE-041-AD]

RIN 2120-AA64

#### Airworthiness Directives; Rockwell Collins, Inc. Flight Management Systems

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Rockwell Collins, Inc. (Rockwell Collins) flight management systems (FMS) installed on airplanes. This proposed AD was prompted by reports of the flight management computer (FMC) software issuing incorrect turn commands when the altitude climb field is edited or the temperature compensation is activated on the FMS control display unit. This proposed AD would require disabling the automatic temperature compensation feature of the FMS through the configuration strapping units (CSU) and revising the airplane flight manual (AFM) Limitations section. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by January 22, 2019.

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

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

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

For service information identified in this NPRM, contact Rockwell Collins, Inc., Collins Aviation Services, 400 Collins Road NE, M/S 164-100, Cedar Rapids, IA 52498-0001; telephone: 888-265-5467 (U.S.) or 319-265-5467; fax: 319-295-4941 (outside U.S.); email: [techmanuals@rockwellcollins.com](mailto:techmanuals@rockwellcollins.com); internet: [http://www.rockwellcollins.com/Services\\_and\\_Support/Publications.aspx](http://www.rockwellcollins.com/Services_and_Support/Publications.aspx). You may review copies of the referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

#### 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-2018-0977; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800-647-5527) is listed above. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Avi Acharya, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: 316-946-4192; fax: 316-946-4107; email: [avishek.acharya@faa.gov](mailto:avishek.acharya@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2018-0977; Product Identifier 2018-CE-041-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

#### Discussion

During flight inspection on a Bombardier Model CRJ-200 airplane, Nav Canada, which is Canada's civil air navigation service provider, observed the FMS map displaying an incorrect turn for the Fort St. John airport instrument landing system runway 29 missed approach while using temperature compensation. Nav Canada assumed this was only an issue with the map display and reported the incident to Rockwell Collins.

Rockwell Collins subsequently determined that an error in the design of the Pro Line 4 and Pro Line 21 FMC software causes changes to the procedure-defined turn direction when the procedure has been significantly modified. The FMS will change the planned database turn direction to an incorrect turn direction when the altitude climb field is edited, and the flight crew may not notice the change during climb. The FMS will also change the planned database turn direction to an incorrect turn direction if the temperature compensation is activated, which may go unnoticed by the flight crew with the increased workload involved with a missed approach procedure. Editing the altitude or using temperature compensation does not change the flight segment. However, due to the design error, the software thinks the flight segment has changed. The change of the planned turn direction can occur for either left or right turns.

The FMS commanding incorrect turn direction may result in a collision or controlled flight into terrain.

#### Related Service Information Under 14 CFR Part 51

We reviewed Rockwell Collins Service Information Letter, CSU-XX00-18-1, dated June 27, 2018. The service letter contains procedures for disabling the automatic temperature compensation option in Pro Line 4 and Pro Line 21 FMC systems. We also reviewed Rockwell Collins Service Information Letter FMC-XX00-18-1, dated June 27, 2018. The service letter provides instructions for revising the



Limitations section of the AFM by adding prohibitions on editing altitudes for specific Pro Line 4 and Pro Line 21 Flight Management Systems. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA’s Determination**

We are proposing this AD because we evaluated all the relevant information

and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

**Proposed AD Requirements**

This proposed AD would require disabling the automatic temperature compensation feature on the FMS through the CSUs. This proposed AD would also require revising the Limitations section of the AFM by adding limitations on the use of the

temperature compensation feature and the editing of altitudes.

**Costs of Compliance**

We estimate that this proposed AD affects 2,855 products installed on airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

**ESTIMATED COSTS**

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
CSU strapping change .....	2 work-hours × \$85 per hour = \$170.	Not applicable .....	\$170	\$485,350
Revision to the AFM Limitations section.	.5 work-hour × \$85 per hour = \$42.50.	Not applicable .....	42.50	121,337.50

**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 small airplanes, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

**Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a

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

For the reasons discussed above, I certify this proposed regulation:

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**Rockwell Collins, Inc.:** Docket No. FAA–2018–0977; Product Identifier 2018–CE–041–AD.

**(a) Comments Due Date**

We must receive comments by January 22, 2019.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Rockwell Collins, Inc. (“Rockwell Collins”) Pro Line 4 and Pro Line 21 Flight Management Systems installed on airplanes, certificated in any category, that has a flight management computer (FMC) with a Rockwell Collins part number (RCPN) listed in paragraph (c)(1) of this AD and with a configuration strapping unit (CSU) listed in paragraph (c)(2) of this AD.

- (1) FMC–3000 RCPN 822–0883–031, –036, –038, –040, –041, –053, –054, –056, –057, –058, –059, –060, –081, –082, –083, –084; FMC–4200 RCPN 822–0783–022, –025, –028, –032, –036, –039, –040; FMC–5000 RCPN 822–0891–021, –027, –028, –034, –040; or FMC–6000 RCPN 822–0868–074, –075, –082, –083, –084, –085, –087, –089, –090, –109, –117, –111, –112, –113, –114, –116, –117, –122, –123, –127, –130, –132, –133, –134, –139.

- (2) CSU–3100 RCPN 822–1363–002, CSU–4000 RCPN 822–0049–002, or CSU–4100 RCPN 822–1364–002.

**Note 1 to paragraph (c) of this AD:** To determine the CSU and FMC unit RCPN, refer to the aircraft manufacturer or applicable STC holder maintenance instructions for accessing them.

**(d) Subject**

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 3460, Flight Management Computing Hardware System.

**(e) Unsafe Condition**

This AD was prompted by reports of the FMC software issuing incorrect turn

commands when the altitude climb field is edited or when the temperature compensation is activated. We are issuing this AD to prevent the FMC from issuing an incorrect turn direction command. The unsafe condition, if not addressed, could result in a collision or controlled flight into terrain.

#### (f) Compliance

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

#### (g) Disable the Temperature Compensation

Within the next 12 months after the effective date of this AD, disable the automatic temperature compensation feature on the CSU by following steps (2) through (6) of the Instructions in Rockwell Collins Service Information Letter CSU-XX00-18-1, dated June 27, 2018.

#### (h) Revise the Airplane Flight Manual Limitations

Within the next 12 months after the effective date of this AD, revise the airplane flight manual by adding the information from step 2 of the Aircraft Flight Manual Recommendation in Rockwell Collins Service Information Letter FMC-XX00-18-1, dated June 27, 2018, into the Limitations section of the AFM.

#### (i) Alternative Methods of Compliance (AMOCs)

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

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

#### (j) Related Information

(1) For more information about this AD, contact Avi Acharya, Aerospace Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: 316-946-4192; fax: 316-946-4107; email: [avishek.acharya@faa.gov](mailto:avishek.acharya@faa.gov).

(2) For service information identified in this AD, contact Rockwell Collins, Inc., Collins Aviation Services, 400 Collins Road NE, M/S 164-100, Cedar Rapids, IA 52498-0001; telephone: 888-265-5467 (U.S.) or 319-265-5467; fax: 319-295-4941 (outside U.S.); email: [techmanuals@rockwellcollins.com](mailto:techmanuals@rockwellcollins.com); internet: [http://www.rockwellcollins.com/Services\\_and\\_Support/Publications.aspx](http://www.rockwellcollins.com/Services_and_Support/Publications.aspx). You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

Issued in Kansas City, Missouri, on November 26, 2018.

**Melvin J. Johnson,**

*Aircraft Certification Service, Deputy Director, Policy and Innovation Division, AIR-601.*

[FR Doc. 2018-26253 Filed 12-4-18; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA-2018-1003; Product Identifier 2018-NM-133-AD]**

**RIN 2120-AA64**

#### Airworthiness Directives; Airbus SAS Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A330-201, -202, and -203, and Model A330-301, -302, and -303 airplanes. This proposed AD was prompted by reports of damaged drain pipes located above the lower aft pylon fairing (LAPF), caused by a contact between the drain pipe and the two u-shape ribs of the LAPF. This proposed AD would require a special detailed inspection for damage and corrective actions, if necessary. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by January 22, 2019.

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

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

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No. 2, 31700 Blagnac Cedex, France; phone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: [airworthiness.A330-A340@airbus.com](mailto:airworthiness.A330-A340@airbus.com);

internet: <http://www.airbus.com>. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

#### Examining the AD Docket

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-1003; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2018-1003; Product Identifier 2018-NM-133-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

#### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018-0198, dated September 6, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Airbus SAS Model A330-201, -202, and -203, and Model A330-301, -302, and -303 airplanes. The MCAI states:

Some cases of damaged drain pipes, Part Number F7173000700000, located above the

Lower Aft Pylon Fairing (LAPF) and dedicated to drain pylon compartment A in case of hydraulic fluid leakage, were reported. Subsequent examination identified that the cracks were caused by a contact between the drain pipe and the two U-Shape Ribs of the LAPF. This interference condition can be present during the installation of the LAPF assembly to the pylon. The trailing edge assembly of the fairing has an internal frame bracket and shear clip which can cause chafing with the hydraulic drain pipes.

This condition, if not detected and corrected, combined with an additional independent failure as hydraulic leakage in pylon compartment A, could lead to hydraulic leakage in the LAPF box. In addition, the hydraulic fluid may flow forward of the LAPF and leak above engine hot surfaces, possibly resulting in a temporary uncontrolled fire in the pylon compartment A, and consequent reduced control of the aeroplane.

To address this unsafe condition, Airbus issued the inspection SB [Airbus Service Bulletin A330-54-3042, dated May 17, 2018] to provide instructions for a special detailed inspection (SDI) of the LAPF drain pipes.

For the reasons described above, this [EASA] AD requires a one-time SDI (borescope inspection method) of the LAPF of each pylon [for damage (including but not limited to cracks and leaks of the hydraulic drain pipe, and contact, interference, and chafing of the internal frame bracket and the shear clip of the trailing edge assembly of the LAPF with the aircraft hydraulic drain pipe)] and, depending on findings, replacement of

the LAPF drain pipes and clamp block, and rework of the U-shape ribs.

You may examine the MCAI in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-1003.

**Related Service Information Under 1 CFR Part 51**

Airbus has issued the following service information.

- Airbus Service Bulletin A330-54-3041, dated May 17, 2018. This service information describes procedures for replacement of the hydraulic drain pipe clamp blocks of the LAPFs of the left-hand (LH) and right-hand (RH) pylons and modification of the LAPFs.
- Airbus Service Bulletin A330-54-3042, dated May 17, 2018. This service information describes procedures for a special detailed inspection for damage (including but not limited to cracks and leaks of the hydraulic drain pipe, and contact, interference, and chafing of the internal frame bracket and the shear clip of the trailing edge assembly of the LAPF with the aircraft hydraulic drain pipe), and corrective actions. Corrective actions include replacement of the hydraulic drain pipe at the LH or RH pylon.

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

**FAA's Determination**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

**Proposed Requirements of This NPRM**

This proposed AD would require accomplishing the actions specified in the service information described previously.

**Costs of Compliance**

We estimate that this proposed AD affects 10 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

**ESTIMATED COSTS FOR REQUIRED ACTIONS**

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × \$85 per hour = \$170 .....	\$0	\$170	\$1,700

We estimate the following costs to do any necessary on-condition actions that would be required based on the results

of any required actions. We have no way of determining the number of aircraft

that might need these on-condition actions:

**ESTIMATED COSTS OF ON-CONDITION ACTIONS**

Labor cost	Parts cost	Cost per product
29 work-hours × \$85 per hour = \$2,465 .....	\$1,640	\$4,105

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all known costs in our cost estimate.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive

Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

### Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

### List of Subjects in 14 CFR Part 39

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

### The Proposed Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**Airbus SAS:** Docket No. FAA–2018–1003; Product Identifier 2018–NM–133–AD.

#### (a) Comments Due Date

We must receive comments by January 22, 2019.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category, all manufacturer serial numbers, except those on which Airbus modification 207430 has

been embodied in production, or Airbus Service Bulletin A330–54–3041 has been embodied in service.

(1) Model A330–201, –202, and –203 airplanes.

(2) Model A330–301, –302, and –303 airplanes.

#### (d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

#### (e) Reason

This AD was prompted by reports of damaged drain pipes located above the lower aft pylon fairing (LAPF), caused by a contact between the drain pipe and the two u-shape ribs of the LAPF. We are issuing this AD to address damaged drain pipes located above the LAPF, which combined with an additional independent failure could lead to hydraulic leakage in the LAPF box, possibly resulting in a temporary uncontrolled fire and consequent reduced control of the airplane.

#### (f) Compliance

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

#### (g) One-Time Inspections

Within 26 months after the effective date of this AD, accomplish a one-time special detailed inspection of the pylon drain pipes (inside and outside) on the left-hand and right-hand pylons, located above both LAPFs, for contact with the U-shaped ribs of the LAPF and damage (including but not limited to cracks and leaks of the pylon drain pipe, and contact, interference, and chafing of the internal frame bracket and the shear clip of the trailing edge assembly of the LAPF with the pylon drain pipe) in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–54–3042, dated May 17, 2018.

#### (h) Corrective Actions

If, during any inspection required by paragraph (g) of this AD, any damage is found, at the applicable time specified in Airbus Service Bulletin A330–54–3042, dated May 17, 2018, accomplish the applicable corrective actions on the affected pylon in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–54–3042, dated May 17, 2018; and Airbus Service Bulletin A330–54–3041, dated May 17, 2018.

#### (i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

paragraph (j)(2) of this AD. Information may be emailed to: [9-ANM-116-AMOC-REQUESTS@faa.gov](mailto:9-ANM-116-AMOC-REQUESTS@faa.gov). Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus SAS’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

#### (j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0198, dated September 6, 2018, for related information. This MCAI may be found in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2018–1003.

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

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; phone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: [airworthiness.A330-A340@airbus.com](mailto:airworthiness.A330-A340@airbus.com); internet: <http://www.airbus.com>. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

**John P. Piccola,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2018–26360 Filed 12–4–18; 8:45 am]

**BILLING CODE 4910–13–P**

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

[Docket No. FAA-2018-1004; Product Identifier 2018-NM-106-AD]

RIN 2120-AA64

**Airworthiness Directives; The Boeing Company Airplanes**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 737-100, -200, -200C, -300, -400, and -500 series airplanes. This proposed AD was prompted by reports of cracks caused by corrosion of the edge of the bore of the spot face and corrosion of the lug bore of certain side-strut support fitting lugs. This proposed AD would require repetitive detailed inspections of the left and right side-strut support fitting lugs with bushings installed for any corrosion, any crack, or any severed lug; repetitive detailed and high frequency eddy current (HFEC) inspections of the left and right side-strut support fitting lugs with bushings removed for any corrosion or any crack; and applicable on-condition actions. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by January 22, 2019.

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

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

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; internet <https://www.myboeingfleet.com>. You may view

this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-1004.

**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-2018-1004; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:**

Alan Pohl, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206-231-3527; email: [alan.pohl@faa.gov](mailto:alan.pohl@faa.gov).

**SUPPLEMENTARY INFORMATION:****Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2018-1004; Product Identifier 2018-NM-106-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

**Discussion**

We have received reports of cracks caused by corrosion of the edge of the bore of the spot face and corrosion of the lug bore of the body station (BS) 685 side-strut support fitting lugs. This condition, if not addressed, could result in sudden loss of the side-strut support fitting joint and main landing gear

attachment to the airplane, resulting in the collapse of a main landing gear.

**Related Service Information Under 14 CFR Part 51**

We reviewed Boeing Service Bulletin 737-53-1246, Revision 1, dated May 30, 2018. This service information describes procedures for repetitive detailed inspections of the left and right side-strut support fitting lugs at BS 685 with bushings installed for any corrosion, any crack, or any severed lug; repetitive detailed and HFEC inspections of the left and right side-strut support fitting lugs at BS 685 with bushings removed for any corrosion or any crack; and applicable on-condition actions. On-condition actions include, among other things, inspections, corrosion removal, and a preventative modification. Doing the repetitive detailed and HFEC inspections of the side-strut support fitting lugs at BS 685 with bushings removed terminates the repetitive detailed inspections of the side-strut support fitting lugs at BS 685 with bushings installed. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA's Determination**

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

**Proposed AD Requirements**

This proposed AD would require accomplishment of the actions identified as "RC" (required for compliance) in the Accomplishment Instructions of Boeing Service Bulletin 737-53-1246, Revision 1, dated May 30, 2018, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-1004.

**Costs of Compliance**

We estimate that this proposed AD affects 302 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive detailed inspection of left and right side lugs with bushings installed.	17 work-hours × \$85 per hour = \$1,445 per inspection cycle.	\$0	\$1,445 per inspection cycle.	\$436,390 per inspection cycle.
Repetitive detailed and HFEC inspections of left and right side lugs with bushings removed.	29 work-hours × \$85 per hour = \$2,465 per inspection cycle.	0	\$2,465 per inspection cycle.	\$744,430 per inspection cycle.

We estimate the following costs to do any necessary on-condition actions that would be required. We have no way of

determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 18 work-hour × \$85 per hour = \$1,530 per inspection cycle .....	Unknown .....	Up to \$1,530 per inspection cycle.

We have received no definitive data that would enable us to provide parts cost estimates for the on-condition inspections and repairs specified in this proposed AD.

**Authority for This Rulemaking**

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

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

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**The Boeing Company:** Docket No. FAA–2018–1004; Product Identifier 2018–NM–106–AD.

**(a) Comments Due Date**

We must receive comments by January 22, 2019.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 53, Fuselage.

**(e) Unsafe Condition**

This AD was prompted by reports of cracks caused by corrosion of the edge of the bore of the spot face and corrosion of the lug bore of the body station (BS) 685 side-strut support fitting lugs. We are issuing this AD to address cracks caused by corrosion, which could result in sudden loss of the side-strut support fitting joint and main landing gear attachment to the airplane, resulting in the collapse of a main landing gear.

**(f) Compliance**

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

**(g) Actions for Group 7**

For airplanes identified as Group 7 in Boeing Service Bulletin 737–53–1246, Revision 1, dated May 30, 2018; Within 120 days after the effective date of this AD, inspect the left and right side-strut support fitting lugs at BS 685 and do all applicable on-condition actions using a method

approved in accordance with the procedures specified in paragraph (j) of this AD.

**(h) Required Actions for Groups 1 Through 6**

For airplanes identified as Groups 1 through 6 in Boeing Service Bulletin 737–53–1246, Revision 1, dated May 30, 2018, except as specified in paragraph (i) of this AD: At the applicable times specified in paragraph 1.E., “Compliance,” of Boeing Service Bulletin 737–53–1246, Revision 1, dated May 30, 2018, do all applicable actions identified as “RC” (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Service Bulletin 737–53–1246, Revision 1, dated May 30, 2018.

**(i) Exceptions to Service Information Specifications**

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Service Bulletin 737–53–1246, Revision 1, dated May 30, 2018, uses the phrase “the Revision 1 date of this service bulletin,” this AD requires using “the effective date of this AD.”

(2) Where Boeing Service Bulletin 737–53–1246, Revision 1, dated May 30, 2018, specifies contacting Boeing for repair instructions or for work instructions: This AD requires doing the repair or the work instructions and doing applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

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

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: [9-ANM-Seattle-ACO-AMOC-Requests@faa.gov](mailto:9-ANM-Seattle-ACO-AMOC-Requests@faa.gov).

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (i) of this AD: For service information that contains steps that are labeled as RC, the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is

labeled “RC Exempt,” then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

**(k) Related Information**

(1) For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3527; email: [alan.pohl@faa.gov](mailto:alan.pohl@faa.gov).

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet <https://www.myboeingfleet.com>. You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

**John P. Piccola,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2018–26361 Filed 12–4–18; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF THE TREASURY**

**Alcohol and Tobacco Tax and Trade Bureau**

**27 CFR Part 9**

**[Docket No. TTB–2018–0009; Notice No. 178]**

**RIN 1513–AC43**

**Proposed Establishment of the Crest of the Blue Ridge Henderson County Viticultural Area**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the approximately 215-square mile “Crest of the Blue Ridge Henderson County” viticultural area in Henderson County, North Carolina. The proposed viticultural area is not located within, nor does it contain, any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of

their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

**DATES:** Comments must be received by February 4, 2019.

**ADDRESSES:** Please send your comments on this proposed rule to one of the following addresses:

- *internet:* <https://www.regulations.gov> (via the online comment form for this proposed rule as posted within Docket No. TTB–2018–0009 at “*Regulations.gov*,” the Federal e-rulemaking portal);
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

See the Public Participation section of this proposed rule for specific instructions and requirements for submitting comments, and for information on how to request a public hearing or view or request copies of the petition and supporting materials.

**FOR FURTHER INFORMATION CONTACT:**

Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

**SUPPLEMENTARY INFORMATION:**

**Background on Viticultural Areas**

*TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 7, 2013, (superseding Treasury Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these provisions.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

#### Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

#### Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and

- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

#### Crest of the Blue Ridge Henderson County Petition

TTB received a petition from Mark Williams, the executive director of Agribusiness Henderson County, and Barbara Walker, the county extension support specialist for North Carolina Cooperative Extension, on behalf of local grape growers and winemakers, proposing to establish the approximately 215-square mile "Crest of the Blue Ridge Henderson County" AVA. The proposed AVA has 14 commercial vineyards, covering a total of approximately 70 acres. According to the petition, several existing vineyards are planning to expand by a total of 55 additional acres in the next 5 years. In addition, there are two wineries located within the proposed AVA.

According to the petition, the distinguishing features of the proposed Crest of the Blue Ridge Henderson County AVA are its climate and topography—specifically its elevation. Unless otherwise noted, all information and data pertaining to the proposed AVA contained in this proposed rule comes from the petition for the proposed Crest of the Blue Ridge Henderson County AVA and its supporting exhibits.

#### Name Evidence

The proposed Crest of the Blue Ridge Henderson County AVA straddles the ridgeline that forms the crest of the Blue Ridge Mountains. The ridgeline forming the crest of the Blue Ridge is marked and labeled on eight of the nine U.S.G.S. topographic maps used to form the boundary of the proposed AVA. Because the entire crest covers a multi-State region that is significantly larger than the proposed AVA, the petitioners added "Henderson County" to the proposed name in order to identify the location of the proposed AVA more specifically. TTB is not requiring the addition of "North Carolina" to the proposed name because TTB is not aware of the crest of the Blue Ridge Mountains running through any other county named Henderson County.

According to the petition, the term "Crest of the Blue Ridge" was first used by Colonel Joseph Pratt, who was the chief of the North Carolina Geological and Economic Survey from 1906 to 1923.<sup>1</sup> In 197, Pratt proposed creating a

scenic road and chain of tourist hotels atop or adjacent to the summit of the Blue Ridge Mountains. Pratt named the project the "Crest of the Blue Ridge Highway." Several small sections of the road were built, but the start of World War I interrupted the work, and completion was put on hold. In the end, the project was never completed, but the term "Crest of the Blue Ridge" survived and remains in widespread, present-day use to describe areas of the Southern Appalachians, especially in North Carolina.

The petition included examples of current use of the term "Crest of the Blue Ridge" to describe the region of the proposed AVA. Henderson County is also often promoted as the Crest of the Blue Ridge Agricultural Area for its variety of commercial agricultural products. For example, the Henderson County Tourism Development Authority's "Cheers Trail" publication, which advertises commercial breweries, cideries, and wineries in the county, notes that all the producers on the trail are "located in Henderson County in the Crest of the Blue Ridge Agricultural Area."<sup>2</sup> The county also promotes its apple orchards with its Crest of the Blue Ridge Orchard Trail guide.<sup>3</sup> Agribusiness Henderson County, a local non-profit agriculture and agri-tourism advocate, promotes the county's farm businesses through its Southern Mountain Fresh brand, which states, "Enjoy the freshness of the Crest of the Blue Ridge Mountains and sustain our local heritage."<sup>4</sup>

Finally, two wineries with vineyards within the proposed AVA use the term "Crest of the Blue Ridge" to describe their locations. Burntshirt Vineyards' website states that its vineyards occupy ". . . a unique position with two vineyards on both sides of the Eastern Continental Divide on the Crest of the Blue Ridge."<sup>5</sup> St. Paul Mountain Vineyards' website describes its vineyards as being "on the crest of the Blue Ridge in Edneyville."<sup>6</sup>

<sup>1</sup> [mitchellnchistory.org/2016/12/21/crest-blue-ridge-highway-parkway-parkway/](http://mitchellnchistory.org/2016/12/21/crest-blue-ridge-highway-parkway-parkway/).

<sup>2</sup> Henderson County Tourism Development Authority (site last accessed August 27, 2018), <http://visithendersonvillenc.org/wp-content/uploads/cheers-trail.pdf>.

<sup>3</sup> Henderson County Tourism Development Authority (site last accessed August 27, 2018), <http://visithendersonvillenc.org/wp-content/uploads/crest-br-orchard-trail-1.pdf>.

<sup>4</sup> Agribusiness Henderson County (site last accessed August 27, 2018), <http://southernmountainfresh.com>.

<sup>5</sup> Burntshirt Vineyards (site last accessed August 27, 2018), <http://www.burntshirtvineyards.com/info/vineyards>.

<sup>6</sup> St. Paul Mountain Vineyards (site last accessed August 27, 2018), <http://>

<sup>1</sup> See North Carolina History Project (site last accessed August 27, 2018), <https://northcarolinahistory.org/encyclopedia/blue-ridge-parkway>; see also Mitchell County Historical Society (site last accessed August 27, 2018), <http://>



*Boundary Evidence*

The proposed Crest of the Blue Ridge Henderson County AVA is located in Henderson County, North Carolina, and straddles the ridgeline that forms the crest of the Blue Ridge Mountains. To the east and south of the proposed AVA are the low, rolling hills of the Inner Piedmont region. To the west of the proposed AVA are the rugged mountains of the Pisgah National Forest. To the north of the proposed AVA are the Asheville Basin, which is marked by the wide valley of the French Broad River, and the rugged highlands that surround the basin.

*Distinguishing Features*

The distinguishing features of the proposed Crest of the Blue Ridge Henderson County AVA are its elevation and climate.

*Elevation*

The petition describes the proposed Crest of the Blue Ridge Henderson County AVA as straddling two physiographic provinces—the Blue Ridge Escarpment and the Blue Ridge Plateau, which are separated by the Eastern Continental Divide, also known as the Crest of the Blue Ridge. To the north of the proposed AVA are two distinct geomorphic regions: The

Asheville Basin and a region of higher mountains known informally as the “northern highlands,” which includes the Black Mountain range and Mount Mitchell, the highest point east of the Mississippi River. To the east and south of the proposed AVA is the Inner Piedmont region. West of the proposed AVA are the rugged mountains of the Pisgah National Forest.

The petition included information about the minimum, maximum, and mean elevations of the proposed Crest of the Blue Ridge Henderson County AVA and each of the surrounding regions. That information is summarized in the following table.

TABLE 1—ELEVATION

Region	Elevation parameters (in feet)		
	Minimum	Maximum	Mean
Proposed AVA .....	1,394.4	4,396.3	2,361.8
North (Asheville Basin) .....	1,236.9	3,284.1	2,147.9
North (Highlands) .....	1,305.8	6,684.0	3,177.8
East .....	702.1	3,966.5	1,150.9
South .....	816.9	3,631.9	1,409.5
West .....	1,958.7	5,715.2	2,769.9

The data in Table 1 shows that the proposed AVA has elevations that are generally lower than those in the region to the west and in the northern highlands region. The regions to the south and east of the proposed AVA, as well as in the Asheville Basin to the north, are generally lower than the proposed AVA. According to the petition, elevation plays a major role in determining the temperatures, length of growing season, and precipitation within the proposed AVA. In general, regions at high elevations have cooler temperatures and shorter growing seasons than regions at low elevations. Regions at intermediate elevations, such as the proposed AVA, generally have warmer temperatures and longer growing seasons than neighboring regions within higher elevations, and they have cooler temperatures and

shorter growing seasons than adjacent lower elevations.

*Climate*

The petition for the proposed Crest of the Blue Ridge Henderson County AVA included information on several different climate aspects of the proposed AVA and surrounding regions, including average growing season temperatures, average length of growing season, growing degree day zones, and precipitation amounts for the proposed AVA and the surrounding regions. The climate data is based on data generated by the Precipitation-elevation Regressions on Independent Slopes Model (PRISM) Climate Group at Oregon State University.<sup>7</sup>

*Temperature*

First, the petition included information on the average growing

season temperatures of the proposed AVA and the surrounding regions. The petition states that a professor at Southern Oregon University used the average growing season temperatures of major wine producing areas of the world to create four major “Climate/Maturity Groupings.”<sup>8</sup> The information was intended to help vineyard owners determine what varieties would ripen the best in their region.<sup>9</sup> Using this system, the petitioners calculated the average growing season temperatures of the proposed AVA and the surrounding regions, as well as the percentage of land within each region that fell into each of the climate/maturity groupings, as summarized in Table 2.

*saintpaulmountainvineyards.com/scripts/historyPg.cfm.*

<sup>7</sup> PRISM Climate Group, Oregon State University, <http://prism.oregonstate.edu>. Data from the PRISM climate data mapping system was used to calculate the average growing season temperatures for the area within the proposed AVA and areas surrounding the proposed AVA. PRISM is a computerized climate mapping system that estimates climate patterns by using data gathered from weather stations, global positioning systems, and remote sensing technologies, along with other

factors such as elevation, longitude, slope angles, and solar aspects. Such “climate normals” are only calculated every 10 years and at the time the petition was submitted, the most recent climate normals available were from the period of 1980–2010. See Christopher Daly and Kirk Bryant, June 2013, “The PRISM Climate and Weather System—An Introduction” (site last accessed August 27, 2018), [http://prism.oregonstate.edu/documents/PRISM\\_history\\_jun2013.pdf](http://prism.oregonstate.edu/documents/PRISM_history_jun2013.pdf); see also Daly et al., February 1994, “A Statistical-Topographic Model for Mapping Climatological Precipitation over

Mountainous Terrain” (site last accessed August 27, 2018), [http://prism.oregonstate.edu/documents/pubs/1994jappclim\\_mountainPrecip\\_gibson.pdf](http://prism.oregonstate.edu/documents/pubs/1994jappclim_mountainPrecip_gibson.pdf).

<sup>8</sup> See GuildSomm, Gregory Jones, “Climate Grapes, and Wine—Terroir and the Importance of Climate to Winegrape Production,” August 12, 2015 (site last accessed August 27, 2018), [https://www.gildsomm.com/public\\_content/features/articles/b/gregory\\_jones/posts/climate-grapes-and-wine](https://www.gildsomm.com/public_content/features/articles/b/gregory_jones/posts/climate-grapes-and-wine).

<sup>9</sup> *Id.*

TABLE 2—AVERAGE GROWING SEASON TEMPERATURES  
[Degrees Fahrenheit]

Region	Wine grape climate/maturity groupings			
	Cool (55–59 °F)	Intermediate (59–63 °F)	Warm (63–67 °F)	Hot (67–72 °F)
	Percentage of Each Region in Each Grouping			
Proposed AVA .....	X	X	94.9	5.1
North (Asheville Basin) .....	X	1.7	97.0	1.3
North (Highlands) .....	4.0	66.7	29.3	X
East .....	X	4.9	13.4	81.7
South .....	X	X	3.8	96.2
West .....	5.6	57.2	36.5	0.7

As shown in Table 2, the majority of the proposed Crest of the Blue Ridge Henderson County AVA has average annual growing season temperatures that are in the “Warm” grouping. No portion of the proposed AVA falls into the “Cool” or “Intermediate” groupings. The Asheville Basin region north of the proposed AVA has a larger percentage of land within the “Warm” grouping and also has some land that can be classified in the slightly cooler “Intermediate” grouping. The highlands region north of the proposed AVA and the region to the west of the proposed AVA are both primarily within the “Intermediate” grouping, while the

regions to the south and east of the proposed AVA are mainly within the “Hot” grouping. According to the petition, regions in the “Warm” grouping are well-suited for growing grape varieties such as Merlot, Cabernet Franc, and Cabernet Sauvignon, which are among the most commonly grown grape varieties within the proposed AVA.

Growing Season Length <sup>10</sup>

As shown in Tables 3 and 4 below, the petition also included data on the length of the growing season within the proposed Crest of the Blue Ridge Henderson County AVA and the surrounding regions. The petition states

that according to a vineyard site study conducted by the Institute for the Application of Geospatial Technologies and Cornell University’s College of Agriculture and Life Sciences,<sup>11</sup> regions with growing seasons shorter than 160 days are generally unsuitable for vineyards because the grapes will not have sufficient time to ripen. Locations with growing seasons of 170 to 180 days are considered “satisfactory,” while sites with growing seasons of 180 to 190 days are considered “good.” Vineyard locations with growing seasons of over 190 days are considered “not limited by growing season” and are generally the most desirable sites.

TABLE 3—GROWING SEASON LENGTH

Region	Growing season length in days									
	140–150	150–160	160–170	170–180	180–190	190–200	200–210	210–220	220–230	230–240
	Percentage of each region in each category									
Proposed AVA .....	X	X	X	0.1	0.7	6.2	32.7	59.7	0.6	X
North (Asheville Basin) .....	X	X	X	X	X	0.1	13.5	82.8	3.6	X
North (Highlands) .....	0.2	0.9	2.0	5.0	21.3	27.4	40.5	2.7	X	X
East .....	X	X	X	0.2	0.6	2.4	5.9	13.0	41.6	36.3
South .....	X	X	X	X	X	0.4	1.7	2.7	16.9	78.3
West .....	X	1.1	3.9	7.9	17.5	26.4	29.5	13.3	0.4	X

TABLE 4—MEAN GROWING SEASON LENGTH

Region	Growing season length (days)
Proposed AVA .....	209
North (Asheville Basin) .....	213
North (Highlands) .....	197
East .....	225
South .....	231
West .....	196

The data in Tables 3 and 4 shows that the proposed Crest of the Blue Ridge Henderson County AVA has a growing season that is longer than the northern highlands region and the region to the west of the proposed AVA and shorter than the Asheville Basin region and the regions to the east and south. The petition notes that although the majority of land within the proposed AVA has a growing season of between 210 and 220 days, there is also a large percentage of land with a growing season length

between 200 and 210 days, and a small percentage of land with a growing season length of between 170 and 190 days. As a result, the proposed AVA can support some early-ripening varieties of grapes, as well as varieties that require longer growing seasons.

Growing Degree Day Zones

<sup>10</sup> The petition defines “growing season length” as the average number of days between the last 28 °F temperature in the spring and the first occurrence of this temperature in the fall. The petition states that plant tissues begin to freeze and

die at 28 °F. See also Institute for the Application of Geospatial Technologies and Cornell University’s College of Agriculture and Life Sciences—New York Site Vineyard Elevation Project, Alan N. Lasko and Tim E. Martinson, “The Basics of Vineyard Site

Elevation and Selection,” (site last accessed August 27, 2018), <http://arcserver2.iagt.org/vll/learnmore.aspx>.

<sup>11</sup> See Lasko, *id.*

As shown in Table 5 below, the petition also included an analysis of the growing degree day (GDD) zones<sup>12 13</sup>

within the proposed AVA and the surrounding regions. GDD zones range

from Zone I (coolest) to Zone V (warmest).

TABLE 5—GROWING DEGREE DAY REGIONS

Region	Growing degree day regions				
	Zone I	Zone II	Zone III	Zone IV	Zone V
	Percentage of occurrence in each location				
Proposed AVA .....	1.3	18.1	77.5	3.1	X
North (Asheville Basin) .....	X	6.6	89.7	3.7	X
North (Highlands) .....	43.6	46.2	10.1	0.1	X
East .....	2.3	6.0	11.0	34.0	46.7
South .....	X	0.9	2.8	4.0	92.3
West .....	46.6	36.6	16.0	0.7	0.1

As shown in Table 5, most of the proposed Crest of the Blue Ridge Henderson County AVA is classified as Zone III with GDD accumulations of between 3,001 and 3,500. The data supports the petition’s assertion that the proposed AVA has a long, warm growing season that is cooler than the regions to the south and east of the Asheville Basin and warmer than the region to the west and the northern highlands region. The petition states that the two primary GDD zones found within the proposed AVA are suitable for growing both cooler-climate grapes such as Cabernet Sauvignon and Cabernet Franc as well as warmer-climate grapes such as Sauvignon Blanc and Syrah.

Precipitation

Finally, the petition included information on the mean annual, growing season, and winter precipitation amounts for the proposed AVA and the surrounding regions for the period from 1980–2010. According to the petition, within the region of the proposed AVA, air moving inland from the southeastern Atlantic Ocean and the Gulf of Mexico drops its moisture along the mountainous elevations of the Blue Ridge Escarpment and the Eastern Continental Divide. As a result, precipitation amounts decrease as one moves from southeast to northwest through the region. Sufficient annual precipitation amounts are important to prevent vines from experiencing excessive heat and water stress.

The data shown below in Table 6 demonstrates that the proposed Crest of the Blue Ridge Henderson County AVA generally has higher mean annual precipitation amounts than the regions to the north and lower mean annual precipitation amounts than the regions to the east and south, which are within the Blue Ridge Escarpment. Although the data also suggests that the region to the west of the proposed AVA also has higher annual precipitation amounts than the proposed AVA, Figure 18 of the petition shows that the higher rainfall amounts are actually in the region to the southwest of the proposed AVA, where moist air from the Gulf of Mexico encounters high elevations, rather than in the region due west of the proposed AVA, which is in the rain shadow of the Eastern Continental Divide.

TABLE 6—MEAN ANNUAL PRECIPITATION IN INCHES

Region	Minimum	Maximum	Mean
Proposed AVA .....	45.1	70.8	57.5
North (Asheville Basin) .....	36.4	50.5	42.6
North (Highlands) .....	37.9	72.3	50.7
East .....	46.6	75.4	60.3
South .....	45.9	82.4	60.2
West .....	37.1	93.5	62.8

The petition states that is also important to consider the timing of the rainfall. For example, the petition states that during the growing season, excessive rainfall can cause excess vine and leaf growth, promote fungal disease, and attract insects, while too little rainfall can stress the vines and lead to

reduced photosynthesis, cell desiccation, and potential death of the vines. The petition also cites a study that found that the recommended growing season precipitation amount for vineyards in North Carolina is between 24 and 30 inches.<sup>14</sup> The data shown below in Table 7 demonstrates that the

mean minimum growing season precipitation amount within the proposed AVA meets the minimum recommended amount. The mean growing season amount slightly exceeds the recommended precipitation amount.

<sup>12</sup> See Albert J. Winkler, *General Viticulture* (Berkeley: University of California Press, 1974), pages 61–64. In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual GDDs, defines climatic regions. One GDD accumulates for each

degree Fahrenheit that a day’s mean temperature is above 50 degrees F, the minimum temperature required for grapevine growth.

<sup>13</sup> *Id.* In the Winkler scale, the GDD regions are defined as follows: Region I = less than 2,500 GDDs; Region II = 2,501–3,000 GDDs; Region III = 3,001–

3,500 GDDs; Region IV = 3,501–4,000 GDDs; Region V = greater than 4,000 GDDs.

<sup>14</sup> Poling, E.B., 2006, ed., *The North Carolina Winegrape Growers Guide: North Carolina State University, Department of Horticultural Sciences*, page 41.

TABLE 7—MEAN GROWING SEASON PRECIPITATION IN INCHES

Region	Minimum	Maximum	Mean
Proposed AVA .....	27.1	40.9	33.2
North (Asheville Basin) .....	21.5	31.2	24.5
North (Highlands) .....	22.2	42.3	28.7
East .....	27.0	43.7	30.2
South .....	25.0	47.1	29.7
West .....	21.9	51.0	34.4

Finally, the petition states that it is also important to consider the winter precipitation amounts. Excessive precipitation during December, January, and February can delay bud break and vineyard pruning, leading to a later

harvest date and an increased risk that grapes will still be on the vine when the first fall frost occurs. The data listed in Table 8 below shows that the proposed AVA has a mean winter precipitation amount of 13.9 inches, which is

between the lower amounts of the regions to the north, east, and south and the higher amount of the region to the west.

TABLE 8—MEAN WINTER PRECIPITATION IN INCHES

Region	Minimum	Maximum	Mean
Proposed AVA .....	10.6	17.6	13.9
North (Asheville Basin) .....	8.4	12.0	9.7
North (Highlands) .....	8.9	18.6	11.7
East .....	10.9	18.7	12.5
South .....	12.0	20.9	13.4
West .....	8.9	24.5	16.0

*Summary of Distinguishing Features*

In summary, the evidence provided in the petition indicates that the elevation and climate of the proposed Crest of the Blue Ridge Henderson County AVA distinguish it from the surrounding regions in each direction. The proposed AVA has elevations that are generally higher than those of the regions to the south and east and in the Asheville Basin to the north, and lower than those of the northern highlands region and the region to the west. The proposed AVA also has a moderate climate that slightly differs from the climate in the Asheville Basin to the north, is cooler than the regions to the south and east and warmer than the region to the west and the northern highlands. Finally, annual precipitation amounts in the proposed AVA are generally lower than amounts in the regions to the south, west, and east and higher amounts than the highlands and Asheville Basin regions to the north.

**TTB Determination**

TTB concludes that the petition to establish the approximately 215-square mile Crest of the Blue Ridge Henderson County AVA merits consideration and public comment, as invited in this proposed rule.

**Boundary Description**

See the narrative description of the boundary of the petitioned-for AVA in

the proposed regulatory text published at the end of this proposed rule.

**Maps**

The petitioner provided the required maps, and they are listed below in the proposed regulatory text.

**Impact on Current Wine Labels**

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine’s true place of origin. For a wine to be labeled with an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

If TTB establishes this proposed AVA, its name, “Crest of the Blue Ridge Henderson County,” will be recognized as a name of viticultural significance

under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, if this proposed rule is adopted as a final rule, wine bottlers using the name “Crest of the Blue Ridge Henderson County” in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin. TTB is not proposing to designate either “Crest of the Blue Ridge,” standing alone, or “Blue Ridge,” standing alone, as terms of viticultural significance because the Blue Ridge Mountains and the ridgeline that forms the crest of the mountains both cover a multi-State area that is significantly larger than the region of the proposed AVA, which is located entirely within Henderson County, North Carolina. Therefore, wine bottlers using either “Crest of the Blue Ridge,” standing alone, or “Blue Ridge,” standing alone, in a brand name or in another label reference on their wines would not be affected by the establishment of this proposed AVA.

**Public Participation**

*Comments Invited*

TTB invites comments from interested members of the public on whether it should establish the proposed AVA. TTB is also interested in receiving comments on the sufficiency and accuracy of the name, boundary, soils,

climate, and other required information submitted in support of the petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Crest of the Blue Ridge Henderson County AVA on wine labels that include the term “Crest of the Blue Ridge Henderson County,” as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the AVA.

#### Submitting Comments

You may submit comments on this proposed rule by using one of the following three methods (please note that TTB has a new address for comments submitted by U.S. Mail):

- **Federal e-Rulemaking Portal:** You may send comments via the online comment form posted with this proposed rule within Docket No. TTB–2018–0009 on “*Regulations.gov*,” the Federal e-rulemaking portal, at <https://www.regulations.gov>. A direct link to that docket is available under Notice No. 178 on the TTB website at <https://www.ttb.gov/wine/wine-rulemaking.shtml>. Supplemental files may be attached to comments submitted via *Regulations.gov*. For complete instructions on how to use *Regulations.gov*, visit the site and click on the “Help” tab.

- **U.S. Mail:** You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

- **Hand Delivery/Courier:** You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this proposed rule. Your comments must reference Notice No. 178 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public

disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly indicate if you are commenting on your own behalf or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity’s name, as well as your name and position title. If you comment via *Regulations.gov*, please enter the entity’s name in the “Organization” blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity’s comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

#### Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

#### Public Disclosure

TTB will post, and you may view, copies of this proposed rule, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB–2018–0009 on the Federal e-rulemaking portal, *Regulations.gov*, at <https://www.regulations.gov>. A direct link to that docket is available on the TTB website at <https://www.ttb.gov/wine/wine-rulemaking.shtml> under Notice No. 178. You may also reach the relevant docket through the *Regulations.gov* search page at <https://www.regulations.gov>. For information on how to use *Regulations.gov*, click on the site’s “Help” tab.

All posted comments will display the commenter’s name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You may also view copies of this proposed rule, all related petitions, maps and other supporting materials, and any electronic or mailed comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW, Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Please note that TTB is unable to provide copies of USGS maps

or any similarly-sized documents that may be included as part of the AVA petition. Contact TTB’s Regulations and Rulings Division at the above address, by email at [https://www.ttb.gov/webforms/contact\\_RRD.shtml](https://www.ttb.gov/webforms/contact_RRD.shtml), or by telephone at 202–453–1039, ext. 175, to schedule an appointment or to request copies of comments or other materials.

#### Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor’s efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

#### Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

#### Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this proposed rule.

#### List of Subjects in 27 CFR Part 9

Wine.

#### Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

#### PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

#### Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.\_\_\_\_ to read as follows:

#### § 9.\_\_\_\_ Crest of the Blue Ridge Henderson County.

(a) *Name.* The name of the viticultural area described in this section is “Crest of the Blue Ridge Henderson County”. For purposes of part 4 of this chapter, “Crest of the Blue Ridge Henderson County” is a term of viticultural significance.

(b) *Approved maps.* The nine United States Geological Survey (USGS)

1:24,000 scale topographic maps used to determine the boundary of the Crest of the Blue Ridge Henderson County viticultural area are titled:

- (1) Black Mountain, North Carolina, 1941; photorevised 1978;
  - (2) Bat Cave, North Carolina, 1997;
  - (3) Clifffield Mountain, North Carolina, 1946; photorevised 1991;
  - (4) Saluda, North Carolina–South Carolina, 1983 (provisional edition);
  - (5) Zirconia, North Carolina–South Carolina, 1997;
  - (6) Standingstone Mountain, South Carolina–North Carolina, 1997;
  - (7) Horse Shoe, North Carolina, 1997;
  - (8) Hendersonville, North Carolina, 1997; and
  - (9) Fruitland, North Carolina, 1997.
- (c) *Boundary*. The Crest of the Blue Ridge Henderson County viticultural area is located in Henderson County, North Carolina. The boundary of the Crest of the Blue Ridge Henderson County viticultural area is as described below:

(1) The beginning point is on the Black Mountain map at the 4,412-foot elevation marker atop Little Pisgah Mountain, along the shared Buncombe–Henderson county line. From the beginning point, proceed southeast along the shared Buncombe–Henderson county line approximately 4.4 miles, crossing onto the Bat Cave map, to the intersection of the Buncombe–Henderson county line with the shared Henderson–Rutherford county line; then

(2) Proceed southerly along the shared Henderson–Rutherford county line approximately 5.1 miles to its intersection with the Polk county line; then

(3) Proceed southwest along the shared Henderson–Polk county line approximately 14.9 miles, crossing over the Clifffield Mountain map and onto the Saluda map, to its intersection with the North Carolina–South Carolina border; then

(4) Proceed westerly along the North Carolina–South Carolina border approximately 8.1 miles, crossing onto the Zirconia map, to the 3,058-foot elevation marker atop Big Top Mountain; then

(5) Proceed northwest in a straight line approximately 2.0 miles, crossing onto the Standingstone Mountain map, to the center of the highest closing contour atop Maybin Mountain; then

(6) Proceed northeast in a straight line approximately 2.2 miles, crossing back onto the Zirconia map, to the intersection of an unnamed road, known locally as County Road 1113/Maybin Road, with Mountain Valley Road, also known as County Road 1109/Cabin Creek Road; then

(7) Proceed northwest along Mountain Valley Road/County Road 1109/Cabin Creek Road approximately 1.3 miles, crossing back onto the Standingstone Mountain map, to its intersection with Pinnacle Mountain Road; then

(8) Proceed northwest in a straight line approximately 1.0 mile to the intersection of Little Cove Creek with the 2,800-foot elevation contour; then

(9) Proceed westerly along the 2,800-foot elevation contour approximately 2.4 miles to its intersection with an unnamed creek on the north slope of Stone Mountain that flows north into Jeffers Lake; then

(10) Proceed southwest in a straight line approximately 2.0 miles to the intersection of the shared Henderson–Transylvania county line with the Dupont State Forest boundary atop Hickory Mountain; then

(11) Proceed northeast along the Henderson–Transylvania county line approximately 2.6 miles, crossing onto the Horse Shoe map, to its intersection with an unnamed road, known locally as Clipper Lane, on the hilltop above the Sentell Cemetery; then

(12) Proceed northeast in a straight line approximately 1.6 miles to the center of the highest closing contour atop Jeter Mountain; then

(13) Proceed southeast in a straight line approximately 1.3 miles to the center of the highest closing contour atop Evans mountain; then

(14) Proceed northeast in a straight line approximately 2.0 miles to the center of the highest closing contour atop Wolf Mountain; then

(15) Proceed northeast in a straight line approximately 1.2 miles to the center of the highest closing contour atop Drake Mountain; then

(16) Proceed northwest in a straight line approximately 0.7 mile to the center of the highest closing contour atop Cantrell Mountain; then

(17) Proceed northeast in a straight line approximately 3.3 miles to the 2,618-foot elevation marker on the northeast slope of Long John Mountain; then

(18) Proceed northeast in a straight line approximately 1.4 miles, crossing onto the Hendersonville map, to the center of the highest closing contour atop Stoney Mountain; then

(19) Proceed northeast in a straight line approximately 0.6 mile to the intersection of Brookside Camp Road with Dixie Highway; then

(20) Proceed northeast along Brookside Camp Road approximately 2.1 miles, crossing onto the Fruitland map, to its intersection with Locust Grove Road; then

(21) Proceed northeast along Locust Grove Road approximately 1.4 miles to its intersection with an unnamed trail near Locust Grove Church; then

(22) Proceed northeast in a straight line approximately 0.7 mile to the 3,442-foot elevation marker atop Rich Mountain; then

(23) Proceed northwest in a straight line approximately 0.4 mile to the intersection of Southern Leveston Road with an unnamed jeep trail; then

(24) Proceed northwest along Southern Leveston Road approximately 2.4 miles to its intersection with Hoopers Creek Road; then

(25) Proceed northeast in a straight line approximately 0.7 mile to the 2,983-foot elevation marker labeled Edneyville-5 atop a peak on Burney Mountain along the shared Henderson–Buncombe county line; then

(26) Proceed northeast along the Henderson–Buncombe county line approximately 8.2 miles, crossing onto the Black Mountain map, and return to the beginning point atop Little Pisgah Mountain.

Signed: September 19, 2018.

**John J. Manfreda,**  
*Administrator.*

Approved: November 13, 2018.

**Timothy E. Skud,**  
*Deputy Assistant Secretary, (Tax, Trade, and Tariff Policy).*

[FR Doc. 2018–26323 Filed 12–4–18; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Part 9

[Docket No. TTB–2018–0008; Notice No. 177]

RIN 1513–AC40

### Proposed Establishment of the West Sonoma Coast Viticultural Area

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the 141,846-acre “West Sonoma Coast” viticultural area in Sonoma County, California. The proposed viticultural area lies entirely within the established Sonoma Coast and North Coast viticultural areas and contains the established Fort Ross–Seaview viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of

their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

**DATES:** Comments must be received by January 7, 2019.

**ADDRESSES:** Please send your comments on this notice to one of the following addresses:

- *Internet:* <https://www.regulations.gov> (via the online comment form for this notice as posted within Docket No. TTB–2018–0008 at “*Regulations.gov*,” the Federal e-rulemaking portal);
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing or view or obtain copies of the petition and supporting materials.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

**SUPPLEMENTARY INFORMATION:**

**Background on Viticultural Areas**

*TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 7, 2013, (superseding Treasury Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these provisions.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

*Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine’s geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

*Requirements*

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes the standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and

- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

**West Sonoma Coast Petition**

TTB received a petition from Patrick Shabram, on behalf of the West Sonoma Coast Vintners, proposing the establishment of the “West Sonoma Coast” AVA. The proposed West Sonoma Coast AVA is located within Sonoma County, California. The proposed AVA lies entirely within the established Sonoma Coast AVA (27 CFR 9.116) and North Coast AVA (27 CFR 9.30) and entirely overlaps the smaller established Fort Ross–Seaview AVA (27 CFR 9.221). The proposed West Sonoma Coast AVA contains 141,846 acres, with approximately 47 commercially-producing vineyards covering approximately 1,028 acres distributed throughout the proposed AVA. Grape varieties planted within the proposed AVA include Pinot Noir and Chardonnay.

According to the petition, the distinguishing features of the proposed West Sonoma Coast AVA include its topography, geology, and climate. Unless otherwise noted, all information and data pertaining to the proposed AVA contained in this document are from the petition for the proposed West Sonoma Coast AVA and its supporting exhibits.

*Name Evidence*

The proposed West Sonoma Coast AVA is located within the western portion of Sonoma County. The petition states that Sonoma County is typically referred to in terms of “east” and “west,” and that terms such as “West County,” “West Sonoma,” and “Western Sonoma” are frequently used to describe the region that includes the proposed AVA. For example, the school district that serves the proposed AVA is the West Sonoma County Union High School District.<sup>1</sup> A newspaper that serves the town of Sebastopol and points west, including the region of the proposed AVA, is called the *Sonoma West Times & News*.<sup>2</sup> Additionally, in his book about wineries and vineyards along the Russian River, Steve Heimoff refers to residents of the area as “West Sonomans.”<sup>3</sup>

The petition states that although the terms “West Sonoma” and “Western Sonoma” apply to the region of the

<sup>1</sup> West Sonoma County Union High School District (May 7, 2018), <http://wscuhd.k12.ca.us/>.

<sup>2</sup> Sonoma West Times & News (May 16, 2018), <http://www.sonomawest.com/>.

<sup>3</sup> Heimoff, Steve. *A Wine Journey Along the Russian River* (Berkeley: University of California Press, 2005).

proposed AVA, both terms encompass a broader area than just the extreme coastal region covered by the proposed AVA. Therefore, the petition states that “West Sonoma Coast” is a more accurate and precise name for the proposed AVA, as this name conveys the idea that the proposed AVA is located both within the coastal region of the area known as West Sonoma and also within the western portion of the larger established Sonoma Coast AVA. The petition included several examples of the use of “West Sonoma Coast” to refer to the region of the proposed AVA. For example, a 2013 *Wall Street Journal* article notes, “It’s only in the last 20 years or so that the West Sonoma Coast has been recognized as a superb region for Burgundian varietals of Pinot Noir and Chardonnay.”<sup>4</sup> A 2014 article in *Forbes* is titled “California’s Edgiest Wine Region: Western Sonoma Coast.”<sup>5</sup> A 2015 article for *Wine and Spirits* refers to “the region unofficially known as ‘west [sic] Sonoma Coast.’”<sup>6</sup> Finally, the petition included a real estate listing for “West Sonoma Coast ranch land” for sale in the town of Annapolis, California, which is within the proposed West Sonoma Coast AVA.

#### Boundary Evidence

The proposed West Sonoma Coast AVA encompasses the mountainous terrain along the Pacific coastline of Sonoma County. The Pacific Ocean forms the western boundary of the proposed AVA, and the shared Sonoma–Mendocino County line forms the northern boundary. The petition notes that the proposed AVA does not extend farther north because use of the term “Sonoma” does not extend into Mendocino County. The eastern boundary follows a series of elevation contours, creeks, and U.S.G.S. map section lines to separate the proposed AVA from the more inland region of Sonoma County that has lower elevations and warmer climates. The region east of the proposed AVA includes the established Russian River Valley AVA (27 CFR 9.66) and Northern Sonoma AVA (27 CFR 9.70), both of which have boundaries that are concurrent with portions of the proposed West Sonoma Coast AVA’s eastern boundary. The southern boundary of the proposed West Sonoma

Coast AVA is shared with the northern boundary of the Petaluma Gap AVA (27 CFR 9.261), which has generally lower elevations.

#### Distinguishing Features

The distinguishing features of the proposed West Sonoma Coast AVA are its topography, geology, and climate. The petition included detailed information and supporting evidence regarding the distinguishing features of only the regions to the east and south of the proposed AVA. The Pacific Ocean is to the west of the proposed AVA and cannot be used for viticultural purposes. The petition did include a broad summary of the characteristics of the region to the north of the proposed AVA. TTB is not including the information in this document because the petition did not provide evidence to support the claims. However, TTB does not consider information from that region to be necessary because the term “Sonoma” is not used to describe the region to the north of the proposed AVA, within Mendocino County. Therefore, the proposed West Sonoma Coast AVA could not extend farther north even if the distinguishing features of both regions were similar because TTB regulations require the proposed AVA name to apply to the entire proposed AVA. See 27 CFR 9.12(a)(1).

#### Topography

The petition states that the terrain of the proposed West Sonoma Coast is characterized by the steep, rugged mountains and ridgelines that form the Coastal Ranges, which run parallel to the coastline. Very little area within the proposed AVA contains slopes of less than 5 percent, and the summits of the coastal mountains can exceed 1,000 feet. In the coastal regions of California, elevations below 900 feet are below the fog line and are typically exposed to heavy marine fog, which can lower temperatures and impede photosynthesis. However, the petition states that within the proposed AVA, the ridgelines of the Coastal Ranges form protected areas below the fog line where the heavy marine fog does not reach and successful viticulture can occur. The petition states that examples of such protected regions within the proposed AVA include the areas around Freestone, Annapolis, and Occidental. The high elevations within the proposed AVA also allow for vineyards to be placed above the fog. The petition states that the established Fort Ross–Seaview AVA, in particular, benefits from elevations above the fog line. According to the petition, commercial viticulture would likely not occur within the

proposed AVA without protection from the extreme marine influences, either in the form of elevations above the fog line or lower elevations sheltered by the ridgelines, because the cold temperatures and reduced sunlight caused by heavy marine fog would not allow grapes to ripen reliably.

By contrast, the region immediately to the east of the proposed AVA, within the established Russian River Valley AVA, lacks summits that exceed 1,000 feet. Additionally, the Russian River Valley AVA is dominated by large areas with gentler slopes, including the Santa Rosa Plain and the Green Valley that forms the established Green Valley of the Russian River Valley AVA (27 CFR 9.57). The Petaluma Gap AVA, to the south of the proposed West Sonoma Coast AVA, also has lower elevations and gentler slopes.

#### Geology

Much of the proposed West Sonoma Coast AVA is characterized by sedimentary rock of the Franciscan Complex, including Franciscan sandstone. Other major geological formations within the proposed AVA include the German Rancho Formation and the Gualala Formation, both of which also contain sedimentary rock. To the south of the proposed AVA, the region is dominated by the Wilson Grove Formation, which is comprised of claystone, siltstone, and fine sandstone overlying Franciscan Formation sedimentary rock. Northeast of the proposed AVA, the Franciscan Formation is prevalent, but to the southeast, the Wilson Grove Formation is more common. Farther east, the Santa Rosa Plain is characterized by Quaternary alluvium and fluvial deposits, which are uncommon within the proposed West Sonoma Coast AVA.

The petition states that the underlying geology of a region contributes to the topography. Because the Wilson Grove Formation and alluvial deposits are more easily eroded than the geological formations of the proposed AVA, the topography to the south and east of the proposed AVA is characterized by lower elevations, rounded hills, and gentle slopes with generally deep soils. By contrast, the proposed AVA has high elevations and steep, rugged slopes with thin soils that have a high sand content. The petition states that both the thin soils and high sand content promote good drainage in vineyards, which is important to disease prevention.

#### Climate

*Temperature:* The proposed West Sonoma Coast AVA boundary begins at the Pacific coast and extends inland

<sup>4</sup>McInerney, Jay. “West Sonoma Coast Wines Are on the Rise,” *The Wall Street Journal* (July 18, 2013).

<sup>5</sup>Bell, Katie Kelly. “California’s Edgiest Wine Region: Western Sonoma Coast,” *Forbes* (March 6, 2014).

<sup>6</sup>Brown, Elaine Chukan. “Sonoma’s Far Coast: A haven for pinot noir,” *Wines and Spirits* (August 31, 2015).



only a few miles. As a result, the climate of the proposed AVA is strongly influenced by the cold marine air and heavy marine fog. The petition states that much of the proposed AVA is located within the “Marine” climate zone, a category within a climate scale created by former University of California Extension farm advisors Robert Sisson and Paul Vossen during their work in Sonoma County.<sup>7</sup> Sisson believed that the Marine zone was too cold for successful viticulture. However, the petition states that Sisson’s climate scale did not take into account the role the coastal mountains play in creating areas below the fog line that are

protected from the heaviest marine influences, the ridgelines that are above the fog line in the proposed AVA, or the advances in viticultural practices that have been made since the scale was created. The petition notes that the areas within the proposed AVA around Annapolis, Seaview, Occidental, and Freestone are examples of such protected locations within the Marine zone where successful commercial viticulture takes place.

The petition states that although the proposed West Sonoma Coast AVA contains ridgelines above the fog line as well as areas at lower elevations that are sheltered from the heaviest marine fog

and air, the marine influence is still strong enough to affect the climate within the proposed AVA. The petition included growing degree day (GDD) accumulations for a location in Occidental, which is within the proposed AVA, and a location in Windsor, which is within the established Russian River Valley AVA and also within the eastern portion of the established Sonoma Coast AVA. The data shows that the location within the proposed AVA accumulates fewer GDDs than the location to the east of the proposed AVA.

TABLE 1—GROWING DEGREE DAY ACCUMULATIONS

Location	Winkler method <sup>8</sup>				Daily method <sup>9</sup>			
	2011	2012	2013	2014	2011	2012	2013	2014 <sup>10</sup>
Windsor .....	1,860	2,271	2,466	2,628	1,918	2,331	2,513	2,685
Occidental .....	1,761	2,024	2,070	2,358	1,872	1,991	2,045	2,411

The lower GDD accumulations reflect the lower daytime temperatures within the proposed AVA. The petition included a graph showing the average monthly maximum temperatures during the growing seasons from 2010 to 2014 for locations in Occidental, which is within the proposed AVA, and within Windsor and Santa Rosa, which are east of the proposed AVA and also within the Sonoma Coast AVA and the Russian River Valley AVA. The graph shows that temperatures were highest in Windsor, ranging from approximately 79 degrees F to approximately 108 degrees F. In Santa Rosa, the temperature range was almost identical to the range for Windsor. By contrast, maximum temperatures in Occidental did not exceed 100 degrees F and ranged from approximately 71 degrees F to approximately 98 degrees F.

The petition states that, in spite of the heavy marine influence, the proposed West Sonoma Coast AVA generally has warmer nocturnal temperatures than the regions to the east. According to the petition, cool air drains off of the mountains of the proposed AVA at night and settles in the lower elevations to the east, resulting in cooler nighttime

temperatures to the east. The petition included a graph showing the monthly low temperatures from 2012 to 2014 for locations in Occidental, Windsor, and Santa Rosa. The graph shows that monthly low temperatures within Occidental, in the proposed West Sonoma Coast AVA, range from approximately 37 degrees F to approximately 47 degrees F. By contrast, at the Windsor station to the east of the proposed AVA, temperatures range from approximately 31 degrees F to approximately 43 degrees F. At the Santa Rosa station, also to the east of the proposed AVA and at lower elevations than both the Occidental and Windsor stations, temperatures range from approximately 28 degrees F to approximately 44 degrees F. The petition states that, when compared to the region to the east, the proposed AVA has more nights with temperatures that are warm enough to allow the grapes to continue maturing. Additionally, because nighttime temperatures seldom drop low enough to cause significant damage to the vines, the petition states that frost protection measures within the proposed AVA are “nearly non-existent,” whereas frost protection

methods are more frequently used in the lower inland areas to the east of the proposed AVA.

*Wind Speed:* Finally, the petition included data on wind speed averages from 2010 to 2013 within the proposed West Sonoma Coast AVA, the region to the east, and Valley Ford, which is to the south of the proposed AVA within the Petaluma Gap AVA. The petition states that wind speeds are higher within the region to the south of the proposed West Sonoma Coast AVA due to the lower elevations and more open terrain that does not block the wind. Furthermore, wind speeds are higher to the east of the proposed AVA because winds can enter that region from the San Pablo Bay, to the south of the proposed AVA, and blow relatively unhindered up the broad Santa Rosa Plain. The petition states that high wind speeds, such as those found in the regions to the east and south of the proposed West Sonoma Coast AVA, can slow photosynthesis rates in grapevines and, therefore, can also slow fruit development and maturation.

<sup>7</sup> See Vossen, Paul, *Sonoma County Climatic Zones*, University of California Cooperative Extension Service, Sonoma County, 1986 (This publication notes the findings of University of California Extension Farm Advisors Robert Sisson and Paul Vossen regarding the climate zones of Sonoma County, California.).

<sup>8</sup> A.J. Winkler *et al.*, *General Viticulture* 60–71 (2nd. Ed. 1974). The Winkler method of calculating

GDDs utilizes the monthly average temperature above 50 degrees Fahrenheit (the minimum temperature required for grapevine growth) multiplied by the number of days in the month during the growing season (April 1 through October 31).

<sup>9</sup> This method of calculating GDDs utilizes the sum of daily average temperatures above 50 degrees F during the growing season. See Washington State

University, *Growing Degree Days* (July 23, 2018), <http://wine.wsu.edu/extension/weather/growing-degree-days/>.

<sup>10</sup> Data is incomplete for a 17-day period in September and October 2014 at the Occidental station. Daily GDD accumulations during these days are based on an average of temperatures two weeks prior and two weeks following this period.

TABLE 2—WIND SPEED

Location (direction from proposed AVA)	Average wind speed (miles per hour)			
	2010	2011	2012	2013
Valley Ford (south) .....	8.0	7.4	7.6	8.5
Windsor (east) .....	3.4	3.2	3.3	3.9
Santa Rosa (east) .....	3.9	4.0	4.1	N/A
Occidental (within) .....	1.6	1.4	1.6	1.5

*Summary of Distinguishing Features*

In summary, the topography, geology, and climate of the proposed West Sonoma Coast AVA distinguish it from the surrounding regions. The proposed AVA has steeper slopes and reaches higher maximum elevations than the regions to the south and east. The proposed AVA also has lower wind speeds than the regions to the south and east. Additionally, in contrast to the region to the east, the proposed AVA has geological features that lack large amounts of alluvium, lower GDD accumulations, cooler daytime temperatures and warmer nighttime temperatures, and lower wind speeds. To the west of the proposed AVA is the Pacific Ocean. The petition did not provide comparison data for the region to the north of the proposed AVA, in Mendocino County, because the term “Sonoma Coast” is not used to describe regions outside of Sonoma County; therefore, per TTB regulations, the region to the north could not be included in an AVA called “West Sonoma Coast.”

*Comparison of the Proposed West Sonoma Coast AVA to the Existing Sonoma Coast AVA*

Sonoma Coast AVA

T.D. ATF–253, which published in the **Federal Register** on June 11, 1987 (52 FR 22304), established the Sonoma Coast AVA in Sonoma County, California. The primary feature of the Sonoma Coast AVA, as described in T.D. ATF–253, is a marine-influenced climate that is cooler than the region of Sonoma County east of the Russian River Valley AVA. The proposed West Sonoma Coast AVA shares this characteristic with the larger Sonoma Coast AVA. Therefore, TTB believes that the proposed West Sonoma Coast AVA appears to share enough similarities to remain within the established Sonoma Coast AVA.

However, the proposed West Sonoma Coast AVA does have some characteristics that distinguish it from the Sonoma Coast AVA, which TTB believes would warrant its establishment as a new AVA. For

example, the proposed West Sonoma Coast AVA is largely within the “Marine” climate zone, which results in lower GDD accumulations than are found within the eastern portion of the Sonoma Coast AVA, which is in the “Coastal Cool” climate zone.<sup>11</sup> Additionally, the proposed AVA is in a mountainous region with steeper slopes and more rugged terrain than the majority of the Sonoma Coast AVA.

Comparison of the Proposed West Sonoma Coast AVA to the Existing North Coast AVA

The North Coast AVA was established by T.D. ATF–145, published in the **Federal Register** on September 21, 1983 (48 FR 42973). It includes all or portions of Napa, Sonoma, Mendocino, Lake, Marin, and Solano Counties, California. In the conclusion of the “Geographical Features” section of the preamble, T.D. ATF–145 states that “[d]ue to the enormous size of the North Coast, variations exist in climatic features such as temperature, rainfall, and fog intrusion.”

The proposed West Sonoma Coast AVA shares the basic viticultural feature of the North Coast AVA—the marine influence that moderates growing season temperatures in the area. However, the proposed AVA is much more uniform in its climatic features, namely temperature, soils, and topography than the diverse, multicounty North Coast AVA. In this regard, TTB notes that T.D. ATF–145 specifically states that “approval of this viticultural area does not preclude approval of additional areas, either wholly contained with the North Coast, or partially overlapping the North Coast,” and that “smaller viticultural areas tend to be more uniform in their geographical and climatic characteristics, while very large areas such as the North Coast tend to exhibit generally similar characteristics, in this case the influence of maritime air off of the Pacific Ocean and San Pablo Bay.”

<sup>11</sup> See Vossen, Paul, *Sonoma County Climatic Zones*, University of California Cooperative Extension Service, Sonoma County, 1986 (This publication notes the findings of University of California Extension Farm Advisors Robert Sisson and Paul Vossen regarding the climate zones of Sonoma County, California.).

Thus, the proposal to establish the West Sonoma Coast AVA is not inconsistent with what was envisioned when the North Coast AVA was established.

*Comparison of the Proposed West Sonoma Coast AVA to the Existing Fort Ross–Seaview AVA*

The Fort Ross–Seaview AVA was established by T.D. TTB–98, published in the **Federal Register** on December 14, 2011 (76 FR 77684). The Fort Ross–Seaview AVA is located within both the Sonoma Coast and North Coast AVAs and would be located entirely within the proposed West Sonoma Coast AVA, if that AVA is established. T.D. TTB–98 describes the Fort Ross–Seaview AVA as an area of coastal ridges, mountains, and hills of elevations generally above 920 feet. T.D. TTB–98 states that these higher elevations are typically above the fog line, allowing the AVA to receive more sunlight and warmer temperatures than the lower elevations. Additional information provided by the proposed West Sonoma Coast AVA petitioner shows that there are approximately 12 vineyards within the Fort Ross–Seaview AVA, and they are all planted at elevations above the fog line.

The Fort Ross–Seaview AVA shares the mountainous topography and marine-influenced climate of the proposed West Sonoma Coast AVA. However, although there are elevations within the proposed West Sonoma Coast AVA that are above the fog line, similar to those within the Fort Ross–Seaview AVA, the proposed AVA also includes areas at elevations below the fog line. Some of these lower elevations are sheltered from the heaviest marine fog and, therefore, can support viticulture. Additional information provided by the petitioner shows that there are approximately 15 vineyards within the proposed West Sonoma Coast AVA and outside of the Fort Ross–Seaview AVA, 9 of which are planted at elevations at or below the fog line. Therefore, TTB believes that although the Fort Ross–Seaview AVA shares the general topographic and climatic characteristics of the proposed West Sonoma Coast AVA, the proposed AVA has a broader range of elevations where viticulture

takes place that distinguish it from the established AVA and would warrant its establishment as a new AVA.

### TTB Determination

TTB concludes that the petition to establish the 141,846-acre West Sonoma Coast AVA merits consideration and public comment, as invited in this notice of proposed rulemaking.

### Boundary Description

See the narrative description of the boundary of the petitioned-for AVA in the proposed regulatory text published at the end of this proposed rule.

### Maps

The petitioner provided the required maps, and they are listed below in the proposed regulatory text.

### Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

If TTB establishes this proposed AVA, its name, "West Sonoma Coast," will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using the name "West Sonoma Coast" in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin if this proposed rule is adopted as a final rule. TTB is not proposing "Sonoma Coast," standing alone, as a term of viticultural significance with regards to the proposed West Sonoma Coast AVA because the term already has viticultural significance pursuant to 27 CFR 9.116 as

the name of an established AVA. Accordingly, the proposed part 9 regulatory text set forth in this document specifies only the full name "West Sonoma Coast" as a term of viticultural significance for the proposed AVA for the purposes of part 4 of the TTB regulations.

The approval of the proposed West Sonoma Coast AVA would not affect any existing AVA, and any bottlers using "Sonoma Coast," "Fort Ross-Seaview," or "North Coast" as an appellation of origin or in a brand name for wines made from grapes grown within the Sonoma Coast, Fort Ross-Seaview, or North Coast AVAs would not be affected by the establishment of this new AVA. The establishment of the proposed West Sonoma Coast AVA would allow vintners to use "West Sonoma Coast," "Sonoma Coast," and "North Coast" as appellations of origin for wines made from grapes grown within the proposed West Sonoma Coast AVA if the wines meet the eligibility requirements for the appellation. Additionally, vintners would be allowed to use "West Sonoma Coast," as well as "North Coast," "Sonoma Coast," and "Fort Ross-Seaview," as appellations of origin for wines made from grapes grown within the Fort Ross-Seaview AVA if the wines meet the eligibility requirements for the appellation.

### Public Participation

#### Comments Invited

TTB invites comments from interested members of the public on whether it should establish the proposed AVA. TTB is also interested in receiving comments on the sufficiency and accuracy of the name, boundary, soils, climate, and other required information submitted in support of the petition. In addition, given the proposed West Sonoma Coast AVA's location within the existing Sonoma Coast and North Coast AVAs, TTB is interested in comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the existing established AVAs. TTB is also interested in comments on whether the geographic features of the proposed AVA are so distinguishable from the surrounding Sonoma Coast and North Coast AVA that the proposed West Sonoma Coast AVA should no longer be part of that AVA. Finally, TTB is interested in comments on whether the geographic features of the proposed AVA are so distinguishable from the established Fort Ross-Seaview AVA, which is located within the proposed

West Sonoma Coast AVA, that the established AVA should not be part of the proposed AVA. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed West Sonoma Coast AVA on wine labels that include the term "West Sonoma Coast" as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed AVA name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the AVA.

#### Submitting Comments

You may submit comments on this notice by using one of the following three methods:

- *Federal e-Rulemaking Portal*: You may send comments via the online comment form posted with this notice within Docket No. TTB-2018-0008 on "Regulations.gov," the Federal e-rulemaking portal, at <https://www.regulations.gov>. A direct link to that docket is available under Notice No. 177 on the TTB website at <https://www.ttb.gov/wine/wine-rulemaking.shtml>. Supplemental files may be attached to comments submitted via *Regulations.gov*. For complete instructions on how to use *Regulations.gov*, visit the site and click on the "Help" tab.
- *U.S. Mail*: You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.
- *Hand Delivery/Courier*: You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 177 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name, as well as your name and position title. If you comment via *Regulations.gov*, please enter the entity's name in the "Organization" blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

#### Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

#### Public Disclosure

TTB will post, and you may view, copies of this notice, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB-2018-0008 on the Federal e-rulemaking portal, *Regulations.gov*, at <http://www.regulations.gov>. A direct link to that docket is available on the TTB website at [https://www.ttb.gov/wine/wine\\_rulemaking.shtml](https://www.ttb.gov/wine/wine_rulemaking.shtml) under Notice No. 177. You may also reach the relevant docket through the *Regulations.gov* search page at <http://www.regulations.gov>. For information on how to use *Regulations.gov*, click on the site's "Help" tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You may also view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments that TTB receives about this proposal by appointment at the TTB Public Reading Room, 1310 G Street NW, Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Please note that TTB is unable to provide copies of USGS maps or other similarly-sized documents that may be included as part of the AVA petition. Contact TTB's Public Reading Room at

the above address or by telephone at 202-453-2135 to schedule an appointment or to request copies of comments or other materials.

#### Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

#### Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

#### Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this notice of proposed rulemaking.

#### List of Subjects in 27 CFR Part 9

Wine.

#### Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

#### PART 9—AMERICAN VITICULTURAL AREAS

- 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

#### Subpart C—Approved American Viticultural Areas

- 2. Subpart C is amended by adding § 9. \_\_\_ to read as follows:

#### § 9. \_\_\_ West Sonoma Coast.

(a) *Name*. The name of the viticultural area described in this section is "West Sonoma Coast". For purposes of part 4 of this chapter, "West Sonoma Coast" is a term of viticultural significance.

(b) *Approved maps*. The 14 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the West Sonoma Coast viticultural area are titled:

- (1) McGuire Ridge, California, 1991 (provisional edition);
- (2) Stewarts Point, California, 1978;

- (3) Annapolis, California, 1977;
- (4) Tombs Creek, California, 1978;
- (5) Fort Ross, California, 1998;
- (6) Cazadero, California, 1998;
- (7) Duncans Mills, California, 1979;
- (8) Camp Meeker, California, 1995;
- (9) Valley Ford, California, 1954;

photorevised 1971;

- (10) Two Rock, California, 1954;

photorevised 1971;

- (11) Bodega Head, California, 1972;
- (12) Arched Rock, California, 1977;
- (13) Plantation, California, 1977; and
- (14) Gualala, California, 1998.

(c) *Boundary*. The West Sonoma Coast viticultural area is located in Sonoma County, California. The boundary of the West Sonoma Coast viticultural area is as described below:

(1) The beginning point is on the McGuire Ridge map at the intersection of the Sonoma County/Mendocino County boundary and the northwest corner of section 29, T11N/R14W. From the beginning point, proceed southeast in a straight line for 0.4 mile to an unnamed hilltop with a marked elevation of 820 feet in section 29, T11N/R14W; then

(2) Proceed southeast in a straight line for 1.4 miles to the intersection of the eastern boundary of section 32 and the 800-foot elevation contour, T11/R14W; then

(3) Proceed southeast along the 800-foot elevation contour for 3.1 miles, crossing onto the Stewarts Point map, to its intersection with the northern boundary of section 3, T10N/R14W; then

(4) Proceed east along the northern boundary of section 3 and then along the northern boundary of section 2 for a total of 0.8 mile to the intersection of the northern boundary of section 2 and the 600-foot elevation contour, T10N, R14W; then

(5) Proceed generally southeast along the 600-foot elevation contour for 3.3 miles, crossing onto the Annapolis map, to its intersection with the northern boundary of section 12, T10N/R14W; then

(6) Proceed east along the northern boundary of section 12, T10N/R14W, for 0.1 mile to its intersection with the 600-foot elevation contour; then

(7) Proceed north then generally east along the meandering 600-foot elevation contour for 4.8 miles to its sixth intersection with the northern boundary of section 7, T10N/R13W; then

(8) Proceed southeast in a straight line for 0.2 mile to the intersection of an unnamed light-duty road known locally as Kelly Road and an unnamed, unimproved road with a marked elevation of 725 feet, known locally as Oak Hill LO Road, in section 8, T10N/R13W; then

(9) Proceed south in a straight line for 0.6 mile to the intersection of Soda Springs Road and the eastern boundary of section 7, T10N/R13W; then

(10) Proceed in a straight line southeast for 1.6 miles to the intersection of the eastern boundary of section 17, T10N/R13W, and the 800-foot elevation contour; then

(11) Proceed southeast along the 800-foot elevation contour for 2.6 miles to its intersection with an unnamed, unimproved road near the 862-foot benchmark in section 21, T10N/R13W; then

(12) Proceed southeast in a straight line for 0.2 mile to the intersection of the 600-foot elevation contour and an intermittent stream in section 28, T10N/R13W; then

(13) Proceed south along the 600-foot elevation contour for 1.7 miles to its intersection with the eastern boundary of section 33, T10N/R13W; then

(14) Proceed southeast in a straight line for 0.5 mile to the intersection of an unnamed light-duty road known locally as Skaggs Springs Road and an unnamed, unimproved road known locally as Skyline Road, near the Mendosoma Fire Station in section 34, T10N/R13W; then

(15) Proceed southeast along the unnamed, unimproved road (Skyline Road) for total of 5.9 miles as it follows Skyline Ridge and crosses onto the Tombs Creek map, back onto the Annapolis map, then back on to the Tombs Creek map, to the intersection of the road with the 1,200-foot elevation contour in section 13, T9N/R13W; then

(16) Proceed southeast along the 1,200-foot elevation contour for 0.6 mile to the intersection with Allen Creek in section 18, T9N/R12W; then

(17) Proceed north along Allen Creek for 0.2 mile to the intersection with the 920-foot elevation contour in section 18, T9N/R12W; then

(18) Proceed east and then southeast along the meandering 920-foot elevation contour, crossing onto the Fort Ross map, then onto the Tombs Creek map, and then back onto the Fort Ross map, to the intersection of the elevation contour with Jim Creek in section 21, T9N/R12W; then

(19) Proceed southeast along Jim Creek for 0.7 mile to the intersection of the creek with the northern boundary of section 27, T9N, R12W, then

(20) Proceed east along the northern boundary of section 27 for 0.5 mile to the northeast corner of section 27; then

(21) Proceed south along the eastern boundaries of sections 27, 34, 3, 7, 15, and 22 for 5.1 miles to the intersection of the eastern boundary of section 22 and Fort Ross Road, T8N/R12W; then

(22) Proceed east along Fort Ross Road for approximately 262 feet to the intersection of the road with the middle branch of Russian Gulch Creek in section 23, T8N/R12W; then

(23) Proceed south along the middle branch of Russian Gulch Creek for 1.2 miles to the intersection with the 920-foot elevation contour in section 26, T8N/R12W; then

(24) Proceed southeast in a straight line east for 2 miles, crossing onto the Cazadero map, to the summit of Pole Mountain in section 30, T8N/R11W; then

(25) Proceed southeast in a straight line for 4.7 miles, crossing onto the Duncans Mills map, to the confluence of Austin Creek and the Russian River, T7N/R11W; then

(26) Proceed generally east (upstream) along the Russian River for 3.1 miles to the intersection of the Russian River and the Bohemian Highway in section 7, T7N/R10W; then

(27) Proceed southeast along the Bohemian Highway for a total of 10.1 miles, crossing onto the Camp Meeker map and through the towns of Camp Meeker and Occidental, then crossing onto the Valley Ford map and through the town of Freestone, to the intersection of the Bohemian Highway and an unnamed medium-duty road known locally as Bodega Road near benchmark (BM) 214 in section 12, T6N/R10W; then

(28) Proceed northeast along Bodega Road for 0.9 mile, crossing onto the Camp Meeker map, to the intersection of the road with an unnamed light-duty road known locally as Barnett Valley Road north of the marked 486-foot elevation point in the Cañada de Jonive land grant, T6N/R10W; then

(29) Proceed south then east along Barnett Valley Road for 2.2 miles, crossing onto the Valley Ford map and then onto the Two Rock map, to the intersection of Bennett Valley Road with Burnside Road in section 17, T6N/R9W; then

(30) Proceed southeast along Burnside Road for 3.2 miles to its intersection with the 400-foot elevation contour just north of an unnamed light duty road known locally as Bloomfield Road in the Cañada de Pogolimi land grant, T5N/R9W; then

(31) Proceed west along the 400-foot elevation contour for 6.7 miles, crossing onto the Valley Ford map, to the intersection of the elevation contour with an unimproved road, Cañada de Pogolimi land grant, T6N/R9W; then

(32) Proceed northwest then southwest along the unnamed, unimproved road for 0.9 mile to its

terminus, Cañada de Pogolimi land grant, T6N/R9W; then

(33) Proceed northwest in a straight line for 0.1 mile to the marked 448-foot summit of an unnamed hilltop, Cañada de Pogolimi land grant, T6N/R10W; then

(34) Proceed northwest in a straight line for 0.6 mile to the 61-foot benchmark along an unnamed secondary highway known locally as Freestone Valley Ford Road, Cañada de Pogolimi land grant, T6N/R10W; then

(35) Proceed west-northwest in a straight line for 0.8 mile to VABM 724 in the Estero Americano land grant, T6N/R10W; then

(36) Proceed west in a straight line for 1.0 mile to the intersection of Salmon Creek and an intermittent stream, Estero Americano land grant, T6N/R10W; then

(37) Proceed west (downstream) along Salmon Creek for 9.6 miles, crossing onto the Bodega Head map, to the mouth of the creek at the Pacific Ocean; then

(38) Proceed north along the Pacific coastline for 51.4 miles, crossing over the Duncan Mills, Arched Rock, Fort Ross, Plantation, and Stewarts Point maps and onto the Gualala map to the intersection of the coastline with the Sonoma County/Mendocino County line; then

(39) Proceed east along the Sonoma County/Mendocino County line for 5.6 miles, crossing onto the McGuire Ridge map, and returning to the beginning point, T11N, R14W.

Signed: July 27, 2018.

**John J. Manfreda,**  
*Administrator.*

Approved: November 13, 2018.

**Timothy E. Skud,**  
*Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).*

**Editorial note:** This document was received for publication by the Office of the Federal Register on November 29, 2018.

[FR Doc. 2018-26321 Filed 12-4-18; 8:45 am]

**BILLING CODE 4810-31-P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 16

[EPA-HQ-OEI-2014-0849; FRL-9941-43-OEI]

### Revision of the Agency's Privacy Act Regulations for EPA-63

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing revisions to

the Agency's Privacy Act regulations in order to exempt a new system of records, EPA-63, the eDiscovery Enterprise Tool Suite, from certain requirements of the Privacy Act because records in EPA's eDiscovery Enterprise Tool Suite are maintained for use in civil and criminal actions. A notice has been published in the **Federal Register** on July 27, 2018 for the creation of this new system of records that will contain information collected using the Agency's suite of tools that search and preserve electronically stored information (ESI) in support of the Agency's eDiscovery (electronic discovery) and Freedom of Information Act processes. In the "Rules and Regulations" section of this **Federal Register**, we are simultaneously publishing the Revision of the Agency's Privacy Act Regulations for EPA-63 as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

**DATES:** Comments must be received on or before January 7, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OEI-2014-0849, at <https://www.regulations.gov/>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Brian K. Thompson, Acting Director, eDiscovery Division, Office of Enterprise Information Programs, U.S. Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Avenue NW, Washington, DC 20460; email: [thompson.briank@epa.gov](mailto:thompson.briank@epa.gov); telephone number: 202-564-4256.

## SUPPLEMENTARY INFORMATION:

### I. Why is EPA issuing this proposed rule?

This document proposes to revise the Agency's Privacy Act regulations in order to exempt a new system of records, EPA-63, the eDiscovery Enterprise Tool Suite, from certain requirements of the Privacy Act. We have published a direct final rule making this revision in the "Rules and Regulations" section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

### II. General Information

The EPA published a Privacy Act system of records notice for information collected using the eDiscovery Enterprise Tool Suite. Depending on the specific need, the Agency will use a combination of several electronic tools that together assist with the preservation, search, processing, review and production of electronically stored information (ESI). The tool suite will be used to preserve, search, collect, sort and review ESI including email messages, word processing documents, media files, spreadsheets, presentations, scanned documents and data sets in support of legal discovery. The Agency will also use these tools to search for ESI that is responsive to requests for information submitted under the Freedom of Information Act (FOIA), or other formal information requests.

The records in EPA's eDiscovery Enterprise Tool Suite are maintained for use in civil and criminal actions. The Agency's system of records, EPA-63, is maintained by the Office of Environmental Information, Office of Enterprise Information Programs, eDiscovery Division, on behalf of Agency offices that will require use of the eDiscovery tool suite for both civil and criminal actions. When information is maintained for the purpose of civil actions, the relevant provision of the Privacy Act is 5 U.S.C. 552a(d)(5) which

states "nothing in this [Act] shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding." 5 U.S.C. 552a(d)(5).

The system is also maintained for support of criminal enforcement activity by the EPA. In those cases, the system is maintained on behalf of the Criminal Investigation Division, Office of Criminal Enforcement, Forensics, and Training, Office of Enforcement and Compliance Assurance—a component of EPA that performs as its principal function, activities pertaining to the enforcement of criminal laws. When information is maintained for the purpose of criminal cases, the relevant provision of the Privacy Act is 5 U.S.C. 552a(j)(2), which states that the head of an agency may promulgate regulations to exempt the system from certain provisions of the Act if the system is "maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of: (A) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision." 5 U.S.C. 552a(j)(2). Accordingly the EPA is proposing to exempt EPA-63 from 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8) and (f)(2)–(f)(5) and (g):

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her could reveal investigative interest on the part of EPA and/or the Department of Justice. This would permit record subjects to impede the investigation, *e.g.*, destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel. Further, making available to a record subject the accounting of disclosures could reveal the identity of a confidential source.

(2) From subsection (c)(4) because no access to these records is available under subsection (d) of the Privacy Act.

(3) From subsection (d) because the records contained in these systems relate to official federal investigations. Individual access to these records could compromise ongoing investigations, reveal confidential informants and/or sensitive investigative techniques used in particular investigations, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records in either of these systems would interfere with ongoing law enforcement proceedings and impose an unworkable administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (e)(5) because in the course of law enforcement investigations information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede any investigative process, whether civil or criminal, if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(5) From subsection (e)(2) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsections (e)(4)(G) and (H) because no access to these records is available under subsection (d) of the Privacy Act.

(8) From subsection (e)(8) because complying with this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(9) From subsection (f)(2), (f)(3), (f)(4) and (f)(5) because this system is exempt from the access and amendment provisions of subsection (d).

(10) From subsection (g) because EPA is claiming that this system of records is exempt from subsections (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) and (H), (5), and (8), and (f)(2), (3), (4) and (5) of the Act, the provisions of subsection (g) of

the Act are inapplicable and are exempted to the extent that this system of records is exempted from those subsections of the Act.

A final relevant provision of the Privacy Act is 5 U.S.C. 552a(k)(2), which states that the head of an agency may promulgate regulations to exempt the system from certain provisions of the Act if the system “contains investigatory material compiled for law enforcement purposes other than material within the scope of subsection (j)(2)” of 5 U.S.C. 552a. Accordingly EPA-63 is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H) and (f)(2)–(f)(5):

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her could reveal investigative interest on the part of EPA and/or the Department of Justice. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel. Further, making available to a record subject the accounting of disclosures could reveal the identity of a confidential source.

(2) From subsection (d) because the records contained in these systems relate to official Federal investigations. Individual access to these records could compromise ongoing investigations, reveal confidential informants and/or sensitive investigative techniques used in particular investigations, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records in either of these systems would interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring law enforcement investigations to be continuously reinvestigated.

(3) From subsection (e)(1) because in the course of law enforcement investigations information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede any investigative process, whether civil or criminal, if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(4) From subsections (e)(4) (G) and (H), because no access to these records

is available under subsection (d) of the Privacy Act.

(5) From subsection (f)(2), (f)(3), (f)(4) and (f)(5) because this system is exempt from the access and amendment provisions of subsection (d).

### III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

#### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

#### B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

#### C. Paperwork Reduction Act

This action does not impose an information collection burden under the PRA. This action contains no provisions constituting a collection of information under the PRA.

#### D. Regulatory Flexibility Act

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.

#### E. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

#### F. Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

#### G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions 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.

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).

List of Subjects in 40 CFR Part 16

Environmental protection, Administrative practice and procedure, Confidential business information, Privacy, Government employees.

Dated: November 14, 2018.

Vaughn Noga,

Principal Deputy Assistant Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 16 of the Code of Federal Regulations is proposed to be amended as follows:

PART 16—IMPLEMENTATION OF PRIVACY ACT OF 1974

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

Authority: 5 U.S.C. 301, 552a (as revised).

■ 2. Amend § 16.11 by:

■ a. Adding the system number and name, EPA-63 eDiscovery Enterprise Tool Suite, at the end of the list in paragraph (a);

■ b. Adding paragraph (c)(4);

■ c. Revising the first two sentences of paragraph (d); and

■ d. Revising the introductory text of paragraph (e).

The additions and revisions read as follows:

§ 16.11 General exemptions.

(a) \* \* \*

EPA-63 eDiscovery Enterprise Tool Suite.

\* \* \* \* \*

(c) \* \* \*

(4) The Agency's system of records, EPA-63 system of records is maintained by the Office of Environmental Information, Office of Enterprise Information Programs, on behalf of the Criminal Investigation Division, Office of Criminal Enforcement, Forensics, and Training, a component of EPA which performs as its principal function activities pertaining to the enforcement of criminal laws. Authority for the Division's criminal law enforcement activities comes from Powers of Environmental Protection Agency, 18 U.S.C. 3063; Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9603; Resource Conservation and Recovery Act, 42 U.S.C. 6928; Federal Water Pollution Control Act, 33 U.S.C. 1319, 1321; Toxic Substances Control Act, 15 U.S.C. 2614, 2615; Clean Air Act, 42 U.S.C. 7413; Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136j, 136l; Safe Drinking Water Act, 42 U.S.C. 300h-2, 300i-1; Noise Control Act of 1972, 42 U.S.C. 4912; Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. 11045; and the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. 1415.

(d) Scope of Exemption. EPA systems of records 17, 40, 46 and 63 are exempted from the following provisions of the PA: 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (2), (3), (4)(G), and (H), (5), and (8); (f)(2) through (5); and (g). To the extent that the exemption for EPA systems of records 17, 40, 46 and 63 claimed under 5 U.S.C. 552a(j)(2) of the Act is held to be invalid, then an exemption under 5 U.S.C. 552a(k)(2) is claimed for these systems of records from (c)(3), (d), (e)(1), (e)(4)(G), (H), and (f)(2) through (5). \* \* \*

(e) Reasons for exemption. EPA systems of records 17, 40, 46 and 63 are exempted from the above provisions of the PA for the following reasons:

\* \* \* \* \*

■ 3. Amend § 16.12 by:

■ a. Adding the system number and name, EPA-63 eDiscovery Enterprise Tool Suite, at the end of the list in paragraph (a)(1);

■ b. Revising the first sentence in paragraph (a)(4)(i); and

■ c. Revising the introductory text in paragraph (a)(5).

The addition and revisions read as follows:

§ 16.12 Specific exemptions.

(a) \* \* \*

(1) \* \* \*

EPA-63 eDiscovery Enterprise Tool Suite.

\* \* \* \* \*

(4) \* \* \* (i) EPA systems of records 17, 30, 40, 41, 46 and 63 are exempted from the following provisions of the PA, subject to the limitations set forth in 5 U.S.C. 552a(k)(2); 5 U.S.C. 552a(c)(3); (d); (e)(1), (4)(G) and (4)(H); and (f)(2) through (5). \* \* \*

\* \* \* \* \*

(5) Reasons for exemption. EPA systems of records 17, 21, 30, 40, 41, 46 and 63 are exempted from the above provisions of the PA for the following reasons:

\* \* \* \* \*

[FR Doc. 2018-26214 Filed 12-4-18; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 26

[EPA-HQ-ORD-2018-0280; FRL-9987-01-ORD]

RIN 2080-AA13

Protection of Human Research Subjects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On January 19, 2017, the Environmental Protection Agency (EPA), acting in concert with other agencies, promulgated revisions to the "Common Rule," which is based on regulations for the protection of human research subjects originally promulgated by the Department of Health and Human Services (HHS) that were then revised and jointly adopted by multiple departments and agencies that conduct or support research involving human subjects. EPA's codification of these revisions is in 40 CFR part 26, subpart A. These revisions will go into effect on January 21, 2019. In addition to the core protections found in the Common Rule, EPA has promulgated regulations that are specific to research involving human subjects conducted or sponsored by EPA or submitted to EPA for regulatory purposes. The revisions to the Common



Rule create a discrepancy within some of these EPA-specific regulations. This proposed action is to harmonize the EPA-specific regulations with revisions to the Common Rule in order to resolve those discrepancies.

**DATES:** Comments must be received on or before February 4, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-ORD-2018-0280, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Tom Sinks, Director, Office of Science Advisor, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460 (Mail Code: 8105R); telephone number: 202-560-3099; email address: [sinks.tom@epa.gov](mailto:sinks.tom@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

This action is directed to the public in general. This action may, however, be of particular interest to those who conduct human research on substances regulated by EPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. What action is the agency taking?*

The Agency is proposing to amend subparts C, D, K, and M of its regulations relating to human research.

These changes are intended to correct regulatory citation references in subparts C and D that have been rendered ineffective by the revisions to the Common Rule, 82 FR 7149 (Jan. 19, 2017), codified by EPA at 40 CFR part 26, subpart A, and to harmonize language in subpart K with those revisions, where appropriate. Finally, there is a single typographical error in subpart M that should be corrected while this action is being undertaken.

Subparts C and D refer back to provisions in the Common Rule codified at subpart A, and, in light of the revisions to the Common Rule, several numerical citations (*i.e.*, regulatory reference numbers) in subparts C and D are no longer accurate and need to be updated.

Subpart K, in establishing a process for review of third-party research involving intentional exposure of human subjects, borrows heavily from the provisions contained in the previous version of the Common Rule. The proposed amendments would allow the Agency to align subpart K with the revised Common Rule and maintain consistency of Institutional Review Board (IRB) review between agency-conducted or agency-sponsored human research and third-party human research.

Failure to resolve these discrepancies will create confusion and, more seriously, potential compliance and/or legal liabilities for researchers, institutions, and sponsors who must follow EPA regulations. In the absence of the proposed revisions to EPA-specific subparts, there will effectively be two conflicting sets of regulations to follow, once the Common Rule changes are reflected in subpart A and compliance is required. These changes will reduce regulatory burdens and potential confusion among the regulated community about which standards to apply by enhancing consistency among those standards. In addition, as discussed in the final rule amending the Common Rule, the proposed amendments would enhance protections for human subjects and improving consistency means that similar protections for human subjects apply, regardless of who is conducting the study.

*C. What is the agency's authority for taking this action?*

The proposed rule described in this document is authorized under provisions of the following statutes that EPA administers. The proposed amendments to EPA's codification of the Common Rule and other provisions regarding first- and second-party

research are authorized pursuant to 5 U.S.C. 301; the underlying Common Rule also cites to 42 U.S.C. 300v-1(b) as authority for the revisions to the Common Rule provisions. The proposed amendments to regulations governing third-party research involving intentional human exposure to pesticides or to other substances where such research is used for purposes of pesticide decision-making are authorized under the following statutory provisions. Section 3(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to regulate the distribution, sale, or use of any unregistered pesticide in any State "[t]o the extent necessary to prevent unreasonable adverse effects on the environment" (defined at FIFRA section 2(bb), in pertinent part, as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide"). 7 U.S.C. 136a(a) and 136(bb). In addition, section 25(a) of FIFRA authorizes EPA to "prescribe regulations to carry out the provisions of [FIFRA]." *Id.* at § 136w(a). Section 408(e)(1)(C) of the Federal Food, Drug, and Cosmetic Act (FFDCA) authorizes the Administrator to issue a regulation establishing "general procedures and requirements to implement [Section 408]." 21 U.S.C. 346a(e)(1)(C).

EPA has also used the authority provided in section 201 of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, Public Law 109-54 (2006 Appropriations Act) to promulgate the subparts B through Q of EPA's regulations at part 26.

Public Law 109-54, 201, 119 Stat. 499, 531 (Aug. 2, 2005). In the 2006 Appropriations Act, Congress directed EPA to promulgate a rule on "third-party intentional dosing human toxicity studies for pesticides . . .", prohibiting the use of pregnant women, infants or children as subjects, consistent with the principles proposed in the 2004 report of the National Academy of Sciences on intentional human dosing and the principles of the Nuremberg Code, and establishing an independent Human Subjects Review Board. *Id.*

**II. Background**

*A. Common Rule*

In 1991, 15 federal departments and agencies, including EPA, adopted a set of regulations intended to create a uniform body of regulations across the federal government for the protection of human subjects involved in research. *See* 56 FR 28003 (June 18, 1991).

Patterned after the regulations originally promulgated by HHS under 45 CFR part 46, this set of regulations was titled the “Federal Policy for the Protection of Human Subjects” and is commonly referred to as the “Common Rule.” The Common Rule regulations were subsequently promulgated into each federal department’s or agency’s own set of regulations and implemented, and are enforced at the individual department or agency level. EPA codified the Common Rule provisions at 40 CFR part 26, subpart A.

A number of changes in research involving human subjects have occurred since the Common Rule was initially adopted in 1991. In 2011, the Office of the Secretary of HHS, in coordination with the Executive Office of the President’s Office of Science and Technology Policy, published an advance notice of proposed rulemaking, seeking comment on areas where revisions to the Common Rule might be warranted. *See* 76 FR 44512 (Jul. 26, 2011). Then in 2015, HHS and the other Common Rule agencies issued a notice of proposed rulemaking, proposing and seeking comment on several potential regulatory revisions to the Common Rule. *See* 80 FR 53931 (Sept. 8, 2015).

On January 19, 2017, all Common Rule agencies and departments, including EPA, adopted several revisions intended to “modernize, strengthen, and make [the Common Rule] more effective”. *See* 82 FR 7149 (Jan. 19, 2017). The preamble to the final rule noted that the revisions are “intended to better protect human subjects involved in research, while facilitating valuable research and reducing burden, delay, and ambiguity for investigators.” *Id.* In brief, the January 2017 revisions established new requirements for the informed consent process; allowed the use of broad consent (*i.e.*, seeking prospective consent to unspecified future research) from a subject for storage, maintenance, and secondary research use of identifiable private information and identifiable biospecimens; established new exempt categories of research based on their risk profile; required the use of a single IRB for U.S.-based cooperative research; and removed the continuing review requirement for certain research, in addition to making minor changes intended to improve the clarity and accuracy of the rule. *Id.* at 7150. There are currently 20 Federal agencies and departments that are signatories or have otherwise adopted the Common Rule.

The January 19, 2017 rule stated that its effective date and compliance date would be January 19, 2018, with the exception of one section (§ \_\_.114(b)

(cooperative research)), which would have a compliance date of January 20, 2020. *Id.* at 7274. The effective date and January 19, 2018 compliance date were delayed until July 19, 2018, through an interim final rule. *See* 83 FR 2885 (Jan. 22, 2018). Further delay of the compliance date until January 21, 2019, was proposed in a notice of proposed rulemaking, *see* 83 FR 17595 (Apr. 20, 2018), and finalized on June 19, 2018. *See* 83 FR 28497.

#### *B. EPA’s Human Studies Subparts*

In addition to the Common Rule (subpart A), EPA has adopted several additional subparts to the rule at 40 CFR 26 that provide enhanced protection for participants in human research conducted or supported by EPA, or certain types of third party research. These EPA-specific subparts were added in 2006 in response to a Congressional mandate. *See* EPA, Protections for Subjects in Human Research, 71 FR 6138 (Feb. 6, 2006). Specifically, Congress prohibited EPA use of certain appropriated funds until EPA issued a rule on the subject of EPA’s acceptance, consideration, or reliance on third-party intentional dosing human toxicity studies for pesticides. Congress mandated three requirements for EPA’s rule: (1) Prohibit the use of pregnant women, infants or children as subjects; (2) be consistent with the principles proposed in the 2004 report of National Academy of Sciences “Intentional Human Dosing Studies for EPA Regulatory Purposes: Scientific and Ethical Issues” and the principles of the Nuremberg Code; and (3) establish an independent Human Subjects Review Board. *See* Public Law 109–54.

In accordance with that mandate, EPA created several regulatory subparts in addition to subpart A. Subparts B through D govern research conducted or sponsored by EPA involving pregnant or nursing women and children. Specifically, subpart B categorically prohibits any EPA-conducted or EPA-sponsored research involving intentional exposure to any substance of human subjects who are children or pregnant or nursing women; subparts C and D provide extra protections for pregnant women and for children who are the subjects of observational research conducted or supported by EPA.

EPA also created several subparts, K through Q, governing third-party pesticide research and EPA’s reliance on research involving intentional exposure of human subjects. EPA concluded that it was appropriate to apply equivalent ethical standards to EPA-conducted and EPA-sponsored research, as well as to

third-party research and thus in subpart K, extended the Common Rule provisions to third-party human research involving intentional exposure of non-pregnant, non-nursing adults relevant to pesticide regulatory decision-making. *See* 70 FR 53838, 53845 (Sept. 12, 2005). EPA copied the requirements from the Common Rule into a new subpart K with a parallel numbering system to the Common Rule, making minor modifications that reflected the more limited set of human research subject to subpart K. For a discussion of those minor modifications, *see* 71 FR at 6147. The other subparts prohibited use of pregnant or nursing women or children as human subjects in third-party research involving intentional exposure (subpart L); established requirements for submission of information on the ethical conduct of completed human research (subpart M); established provisions to address noncompliance of an IRB or institution (subpart O); established a Human Studies Review Board (HSRB) and standards for EPA and HSRB review of proposed and completed research involving intentional exposure (subpart P); and standards for EPA reliance on such studies (subpart Q).

Additional modifications to subparts K through Q were made in 2013. Among those modifications were broadening its applicability to decision-making outside the scope of the pesticide laws and eliminating the option for a “legally authorized representative” to provide informed consent for a human subject within the context of third-party research involving intentional exposure to pesticides or submitted for pesticide decision making. *See* 78 FR 10538, 10538–39 (Feb. 14, 2013).

### **III. Proposed Amendments and Request for Comment**

This section of the preamble provides a description of the proposed changes to subparts C, D, K, and M. In sum, the rationale for revisions to subparts C, D, and K is to ensure consistency with the revisions to 40 CFR part 26, subpart A, *i.e.*, the Common Rule; the rationale for the revision to subpart M is to correct a minor typographical error.

#### *A. Harmonizing Subparts C and D With the Revised Common Rule*

*Subpart C:* Subpart C, which sets forth additional protections for pregnant women and fetuses involved as subjects in observational research conducted or supported by EPA, refers back to subpart A in several provisions. First, the text at § 26.301(b) provides that the exemptions found in the Common Rule are applicable to the observational

research studies covered by subpart C. The purpose of these exemptions is to provide a mechanism to allow for the conduct of research that is of such low risk that full IRB review and related processes are not warranted and would only serve to inhibit research without adding meaningful protections for human subjects. Recognizing this, the Common Rule pre-emptively identifies several categories of research (including much educational and social science research, simple surveys, and use of existing data or records) that are exempt from the full set of regulatory requirements that follow. In the revised Common Rule, the exempt categories were revised and expanded and moved to a different section number. Without a regulatory correction, EPA's regulations would no longer reference the section describing exempt research. Thus, a study involving an innocuous survey would no longer be eligible for exemption, and EPA researchers or grantees for such studies would need to comply with the full requirements of the Common Rule, in contrast to other federal agencies and grantees, which would be able to proceed with such research outside the scope of the Common Rule.

The second change required to subpart C is found in § 26.301(c), which refers back to the general provisions of the Common Rule. The revised Common Rule contains several new provisions, including a new reference to tribal laws in the preemption provision of the Common Rule found at § 26.101(f). EPA had initially added a provision to its subpart clarifying that tribal laws are not preempted, but this addition is no longer necessary, with updates to the Common Rule. Specifically, the revised Common Rule provides that: "This policy does not affect any state or local laws or regulations (*including tribal law passed by the official governing body of an American Indian or Alaska Native tribe*)." (Emphasis added). The italicized language is new, and renders redundant and unnecessary EPA's previous statement to the same effect. In addition, the Common Rule contains new provisions on the effective and compliance dates of the revised Common Rule and severability, that must also be included in subpart C for consistency in implementation.

*Subpart D:* Like subpart C, subpart D also incorporates by reference the exemptions found in subpart A. Specifically, § 26.401(b) lists the applicable exemptions in subpart A that are also applicable to subpart D. Unlike subpart C, however, subpart D, which provides additional protections for children involved as subjects in

observational research conducted or supported by EPA, provides that the Common Rule exemption for research involving survey or interview procedures or observations of public behavior does not apply to research covered by subpart D, except in limited circumstances. Changes to the relevant section numbers are needed to preserve access to the exemptions incorporated by reference, as well as the provision limiting the application in research involving children. In addition, changes are needed to § 26.401(a) and (c), respectively, to remove the now-unnecessary clarification regarding preemption of tribal laws and to include reference to the new general provisions in the Common Rule, including the effective date information provision.

In practice, failing to amend subparts C and D, especially with respect to ensuring that the applicable exemptions in subpart A are accurately incorporated by reference, would greatly complicate the conduct of the above types of studies that have little to no risk, without commensurate benefit for their subjects. It would also place EPA at odds with the scientists and institutions conducting EPA-sponsored research, and their IRBs that review the studies, all of whom will be applying the new Common Rule.

#### *B. Harmonizing Subpart K With the Revised Common Rule*

As noted above, when establishing new regulations for third-party research in 2006, EPA determined that it was appropriate to extend the Common Rule provisions to third-party research, so that equivalent ethical standards were applied to both research conducted and supported by EPA and by third parties. See 70 FR at 53845. At the same time, EPA narrowed the extension of the Common Rule provisions by limiting the scope of subpart K to third-party research involving intentional exposure of human subjects to pesticides and intended to be submitted to EPA under the pesticide laws and made minor modifications to those provisions to reflect the narrower scope of studies in subpart K. See *id.*

With the adoption of revisions to the Common Rule, EPA believes that many of the Common Rule revisions should again be extended to subpart K for the same reasons that EPA adopted Common Rule provisions for the original subpart K. The Common Rule amendments, as noted above, are intended to accommodate changes in the field of human research and to better protect human subjects, while facilitating research and reducing burden and delay. Those revisions can

similarly apply to research subject to subpart K. EPA continues to believe that it is appropriate for third-party research to be held to equivalent ethical standards as research conducted or supported by EPA. In addition, EPA recognizes the efficiencies in having equivalent or similar standards for regulating the ethical conduct of research involving human subjects, regardless of who conducts that research, and the confusion that might arise if standards are different. Many investigators and their IRBs will be following the revised Common Rule in non-EPA research and in EPA-sponsored research. Increased variability in standards will likely impose greater burden on the regulated community to keep straight and apply the different standards for review of research. Consistency in standards will result in greater clarity and less regulatory burden as well as less potential for confusion and misapplication of standards for the regulated community.

Accordingly, EPA proposes to adopt the revisions finalized for the Common Rule in January 19, 2017, with a few exceptions that are not relevant or appropriate given the scope of subpart K. The same considerations that informed the original drafting of subpart K and the reasons for the 2013 revisions, as mentioned above, inform the harmonization of subpart K with the applicable provisions of the revised Common Rule. As with the original drafting of subpart K, there are some elements of the broader Common Rule that are not applicable to the particular subset of research subject to EPA's subpart K, and inclusion of these provisions would be confusing and problematic. These exceptions include definitions that did not apply to third-party studies; categories of exempt research that are not relevant to third-party studies; requirements for **Federal Register** notifications that would be redundant with the HSRB process; references to research involving pregnant women, fetuses or children that would not be allowed under subpart L; and provisions for alteration or waiver of informed consent. For various reasons, these provisions would generally not be appropriate or permissible for intentional exposure studies, so those provisions are not included in the proposed amendments to subpart K. EPA already determined that waiver of informed consent and consent by legally authorized representative are not appropriate for intentional exposure studies, nor would such studies be eligible for exemption,

so these options are not offered under subpart K. See 71 FR at 6148; 76 FR at 5744–45.

EPA is proposing to adopt the broad consent provisions, which were newly added in the revised Common Rule, with a clarifying statement. There was concern that the Common Rule reference to broad consent as an “alternative” to the informed consent requirements might lead to mistaken use as a replacement for, rather than an adjunct to, full informed consent. Because this would never be appropriate for an intentional exposure study of the type regulated under this EPA-specific subpart, a statement was added to clarify and confirm that the option to obtain broad consent for the limited purposes of storage, maintenance and secondary research use of identifiable private information or identifiable biospecimens is not a replacement for obtaining full informed consent for the primary research involving intentional exposure of a human subject that is subject to subpart K.

Another similarity with the Common Rule revisions is that EPA intends that the proposed amendments to subpart K to apply prospectively, *i.e.*, to research subject to subpart K that is initiated after the final rule goes into effect. As such, EPA proposes to replace the date in section 26.1101(a) with the date the final rule becomes effective. This revision would not eliminate the prior obligation any third-party had to comply with subpart K if it was conducting or sponsoring research involving intentional exposure to human subjects covered by subpart K that was initiated prior to that date; such research would have had to comply with the EPA regulations in effect at the time the research was initiated. Clarity on this point is significant because, in contrast to other Common Rule agencies, EPA’s regulations also require a retrospective analysis of completed research involving intentional exposure to human subjects before EPA may rely on any such research. Specifically, section 26.1705 of EPA’s regulations applies to research that was subject to EPA’s rules “at the time it was conducted” and requires that EPA determine, among other things, that certain completed research involving intentional exposure of human subjects was conducted in substantial compliance with “[a]ll applicable provisions of subparts A through L . . . .” 40 CFR 26.1705. It is important to be clear about the scope of research subject to this retrospective review and to ensure that the research subject to the retrospective review is

evaluated under the appropriate standards. To avoid the misinterpretation that subpart K no longer applies to research initiated before the effective date of the final rule and to avoid the retrospective application of newer regulatory requirements, EPA is proposing to add a new paragraph (h) to § 26.1101, clarifying that research initiated before the effective date of the final rule would be subject to the standards of EPA’s regulations that were in effect at the time the research was initiated.

#### C. Correcting Error in Subpart M

The existing text at 40 CFR 26.1302 reads, “[t]he definitions in § 26.102 apply to this subpart as well.” EPA is proposing to amend this text to reference the definitions in subpart K, which are found at § 26.1102, instead of the definitions in subpart A, found at § 26.102. With the exception of subpart M, all EPA subparts from L to Q refer to the definitions in subpart K, which include terms necessary and relevant to these EPA-specific subparts. Subpart M was intended to reference the same set of definitions. See 71 FR at 6147 (indicating that definition in section 26.1102 was intended to apply to subpart M). This was a typographical error at the time of original drafting, which EPA is proposing to correct.

#### IV. FIFRA Review Requirements

In accordance with FIFRA section 25(a), EPA has submitted a draft of the proposed rule to the FIFRA Scientific Advisory Panel (SAP), the Secretary of Agriculture (USDA), and appropriate Congressional Committees. The SAP waived its review on June 4, 2018. USDA responded on July 3, 2018 and had no substantive comments on the proposal. Both responses are in the docket for this rulemaking.

#### V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.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 a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket for this rulemaking as required by the Executive Order.

The incremental costs of these proposed amendments both to industry and to EPA are expected to be negligible, including the costs to industry related to informed consent documentation and the cost to EPA of reviewing research submitted under the revised subpart K requirements. Entities who would be impacted by the proposed amendments have already been accounted for in previous economic analyses for the revised Common Rule and the 2006 and 2013 EPA rulemakings concerning human subjects research. EPA has not, therefore, prepared a new economic analysis for this rulemaking. The cost estimates for complying with the 2006 rule were incremental costs of \$39,000 for industry and \$808,000 for EPA (71 FR at 6166), and the costs for the 2013 amendments were estimated to be negligible (76 FR at 5751). The costs and benefits associated with implementing these proposed amendments, particularly those linked to IRBs, have already been captured by the economic analysis for the Common Rule. The costs for this rule include costs for some additional parties, *i.e.*, third-party investigators, who may need to spend some time familiarizing themselves with the new requirements, but these costs will be negligible<sup>1</sup> and outweighed by the benefits to the regulated community of having consistent standards applied to third-party studies. In addition to providing equally protective ethical standards to the human subjects of third-party intentional exposure research, the benefits of greater consistency will improve efficiencies in the oversight and review of human research, improve understanding of the standards that apply, and reduce the potential for misapplication of standards. This proposal provides no basis on which to revise the cost estimates that were provided in the economic analysis for the 2006 rulemaking or those most recently provided in the 2013 renewal of the Information Collection Request (ICR) for the existing regulation at 40 CFR part 26.

##### B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is not expected to be subject to Executive Order 13771 because this proposed rule is expected to result in no more than *de minimis* costs.

<sup>1</sup> The revised Common Rule economic analysis, which included more revisions than proposed in this document, estimated that affected individuals would spend five hours to familiarize themselves with the changes. See 82 FR at 7238.

*C. Paperwork Reduction Act*

This action does not impose any new information collection burden that would require additional review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* OMB previously approved the information collection requirements contained in the existing regulations at 40 CFR part 26 under OMB Control No. 2070-0169.

*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.

The Agency has not identified any small entities subject to the requirements in this proposal, but it is possible that some small pesticide registrants may initiate research subject to EPA's Human Studies rule. The Agency has determined that impacted small entities, if any, may experience an impact of 0.02% as indicated in the "Economic Analysis of Final Rule: Protections for Human Research Participants" (Jan. 12, 2006). The Agency does not have any information to support revising that analysis.

*E. Unfunded Mandates Reform Act*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. This action is not expected to have substantial direct effects on Indian Tribes, will not significantly or uniquely affect the communities of Indian Tribal governments, and does not involve or impose any requirements that affect 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*

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 does not concern an environmental health risk or safety risk. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. EPA's regulations governing research involving human subjects applies to the conduct and review of research involving intentional exposure of human subjects, and prohibits the conduct of or EPA reliance on any such research involving subjects who are children, or pregnant or nursing women. These provisions remain in effect and would not be affected by the proposed amendments.

*I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not a "significant energy action" because it is not likely to have any effect on the supply, distribution, or use of energy.

*J. National Technology Transfer and Advancement Act*

This action does not involve any technical standards.

*K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

This action does not entail special considerations of environmental justice-related issues as delineated by Executive Order 12898. The strengthened protections for human subjects participating in covered research established in the 2006 rule would not be altered by these proposed amendments.

**List of Subjects in 40 CFR Part 26**

Environmental protection, Administrative practice and procedures, Human research, Pesticides and pests.

Dated: November 16, 2018.

**Andrew R. Wheeler,**  
*Acting Administrator.*

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

**PART 26—[AMENDED]**

■ 1. The authority citation for part 26 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 136a(a) and 136w(a)(1); 21 U.S.C. 346a(e)(1)(C); sec. 201, Pub. L. 109-54, 119 Stat. 531; and 42 U.S.C. 300v-1(b).

■ 2. Amend § 26.301 by revising paragraphs (b) and (c) to read as follows:

**§ 26.301 To what does this subpart apply?**

\* \* \* \* \*

(b) The exemptions at § 26.104(d) are applicable to this subpart.

(c) The provisions of § 26.101(c) through (m) are applicable to this subpart.

■ 3. Amend § 26.401 by revising paragraphs (a) and (b) to read as follows:

**§ 26.401 To what does this subpart apply?**

(a) This subpart applies to all observational research involving children as subjects, conducted or supported by EPA. This includes research conducted in EPA facilities by any person and research conducted in any facility by EPA employees.

(b) Exemptions at § 26.104(d)(1) and (d)(3) through (d)(8) are applicable to this subpart. The exemption at § 26.104(d)(2) regarding educational tests is also applicable to this subpart. However, the exemption at § 26.104(d)(2) for research involving survey or interview procedures or observations of public behavior does not apply to research covered by this subpart, except for research involving observation of public behavior when the investigator(s) do not participate in the activities being observed.

\* \* \* \* \*

**§ 26.402 [Amended]**

■ 4. Amend § 26.402 by removing paragraph (g).

■ 5. Amend § 26.406 by revising the last sentence of paragraph (a) to read as follows:

**§ 26.406 Requirements for permission by parents or guardians and for assent by children.**

(a) \* \* \* Even where the IRB determines that the subjects are capable of assenting, the IRB may still waive the assent requirement under circumstances in which consent may be waived in accord with § 26.116(e).

\* \* \* \* \*

■ 6. Revise subpart K, consisting of §§ 26.1101 through 26.1125, to read as follows:

## PART 26—PROTECTION OF HUMAN RESEARCH SUBJECTS

### Subpart K—Basic Ethical Requirements for Third-Party Human Research for Pesticides Involving Intentional Exposure of Non-Pregnant, Non-Nursing Adults

Sec.

- 26.1101 To what does this subpart apply
- 26.1102 Definitions
- 26.1103–26.1106 [Reserved]
- 26.1107 IRB membership
- 26.1108 IRB functions and operations
- 26.1109 IRB review of research
- 26.1110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
- 26.1111 Criteria for IRB approval of research
- 26.1112 Review by institution
- 26.1113 Suspension or termination of IRB approval of research
- 26.1114 Cooperative research
- 26.1115 IRB records
- 26.1116 General requirements for informed consent
- 26.1117 Documentation of informed consent
- 26.1118–26.1122 [Reserved]
- 26.1123 Early termination of research
- 26.1124 [Reserved]
- § 26.1125 Prior submission of proposed human research for EPA review

#### § 26.1101 To what does this subpart apply?

(a) Except as provided in paragraph (c) of this section, this subpart applies to all research initiated on or after [effective date for final rule] involving intentional exposure of a human subject to:

(1) Any substance if, at any time prior to initiating such research, any person who conducted or supported such research intended either to submit results of the research to EPA for consideration in connection with any action that may be performed by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136–136y) or section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a), or to hold the results of the research for later inspection by EPA under FIFRA or section 408 of FFDCA; or

(2) A pesticide if, at any time prior to initiating such research, any person who conducted or supported such research intended either to submit results of the research to EPA for consideration in connection with any action that may be performed by EPA under any regulatory statute administered by EPA other than those statutes designated in paragraph (a)(1) of this section, or to hold the results of the research for later inspection by EPA under any regulatory

statute administered by EPA other than those statutes designated in paragraph (a)(1) of this section.

(b) For purposes of determining a person's intent under paragraph (a) of this section, EPA may consider any available and relevant information. EPA must rebuttably presume the existence of intent if:

(1) The person or the person's agent has submitted or made available for inspection the results of such research to EPA; or

(2) The person is a member of a class of people who, or whose products or activities, are regulated by EPA and, at the time the research was initiated, the results of such research would be relevant to EPA's exercise of its regulatory authority with respect to that class of people, products, or activities.

(c) Unless otherwise required by the Administrator, research is exempt from this subpart if it involves only the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens from previously conducted studies, and if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(d) The EPA Administrator retains final judgment as to whether a particular activity is covered by this subpart and this judgment shall be exercised consistent with the ethical principles of the Belmont Report.

(e) Compliance with this subpart requires compliance with pertinent Federal laws or regulations that provide additional protections for human subjects.

(f) This subpart does not affect any state or local laws or regulations (including tribal law passed by the official governing body of an American Indian or Alaska Native tribe) that may otherwise be applicable and that provide additional protections for human subjects.

(g) This subpart does not affect any foreign laws or regulations that may otherwise be applicable and that provide additional protections to human subjects of research.

(h) Notwithstanding paragraph (a), nothing in this section alters the previous obligation to comply with EPA regulations in this subpart that governed research involving intentional exposure of human subjects initiated prior to [effective date of final rule] and that were in effect and applicable to such research at the time it was initiated.

#### § 26.1102 Definitions.

(a) *Administrator* means the Administrator of the Environmental Protection Agency (EPA) and any other officer or employee of EPA to whom authority has been delegated.

(b) *Common Rule* refers to the Federal Policy for the Protection of Human Subjects as established in 1991 and codified by EPA and 14 other Federal departments and agencies (see the **Federal Register** issue of June 18, 1991 (56 FR 28003)) and its subsequent revisions as adopted by EPA and other federal departments and agencies (see the **Federal Register** issue of January 19, 2017 (82 FR 7149)). The Common Rule contains a widely accepted set of standards for conducting ethical research with human subjects, together with a set of procedures designed to ensure that the standards are met. Once codified or adopted by a Federal department or agency, the requirements of the Common Rule apply to research conducted or sponsored by that Federal department or agency. EPA's codification of the Common Rule appears in 40 CFR part 26, subpart A.

(c) *Federal department or agency* refers to a federal department or agency (the department or agency itself rather than its bureaus, offices or divisions) that takes appropriate administrative action to make the Common Rule applicable to the research involving human subjects it conducts, supports, or otherwise regulates (e.g., the U.S. Department of Health and Human Services, the U.S. Department of Defense, or the Central Intelligence Agency).

(d)(1) *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research:

(i) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens, or

(ii) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens.

(2) *Intervention* includes both physical procedures by which information or biospecimens are gathered (e.g., venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes.

(3) *Interaction* includes communication or interpersonal contact between investigator and subject.

(4) *Private information* includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or

recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (e.g., a medical record).

(5) *Identifiable private information* is private information for which the identity of the subject is or may readily be ascertained by the investigator or associated with the information.

(6) *An identifiable biospecimen* is a biospecimen for which the identity of the subject is or may readily be ascertained by the investigator or associated with the biospecimen.

(e) *Institution* means any public or private entity or agency (including federal, state, and other agencies).

(f) *IRB* means an institutional review board established in accord with and for the purposes expressed in this part.

(g) *IRB approval* means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and federal requirements.

(h) *Minimal risk* means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

(i) *Person* means any person, as that term is defined in FIFRA section 2(s) (7 U.S.C. 136), except:

(1) A federal agency that is subject to the provisions of the Federal Policy for the Protection of Human Subjects of Research, and

(2) A person when performing human research supported by a federal agency covered by paragraph (i)(1) of this section.

(j) *Pesticide* means any substance or mixture of substances meeting the definition in 7 U.S.C. 136(u) (Federal Insecticide, Fungicide, and Rodenticide Act, section 2(u)).

(k) *Research* means a systematic investigation, including research, development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this subpart, whether or not they are considered research for other purposes. For example, some demonstration and service programs may include research activities.

(l) *Research involving intentional exposure of a human subject* means a study of a substance in which the exposure to the substance experienced by a human subject participating in the

study would not have occurred but for the human subject's participation in the study.

(m) *Written, or in writing*, for purposes of this subpart refers to writing on a tangible medium (e.g., paper) or in an electronic format.

#### §§ 26.1103–26.1106 [Reserved]

#### § 26.1107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities that are presented for its approval. The IRB shall be sufficiently qualified through the experience and expertise of its members (professional competence), and the diversity of the members, including consideration of race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. The IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments (including policies and resources) and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a category of subjects vulnerable to coercion or undue influence, such as prisoners, individuals with impaired decision-making capacity, or economically or educationally disadvantaged persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these categories of subjects.

(b) Each IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.

(c) Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.

(d) No IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.

(e) An IRB may, in its discretion, invite individuals with competence in special areas to assist in the review of issues that require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.

#### § 26.1108 IRB functions and operations.

(a) In order to fulfill the requirements of this subpart each IRB shall:

(1) Have access to meeting space and sufficient staff to support the IRB's review and recordkeeping duties;

(2) Prepare and maintain a current list of the IRB members identified by name; earned degrees; representative capacity; indications of experience such as board certifications or licenses sufficient to describe each member's chief anticipated contributions to IRB deliberations; and any employment or other relationship between each member and the institution, for example, full-time employee, part-time employee, member of governing panel or board, stockholder, paid or unpaid consultant;

(3) Establish and follow written procedures for:

(i) Conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution;

(ii) Determining which projects require review more often than annually and which projects need verification from sources other than the investigator that no material changes have occurred since previous IRB review;

(iii) Ensuring prompt reporting to the IRB of proposed changes in research activity, and for ensuring that investigators will conduct the research activity in accordance with the terms of the IRB approval until any proposed changes have been reviewed and approved by the IRB, except when necessary to eliminate apparent immediate hazards to the subject.

(4) Establish and follow written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the Environmental Protection Agency of:

(i) Any unanticipated problems involving risks to human subjects or others or any instance of serious or continuing noncompliance with this subpart or the requirements or determinations of the IRB; and

(ii) Any suspension or termination of IRB approval.

(b) Except when an expedited review procedure is used (see § 26.1110), an IRB must review proposed research at convened meetings at which a majority of the members of the IRB are present, including at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved, it shall receive the approval of a majority of those members present at the meeting.

**§ 26.1109 IRB review of research.**

(a) An IRB shall review and have authority to approve, require modifications in (to secure approval), or disapprove all research activities covered by this subpart.

(b) An IRB shall require that information given to subjects as part of informed consent is in accordance with § 26.1116. The IRB may require that information, in addition to that specifically mentioned in § 26.1116, be given to the subjects when, in the IRB's judgment, the information would meaningfully add to the protection of the rights and welfare of subjects.

(c) An IRB shall require documentation of informed consent in accordance with § 26.1117.

(d) An IRB shall notify investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure IRB approval of the research activity. If the IRB decides to disapprove a research activity, it shall include in its written notification a statement of the reasons for its decision and give the investigator an opportunity to respond in person or in writing.

(e) An IRB shall conduct continuing review of research requiring review by the convened IRB at intervals appropriate to the degree of risk, not less than once per year, except as described in paragraph (f) of this section.

(f)(1) Unless an IRB determines otherwise, continuing review of research is not required in the following circumstances:

(i) Research eligible for expedited review in accordance with § 26.1110;

(ii) Research that has progressed to the point that it involves only one or both of the following, which are part of the IRB-approved study:

(A) Data analysis, including analysis of identifiable private information or identifiable biospecimens, or

(B) Accessing follow-up clinical data from procedures that subjects would undergo as part of clinical care.

(2) [Reserved.]

(g) An IRB shall have authority to observe or have a third party observe the consent process and the research.

**§ 26.1110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.**

(a) The Secretary of HHS, has established, and published as a Notice in the **Federal Register**, a list of categories of research that may be reviewed by the IRB through an expedited review procedure. The

Secretary will evaluate the list at least every 8 years and amend it, as appropriate after consultation with other federal departments and agencies and after publication in the **Federal Register** for public comment. A copy of the list is available from the Office for Human Research Protections, HHS, or any successor office.

(b)(1) An IRB may use the expedited review procedure to review the following:

(i) Some or all of the research appearing on the list described in paragraph (a) of this section, unless the reviewer finds that the study involves more than minimal risk.

(ii) Minor changes in previously approved research during the period for which approval is authorized.

(2) Under an expedited review procedure, the review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB. In reviewing the research, the reviewers may exercise all of the authorities of the IRB except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the non-expedited procedure set forth in § 26.1108(b).

(c) Each IRB that uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals that have been approved under the procedure.

(d) The Administrator may restrict, suspend, terminate, or choose not to authorize an institution's or IRB's use of the expedited review procedure for research covered by this subpart.

**§ 26.1111 Criteria for IRB approval of research.**

(a) In order to approve research covered by this subpart the IRB shall determine that all of the following requirements are satisfied:

(1) Risks to subjects are minimized:

(i) By using procedures that are consistent with sound research design and that do not unnecessarily expose subjects to risk, and

(ii) Whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes.

(2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result. In evaluating risks and benefits, the IRB should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of therapies subjects would receive even if

not participating in the research). The IRB should not consider possible long-range effects of applying knowledge gained in the research (e.g., the possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility.

(3) Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted. The IRB should be particularly cognizant of the special problems of research that involves a category of subjects who are vulnerable to coercion or undue influence, such as prisoners, individuals with impaired decision-making capacity, or economically or educationally disadvantaged persons.

(4) Informed consent will be sought from each prospective subject, in accordance with, and to the extent required by § 26.1116.

(5) Informed consent will be appropriately documented in accordance with § 26.1117.

(6) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects.

(7) When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

(b) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as prisoners, individuals with impaired decision-making capacity, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

**§ 26.1112 Review by institution.**

Research covered by this subpart that has been approved by an IRB may be subject to further appropriate review and approval or disapproval by officials of the institution. However, those officials may not approve the research if it has not been approved by an IRB.

**§ 26.1113 Suspension or termination of IRB approval of research.**

An IRB shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the IRB's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the IRB's action and shall be reported promptly to the investigator, appropriate institutional officials, and the Administrator of EPA.



**§ 26.1114 Cooperative research.**

In complying with this subpart, sponsors, investigators, or institutions involved in multi-institutional studies may use joint review, reliance upon the review of another qualified IRB, or similar arrangements aimed at avoidance of duplication of effort.

**§ 26.1115 IRB records.**

(a) An institution, or when appropriate an IRB, shall prepare and maintain adequate documentation of IRB activities, including the following:

(1) Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to subjects.

(2) Minutes of IRB meetings, which shall be in sufficient detail to show attendance at the meetings; actions taken by the IRB; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution.

(3) Records of continuing review activities, including the rationale for conducting continuing review of research that otherwise would not require continuing review as described in § 26.1109(f)(1).

(4) Copies of all correspondence between the IRB and the investigators.

(5) A list of IRB members in the same detail as described in § 26.1108(a)(2).

(6) Written procedures for the IRB in the same detail as described in § 26.1108(a)(3) and (4).

(7) Statements of significant new findings provided to subjects, as required by § 26.1116(c)(5).

(8) The rationale for an expedited reviewer's determination under § 26.1110(b)(1)(i) that research appearing on the expedited review list described in § 26.1110(a) is more than minimal risk.

(9) Documentation specifying the responsibilities that an institution and an organization operating an IRB each will undertake to ensure compliance with the requirements of this subpart.

(b) The records required by this subpart shall be retained for at least 3 years, and records relating to research which is conducted shall be retained for at least 3 years after completion of the research. The institution or IRB may maintain the records in printed form or electronically. All records shall be accessible for inspection and copying by authorized representatives of EPA at

reasonable times and in a reasonable manner.

**§ 26.1116 General requirements for informed consent.**

(a) *General.* General requirements for informed consent, whether written or oral, are set forth in this paragraph and apply to consent obtained in accordance with the requirements set forth in paragraphs (b) and (c) of this section. Except as provided elsewhere in this subpart:

(1) Before involving a human subject in research covered by this subpart, an investigator shall obtain the legally effective informed consent of the subject.

(2) An investigator shall seek informed consent only under circumstances that provide the prospective subject sufficient opportunity to discuss and consider whether or not to participate and that minimize the possibility of coercion or undue influence.

(3) The information that is given to the subject shall be in language understandable to the subject.

(4) The prospective subject must be provided with the information that a reasonable person would want to have in order to make an informed decision about whether to participate, and an opportunity to discuss that information.

(5)(i) Informed consent must begin with a concise and focused presentation of the key information that is most likely to assist a prospective subject in understanding the reasons why one might or might not want to participate in the research. This part of the informed consent must be organized and presented in a way that facilitates comprehension.

(ii) Informed consent as a whole must present information in sufficient detail relating to the research, and must be organized and presented in a way that does not merely provide lists of isolated facts, but rather facilitates the prospective subject's understanding of the reasons why one might or might not want to participate.

(6) No informed consent may include any exculpatory language through which the subject is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution, or its agents from liability for negligence.

(b) *Basic elements of informed consent.* In seeking informed consent the following information shall be provided to each subject:

(1) A statement that the study involves research, an explanation of the purposes of the research and the

expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures that are experimental;

(2) A description of any reasonably foreseeable risks or discomforts to the subject;

(3) A description of any benefits to the subject or to others that may reasonably be expected from the research;

(4) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;

(5) A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;

(6) For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;

(7) An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject;

(8) A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled; and

(9) One of the following statements about any research that involves the collection of identifiable private information or identifiable biospecimens:

(i) A statement that identifiers might be removed from the identifiable private information or identifiable biospecimens and that, after such removal, the information or biospecimens could be used for future research studies or distributed to another investigator for future research studies without additional informed consent from the subject, if this might be a possibility; or

(ii) A statement that the subject's information or biospecimens collected as part of the research, even if identifiers are removed, will not be used or distributed for future research studies.

(c) *Additional elements of informed consent.* One or more of the following elements of information, when appropriate, shall also be provided to each subject:

(1) A statement that the particular treatment or procedure may involve

risks to the subject (or to the embryo or fetus, if the subject may become pregnant) that are currently unforeseeable;

(2) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent;

(3) Any additional costs to the subject that may result from participation in the research;

(4) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;

(5) A statement that significant new findings developed during the course of the research that may relate to the subject's willingness to continue participation will be provided to the subject;

(6) The approximate number of subjects involved in the study;

(7) A statement that the subject's biospecimens (even if identifiers are removed) may be used for commercial profit and whether the subject will or will not share in this commercial profit;

(8) A statement regarding whether clinically relevant research results, including individual research results, will be disclosed to subjects, and if so, under what conditions; and

(9) For research involving biospecimens, whether the research will (if known) or might include whole genome sequencing (*i.e.*, sequencing of a human germline or somatic specimen with the intent to generate the genome or exome sequence of that specimen).

(d) *Elements of broad consent for the storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens.* Broad consent for the storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens (collected for either research studies other than the proposed research or non-research purposes) is permitted as an alternative to the informed consent requirements in paragraphs (b) and (c) of this section. Broad consent is only permitted for the purposes mentioned and may not be substituted for the elements of informed consent in paragraphs (b) and (c) of this section, as required for the intentional exposure research subject to this subpart. If the subject is asked to provide broad consent, in addition to providing the informed consent required in paragraph (b) and (c), the following shall be provided to each subject:

(1) The information required in paragraphs (b)(2), (b)(3), (b)(5), and

(b)(8) and, when appropriate, (c)(7) and (9) of this section;

(2) A general description of the types of research that may be conducted with the identifiable private information or identifiable biospecimens. This description must include sufficient information such that a reasonable person would expect that the broad consent would permit the types of research conducted;

(3) A description of the identifiable private information or identifiable biospecimens that might be used in research, whether sharing of identifiable private information or identifiable biospecimens might occur, and the types of institutions or researchers that might conduct research with the identifiable private information or identifiable biospecimens;

(4) A description of the period of time that the identifiable private information or identifiable biospecimens may be stored and maintained (which period of time could be indefinite), and a description of the period of time that the identifiable private information or identifiable biospecimens may be used for research purposes (which period of time could be indefinite);

(5) Unless the subject will be provided details about specific research studies, a statement that they will not be informed of the details of any specific research studies that might be conducted using the subject's identifiable private information or identifiable biospecimens, including the purposes of the research, and that they might have chosen not to consent to some of those specific research studies;

(6) Unless it is known that clinically relevant research results, including individual research results, will be disclosed to the subject in all circumstances, a statement that such results may not be disclosed to the subject; and

(7) An explanation of whom to contact for answers to questions about the subject's rights and about storage and use of the subject's identifiable private information or identifiable biospecimens, and whom to contact in the event of a research-related harm.

(e) *Screening, recruiting, or determining eligibility.* An IRB may approve a research proposal in which an investigator will obtain information or biospecimens for the purpose of screening, recruiting, or determining the eligibility of prospective subjects without the informed consent of the prospective subject, if either of the following conditions are met:

(1) The investigator will obtain information through oral or written

communication with the prospective subject, or

(2) The investigator will obtain identifiable private information or identifiable biospecimens by accessing records or stored identifiable biospecimens.

(f) *Preemption.* The informed consent requirements in this subpart are not intended to preempt any applicable Federal, state, or local laws (including tribal laws passed by the official governing body of an American Indian or Alaska Native tribe) that require additional information to be disclosed in order for informed consent to be legally effective.

(g) *Emergency medical care.* Nothing in this subpart is intended to limit the authority of a physician to provide emergency medical care, to the extent the physician is permitted to do so under applicable Federal, state, or local law (including tribal law passed by the official governing body of an American Indian or Alaska Native tribe).

(h) *Additional information for subjects when research involves a pesticide.* If the research involves intentional exposure of subjects to a pesticide, the subjects of the research must be informed of the identity of the pesticide and the nature of its pesticidal function.

#### **§ 26.1117 Documentation of informed consent.**

(a) Informed consent shall be documented by the use of a written consent form approved by the IRB and signed (including in an electronic format) by the subject. A written copy shall be given to the subject.

(b) The informed consent form may be either of the following:

(1) A written informed consent form that meets the requirements of § 26.1116. The investigator shall give the subject adequate opportunity to read the informed consent form before it is signed; alternatively, this form may be read to the subject.

(2) A short form written informed consent form stating that the elements of informed consent required by § 26.1116 have been presented orally to the subject, and that the key information required by § 26.1116(a)(5)(i) was presented first to the subject, before other information, if any, was provided. The IRB shall approve a written summary of what is to be said to the subject. When this method is used, there shall be a witness to the oral presentation. Only the short form itself is to be signed by the subject. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent

shall sign a copy of the summary. A copy of the summary must be given to the subject, in addition to a copy of the short form.

**§§ 26.1118–26.1122 [Reserved]**

**§ 26.1123 Early termination of research.**

The Administrator may require that any project covered by this subpart be terminated or suspended when the Administrator finds that an IRB, investigator, sponsor, or institution has materially failed to comply with the terms of this subpart.

**§ 26.1124 [Reserved]**

**§ 26.1125 Prior submission of proposed human research for EPA review.**

Any person or institution who intends to conduct or sponsor human research covered by § 26.1101(a) shall, after receiving approval from all appropriate IRBs, submit to EPA prior to initiating such research all information relevant to the proposed research specified by § 26.1115(a), and the following additional information, to the extent not already included:

- (a) A discussion of:
  - (1) The potential risks to human subjects;
  - (2) The measures proposed to minimize risks to the human subjects;
  - (3) The nature and magnitude of all expected benefits of such research, and to whom they would accrue;
  - (4) Alternative means of obtaining information comparable to what would be collected through the proposed research; and
  - (5) The balance of risks and benefits of the proposed research.
- (b) All information for subjects and written informed consent agreements as originally provided to the IRB, and as approved by the IRB.
- (c) Information about how subjects will be recruited, including any advertisements proposed to be used.
- (d) A description of the circumstances and methods proposed for presenting information to potential human subjects for the purpose of obtaining their informed consent.
- (e) All correspondence between the IRB and the investigators or sponsors.
- (f) Official notification to the sponsor or investigator, in accordance with the requirements of this subpart, that research involving human subjects has been reviewed and approved by an IRB.

■ 7. Revise § 26.1302 to read as follows:

**§ 26.1302 Definitions.**

The definitions in § 26.1102 apply to this subpart as well.

[FR Doc. 2018–26228 Filed 12–4–18; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R02–OAR–2017–0094; FRL–9987–49–Region 2]

**Approval and Promulgation of Implementation Plans: New York Ozone Section 185**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the State of New York's Low Emissions Vehicle program as an alternative program to fulfill the Clean Air Act Section 185 requirement for the New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT nonattainment area for the revoked 1979 1-hour ozone National Ambient Air Quality Standard. Clean Air Act Section 185 requires fees to be paid, per ton of emissions, by major sources located in ozone nonattainment areas classified as Severe or Extreme that have failed to attain the National Ambient Air Quality Standard by the required attainment date. The EPA is proposing to find that New York's Low Emissions Vehicle program is no less stringent than a Clean Air Act Section 185 fee program because the emissions reductions achieved by the Low Emissions Vehicle program are at least equivalent to reductions associated with a 185 fee program.

**DATES:** Comments must be received on or before January 7, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R02–OAR–2017–0094 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia

submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:**

Gavin Lau, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–3708, or by email at [Lau.Gavin@epa.gov](mailto:Lau.Gavin@epa.gov).

**SUPPLEMENTARY INFORMATION:**

- I. What Action is the EPA proposing?
- II. What is the background for the proposed action?
- III. What did New York Submit?
- IV. What is New York's alternative to the Clean Air Act Section 185 fee program?
- V. What is the EPA's analysis of the alternative to Clean Air Act Section 185 fee program?
- VI. What action is the EPA taking?
- VII. Statutory and Executive Order Reviews

**I. What Action is the EPA proposing?**

The EPA is proposing to approve into the State of New York's State Implementation Plan (SIP) the use of an alternative program to fulfill the requirements of Clean Air Act (CAA) Section 185 for the New York (NY) portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT (NY–NJ–CT) nonattainment area for the 1979 1-hour ozone National Ambient Air Quality Standard (NAAQS). NY's Low Emissions Vehicle program (LEV) was updated and adopted as LEV II in 2000 and further revised in 2002. The LEV II program was fully phased in as of the 2007 vehicle model year and resulted in excess emissions reductions. The EPA is proposing to approve the LEV II program as an equivalent alternative program no less stringent than the program required by CAA Section 185 consistent with the principles of CAA Section 172(e).

**II. What is the background for the proposed action?**

*1979 1-Hour Ozone NAAQS*

The 1-hour ozone standard designations were established by the EPA following the CAA Amendments in 1990. Each area of the country that was designated as nonattainment for the 1-hour ozone NAAQS was classified by operation of law as marginal, moderate, serious, severe, or extreme depending on the severity of the area's 1-hour ozone air quality problem.<sup>1</sup> The 1-hour ozone NAAQS was set at 0.12 parts per million (ppm). The NY–NJ–CT area was designated as nonattainment and classified as severe-17 with an attainment date of November 15, 2007. The 1-hour NY–NJ–CT area is composed of: Bergen, Essex, Hudson, Hunterdon,

<sup>1</sup> See Clean Air Act sections 107(d)(C) and 181(a).

Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union Counties in New Jersey; Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, Westchester, and part of Orange County in New York; and parts of Fairfield and Litchfield Counties in Connecticut.

The EPA revoked the 1-hour ozone standard effective June 15, 2005 (69 FR 23951). The EPA still determines whether an area has attained the 1-hour ozone NAAQS by its applicable deadline if it relates to effectuating anti-backsliding requirements that have been specifically retained.

In a June 18, 2012 rulemaking, the EPA determined that the NY–NJ–CT 1-hour ozone nonattainment area failed to attain the 1-hour ozone NAAQS by its applicable attainment deadline of November 15, 2007, based on complete, quality assured and certified ozone monitoring data for 2005–2007. *See* 77 FR 36163 (June 19, 2012). This determination of failure to attain by the NY–NJ–CT attainment date, triggered the provisions of CAA Section 185. In the determination of failure to attain by the NY–NJ–CT attainment date, the EPA indicated that it would address CAA Section 185 fee programs in a future rulemaking.

In the same June 18, 2012 rulemaking, the EPA determined that the NY–NJ–CT 1-hour ozone nonattainment area attained the 1-hour ozone NAAQS based on complete, quality assured, and certified monitoring data for 2008–2010 (77 FR 36163). Current complete, quality assured, and certified monitoring data for the most recent time period of 2015–2017 continues to show that the NY–NJ–CT area continues to attain the 1-hour ozone NAAQS.

#### *Clean Air Act Section 185*

CAA Section 185 fee program requirements apply to ozone nonattainment areas classified as Severe or Extreme that fail to attain by the required attainment date. CAA Section 185 requires each major stationary source of volatile organic compounds (VOC) located in an area that fails to attain by its attainment date to pay a fee to the state, for each calendar year following the attainment year, for each ton it emits in excess of 80 percent of the baseline amount. CAA Section 182(f) extends the application of this provision to major stationary sources of oxides of nitrogen (NO<sub>x</sub>). In 1990, the CAA set the fee as \$5,000 per ton of VOC and NO<sub>x</sub> emitted, which is adjusted for inflation, based on the Consumer Price Index, on an annual basis.

#### *Applicability of CAA Section 185 to the NY–NJ–CT area*

As discussed above, the NY–NJ–CT 1-hour ozone nonattainment area failed to attain the 1-hour ozone NAAQS by its attainment date of November 15, 2007 (77 FR 36163). As a result, the requirements of CAA Section 185 are applicable to the area, starting in calendar year 2008. The NY–NJ–CT area was determined to attain the 1-hour ozone NAAQS for 2008–2010 (77 FR 36163).

#### *CAA Section 185 Equivalent Alternative Programs*

CAA Section 172(e) provides that when the Administrator relaxes a NAAQS, the EPA must ensure that all areas which have not attained that NAAQS maintain “controls which are not less stringent than the controls applicable to areas designated nonattainment before such relaxation.” Although Section 172(e) does not apply directly to supplanting one NAAQS with a stronger standard, the EPA has applied the principles of CAA Section 172(e) following revocation of ozone standards. The EPA interprets the principles of 172(e) as authorizing the Administrator to approve on a case-by-case basis and through rulemaking to accept alternatives to the applicable CAA Section 185 fee programs associated with a revoked ozone NAAQS that are “not less stringent.” *See generally* 80 FR 12264, 12306 (March 6, 2015).

The EPA notes that it has previously approved alternative programs as not less stringent than the requirements of CAA Section 185 fee programs, consistent with the principles of CAA Section 172(e). *See, e.g.,* 77 FR 50021 (August 20, 2012) (CAA Section 185 alternative for the San Joaquin Valley Unified Air Pollution Control District); 77 FR 74372 (December 14, 2012) (CAA Section 185 alternative for the South Coast Air Quality Management District); *see also Natural Res. Def. Council v. EPA*, 779 F.3d 1119 (9th Cir. 2015) (denying petition to review the approval of alternative programs “[b]ecause EPA reasonably interpreted CAA § 172(e) to give it authority to approve programs that are alternative to, but not less stringent than, § 185 fee programs, EPA’s approval of . . . such an alternative program, after reasoned consideration and notice and comment procedure regarding [the rule’s] stringency and approach to fee collecting, was proper.”).

Consistent with the principles of CAA Section 172(e), a state can meet the 1-hour ozone Section 185 obligation

through either the fee program prescribed in Section 185 of the CAA or an equivalent alternative program, if the state demonstrates that the alternative is not less stringent than the otherwise applicable Section 185 fee program and the EPA approves such demonstration after notice and comment rulemaking. In this action, the EPA is proposing that the State of New York’s Low Emission Vehicle program (LEV II) constitutes an approvable alternative CAA Section 185 fee program and invites public comment on this determination.

#### **III. What did New York submit?**

On January 31, 2014, the New York State Department of Environmental Conservation (NYSDEC) submitted a request on behalf of the State of New York to the EPA to determine that the State’s LEV II program is an equivalent alternate program to the program required under CAA Section 185. On April 7, 2014, NYSDEC submitted a letter to the EPA which included the State’s Environmental Notice Bulletin and public comment received on the State’s CAA Section 185 submission to the EPA. NYSDEC’s submissions included demonstrations of emissions reductions associated with NY’s LEV II program, calculation of reductions needed to fulfill the requirements of CAA Section 185, examples of additional VOC and NO<sub>x</sub> control measures, a copy of the public notice, and the supportive comment that was received during the state’s public participation process. On October 13, 2016, NYSDEC submitted a letter to the EPA providing additional details clarifying LEV II reductions. On April 3, 2018, NYSDEC submitted additional information to the EPA which included an analysis of actual and allowable emissions for facilities located in the NY portion of the NY–NJ–CT 1-hour ozone nonattainment area to support the use of actual emissions for baseline calculations.

#### **IV. What is New York’s alternative to the Clean Air Act Section 185 fee program?**

NYSDEC submitted a request to the EPA to determine that its LEV II program is an alternative program which satisfies the requirements of CAA Section 185. The CAA Section 185 fee program requires a fee per ton of VOC and NO<sub>x</sub> emissions, in the NY–NJ–CT 1-hour ozone nonattainment area, in excess of 80% the baseline amount. NYSDEC examined actual and allowable emissions from major sources of VOC and NO<sub>x</sub> for 2007 and determined that the actual emissions were lower than the allowable emissions. In accordance

with the methodology required under CAA Section 185(b)(2) for computing a baseline amount, NYSDEC then compared the actual 2008 and 2009 emissions of VOC and NO<sub>x</sub> for each major source to 80% of its 2007 emissions. For sources that emitted greater than 80% of their emissions for 2007, NYSDEC calculated its corresponding excess emissions for 2008 and 2009. For 2008 and 2009, VOC and NO<sub>x</sub> excess emissions for major sources were totaled and daily excess emissions per day were calculated. The amount of emissions from the NY State portion of the NY–NJ–CT area subject to the CAA Section 185 fee program was determined to be for 2008: 2.2 tons per day (tpd) of VOC and 8.7 tpd of NO<sub>x</sub>; and for 2009: 1.4 tpd of VOC and 4.5 tpd of NO<sub>x</sub>. As an alternative to the CAA Section 185 fee program requirement, NYSDEC requested that the EPA find that its LEV II program provided excess emissions reductions greater than 80% of the 2007 baseline for 2008 and 2009.

New York adopted LEV II new vehicle emission standards, identical to those of California LEV II, in Title 6 of the New York Codes, Rules and Regulations (6 NYCRR) Part 218, “Emission Standards for Motor Vehicles and Motor Vehicle Engines.” LEV II exhaust emissions standards were fully phased in by the 2007 model year and provided additional reductions from previous LEV standards. NYSDEC had previously submitted to the EPA a supplemental Reasonable Further Progress Plan (RFP) and 2008 projection year emissions inventory, which included VOC and NO<sub>x</sub> projections, as part of the attainment demonstration for the New York State Implementation Plan for ozone. The EPA subsequently approved the RFP and 2008 projection year emissions inventory. See 76 FR 51264 (August 18, 2011). The RFP control measures for the 2008 projection year inventory resulted in surplus reductions of 3.94 tpd of VOC and 81.8 tpd of NO<sub>x</sub>. LEV II was part of 2008 projection year surplus and was expected to reduce VOC by 2.5 tons per ozone season day and reduce NO<sub>x</sub> by 18.9 tons per ozone season day. New York identified that LEV II could be used for an equivalent alternate program to meet the requirements of CAA Section 185 since the reductions were part of the RFP surplus emissions reductions.

In order to make the LEV II ozone season day reductions representative of an entire year, NYSDEC applied a seasonal adjustment factor based on recommendations from the New York State Department of Transportation (NYSDOT). NYSDEC chose a seasonal adjustment factor that was more conservative than the NYSDOT recommendation for urban areas like the New York City area to assure that sufficient reductions were achieved. In applying a seasonal adjustment factor, LEV II attributable reductions of VOC and NO<sub>x</sub> were 2.3 tpd and 17.5 tpd, respectively, for all of 2008. Interpolating between 2008 and 2011 projections included in the RFP yielded seasonally adjusted LEV II attributable reductions of VOC and NO<sub>x</sub> of 3.2 tpd and 24.4 tpd, respectively, for all of 2009. Additional details regarding seasonal adjustment of emissions reductions can be found in the Technical Support Document.

New York’s LEV II emission standards continue to be in place under 6 NYCRR Part 218 and continue to achieve reductions in VOC and NO<sub>x</sub> emissions. EPA performed an analysis to verify that LEV II continued to achieve emissions reduction through 2017. The emissions reductions attributable to LEV II in the NY state portion of the NY–NJ–CT area for 2017 were 1,321 tons of NO<sub>x</sub> and 558 tons of VOCs. Details regarding 2017 LEV II emissions reduction can be found in the Technical Support Document.

#### **V. What is the EPA’s analysis of the alternative to Clean Air Act Section 185 fee program?**

For an alternative to CAA Section 185 fee program to be approvable, a state must provide a demonstration that the proposed alternative program is no less stringent than the application of CAA Section 185. EPA has previously stated that one way to demonstrate this is to show that the alternative program provides equivalent or greater fees and/or emissions reductions directly attributable to the application of CAA Section 185<sup>2</sup>. The state’s demonstration

<sup>2</sup> The EPA initially explained this position in a January 2010 Guidance document. Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, “Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for

should also not underestimate the expected fees and/or emissions reduction from the CAA Section 185 fee program nor overestimate the expected fees and/or emissions reductions associated with the proposed alternative program. In principle, the alternative program must encourage 1-hour ozone NAAQS nonattainment areas to reach attainment as effectively and expeditiously as a CAA Section 185 program. The EPA has previously approved CAA Section 185 alternative programs for the San Joaquin Valley Unified Air Pollution Control District (77 FR 50021) and the South Coast Air Quality Management District (77 FR 74372) (upheld in *Natural Res. Def. Council v. EPA*, 779 F.3d 1119 (9th Cir. 2015)).

The EPA is proposing to determine that NY demonstrated that the emissions reductions from LEV II were at least as significant as those that would have been gained from direct application of CAA Section 185 fees. The surplus RFP LEV II projected emissions reductions for 2008 VOC and NO<sub>x</sub> were 2.3 tpd and 17.5 tpd. The 2008 CAA Section 185 emissions reductions targets, calculated as amount in excess of 80% of the 2007 baseline, for VOC and NO<sub>x</sub> were 2.2 tpd and 8.7 tpd. LEV II projected emissions reductions for 2009 VOC and NO<sub>x</sub> were 3.2 tpd and 24.4 tpd. The 2009 CAA Section 185 emissions reductions targets for VOC and NO<sub>x</sub> were 1.4 tpd and 4.5 tpd. For 2008 and 2009, the LEV II emissions reduction were greater than the CAA Section 185 targets for both VOC and NO<sub>x</sub>. Table 1 below shows the emissions targets and LEV II emission reductions. Since the amount of LEV II attributable emissions reductions is not less stringent than the emissions in excess of 80% of the 2007 baseline, the alternative program is consistent with the anti-backsliding provisions of CAA Section 172(e). LEV II has continued to achieve emissions reductions through 2017.

the 1-hour Ozone NAAQS,” dated January 5, 2010 (January 2010 guidance). The D.C. Circuit Court of Appeals vacated the January 2010 guidance on procedural grounds, but the Court did not prohibit alternative programs, stating that “neither the statute nor our case law obviously precludes that alternative.” *NRDC v. EPA*, 643 F.3d 322 (D.C. Cir. July 2011).

TABLE 1

Emission reduction	Emissions reduction (tons per day)	
	NO <sub>x</sub>	VOC
2008 CAA Section 185 Target .....	8.7	2.2
2008 LEV II Projection .....	17.5	2.3
LEV II emissions reduction greater than 2008 target? .....	Yes	Yes
2009 CAA Section 185 Target .....	4.5	1.4
2009 LEV II Projection .....	24.4	3.2
LEV II emissions reduction greater than 2009 target? .....	Yes	Yes

LEV II was not included as a control measure relied on in the 1-hour Ozone Attainment SIP, including Rate of Progress and RFP for the NY–NJ–CT 1-hour ozone area (67 FR 5170 (February 4, 2002)). LEV was included in the Ozone Attainment Demonstration SIP, but emissions reductions attributable to the LEV II program were not. Projected emissions reductions by control strategy provided by NYSDEC included specific reductions for each control measure including LEV II. Emissions reductions attributable to LEV II are surplus, were not previously accounted for and do not interfere with other applicable requirements concerning attainment, Rate of Progress, and RFP.

In this action, EPA is proposing that the LEV II program is an acceptable alternative program to the 185 fee program consistent with the anti-backsliding provisions of CAA Section 172(e) because it achieves greater emissions reductions than application of the 185 fee program. The principles of Section 172(e) require controls in nonattainment areas that are not less stringent than those that were applied to an area before EPA revoked the one-hour NAAQS.

**VI. What action is EPA taking?**

EPA is proposing to approve NY’s LEV II program as an alternative program to the requirements of CAA Section 185. The EPA proposes to find the LEV II program achieves sufficient reductions to fulfill the requirements of CAA Section 172(e) and 185 for the NY portion of the NY–NJ–CT 1-hour ozone nonattainment area. The LEV II program will be incorporated into the federally enforceable SIP as an alternative CAA Section 185 program if EPA finalizes this action.

**VII. Statutory and Executive Order Reviews**

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

submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 7, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using

practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: November 19, 2018.

**Peter D. Lopez,**

*Regional Administrator, Region 2.*

[FR Doc. 2018–26475 Filed 12–4–18; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R03–OAR–2017–0735; FRL–9987–48–Region 3]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Nonattainment New Source Review Requirements for 2008 8-Hour Ozone Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the Commonwealth of Pennsylvania’s state implementation plan (SIP). The revision is in response to EPA’s February 3, 2017 Findings of

Failure to Submit for various requirements relating to the 2008 8-hour ozone national ambient air quality standards (NAAQS). This SIP revision is specific to nonattainment new source review (NNSR) requirements. EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before January 7, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2017-0735 at <http://www.regulations.gov>, or via email to [maldonado.zelma@epa.gov](mailto:maldonado.zelma@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Amy Johansen, (215) 814-2156, or by email at [johansen.amy@epa.gov](mailto:johansen.amy@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On October 30, 2017, the Pennsylvania Department of Environmental Protection (PADEP) submitted on behalf of the Commonwealth of Pennsylvania a formal revision, requesting EPA's approval for the SIP of its NNSR Certification for the 2008 Ozone Standard and its existing Emission Statement Program. EPA is only acting on the NNSR Certification portion of the SIP revision in this action. EPA previously finalized a rulemaking action for the existing Emission Statement Program. See 83 FR 26221 (June 6,

2018). This SIP revision is in response to EPA's final 2008 8-hour ozone NAAQS Findings of Failure to Submit for NNSR requirements. See 82 FR 9158 (February 3, 2017). Specifically, Pennsylvania is certifying that its existing NNSR program, covering the Allentown-Bethlehem-Easton, PA Nonattainment Area (which includes Carbon, Lehigh, and Northampton Counties), the Lancaster, PA Nonattainment Area (which includes Lancaster County) the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE Nonattainment Area (which includes Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties), Pittsburgh-Beaver Valley, PA Nonattainment Area (which includes Allegheny, Beaver, Butler, Fayette, Washington, and Westmoreland Counties) and the Reading, PA Nonattainment Area (which includes Berks County) for the 2008 8-hour ozone NAAQS, is at least as stringent as the requirements at 40 CFR 51.165, as amended by the final rule titled "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements" (SIP Requirements Rule), for ozone and its precursors.<sup>1</sup> See 80 FR 12264 (March 6, 2015).

**A. 2008 8-Hour Ozone NAAQS**

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). See 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR 50.15, the 2008 8-hour ozone NAAQS is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area

<sup>1</sup> The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 8-hour ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements.

<sup>2</sup> On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir. Court or Court) issued an opinion on the EPA's SIP Requirements Rule. *South Coast Air Quality Mgmt. Dist. v. EPA*, 882 F.3d 1138, 2018 U.S. App. LEXIS 3636 (D.C. Cir. Feb. 16, 2018). The D.C. Cir. Court found certain provisions from the SIP Requirements Rule, including certain provisions relating to anti-backsliding, to be inconsistent with the statute and unreasonable and vacated those provisions. *Id.* The Court found other parts of the SIP Requirements Rule unrelated to anti-backsliding and this action reasonable and denied the petition for appeal on those provisions. *Id.*

that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. The Allentown-Bethlehem-Easton, PA Nonattainment Area, the Lancaster, PA Nonattainment Area, the Pittsburgh-Beaver Valley, PA Nonattainment Area, and the Reading, PA Nonattainment Area were classified as marginal nonattainment areas for the 2008 8-hour ozone NAAQS on May 21, 2012 (effective July 20, 2012) using 2009-2011 ambient air quality data. See 77 FR 30088. The Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE Nonattainment Area was classified as a marginal nonattainment area for the 2008 8-hour ozone NAAQS on May 21, 2012 (effective July 20, 2012) using 2008-2010 ambient air quality data. See 77 FR 30088. On March 6, 2015, EPA issued the final SIP Requirements Rule, which establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2008 8-hour ozone NAAQS. See 80 FR 12264. Areas that were designated as marginal ozone nonattainment areas were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2015, based on 2012-2014 monitoring data. See 40 CFR 51.1103.

The Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE and the Pittsburgh-Beaver Valley, PA Nonattainment Areas did not attain the 2008 8-hour ozone NAAQS by July 20, 2015; however, these areas did meet the CAA section 181(a)(5) criteria, as interpreted in 40 CFR 51.1107, for a one-year attainment date extension. See 81 FR 26697 (May 4, 2016). Therefore, on April 11, 2016, the EPA Administrator signed a final rule extending the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE and the Pittsburgh-Beaver Valley, PA Nonattainment Area 8-hour ozone NAAQS attainment dates from July 20, 2015 to July 20, 2016. *Id.*<sup>3</sup> Based on

<sup>3</sup> EPA proposed approval of a Determination of Attainment (DOA) for the 2008 8-hour ozone NAAQS for the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE Area and the Pittsburgh-Beaver Valley, PA Area on April 18, 2017, and August 25, 2016, respectively. These proposed actions were based on complete, certified, and quality assured ambient air quality monitoring data for the 2013-2015 monitoring period. See 82 FR 18268 (April 18, 2017) and 81 FR 58435 (August 25, 2016). It should be noted that a DOA does not alleviate the need for Pennsylvania to certify that their existing SIP approved NNSR program is as stringent as the requirements at 40 CFR 51.165, as NNSR applies in nonattainment areas until an area has been redesignated to attainment. EPA issued final rulemaking actions on both of these DOAs. See 82 FR 50814 (November 2, 2017) (Philadelphia Area)

initial nonattainment designations for the 2008 8-hour ozone standard, as well as the March 6, 2015 final SIP Requirements Rule, Pennsylvania was required to develop a SIP revision addressing certain CAA requirements for the Allentown-Bethlehem-Easton, PA, the Lancaster, PA, the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE, the Pittsburgh-Beaver Valley, PA, and the Reading, PA Nonattainment Areas, and submit to EPA a NNSR Certification SIP or SIP revision no later than 36 months after the effective date of area designations for the 2008 8-hour ozone NAAQS (*i.e.*, July 20, 2015).<sup>4</sup> See 80 FR 12264 (March 6, 2015). EPA is proposing to approve Pennsylvania's October 30, 2017 NNSR Certification SIP revision. EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2008 8-hour ozone NAAQS is provided in Section II below.

#### *B. 2017 Findings of Failure To Submit SIP for the 2008 8-Hour Ozone NAAQS*

Areas designated nonattainment for the ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and also to the ozone-specific planning requirements of CAA section 182.<sup>5</sup> States in the ozone transport region (OTR), such as Pennsylvania, are additionally subject to the requirements outlined in CAA section 184.

Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For marginal areas, such as the Allentown-Bethlehem-Easton, PA, the Lancaster, PA, the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE, the Pittsburgh-Beaver Valley, PA, and the Reading, PA Areas, a state is required to submit a baseline emissions inventory, adopt a SIP requiring emissions statements from stationary sources, and implement a NNSR program for the relevant ozone standard. See CAA section 182(a). For each higher ozone nonattainment classification, a state needs to comply with all lower

area classification requirements, plus additional emissions controls and more expansive NNSR offset requirements.

The CAA sets out specific requirements for states in the OTR.<sup>6</sup> Upon promulgation of the 2008 8-hour ozone NAAQS, states in the OTR were required to submit a SIP revision addressing reasonably available control technology (RACT). See 40 CFR 51.1116. This requirement is the only recurring obligation for an OTR state upon revision of a NAAQS, unless that state also contains some portion of a nonattainment area for the revised NAAQS.<sup>7</sup> In that case, the nonattainment requirements described previously also apply to those portions of that state.

In the March 6, 2015 SIP Requirements Rule, EPA detailed the requirements applicable to ozone nonattainment areas, as well as requirements that apply in the OTR, and provided specific deadlines for SIP submittals. See 80 FR 12264.

On February 3, 2017, EPA found that 15 states and the District of Columbia failed to submit SIP revisions in a timely manner to satisfy certain requirements for the 2008 8-hour ozone NAAQS that apply to nonattainment areas and/or states in the OTR. See 82 FR 9158. As explained in that rulemaking action, consistent with the CAA and EPA regulations, these Findings of Failure to Submit established certain deadlines for the imposition of sanctions, if a state does not submit a timely SIP revision addressing the requirements for which the finding is being made, and for the EPA to promulgate a Federal implementation plan (FIP) to address any outstanding SIP requirements.

EPA found, *inter alia*, that the Commonwealth of Pennsylvania failed to submit SIP revisions in a timely matter to satisfy NNSR requirements for its marginal nonattainment areas, specifically the Allentown-Bethlehem-Easton, PA, the Lancaster, PA, the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD, DE, the Pittsburgh-Beaver Valley, PA, and the Reading, PA Areas.<sup>8</sup>

Pennsylvania submitted its October 30, 2017 SIP revision to address the specific NNSR requirements for the 2008 8-hour ozone NAAQS, located in 40 CFR 51.160–165, as well as its obligations under EPA's February 3, 2017 Findings of Failure to Submit. EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2008 8-hour ozone NAAQS and the Findings of Failure to Submit is provided in Section II below.

## **II. Summary of SIP Revision and EPA Analysis**

This rulemaking action is specific to Pennsylvania's NNSR requirements. NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area.<sup>9</sup> The specific NNSR requirements for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.160–165. As set forth in the SIP Requirements Rule, for each nonattainment area, a NNSR plan or plan revision was due no later than 36 months after the July 20, 2012 effective date of area designations for the 2008 8-hour ozone standard (*i.e.*, July 20, 2015).<sup>10</sup>

The minimum SIP requirements for NNSR permitting programs for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.165. See 40 CFR 51.1114. These NNSR program requirements include those promulgated in the "Phase 2 Rule" implementing the 1997 8-hour ozone NAAQS (75 FR 71018 (November 29, 2005)) and the SIP Requirements Rule implementing the 2008 8-hour ozone NAAQS. Under the Phase 2 Rule, the SIP for each ozone nonattainment area must contain NNSR provisions that: Set major source thresholds for oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOC) pursuant to 40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2); classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); consider any significant net emissions increase of NO<sub>x</sub> as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); consider certain increases of VOC emissions in extreme ozone nonattainment areas as a significant net emissions increase and a

and 81 FR 87819 (December 6, 2016) (Pittsburgh Area).

<sup>4</sup> Neither Pennsylvania's obligation to submit the NNSR Certification SIP nor the requirements governing that submission were affected by the D.C. Circuit's February 16, 2018 decision on portions of the SIP Requirements Rule in *South Coast Air Quality Mgmt. Dist. v. EPA*.

<sup>5</sup> Ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's "design value," which represents air quality in the area for the most recent three years). The possible classifications for ozone nonattainment areas are Marginal, Moderate, Serious, Severe, and Extreme. See CAA section 181(a)(1).

<sup>6</sup> CAA section 184 details specific requirements for a group of states (and the District of Columbia) that make up the OTR. States in the OTR are required to submit RACT SIP revisions and mandate a certain level of emissions control for the pollutants that form ozone, even if the areas in the state meet the ozone standards.

<sup>7</sup> NNSR requirements continue to apply in the OTR. See CAA section 184(b).

<sup>8</sup> The EPA found that the Commonwealth of Pennsylvania also failed to submit a SIP revision for the Control Techniques Guidelines (CTG) for the volatile organic compound RACT (for all 44 CTGs). This SIP requirement will be addressed in a separate rulemaking action and will not be discussed here. See 82 FR 9158 (February 3, 2017).

<sup>9</sup> See CAA sections 172(c)(5), 173 and 182.

<sup>10</sup> With respect to states with nonattainment areas subject to a Findings of Failure to Submit NNSR SIP revisions, such revisions would no longer be required if the area were redesignated to attainment. The CAA's prevention of significant deterioration (PSD) program requirements apply in lieu of NNSR after an area is redesignated to attainment. For areas outside the OTR, NNSR requirements do not apply in areas designated as attainment.



major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); set significant emissions rates for VOC and NO<sub>x</sub> as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)–(C) and (E); contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(1)–(2); provide that the requirements applicable to VOC also apply to NO<sub>x</sub> pursuant to 40 CFR 51.165(a)(8); and set offset ratios for VOC and NO<sub>x</sub> pursuant to 40 CFR 51.165(a)(9)(i)–(iii) (renumbered as (a)(9)(ii)–(iv) under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS). Under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS, the SIP for each ozone nonattainment area designated nonattainment for the 2008 8-hour ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS on April 6, 2015, must also contain NNSR provisions that include the anti-backsliding requirements at 40 CFR 51.1105. *See* 40 CFR 51.165(a)(12).

Pennsylvania's SIP approved NNSR program, established in the Pennsylvania Code of Regulations (Pa. Code) Rule 25 Pa. Code Chapter 127—*Construction, Modification, Reactivation, and Operation of Sources*, applies to the construction and modification of major stationary sources in nonattainment areas. In its October 30, 2017 SIP revision, Pennsylvania certifies that the version of 25 Pa. Code Chapter 127 in the SIP is at least as stringent as the Federal NNSR requirements for the Allentown-Bethlehem-Easton, PA, the Lancaster, PA, the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD, DE, the Pittsburgh-Beaver Valley, PA, and the Reading, PA Nonattainment Areas. EPA last approved revisions to Pennsylvania's major NNSR SIP on May 14, 2012. In that action, EPA approved revisions to Pennsylvania's SIP which made PADEP's NNSR program consistent with Federal requirements. *See* 77 FR 28261.

EPA notes that 25 Pa. Code Section 127.207(5) nor Pennsylvania's approved SIP contain a regulatory provision pertaining to establishing emissions reductions credits (ERC), as specified in 40 CFR 51.165(a)(3)(ii)(C)(2)(i) and 40 CFR 51.165(a)(3)(ii)(C)(2)(ii). However, even if Pennsylvania's regulations do not offer this emissions reductions credit option, their approved SIP is still adequate to meet the standard ERC requirements found in 40 CFR 51.165(a)(3)(ii)(C)(1), where emissions reductions must be surplus, permanent, quantifiable, and Federally enforceable, for example. Pennsylvania has the appropriate ERC requirements approved

in their regulations and their SIP, which enables them to implement the program appropriately and in accordance with Federal requirements.

Given the D.C. Cir. Court's recent ruling in *South Coast Air Quality Mgmt. Dist. v. EPA* vacating the anti-backsliding provisions of the SIP Requirements Rule, Pennsylvania remains required to comply with the anti-backsliding provisions found in 40 CFR 51.165(a)(12). In Pennsylvania, neither 25 Pa. Code Chapter 127 or the Pennsylvania SIP contain the anti-backsliding provisions found in 40 CFR 51.165(a)(12), which applied to NNSR requirements for the 1997 ozone NAAQS. However, EPA finds that 25 Pa. Code and Pennsylvania's SIP presently include appropriate thresholds for major stationary sources and emissions offset ratios for the worst air quality designations these nonattainment areas have been designated. For example, in 25 Pa. Code Section 121.1, a source is considered a "major NO<sub>x</sub> emitting facility" if it emits 25 tons per year of NO<sub>x</sub> in Bucks, Chester, Delaware, Montgomery or Philadelphia County (the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE Nonattainment Area). This emissions threshold is equivalent to an area that was designated as severe nonattainment for the ozone NAAQS and is therefore more stringent. In addition, the entire state of Pennsylvania is located in the OTR and any source in the OTR is considered major for NO<sub>x</sub> and VOC if it emits or has the potential to emit at least 100 tons per year or 50 tons per year, respectively. This requirement can be found in 25 Pa. Code Section 127.201(c), as well as Pennsylvania's approved SIP and is equivalent to the higher moderate nonattainment area classification. Additionally, emissions offset ratios for sources located in Pennsylvania are more stringent than the requirements of 40 CFR 51.165(a)(9)(i). 25 Pa. Code Section 127.210 and the approved Pennsylvania SIP require sources in a marginal nonattainment area to offset their NO<sub>x</sub> and VOC emissions at a ratio of 1.15 to 1 versus the Federal NNSR requirement for a source located in a marginal nonattainment area to offset NO<sub>x</sub> and VOC at a less stringent ratio of 1.1 to 1. *See* 40 CFR 51.165(a)(9)(i)(A). Therefore, EPA finds that Pennsylvania's regulations and approved SIP are more stringent than EPA's NNSR anti-backsliding requirements and their program is adequate to implement NNSR for the 2008 ozone NAAQS.

The version of 25 Pa. Code Chapter 127 that is contained in the current SIP has not changed since the 2012

rulemaking where EPA last approved Pennsylvania's NNSR provisions, with respect to ozone and its precursors.<sup>11</sup> This version of the rule covers the Allentown-Bethlehem-Easton, PA, the Lancaster, PA, the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD, DE, the Pittsburgh-Beaver Valley, PA, and the Reading, PA Nonattainment Areas and remains adequate to meet all applicable NNSR requirements for the 2008 8-hour ozone NAAQS found in 40 CFR 51.165, the Phase 2 Rule and the SIP Requirements Rule.

### III. Proposed Action

EPA is proposing to approve Pennsylvania's October 30, 2017 SIP revision addressing the NNSR requirements for the 2008 ozone NAAQS for the Allentown-Bethlehem-Easton, PA, the Lancaster, PA, the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD, DE, the Pittsburgh-Beaver Valley, PA, and the Reading, PA Nonattainment Areas. EPA has concluded that the Commonwealth's submission fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165, as well as its obligations under EPA's February 3, 2017 Findings of Failure to Submit. *See* 82 FR 9158. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### IV. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory

<sup>11</sup> Subsequently, EPA did approve an update to Pennsylvania's SIP incorporating preconstruction permitting requirements for fine particulate matter (PM<sub>2.5</sub>) into their NNSR regulations on July 13, 2012. *See* 77 FR 41276.

action because SIP approvals are exempted under Executive Order 12866.

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 7, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, approving Pennsylvania's 2008 8-hour ozone NAAQS Certification SIP revision for NNSR does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

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

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

Dated: November 26, 2018.

**Cosmo Servidio,**

*Regional Administrator, Region III.*

[FR Doc. 2018–26479 Filed 12–4–18; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 405 and 423

[CMS–4174–CN]

RIN 0938–AT62

#### Medicare Program: Changes to the Medicare Claims and Medicare Prescription Drug Coverage Determination Appeals Procedures, Correction

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule; correction.

**SUMMARY:** This document corrects technical and typographical errors in the proposed rule that appeared in the **Federal Register** on October 2, 2018 entitled “Medicare Program: Changes to the Medicare Claims and Medicare Prescription Drug Coverage Determination Appeals Procedures.”

**FOR FURTHER INFORMATION CONTACT:**

Joella Roland, (410) 786–7638.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In FR Doc. 2018–21223 of October 2, 2018 (83 FR 49513), there were technical and typographical errors that are identified and corrected in the Correction of Errors section of this document.

#### II. Summary of Errors

On page 49513, we inadvertently made a typographical error in the alphanumeric portion of the regulation identification number (RIN).

On page 49523, in our discussion of the “Notice of a Remand,” we inadvertently referenced an incorrect subsection of the regulation. In noting the corresponding change to part 423, subpart U, we erroneously referenced § 423.2056(d)(1) instead of § 423.2056(f).

On page 49525, in the “Regulatory Impact Statement,” although our calculation of the total amount of time that would be saved by not requiring appellants to sign appeals was correct, we made an inadvertent typographical error in the formula used to calculate this amount. Instead of referencing .083 hours, we incorrectly listed .0083 hours in the formula.

#### III. Correction of Errors

In FR Doc. 2018–21223 of October 2, 2018 (83 FR 49513), make the following corrections:

1. On page 49513, second column, line 5, the alphanumeric term “AT27” is corrected to read “AT62” in the RIN.

2. On page 49523, first column, first full paragraph, last line 23, the reference “§ 423.2056(d)(1)” is corrected to read “§ 423.2056(f)”.

3. On page 49525, first column, first partial paragraph, line 2, the figure “.0083” is corrected to read “.083”.

Dated: November 29, 2018.

**Ann C. Agnew,**

*Executive Secretary to the Department, Department of Health and Human Services.*

[FR Doc. 2018–26497 Filed 12–4–18; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS–R2–ES–2017–0014; 4500090023]

RIN 1018–BD53

#### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Sonoyta Mud Turtle

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Sonoyta mud turtle (*Kinosternon sonoriense longifemorale*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 12.28 acres (4.97 hectares) in Pima County, Arizona, located entirely within Organ Pipe Cactus National Monument, fall within the boundaries of the proposed critical habitat designation. If we finalize this rule as proposed, it would extend the Act's protections to this subspecies' critical habitat. We also announce the availability of a draft economic analysis of the proposed designation of critical habitat for the Sonoyta mud turtle.

**DATES:** We will accept comments on the proposed rule or draft economic analysis that are received or postmarked on or before February 4, 2019.

Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by January 22, 2019.

**ADDRESSES:** *Written comments:* You may submit comments on the proposed rule

or draft economic analysis by one of the following methods:

(1) *Electronically*: Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS-R2-ES-2017-0014, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy*: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R2-ES-2017-0014, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

*Document availability*: The draft economic analysis and the species status assessment report (SSA Report) are available online at <http://www.fws.gov/southwest/es/arizona/> and at <http://www.regulations.gov> under Docket No. FWS-R2-ES-2017-0014, and at the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

The coordinates or plot points or both from which the map was generated are included in the administrative record for this critical habitat designation and are available online at <http://www.fws.gov/southwest/es/arizona/> and at <http://www.regulations.gov> under Docket No. FWS-R2-ES-2017-0014, and in person at the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Fish and Wildlife Service website and Field Office set out above, and may also be available on <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT**: Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, Fish and Wildlife Office, 9828 North 31st Ave. #C3, Phoenix, AZ 85051-2517; telephone 602-242-0210; facsimile 602-242-2513. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION**:

### Executive Summary

*The basis for our action*. Section 4(b)(2) of the Act states that the Secretary of the Interior shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

*Why we need to publish a rule*. Under the Act, any species that is determined to be endangered or threatened requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule. This is a proposed rule to designate critical habitat for the Sonoyta mud turtle under the Act. Supplemental documentation includes a draft economic analysis and species status assessment.

### Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether there are threats to the subspecies from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of Sonoyta mud turtle habitat;

(b) What areas, occupied at the time of listing and that contain the physical or biological features essential to the conservation of the subspecies, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are

proposing, including managing for the potential effects of climate change;

(d) What areas not occupied at the time of listing are essential for the conservation of the subspecies and why; and

(e) Current habitat information within the Rio Sonoyta watershed and whether any potential habitat areas there may be essential to the conservation of the Sonoyta mud turtle.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the Sonoyta mud turtle and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the benefits of including or excluding areas that may be impacted.

(6) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts of the designation.

(7) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(8) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(9) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

All comments submitted electronically via <http://www.regulations.gov> will be presented on the website in their entirety as submitted. For comments submitted via hard copy, we will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. You may request

at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

### Previous Federal Actions

The final rule listing the Sonoyta mud turtle as endangered was published in the **Federal Register** on September 20, 2017 (82 FR 43897). All other previous Federal actions are described in the proposed rule to list Sonoyta mud turtle as an endangered species under the Act, published in the **Federal Register** on September 21, 2016 (81 FR 64829).

### Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary of the Interior (*i.e.*, range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.*, migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and

procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the specific features that support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex

combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We will determine whether unoccupied areas are essential for the conservation of the species by considering the life-history, status, and conservation needs of the species. This will be further informed by any generalized conservation strategy, criteria, or outline that may have been developed for the species to provide a substantive foundation for identifying which features and specific areas are essential to the conservation of the species and, as a result, the development of the critical habitat designation. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the species status assessment document and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species, the

recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

#### Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be

expected to increase the degree of threat to the species, or

(2) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the Service may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of "critical habitat."

As discussed in the final rule listing the Sonoyta mud turtle as an endangered species (82 FR 43897; September 20, 2017), there is currently no imminent threat of take attributed to collection or vandalism identified under Factor B (overutilization for commercial, recreational, scientific, or educational purposes) for this subspecies, and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, we next determine whether such designation of critical habitat would not be beneficial to the species. As discussed in our final listing rule, we determined that the present destruction, modification, or curtailment of a species' habitat or range is a threat to the Sonoyta mud turtle. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to the subspecies and would be beneficial, we find that designation of critical habitat is prudent for the Sonoyta mud turtle.

#### Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act, we must find whether critical habitat for the Sonoyta mud turtle is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(1) Data sufficient to perform required analyses are lacking, or

(2) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of "critical habitat."

On September 20, 2017, our final listing rule (82 FR 43897) concluded that critical habitat was not determinable at that time. When critical habitat is not determinable at the time of listing, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)). Therefore, the Act requires that we publish a rule for critical habitat by September 20, 2018.

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. We have reviewed the available information pertaining to the biological needs of the subspecies and habitat characteristics where this subspecies is located. This and other information represent the best scientific data available for the proposed designation of critical habitat for the Sonoyta mud turtle.

#### Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. For example, physical features might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic needed to support the life history of the species. In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

We conducted a species status assessment for Sonoyta mud turtle, which is an evaluation of the best available scientific and commercial data on the status of the subspecies. The

species status assessment report (SSA Report; Service 2017, which is available at <https://www.fws.gov/southwest/es/arizona/Sonoyta.html> and at <http://www.regulations.gov> under Docket No. FWS-R2-ES-2017-0014) is based on a thorough review of the natural history, habitats, ecology, populations, and range of the Sonoyta mud turtle, and risks to the subspecies. The SSA Report provides the scientific information upon which this proposed critical habitat designation is based.

The Sonoyta mud turtle is a freshwater turtle encountered in or near water in an otherwise arid environment that commonly experiences drought and extreme heat (ambient temperatures can exceed 45 degrees Celsius (°C) (113 degrees Fahrenheit (°F)). Sonoyta mud turtles depend on aquatic habitat with adjacent terrestrial habitat for life-history functions. Aquatic habitat consists of streams and natural and manmade ponds with perennial or near-perennial (water present more than 11 months of the year for multiple years) sources of water. Terrestrial habitat consists of riparian areas along water sources that maintain moist soil and a cooler environment than adjacent uplands. Much of the information on resource needs of the Sonoyta mud turtle subspecies is inferred from work on the nominate subspecies, Sonora mud turtle (*Kinosternon sonoriense sonoriense*), and noted accordingly in the text that follows.

Aquatic habitat in ponds and streams is usually shallow water to 2 meters (m) (7 feet (ft)) deep, with a rocky, muddy, or sandy substrate, and emergent or submergent vegetation, or both (NPS 2015, p. 2; Paredes-Aguilar and Rosen 2003, pp. 5–7; Rosen 2003, p. 5; Rosen *et al.* 207, p. 14). Sonoyta mud turtles need perennial or near-perennial surface water for feeding, for protection from predators, to prevent desiccation, and for mating. Hatchling, juvenile, and sub-adult turtles prefer aquatic habitat with shallow water and dense emergent vegetation that provides foraging opportunities as well as protection from predators (Rosen 1986, pp. 14, 36; Rosen and Lowe 1996, p. 11). Emergent aquatic vegetation includes plants such as cattail (*Typha domingensis*), spikerush (*Eleocharis geniculata*), and travelling spikerush (*Eleocharis rostellata*) (Felger *et al.* 1992, pp. 33, 36). Adults will also use shallow water habitat, but prefer aquatic habitat with deeper (up to 2 m (7 ft)) open water (with no or little vegetation growing in the water column), and submerged vegetation for feeding on benthic and plant-crawling invertebrates along the substrate (Rosen 1986, pp. 14, 16; Rosen and Lowe 1996,

p. 11). American bulrush (*Schoenoplectus americanus*), an introduced nonnative plant species, and the native cattails can encroach into open water used by Sonoyta mud turtles. Historically, Sonoyta mud turtles occurred in rivers or cienegas with a natural ecosystem that maintained aquatic vegetation suitable to the Sonoyta mud turtle's needs. However, habitat at some Sonoyta mud turtle locations has been altered from this natural ecosystem to ponded water maintained by water control structures. American bulrush and cattails encroach these ponded sites such that open water is eliminated. Consequently, mechanical removal of American bulrush and cattails may be needed periodically to maintain patches of open water. The submerged aquatic vegetation required for prey includes plants such as holly-leaved water nymph (*Najas marina*), slender pondweed (*Potamogeton pectinatus*), ditch-grass (*Ruppia maritima*), and horned pondweed (*Zannichellia palustris*) (Felger *et al.* 1992, p. 36).

Reduced water levels would reduce overall habitat amount (water and vegetation) and quality, causing crowding and increased competition for remaining, limited resources such as cover and prey (Stanila 2009, p. 45). A reduction in water and emergent vegetation would likely reduce the amount of space and invertebrate prey for Sonoyta mud turtles. Large adult Sonora mud turtles have exhibited site fidelity to specific pools in a stream channel (Hall and Steidl, 2007, p. 410), and although not studied, this could also be true for the Sonoyta mud turtle. As a result, lower water levels could reduce carrying capacity and increase overlap of adult Sonoyta mud turtle territory. Adequate prey allows juvenile turtles to grow rapidly and allows adults to have sufficient lipid content to support reproduction. Poor body condition (*i.e.*, low lipids) may be associated with lower clutch size (total number of eggs produced) and, therefore, lower population growth (Rosen and Lowe 1996, pp. 40–43). Sonoyta mud turtles in dry or low surface water reaches would burrow in channels to escape desiccation for a short period of time. Over time, however, burrows themselves may become too dry; turtles will lose fat reserves due to lack of foraging opportunity. If adult Sonoyta mud turtles mate during or after losing fat reserves, females may not have viable eggs due to lack of nutrition and fat reserves, and eventually turtles will die from either starvation or desiccation.

Potential population-level impacts include lower reproductive rates, reduced recruitment, reduced population growth rate, and changes in distribution.

Sonoyta mud turtles are opportunistic carnivores, feeding primarily on aquatic invertebrates that live on emergent and submergent vegetation or the substrate of ponds and streams (Rosen 1986, pp. 14, 31; Rosen and Lowe 1996, pp. 32–35). Sonoyta mud turtle hatchlings and juveniles feed on littoral invertebrate fauna, while subadults and adults prefer benthic and plant-crawling invertebrates (Hulse 1974, pp. 197–198; Lovich *et al.* 207, pp. 135–136; Rosen 1986, pp. 14, 31; Rosen and Lowe 1996, pp. 32–35; Stanila *et al.* 2008, p. 42). In habitats with poor aquatic invertebrate faunas, Sonoyta mud turtles will shift to omnivorous feeding, including plants and vertebrates such as fish (Rosen and Lowe 1996, pp. 32–35). However, where fish are abundant, Sonoyta mud turtles catch few of them (Rosen and Lowe 1996, p. 32). Sonora mud turtles are also known to consume other vertebrates including toads, and even reptiles and birds when available for capture (Ligon and Stone 2003, entire; Stone *et al.* 2005, entire). Analysis of stomach contents of the Sonora mud turtle revealed animal material represented 69.0–93.6 percent total volume, with plant material making up the remaining volume (Hulse 1974, p. 197). Aquatic invertebrates found in the stomach contents of Sonora mud turtles included members of 11 invertebrate orders such as dragonflies (Anisoptera), caddisflies (Trichoptera), flies (Diptera), beetles (Coleoptera), and aquatic snail species (Basommatophora). Aquatic invertebrates require submergent or emergent vegetation and a variety of prey, such as algae, diatoms, and other microorganisms.

Sonoyta mud turtles need aquatic habitat free of nonnative predators and competitors. Aquatic habitat with nonnative predators, including crayfish (*Orconectes* spp. and *Cherax* spp.), American bullfrogs (*Lithobates catesbeianus*), and sunfish (centrarchids), could decrease population stability or potentially decimate populations of the Sonoyta mud turtle (Drost *et al.* 207, pp. 33–34; Hensley *et al.* 207, pp. 186–187; Fernandez and Rosen 1996, pp. 39–41). These species, along with black bullheads (*Ameiurus melas*), African cichlid fishes (tilapia), western mosquitofish (*Gambusia affinis*), and exotic turtles, compete with mud turtles for food or disrupt the food chain, which could alter the invertebrate community (Taylor *et al.* 1984, pp. 330–

331; Fernandez and Rosen 1996, pp. 39–40; Duncan 2013, p. 1). Such competition, in turn, could decrease type and amount of aquatic invertebrate prey available to Sonoyta mud turtles (Fernandez and Rosen 1996, pp. 39–40).

Because high average annual juvenile survivorship is required for populations of long-lived organisms to maintain population stability (Congdon *et al.* 1993, pp. 831–832; Congdon *et al.* 1994, pp. 405–406), nonnative predators that reduce recruitment into Sonoyta mud turtle populations could cause population declines. Bullfrogs and crayfish are known predators of hatchling and juvenile turtles of the Sonora mud turtle (Fernandez and Rosen 1996, pp. 33–43; Akins and Jones 207, p. 343; Hensley *et al.* 207, pp. 186–187; Schwendiman 2001, p. 39), and would likely eat hatchling Sonoyta mud turtles if introduced. Populations of the Sonora mud turtle have coexisted with moderate and high densities of bullfrogs (Rosen and Schwalbe 2002, p. 230). However, a high density of bullfrogs may reduce population density of mud turtles (van Lobel Sells 1997, p. 343). Crayfish are detrimental to populations of the Sonora mud turtle and not only prey on small mud turtles, but likely compete with them for native aquatic invertebrate food sources (Fernandez and Rosen 1996, pp. 39–40). One study documented cessation of Sonora mud turtle recruitment 2 years after crayfish introduction to an area that had supported a population of approximately 1,000 Sonora mud turtles (Fernandez and Rosen 1996, pp. 40–41). Large sunfish, such as largemouth bass (*Micropterus salmoides*), also have the potential to reduce recruitment in populations of Sonora mud turtles because their large gape (external mouth width) makes it possible for them to prey on hatchling and juvenile Sonoyta mud turtles (Stanila 2009, p. 50). Largemouth bass are known to eat other aquatic turtle species, and Rosen (1987, p. 6) reported the lowest population densities of Sonora mud turtles in habitats with largemouth bass.

Adult and juvenile Sonoyta mud turtles use aquatic habitat with complex structure that provides protection from predators such as root masses, rock features, and undercut banks (Rosen 1986, pp. 14, 16; Rosen and Lowe 1996, p. 11). Shallow water areas with dense emergent vegetation also provides protection from predators for hatchlings, juveniles, and adults. Overhanging riparian vegetation along the stream channel or pond margin and soil burrows under overhanging banks provide some protection from predators for turtles in the water near the

shoreline. Riparian vegetation may also provide some level of protection from terrestrial predators while turtles are out of the water.

Terrestrial habitat that maintains soil moisture for Sonoyta mud turtles occurs in riparian areas along the banks of ponds and streams, and in intermittently dry sections of stream channels. Riparian habitat provides shadier, cooler, and moister conditions than the adjacent upland areas. Sonoyta mud turtles require moist soil for nesting to prevent desiccation of eggs and for estivation (a state of dormancy) sites to prevent desiccation of hatchlings, juveniles, and adults. Riparian vegetation includes plants such as Fremont cottonwood (*Populus fremontii*), Goodding willow (*Salix gooddingii*), honey mesquite (*Prosopis glandulosa*), screwbean mesquite (*P. pubescens*), seepwillow (*Baccharis salicifolia*), greythorn (*Ziziphus obtusifolia*), wolfberry (*Lycium spp.*), salt grass (*Distichlis spicata*), and arrowweed (*Pluchea sericea*) (Felger *et al.* 1992, p. 4).

Sonoyta mud turtles need accessible shoreline without insurmountable rock or artificial vertical barriers to allow for movement between wetted sites, between aquatic habitat and terrestrial nest sites, and between water and estivation (dormancy during drought) sites. Sonora mud turtles in dry or low surface water conditions may either travel along dry intermittent sections of a stream to find water or they will estivate (Hall and Steidl 2007, p. 406; Hensley *et al.* 207, pp. 181–182; Ligon and Stone 2003, pp. 752–753; Stone 2001, pp. 46–49). Sonora mud turtles that live in permanent bodies of water have shown highly aquatic behavior with little terrestrial behavior or movement between water sources, while Sonora mud turtles in more ephemeral habits have been documented moving through or out of dry stream beds to reach wetted pools, for winter hibernation, or for estivation during drought as a drought-survival strategy (Hall and Steidl 2007, pp. 406–408; Hensley *et al.* 207, pp. 181–182; Ligon and Stone 2003, pp. 752–753; Stone 2001, pp. 46–51).

Sonora mud turtles can endure lack of surface water for a short time and have been documented estivating in the wild for 11 to 34 days (Ligon and Stone 2003, p. 752), and once for up to 68 days (Ligon and Stone 2002, entire; Ligon and Stone 2003, p. 753). However, prolonged and recurrent estivation is expected to reduce fitness and increase mortality (Peterson and Stone 2000, pp. 692–698). Terrestrial estivation sites consisted of depressions under

vegetation, soil, or organic matter; in rock crevices; or in soil burrows under overhanging banks of streams or ponds. One study found Sonora mud turtles estivating up to 79 m (259 ft) from a streambed during summer even when water was available, with mud turtles using clumps of vegetation or spaces under large rocks in the terrestrial environment (Ligon and Stone 2003, pp. 752–753).

Estivation has not been verified in the Sonoyta mud turtle, and physiological tolerances for estivation are unknown. However, Sonoyta mud turtles have been found in burrows up to 1 m (3.3 ft) deep in stream banks, presumably using these burrows to escape from predators (Paredes-Aguilar and Rosen 2003, p. 8) or for drought refuge. Further, based on the physiological requirements of the Sonora mud turtle and the arid environment in which the Sonoyta mud turtle lives, we believe that they estivate during times of little or no surface water.

Long-distance movements of Sonora mud turtles exceeding 7 kilometers (5 miles) in straight-line distance occurred between aquatic habitats. Such movements may reduce reproductive isolation and lower the probability of extirpation of populations (Hall and Steilde 2007, p. 408; Hensley *et al.* 207, pp. 181–182; Stone *et al.* 2015, p. 736). Although not well-studied, no movement of Sonoyta mud turtles of these magnitudes has been documented, and restrictions associated with their extreme arid environment may reduce such movements (P. Rosen 2016, pers. comm.). Dispersal habitat along drainages is likely needed to maintain connectivity between populations of the Sonoyta mud turtle on a rangewide scale.

The Sonora mud turtle is known to mate from April to October, and female Sonora and Sonoyta mud turtles lay eggs from mid to late July through September in vegetation litter, soil burrows, and rock crevices up to 52 m (171 ft) away from water (Rosen and Lowe 1996, pp. 21, 23; Stone *et al.* 2015, p. 735; D. Hall 2016, pers. comm.; Rosen 1986, p. 7; A. Owens 2007, pers. comm.; P. Holm 2016, pers. comm.). Eggs may undergo embryonic diapause in the nest for 11 months after being laid, with hatchlings emerging the following year (van Lobel Sells *et al.* 1997, p. 343; Ernst and Lovich 2009, p. 497; Stone *et al.* 2015, p. 735). In mid to late July through September, females leave the water briefly to lay eggs in terrestrial nests that maintain some level of moisture. Three presumed nest sites have been observed for the Sonoyta mud turtle that indicate this subspecies uses nest sites similar to

the Sonora mud turtle. The only potential nesting behavior of the Sonoyta mud turtle observed was a gravid female, “apparently preparing to lay eggs,” digging 15 centimeters (cm) (6 inches (in)) into the soil in a mesquite bosque (cluster of trees along a stream) 9 m (30 ft) from the edge of the pond at Quitobaquito Springs (Rosen and Lowe 1996, p. 23). A second turtle nest site was found in a small cavity (5 by 5 cm (2 by 2 in)) within a 3 m (10 ft) high soil bank that runs next to the spring-fed channel leading to the pond at Quitobaquito Springs (A. Owens 2007, pers. comm.). The third nest site was found in a small depression in soil beneath a piece of tree bark on top of an undercut bank at the edge the pond at Quitobaquito Springs (P. Holm 2016, pers. comm.).

#### *Summary of Essential Physical or Biological Features*

We derive the specific physical or biological features essential for Sonoyta mud turtle from studies of the Sonora mud turtle, used as a proxy, of this subspecies’ habitat, ecology, and life history, as described above. Additional information can be found in the proposed listing rule (81 FR 64829; September 21, 2016). We have determined that the following physical or biological features are essential to the conservation of Sonoyta mud turtle:

(1) Aquatic habitat, such as streams and natural or manmade ponds, with perennial or near-perennial sources of water, containing or including:

(a) Surface water to 2 m (7 ft) deep, with a rocky, muddy, or sandy substrate, and emergent or submergent vegetation, or both;

(b) Surface water free of nonnative predators and competitors, including crayfish, American bullfrogs, and large sunfish;

(c) Shallow water areas with dense emergent vegetation (e.g., cattail, spikerush, and travelling spikerush);

(d) Access to deeper open water in ponds, and submerged vegetation (e.g., holly-leaved water nymph, slender pondweed, ditch-grass, and horned pondweed); and

(e) Areas with complex structure, including protective shelter sites such as root masses, rock features, and undercut banks.

(2) Aquatic invertebrate prey base (e.g., Anisoptera, Trichoptera, Diptera, Coleoptera, aquatic snail species) and their corresponding habitat, including submergent or emergent vegetation and a variety of forage, and prey such as algae, diatoms, other microorganisms.

(3) Terrestrial, riparian habitat, adjacent to suitable aquatic habitat, containing or including:

(a) Accessible shoreline for Sonoyta mud turtles without insurmountable rock or artificial vertical barriers to allow movement between wetted sites, between aquatic habitat and terrestrial nest sites, and between aquatic habitat and estivation sites;

(b) Riparian areas that maintain soil moisture to prevent desiccation of eggs and provide estivation sites, located along the banks of ponds and streams with riparian vegetation (e.g., cottonwood, willow, seepwillow, mesquite, greythorn, wolfberry, salt grass, arrowweed); and

(c) Estivation and nesting sites, including depressions under vegetation, soil, or organic matter; rock crevices; and soil burrows under overhanging banks of streams or ponds, that are available year-round.

#### **Special Management Considerations or Protection**

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of the Sonoyta mud turtle may require special management considerations or protection to reduce the following threats: (1) Water loss; (2) loss of riparian habitat; (3) reduction of invertebrate prey; (4) presence of nonnative species; and (5) land management activities incompatible with maintaining needed habitat (such as dredging).

Management activities that could ameliorate these threats and protect the quantity and quality of the aquatic and riparian habitat include, but are not limited to: (1) Maximizing surface water and aquatic habitat available through structure maintenance, such as berms, lining ponds and spring runs, and removing sediment; (2) decreasing groundwater pumping to maintain surface water that supports aquatic and riparian habitat, as well as the invertebrate prey base; (3) controlling and removing introduced nonnative plant species, such as American bulrush, to maintain aquatic habitat; and (4) controlling and removing introduced nonnative predators and competitors, such as crayfish, American bullfrogs, and large sunfish.

#### **Criteria Used To Identify Critical Habitat**

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species that are essential for the species’ conservation to be considered for designation as critical habitat. We are proposing to designate critical habitat in areas within the United States that are occupied by Sonoyta mud turtle at the time we published the final rule to list the subspecies as endangered (September 20, 2017). For purposes of this proposed rule, we define “occupied habitat” for Sonoyta mud turtle as areas with a positive survey records since 2000. This definition of occupied is based on the average life span of the subspecies (ranging from 12 to 17 years). Since Sonoyta mud turtles live approximately 12 to 17 years, we used records from this time period and concluded that a portion of the turtles found during this time would still be alive, and, therefore, we consider the site occupied. We are not currently proposing to designate any areas outside the geographical area occupied by the subspecies because we did not find any such areas that were essential for the conservation of the subspecies, as we are not aware of any other areas within the historic range of the subspecies that maintain perennial or nearly perennial surface water.

Sources of occupancy data on the Sonoyta mud turtle are monitoring data from Organ Pipe Cactus National Monument (NPS 2002–2016, p. 1). We obtained information on ecology and habitat requirements of the Sonoyta mud turtle from multiple sources, as identified in the SSA Report. For mapping of proposed critical habitat, we used Organ Pipe Cactus National Monument geo-referenced data of the water features used by Sonoyta mud turtles at Quitobaquito. In addition, we used satellite imagery available in ArcGIS to delineate riparian areas surrounding the surface water habitat.

#### **Areas Occupied at the Time of Listing**

We are proposing for designation as critical habitat lands that we have determined are occupied at the time of listing (in this case, the date we published the final listing rule:



September 20, 2017) and contain one or more of the physical or biological features to support life-history processes essential to the conservation of the subspecies. The proposed critical habitat designation includes the only known extant population of Sonoyta mud turtles in the United States, within the Organ Pipe Cactus National Monument. This is also the only known population in the United States.

We propose to designate one critical habitat unit based on one or more of the physical or biological features being present to support the life-history processes of the Sonoyta mud turtle.

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the Proposed Regulation Promulgation section. We include more detailed information on the boundaries of the critical habitat designation in the Proposed Critical Habitat Designation section, below. We will make the coordinates or plot points or both on which the map is based available to the public on [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov) at Docket No. FWS-R2-ES-2017-0014, on our internet site at <http://www.fws.gov/southwest/es/arizona>, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the Sonoyta mud turtle. However, manmade water conveyance structures within the proposed designated critical habitat are part of the designation and are needed to manage the existing habitat. The current occupied unit includes a manmade spring enclosure and spring channel that convey water to a manmade pond surrounded by a manmade berm. The spring channel not only conveys water to the pond but also serves as habitat for the subspecies. Therefore, all of these manmade features are considered critical habitat. The scale of the map we prepared under the

parameters for publication within the Code of Federal Regulations may not reflect the exclusion of developed lands otherwise excluded from critical habitat. Any such lands inadvertently left inside critical habitat boundaries shown on the map of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

**Proposed Critical Habitat Designation**

We are proposing to designate approximately 12.28 acres (ac) (4.97 hectares (ha)) in one unit as critical habitat for the Sonoyta mud turtle. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Sonoyta mud turtle.

TABLE 1—OCCUPANCY, LAND OWNERSHIP, AND SIZE OF SONOYTA MUD TURTLE PROPOSED CRITICAL HABITAT  
[Area estimates reflect all land within critical habitat unit boundaries]

Unit name	Occupied at time of listing?	Currently occupied?	Ownership	Size (ha)	Size (ac)
Quitobaquito .....	Yes .....	Yes .....	National Park Service .....	4.97	12.28

Below, we present a brief description of the Quitobaquito Unit, and reasons why it meets the definition of critical habitat for the Sonoyta mud turtle.

*Quitobaquito Unit*

This unit consists of 12.28 ac (4.97 ha) in the Rio Sonoyta watershed of Organ Pipe Cactus National Monument. This unit is within the geographic area occupied by the subspecies at the time of listing and contains at least one of the physical or biological features essential to the conservation of the Sonoyta mud turtle.

Aquatic habitat within this unit consists of the two Quitobaquito springs, the piped water that connects the two springs, a manmade spring channel that connects the springs to Quitobaquito pond, and a manmade pond with a perennial source of water. The spring channel and pond both have shallow water habitat, an aquatic invertebrate prey base, and no nonnative predators. The pond includes surface water up to 107 cm (42 in) deep with a muddy substrate; dense emergent and submergent vegetation; access to

deeper open water in a pond for feeding along the substrate; and areas with complex structure and protective shelter sites, including root masses and undercut banks.

Terrestrial habitat within this unit consists of adjacent, accessible shoreline along the stream channel and around Quitobaquito pond without insurmountable rock or artificial vertical barriers to movement of the Sonoyta mud turtle, as well as riparian areas, located along the banks of the pond, stream channel, and berm around the pond. These terrestrial habitat components maintain soil moisture to prevent desiccation of eggs and estivating turtles, and include estivation and nesting sites, including depressions under vegetation, soil, organic matter, and soil burrows under overhanging banks of the pond, that are available year-round.

The physical or biological features in this unit may require special management considerations or protection to address threats from loss of surface water due to groundwater pumping, berm leaking, aquatic

vegetation control, and sedimentation removal in the pond. This unit is entirely within the Organ Pipe Cactus National Monument, and the National Park Service (NPS) manages the habitat to support the Sonoyta mud turtle population. This unit is not being considered for exclusion or exemption.

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final rule adopting a new definition of “destruction or adverse modification” on February 11, 2016 (81 FR 7214). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

- (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or
- (2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define “reasonable and prudent alternatives” (at 50 CFR 402.02) as alternative actions identified during consultation that:

- (1) Can be implemented in a manner consistent with the intended purpose of the action,

- (2) Can be implemented consistent with the scope of the Federal agency’s legal authority and jurisdiction.

- (3) Are economically and technologically feasible, and

- (4) Would, in the Service Director’s opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency’s discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

#### *Application of the “Adverse Modification” Standard*

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that result in a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of the Sonoyta mud turtle. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of this subspecies or that preclude or significantly delay development of such features. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may

destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Sonoyta mud turtle. These activities include, but are not limited to:

- (1) Actions that would decrease the amount of water available to ponds and streams used by Sonoyta mud turtles. Such actions could include, but are not limited to, groundwater pumping. Groundwater pumping could decrease the amount of groundwater that infiltrates streamflow so that streams become smaller, intermittent, or dry, and thereby could reduce the amount of space, prey, nest sites, and cover available for Sonoyta mud turtles.

- (2) Actions that would maintain habitat for the Sonoyta mud turtles. Such actions could include the maintenance of springheads, stream or channel courses, and ponds. Maintaining springheads and manmade or natural spring channels will maximize the amount of surface water available to Sonoyta mud turtles. All ponds that support Sonoyta mud turtles are manmade and require constant management to remove sediment that builds up and to stop encroaching vegetation from completely filling in the ponds.

#### **Exemptions**

##### *Application of Section 4(a)(3) of the Act*

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: “The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.” There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation.

#### **Consideration of Impacts Under Section 4(b)(2) of the Act**

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat.

The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

We have not considered any areas for exclusion from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis (DEA) concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**, above).

#### Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.” The “without critical habitat” scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.*, under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.*, conservation of the species and its habitat incurred

regardless of whether critical habitat is designated). The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary section 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Sonoyta mud turtle (IEc 2017, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.*, absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the subspecies. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether units are unoccupied by the subspecies and may require additional management or conservation efforts as a result of the critical habitat designation for the subspecies, which may incur incremental economic impacts. This screening analysis, combined with the

information contained in our IEM, is what we consider our DEA of the proposed critical habitat designation for the Sonoyta mud turtle and is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the Sonoyta mud turtle, first we identified, in the IEM (Service 2017), probable incremental economic impacts associated with the following categories of activities: (1) Federal lands management (National Park Service, Organ Pipe Cactus National Monument); (2) groundwater pumping; and (3) Customs and Border Protection. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; the Act's designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Sonoyta mud turtle is present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the subspecies, because the subspecies is listed as an endangered species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that result from the subspecies being listed and those that would be attributable to the critical habitat designation (*i.e.*, difference between the jeopardy and adverse modification standards) for the Sonoyta mud turtle's critical habitat. Because the designation of critical

habitat for the Sonoyta mud turtle is being proposed soon after the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the subspecies being listed and those which would result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the subspecies; and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the Sonoyta mud turtle would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this subspecies. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the Sonoyta mud turtle consists of a single unit currently occupied by the subspecies. We are not proposing to designate any units of unoccupied habitat. The proposed Quitobaquito critical habitat unit totals 12.28 ac (4.97 ha) and is entirely contained within federally owned land at Organ Pipe Cactus National Monument. In this area, any actions that may affect the subspecies or its habitat would also affect designated critical habitat, and it is unlikely that any additional recommendations or project modifications to avoid adversely modifying critical habitat above those we would recommend for avoiding jeopardy. Therefore, only administrative costs of conducting any section 7 consultation are expected in all of the proposed critical habitat designation. While this additional analysis will require time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs would predominantly be administrative in nature and would not be significant.

We anticipate minimal change in behavior at Organ Pipe Cactus National Monument if we designate critical habitat for the Sonoyta mud turtle. Based on Organ Pipe Cactus National Monument's history of consultation under section 7 of the Act and on the consultation history of the most comparable species, desert pupfish (*Cyprinodon macularius*), we anticipate

that this critical habitat designation may result in a maximum of two additional consultations per decade.

As we stated earlier, we are soliciting data and comments from the public on the draft economic analysis, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this subspecies.

#### Exclusion

##### *Exclusions Based on Economic Impacts*

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared an analysis of the probable economic impacts of the proposed critical habitat designation and related factors. In our DEA, we did not identify any ongoing or future actions that would warrant additional recommendations or project modifications to avoid adversely modifying critical habitat above those we would recommend for avoiding jeopardy to the subspecies, and we anticipate minimal change in behavior at Organ Pipe Cactus National Monument due to the designation of critical habitat for Sonoyta mud turtle (IEc 2017).

At this time, we are not considering any exclusion based on economic impacts from the proposed designation of critical habitat for Sonoyta mud turtle. During the development of a final designation, we will consider any additional economic impact information we receive during the public comment period; as such, areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

##### *Exclusions Based on National Security Impacts or Homeland Security Impacts*

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the Sonoyta mud turtle are not owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we

anticipate no impact on national security. Consequently, the Secretary does not intend to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

##### *Exclusions Based on Other Relevant Impacts*

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether there are permitted conservation plans covering the subspecies in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans on non-federal lands for the Sonoyta mud turtle, and the proposed designation does not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or HCPs from this proposed critical habitat designation. Accordingly, the Secretary does not intend to exercise his discretion to exclude any areas from the final designation based on other relevant impacts.

#### Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270) and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of at least three appropriate and independent specialists regarding the SSA Report, which informed this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in Sonoyta or Sonora mud turtle life history, needs, habitat, and stressors (factors negatively affecting the species). We will consider all comments and information we receive during the comment period on this proposed rule during our preparation of a final designation.

Accordingly, the final decision may differ from this proposal.

### Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received by the date specified above in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

### Required Determinations

#### *Regulatory Planning and Review* (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

#### *Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs*

This proposed rule is not an Executive Order (E.O.) 13771 (82 FR 9339, February 3, 2017) regulatory action because this proposed rule is not significant under E.O. 12866.

#### *Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any

proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory

requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if adopted, this proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if adopted, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

#### *Energy Supply, Distribution, or Use—Executive Order 13211*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that the designation of this proposed critical habitat would significantly affect energy supplies, distribution, or use because the proposed critical habitat unit is entirely contained within Organ Pipe Cactus National Monument. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

#### *Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings: (1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C.

658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because we are proposing to designate only a single critical habitat unit that is entirely

owned by the National Park Service. Therefore, a Small Government Agency Plan is not required.

#### *Takings—Executive Order 12630*

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Sonoyta mud turtle in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this proposed designation of critical habitat for Sonoyta mud turtle does not pose significant takings implications for lands within or affected by the designation.

#### *Federalism—Executive Order 13132*

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in Arizona. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, this proposed rule would not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these

governments because the areas that contain the features essential to the conservation of the subspecies are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the subspecies are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

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

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the E.O. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the subspecies, the proposed rule identifies the elements of physical or biological features essential to the conservation of the subspecies. The proposed areas of critical habitat are presented on a map, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

#### *Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). Because this proposed critical habitat does not occur on lands within the U.S. Court of Appeals for the Tenth Circuit, we are not conducting an environmental analysis.

*Government-to-Government Relationship With Tribes*

In accordance with the President’s memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior’s manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly

with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. The Quitobaquito Pond is a culturally significant site for the Tohono O’odham. We will request a meeting with the Tohono O’odham Nation to inform them of this proposed rule to designate critical habitat.

We determined that there are no tribal lands that were occupied by the Sonoyta mud turtle at the time of listing that contain the features essential for conservation of the subspecies, and no tribal lands unoccupied by the Sonoyta mud turtle that are essential for the conservation of the subspecies. Therefore, we are not proposing to designate critical habitat for the Sonoyta mud turtle on tribal lands.

*Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written,

which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**References Cited**

A complete list of references cited in this proposed rule is available on the internet at <http://www.regulations.gov> and upon request from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this proposed rule are the staff members of the Arizona Ecological Services Field Office.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

- 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

- 2. Amend § 17.11(h) by revising the entry for “Turtle, Sonoyta mud” under “REPTILES” in the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* REPTILES	*	*	*	*
Turtle, Sonoyta mud .....	<i>Kinosternon sonoriense longifemorale</i> .	Wherever found .....	E	82 FR 43897, 9/20/2017; 50 CFR 17.95(c). <sup>CH</sup>
*	*	*	*	*

- 3. Amend § 17.95(c) by adding an entry for “Sonoyta Mud Turtle (*Kinosternon sonoriense longifemorale*),” immediately following the entry for “Plymouth Red-bellied Turtle (*Chrysemys rubriventris bangsi*)”, to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

\* \* \* \* \*  
(c) *Reptiles*.  
\* \* \* \* \*

Sonoyta Mud Turtle (*Kinosternon sonoriense longifemorale*)

- (1) Critical habitat unit is depicted for Pima County, Arizona, on the map below.

- (2) Within this area, the physical or biological features essential to the conservation of the Sonoyta mud turtle consist of the following components:

(j) Aquatic habitat, such as streams and natural or manmade ponds, with perennial or near-perennial sources of water, containing or including:

(A) Surface water to 2 meters (7 feet) deep, with a rocky, muddy, or sandy substrate, and emergent or submergent vegetation, or both;

(B) Surface water free of nonnative predators and competitors, including crayfish, American bullfrogs, and large sunfish;

(C) Shallow water areas with dense emergent vegetation (*e.g.*, cattail, spikerush, and travelling spikerush);

(D) Access to deeper open water in ponds, and submerged vegetation (*e.g.*, holly-leaved water nymph, slender pondweed, ditch-grass, and horned pondweed); and

(E) Areas with complex structure, including protective shelter sites such as root masses, rock features, and undercut banks.

(ii) Aquatic invertebrate prey base (*e.g.*, Anisoptera, Trichoptera, Diptera, Coleoptera, aquatic snail species) and their corresponding habitat, including submergent or emergent vegetation and a variety of forage, and prey such as algae, diatoms, other microorganisms.

(iii) Terrestrial, riparian habitat, adjacent to suitable aquatic habitat, containing or including:

(A) Accessible shoreline for Sonoyta mud turtles without insurmountable rock or artificial vertical barriers to allow movement between wetted sites, between aquatic habitat and terrestrial nest sites, and between aquatic habitat and estivation sites;

(B) Riparian areas that maintain soil moisture to prevent desiccation of eggs and provide estivation sites, located along the banks of ponds and streams with riparian vegetation (*e.g.*,

cottonwood, willow, seepwillow, mesquite, greythorn, wolfberry, salt grass, arrowweed); and

(C) Estivation and nesting sites, including depressions under vegetation, soil, or organic matter; rock crevices; and soil burrows under overhanging banks of streams or ponds, that are available year-round.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [Insert effective date of final rule]. However, the spring enclosure, the manmade pond, the manmade channel that connects the springs to the pond, and the piped water that connects the two springs within the designated critical habitat are part of the designation.

(4) *Critical habitat map units.* Data layers defining map unit were developed using ESRI ArcGIS mapping software along with various spatial layers. We used ground-truthed data provided by Organ Pipe Cactus National Monument staff that depicts all aquatic habitat used by the Sonoyta mud turtle, including Quitobaquito Pond and moat, the two Quitobaquito springs, the manmade channel that connects the springs to the pond, and the piped water that connects the two springs. For terrestrial, we used satellite imagery available in ArcGIS to delineate the riparian areas surrounding the surface water habitat. World Imagery used from ArcGIS provides 1 meter or better satellite and aerial imagery in many parts of the world and lower resolution satellite imagery worldwide. The map includes 15m TerraColor 0.3m resolution imagery at this map scale of 1:6,000. Additionally, imagery at

different resolutions has been contributed by the GIS User Community. ArcGIS was also used to calculate area hectares and acres, and was used to determine longitude and latitude coordinates in decimal degrees. The coordinate system used in mapping and calculating area and locations within the unit was Universal Transverse Mercator (UTM) conformal projection with 1983 North American Datum in Zone 12. The map in this entry, as modified by any accompanying regulatory text, establishes the boundaries of the critical habitat designation. The coordinates or plot points or both on which the map is based are available to the public at <http://www.fws.gov/southwest/es/arizona/>, at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2017-0014, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

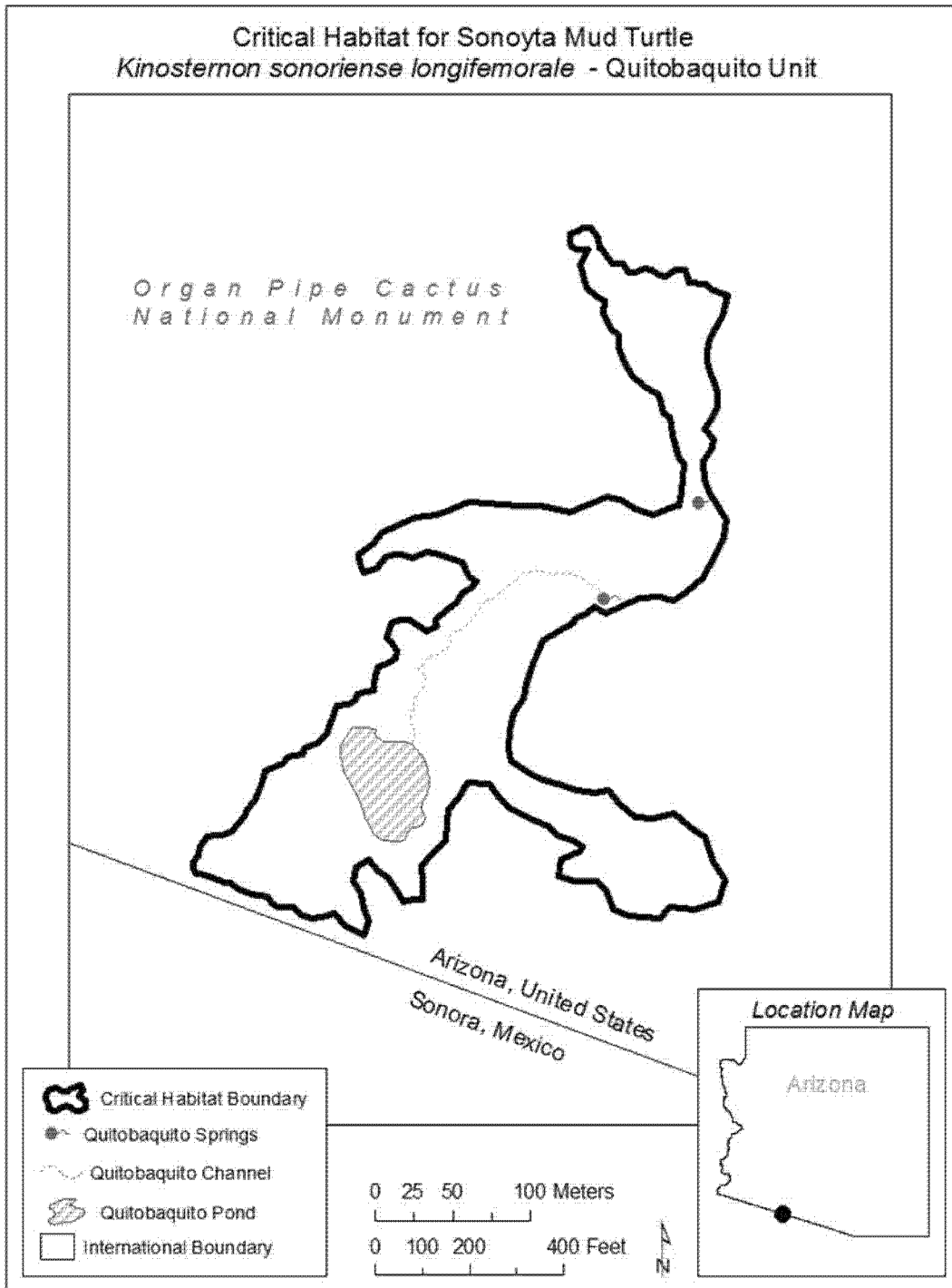
(5) Quitobaquito Unit, Pima County, Arizona.

(i) *General description:* This unit consists of approximately 12.28 acres (4.97 hectares) in the Rio Sonoyta watershed in Pima County, and is composed entirely of Federal land owned by the National Park Service on Organ Pipe Cactus National Monument. The unit includes Quitobaquito Pond, the two Quitobaquito springs, the manmade channel that connects the springs to the pond, and the piped water that connects the two springs and surrounding riparian habitat.

(ii) Unit map follows:

**BILLING CODE 4333-15-P**





\* \* \* \* \*

Dated: October 11, 2018.

**James W. Kurth,***Deputy Director, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2018-26388 Filed 12-4-18; 8:45 am]

BILLING CODE 4333-15-C

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 180831813-8813-01]

RIN 0648-XG471

**Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; 2019 and 2020 Harvest Specifications for Groundfish****AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes 2019 and 2020 harvest specifications, apportionments, and Pacific halibut prohibited species catch limits for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits for groundfish during the 2019 and 2020 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

**DATES:** Comments must be received by January 7, 2019.**ADDRESSES:** Submit comments on this document, identified by NOAA-NMFS-2018-0103, by either of the following methods:

- *Federal e-Rulemaking Portal:* Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0103](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0103), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
  - *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.
- Instructions:* NMFS may not consider comments if they are sent by any other

method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record, and NMFS will post the comments for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (Final EIS), Record of Decision (ROD) for the Final EIS, the annual Supplementary Information Reports (SIRs) to the Final EIS, and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action may be obtained from <http://www.regulations.gov> or from the Alaska Region website at <https://alaskafisheries.noaa.gov>. An updated SIR for the final 2019 and 2020 harvest specifications will be available from the same sources. The final 2017 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the GOA, dated November 2017, is available from the North Pacific Fishery Management Council (Council) at 605 West 4th Avenue, Suite 306, Anchorage, AK 99501, phone 907-271-2809, or from the Council's website at <http://www.npfmc.org>. The 2018 SAFE report for the GOA will be available from the same source.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the GOA groundfish fisheries in the exclusive economic zone (EEZ) of the GOA under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600, 679, and 680.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify the total allowable catch (TAC) for each target species, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) (§ 679.20(a)(1)(i)(B)). Section 679.20(c)(1) further requires NMFS to publish and solicit public comment on proposed annual TACs and

apportionments thereof, Pacific halibut prohibited species catch (PSC) limits, and seasonal allowances of pollock and Pacific cod. The proposed harvest specifications in Tables 1 through 19 of this rule satisfy these requirements. For 2019 and 2020, the sum of the proposed TAC amounts is 375,280 mt.

Under § 679.20(c)(3), NMFS will publish the final 2019 and 2020 harvest specifications after (1) considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its December 2018 meeting, (3) considering information presented in the 2019 SIR that assesses the need to prepare a Supplemental EIS (see **ADDRESSES**), and (4) considering information presented in the final 2018 SAFE report prepared for the 2019 and 2020 groundfish fisheries.

**Other Actions Affecting or Potentially Affecting the 2019 and 2020 Harvest Specifications***Amendment 106: Reclassify Squid as an Ecosystem Species*

On July 6, 2018, NMFS published the final rule to implement Amendment 106 to the FMP (83 FR 31460). This rule reclassified squid in the FMP as an "Ecosystem Component" species, which is a category of non-target species that are not in need of conservation and management. Accordingly, NMFS will no longer set an Overfishing Level (OFL), acceptable biological catch (ABC), and TAC for squid in the GOA groundfish harvest specifications, beginning with the proposed 2019 and 2020 harvest specifications.

Amendment 106 prohibits directed fishing for squid, while maintaining recordkeeping and reporting requirements for squid. Amendment 106 also establishes a squid maximum retainable amount when directed fishing for groundfish species at 20 percent to discourage targeting squid species.

*Rulemaking To Prohibit Directed Fishing for American Fisheries Act (AFA) and Crab Rationalization (CR) Program Sideboard Limits*

On August 16, 2018, NMFS published a proposed rule (83 FR 40733) that would modify regulations for the AFA Program and CR Program participants subject to limits on the catch of specific species (sideboard limits) in the GOA. Sideboard limits are intended to prevent participants who benefit from receiving exclusive harvesting privileges in a particular fishery from shifting effort into other fisheries.

Specifically, the proposed rule would primarily establish regulations to prohibit directed fishing for sideboard

limits for specific groundfish species or species groups, rather than prohibiting directed fishing for AFA and CR Program sideboard limits through the GOA annual harvest specifications. The proposed rule would streamline and simplify NMFS's management of applicable groundfish sideboard limits. Currently, NMFS calculates numerous AFA Program and CR Program sideboard limits as part of the annual GOA groundfish harvest specifications process and publishes these limits in the **Federal Register**. Concurrently, NMFS prohibits directed fishing for the majority of the groundfish sideboard limits because most limits are too small to support directed fishing. Rather than continue this annual process, this action proposes to revise regulations to prohibit directed fishing in regulation for most AFA Program and CR Program groundfish sideboard limits. NMFS would no longer calculate and publish AFA Program and CR Program sideboard limit amounts for most groundfish species in the annual GOA harvest specifications. If the final rulemaking implementing these changes is effective prior to the publication of the final 2019 and 2020 harvest specifications, NMFS would no longer publish the majority of the sideboard limits contained in Tables 13 and 15 of this proposed action.

#### **Proposed ABC and TAC Specifications**

At the October 2018 Council meeting, the Council, its Scientific and Statistical Committee (SSC), and its Advisory Panel (AP) reviewed the most recent biological and harvest information about the condition of groundfish stocks in the GOA. This information was compiled by the GOA Groundfish Plan Team (Plan Team) and presented in the final 2017 SAFE report for the GOA groundfish fisheries, dated November 2017 (see **ADDRESSES**). The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team recommends—and the SSC sets—an OFL and ABC for each species or species group. The amounts proposed for the 2019 and 2020 OFLs and ABCs are based on the 2017 SAFE report. The AP and Council recommended that the proposed 2019 and 2020 TACs be set equal to proposed ABCs for all species and species groups, with the exception of the species categories further discussed below. The proposed OFLs, ABCs, and TACs could be changed in

the final harvest specifications depending on the most recent scientific information contained in the final 2018 SAFE report. The draft stock assessments that will comprise, in part, the 2018 SAFE report are available at <https://www.npfinc.org/fishery-management-plan-team/goa-bsai-groundfish-plan-team/>. The final SAFE report will be available from the same source.

In November 2018, the Plan Team will update the 2017 SAFE report to include new information collected during 2018, such as NMFS stock surveys, revised stock assessments, and catch data. The Plan Team will compile this information and present the draft 2018 SAFE report at the December 2018 Council meeting. At that meeting, the SSC and the Council will review the 2018 SAFE report, and the Council will approve the 2018 SAFE report. The Council will consider information in the 2018 SAFE report, recommendations from the November 2018 Plan Team meeting and December 2018 SSC and AP meetings, public testimony, and relevant written public comments in making its recommendations for the final 2019 and 2020 harvest specifications. Pursuant to § 679.20(a)(2) and (3), the Council could recommend adjusting the TACs if warranted based on the biological condition of groundfish stocks or a variety of socioeconomic considerations, or if required to cause the sum of TACs to fall within the optimum yield range.

In previous years, the most significant changes (relative to the amount of assessed tonnage of fish) to the OFLs and ABCs from the proposed to the final harvest specifications have been based on the most recent NMFS stock surveys. These surveys provide updated estimates of stock biomass and spatial distribution, and changes to the models used for producing stock assessments. NMFS scientists presented updated and new survey results, potential changes to assessment models, and accompanying, preliminary stock estimates at the September 2018 Plan Team meeting, and the SSC reviewed this information at the October 2018 Council meeting. The species with possible significant model changes are demersal shelf rockfish, northern rockfish, thornyhead rockfish, and sharks. Model changes can result in changes to final OFLs, ABCs, and TACs.

In November 2018, the Plan Team will consider updated stock assessments for groundfish, which will be included in the draft 2018 SAFE report. If the 2018 SAFE report indicates that the stock biomass trend is increasing for a species, then the final 2019 and 2020

harvest specifications for that species may reflect an increase from the proposed harvest specifications. Conversely, if the 2018 SAFE report indicates that the stock biomass trend is decreasing for a species, then the final 2019 and 2020 harvest specifications may reflect a decrease from the proposed harvest specifications.

The proposed 2019 and 2020 OFLs, ABCs, and TACs are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. The FMP specifies the tiers to be used to compute OFLs and ABCs. The tiers applicable to a particular stock or stock complex are determined by the level of reliable information available to the fisheries scientists. This information is categorized into a successive series of six tiers to define OFL and ABC amounts, with Tier 1 representing the highest level of information quality available and Tier 6 representing the lowest level of information quality available. The Plan Team used the FMP tier structure to calculate OFLs and ABCs for each groundfish species. The SSC adopted the proposed 2019 and 2020 OFLs and ABCs recommended by the Plan Team for all groundfish species. The Council adopted the SSC's OFL and ABC recommendations and the AP's TAC recommendations. These amounts have changed from the final 2019 harvest specifications published in the **Federal Register** on March 1, 2018 (83 FR 8768) as a result of the removal of squid as a specified species. This results in an OFL reduction of 1,516 mt, and ABC and TAC reductions of 1,137 mt.

#### *Specification and Apportionment of TAC Amounts*

The Council recommended proposed 2019 and 2020 TACs that are equal to proposed ABCs for all species and species groups, with the exception of pollock in the Western and Central GOA and the West Yakutat District of the Eastern GOA, Pacific cod, shallow-water flatfish in the Western GOA, arrowtooth flounder, flathead sole in the Western and Central GOA, "other rockfish" in Southeast Outside (SEO) District, and Atka mackerel. The combined Western, Central, and West Yakutat pollock TACs and GOA Pacific cod TACs are set to account for the State of Alaska's (State's) guideline harvest levels (GHLs) for the State water pollock and Pacific cod fisheries so that the ABCs are not exceeded. The shallow-water flatfish, arrowtooth flounder, and flathead sole

TACs are set to allow for increased harvest opportunities for these target species while conserving the halibut PSC limit for use in other fisheries. The “other rockfish” TAC is set to reduce the potential amount of discards of the species in that complex. The Atka mackerel TAC is set to accommodate incidental catch amounts in other fisheries. These reductions are described below.

NMFS’ proposed apportionments of groundfish species are based on the distribution of biomass among the regulatory areas under which NMFS manages the species. Additional regulations govern the apportionment of pollock, Pacific cod, and sablefish. Additional detail on these apportionments are described below, and briefly summarized here.

The ABC for the pollock stock in the combined Western and Central Regulatory Areas and the West Yakutat District of the Eastern Regulatory Area (W/C/WYK) includes the amount for the GHL established by the State for the Prince William Sound (PWS) pollock fishery. The Plan Team, SSC, AP, and Council recommended that the sum of all State water and Federal water pollock removals from the GOA not exceed ABC recommendations. For 2019 and 2020, the SSC recommended and the Council recommended the combined W/C/WYK pollock ABC, including the amount to account for the State’s PWS GHL. At the November 2017 Plan Team meeting, State fisheries managers recommended setting the PWS GHL at 2.5 percent of the annual W/C/WYK pollock ABC. For 2019, this yields a PWS pollock GHL of 2,664 mt, a decrease from the 2018 PWS GHL of 4,037 mt. After accounting for PWS GHL, the 2019 and 2020 pollock ABC for the combined W/C/WYK areas is then apportioned between four statistical areas (Areas 67, 620, 630, and 640) as both ABCs and TACs, as described below and detailed in Table 1. The total ABCs and TACs for the four statistical areas, plus the State GHL, do not exceed the combined W/C/WYK ABC. The proposed W/C/WYK 2019 and 2020 pollock ABC is 106,569 mt, and the proposed TAC is 103,905 mt.

Apportionments of pollock to the W/C/WYK management areas are

considered to be “apportionments of annual catch limit (ACLs)” rather than “ABCs.” This more accurately reflects that such apportionments address management, rather than biological or conservation, concerns. In addition, apportionments of the ACL in this manner allow NMFS to balance any transfer of TAC among Areas 67, 620, and 630 pursuant to § 679.20(a)(5)(iv)(B) to ensure that the combined W/C/WYK ACL, ABC, and TAC are not exceeded.

NMFS proposes pollock TACs in the Western (Area 610), Central (Areas 620 and 630), and the West Yakutat District (Area 640) and the SEO District (Area 650) of the Eastern Regulatory Area of the GOA (see Table 1). NMFS also proposes seasonal apportionment of the annual pollock TAC in the Western and Central Regulatory Areas of the GOA between Statistical Areas 67, 620, and 630. These apportionments are divided equally among each of the following four seasons: the A season (January 20 through March 10), the B season (March 10 through May 31), the C season (August 25 through October 1), and the D season (October 1 through November 1) (§§ 679.23(d)(2)(i) through (iv), and 679.20(a)(5)(iv)(A) and (B)). Additional detail is provided below; Table 2 lists these amounts.

The proposed 2019 and 2020 Pacific cod TACs are set to accommodate the State’s GHLS for Pacific cod in State waters in the Western and Central Regulatory Areas, as well as in PWS. The Plan Team, SSC, AP, and Council recommended that the sum of all State water and Federal water Pacific cod removals from the GOA not exceed ABC recommendations. Therefore, the proposed 2019 and 2020 Pacific cod TACs are less than the proposed ABCs by the following amounts: (1) Western GOA, 2,290 mt; (2) Central GOA, 1,917 mt; and (3) Eastern GOA, 425 mt. These amounts reflect the State’s 2019 and 2020 GHLS in these areas, which are 30 percent of the Western GOA proposed ABC, and 25 percent of the Eastern and Central GOA proposed ABCs.

NMFS proposes Pacific cod TACs in the Western, Central, and Eastern GOA (see Table 1). NMFS also proposes seasonal apportionments of the Pacific cod TAC in the Western and Central Regulatory Areas. Sixty percent of the

annual TAC is apportioned to the A season for hook-and-line, pot, and jig gear from January 1 through June 7, and for trawl gear from January 20 through June 10. Forty percent of the annual TAC is apportioned to the B season for jig gear from June 10 through December 31, for hook-and-line and pot gear from September 1 through December 31, and for trawl gear from September 1 through November 1 (§§ 679.23(d)(3) and 679.20(a)(12)). The Western and Central GOA Pacific cod TACs are allocated among various gear and operational sectors. Additional detail is provided below; Table 3 lists the amounts apportioned to each sector.

The Council’s recommendation for sablefish area apportionments takes into account the prohibition on the use of trawl gear in the SEO District of the Eastern Regulatory Area (§ 679.7(b)(1)) and makes available 5 percent of the combined Eastern Regulatory Area TACs to vessels using trawl gear for use as incidental catch in other trawl groundfish fisheries in the WYK District (§ 679.20(a)(4)(i)). Additional detail is provided below. Tables 4 and 5 list the proposed 2019 and 2020 allocations of the sablefish TAC to fixed gear and trawl gear in the GOA.

For 2019 and 2020, the Council recommends and NMFS proposes the OFLs, ABCs, and TACs listed in Table 1. The proposed ABCs reflect harvest amounts that are less than the specified overfishing levels. Table 1 lists the proposed 2019 and 2020 OFLs, ABCs, TACs, and area apportionments of groundfish in the GOA. These amounts are consistent with the biological condition of groundfish stocks as described in the 2017 SAFE report, and adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range. The sum of the proposed TACs for all GOA groundfish is 375,280 mt for 2019 and 2020, which is within the OY range specified by the FMP. These proposed amounts and apportionments by area, season, and sector are subject to change pending consideration of the 2018 SAFE report and the Council’s recommendations for the final 2019 and 2020 harvest specifications during its December 2018 meeting.

TABLE 1—PROPOSED 2019 AND 2020 OFLs, ABCs, AND TACs OF GROUND FISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, AND EASTERN REGULATORY AREAS, THE WEST YAKUTAT AND SOUTHEAST OUTSIDE DISTRICTS OF THE EASTERN REGULATORY AREA, AND GULFWIDE DISTRICT OF THE GULF OF ALASKA

[Values are rounded to the nearest metric ton]

Species	Area <sup>1</sup>	OFL	ABC	TAC <sup>2</sup>
Pollock <sup>2</sup> .....	Shumagin (610) .....	n/a	19,921	19,921

TABLE 1—PROPOSED 2019 AND 2020 OFLs, ABCs, AND TACs OF GROUND FISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, AND EASTERN REGULATORY AREAS, THE WEST YAKUTAT AND SOUTHEAST OUTSIDE DISTRICTS OF THE EASTERN REGULATORY AREA, AND GULFWIDE DISTRICT OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species	Area <sup>1</sup>	OFL	ABC	TAC <sup>2</sup>
	Chirikof (620) .....	n/a	52,459	52,459
	Kodiak (630) .....	n/a	27,016	27,016
	WYK (640) .....	n/a	4,509	4,509
	W/C/WYK (subtotal) .....	131,170	106,569	103,905
	SEO (650) .....	11,697	8,773	8,773
Pacific cod <sup>3</sup> .....	Total .....	142,867	115,341	112,678
	W .....	n/a	7,633	5,343
	C .....	n/a	7,667	5,750
	E .....	n/a	1,700	1,275
Sablefish <sup>4</sup> .....	Total .....	21,412	17,000	12,368
	W .....	n/a	2,174	2,174
	C .....	n/a	7,260	7,260
	WYK .....	n/a	2,573	2,573
	SEO .....	n/a	4,187	4,187
	E (WYK and SEO) (subtotal) .....	n/a	6,760	6,760
Shallow-water flatfish <sup>5</sup> .....	Total .....	35,989	16,194	16,194
	W .....	n/a	25,544	13,250
	C .....	n/a	25,655	25,655
	WYK .....	n/a	2,272	2,272
	SEO .....	n/a	1,951	1,951
Deep-water flatfish <sup>6</sup> .....	Total .....	68,114	55,422	43,128
	W .....	n/a	416	416
	C .....	n/a	3,442	3,442
	WYK .....	n/a	3,279	3,279
	SEO .....	n/a	2,361	2,361
Rex sole .....	Total .....	11,431	9,499	9,499
	W .....	n/a	2,909	2,909
	C .....	n/a	8,236	8,236
	WYK .....	n/a	1,657	1,657
	SEO .....	n/a	1,727	1,727
Arrowtooth flounder .....	Total .....	17,692	14,529	14,529
	W .....	n/a	35,844	14,500
	C .....	n/a	70,700	48,000
	WYK .....	n/a	15,845	6,900
	SEO .....	n/a	22,845	6,900
Flathead sole .....	Total .....	173,872	145,234	76,300
	W .....	n/a	13,222	8,650
	C .....	n/a	21,087	15,400
	WYK .....	n/a	2,013	2,013
	SEO .....	n/a	424	424
Pacific ocean perch <sup>7</sup> .....	Total .....	44,822	36,746	26,487
	W .....	n/a	3,240	3,240
	C .....	n/a	19,678	19,678
	WYK .....	n/a	3,298	3,298
	W/C/WYK .....	31,170	26,216	26,216
	SEO .....	2,840	2,389	2,389
Northern rockfish <sup>8</sup> .....	Total .....	34,010	28,605	28,605
	W .....	n/a	382	382
	C .....	n/a	2,965	2,965
	E .....	n/a	3	.....
Shortraker rockfish <sup>9</sup> .....	Total .....	3,984	3,350	3,347
	W .....	n/a	44	44
	C .....	n/a	305	305
	E .....	n/a	514	514
Dusky rockfish <sup>10</sup> .....	Total .....	1,151	863	863
	W .....	n/a	135	135
	C .....	n/a	3,246	3,246
	WYK .....	n/a	215	215

TABLE 1—PROPOSED 2019 AND 2020 OFLs, ABCs, AND TACs OF GROUND FISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, AND EASTERN REGULATORY AREAS, THE WEST YAKUTAT AND SOUTHEAST OUTSIDE DISTRICTS OF THE EASTERN REGULATORY AREA, AND GULFWIDE DISTRICT OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species	Area <sup>1</sup>	OFL	ABC	TAC <sup>2</sup>
Rougheye and blackspotted rockfish <sup>11</sup>	SEO	n/a	72	72
	Total	4,488	3,668	3,668
	W	n/a	174	174
	C	n/a	550	550
	E	n/a	703	703
Demersal shelf rockfish <sup>12</sup>	Total	1,715	1,427	1,427
	SEO	394	250	250
	W	n/a	344	344
	C	n/a	921	921
	E	n/a	773	773
Thornyhead rockfish <sup>13</sup>	Total	2,717	2,038	2,038
	W/C combined	n/a	1,737	1,737
	WYK	n/a	368	368
	SEO	n/a	3,488	200
	Other rockfish <sup>14 15</sup>	Total	7,356	5,593
GW		6,200	4,700	3,000
W		n/a	504	504
C		n/a	1,774	1,774
E		n/a	570	570
Atka mackerel	Total	3,797	2,848	2,848
	W	n/a	149	149
	C	n/a	2,804	2,804
	E	n/a	619	619
	Longnose skates <sup>17</sup>	Total	4,763	3,572
GW		1,845	1,384	1,384
GW		6,958	5,301	5,301
GW		6,020	4,514	4,514
GW		1,300	975	975
Other skates <sup>18</sup>	Total	602,897	479,050	375,280
	GW			
	GW			
	GW			
	GW			
Sculpins				
Sharks				
Octopuses				
Total <sup>19</sup>				

<sup>1</sup> Regulatory areas and districts are defined at § 679.2. (W=Western Gulf of Alaska; C=Central Gulf of Alaska; E=Eastern Gulf of Alaska; WYK=West Yakutat District; SEO=Southeast Outside District; GW=Gulf-wide).

<sup>2</sup> The total for the W/C/WYK management area pollock ABC is 106,569 mt. After deducting 2.5 percent (2,664 mt) of that ABC for the State's pollock GHL fishery, the remaining pollock ABC of 103,905 mt (for the W/C/WYK management areas) is apportioned among four statistical areas (Areas 67, 620, 630, and 640). These apportionments are considered subarea ACLs, rather than ABCs, for specification and reapportionment purposes.

The ACLs in Areas 610, 620, and 630 are further divided by season, as detailed in Table 2. In the West Yakutat (Area 640) and Southeast Outside (Area 650) Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

<sup>3</sup> The annual Pacific cod TAC is apportioned 60 percent to the A season and 40 percent to the B season in the Western and Central Regulatory Areas of the GOA. Pacific cod TAC in the Eastern Regulatory Area of the GOA is allocated 90 percent to vessels harvesting Pacific cod for processing by the inshore component and 10 percent to vessels harvesting Pacific cod for processing by the offshore component. Table 3 lists the proposed 2019 and 2020 Pacific cod seasonal apportionments.

<sup>4</sup> Sablefish is allocated to fixed and trawl gear in 2019 and trawl gear in 2020. Tables 4 and 5 list the proposed 2019 and 2020 allocations of sablefish TACs.

<sup>5</sup> "Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

<sup>6</sup> "Deep-water flatfish" means Dover sole, Greenland turbot, Kamchatka flounder, and deep-sea sole.

<sup>7</sup> "Pacific ocean perch" means *Sebastes alutus*.

<sup>8</sup> "Northern rockfish" means *Sebastes polyspinous*. For management purposes the 3 mt apportionment of ABC to the WYK District of the Eastern Regulatory Area has been included in the other rockfish species group.

<sup>9</sup> "Shortraker rockfish" means *Sebastes borealis*.

<sup>10</sup> "Dusky rockfish" means *Sebastes variabilis*.

<sup>11</sup> "Rougheye and blackspotted rockfish" means *Sebastes aleutianus* (rougheye) and *Sebastes melanostictus* (blackspotted).

<sup>12</sup> "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

<sup>13</sup> "Thornyhead rockfish" means *Sebastes* species.

<sup>14</sup> "Other rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergray), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), *S. reedi* (yellowmouth), *S. entomelas* (widow), and *S. flavidus* (yellowtail). In the Eastern GOA only, "other rockfish" also includes northern rockfish (*S. polyspinous*).

<sup>15</sup> "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District of the Eastern Regulatory Area means all rockfish species included in the "other rockfish" and demersal shelf rockfish categories. The "other rockfish" species group in the SEO District only includes other rockfish.

<sup>16</sup> "Big skates" means *Raja binoculata*.

<sup>17</sup> "Longnose skates" means *Raja rhina*.

<sup>18</sup> "Other skates" means *Bathyrāja* and *Raja* spp.

<sup>19</sup>On July 6, 2018, the final rule to implement Amendment 106 to the FMP was published (83 FR 31460). This rule reclassified squid in the FMP as an “Ecosystem Component” species, which is a category of non-target species that are not in need of conservation and management. NMFS will no longer set an OFL, ABC, and TAC for squid in the GOA groundfish harvest specifications, beginning with the proposed 2019 and 2020 harvest specifications.

*Proposed Apportionment of Reserves*

Section 679.20(b)(2) requires NMFS to set aside 20 percent of each TAC for pollock, Pacific cod, flatfish, sculpins, sharks, and octopuses in reserves for possible apportionment at a later date during the fishing year. Section 679.20(b)(3) authorizes NMFS to reapportion all or part of these reserves. In 2018, NMFS reapportioned all of the reserves in the final harvest specifications. For 2019 and 2020, NMFS proposes reapportionment of each of the reserves for pollock, Pacific cod, flatfish, sculpins, sharks, and octopuses back into the original TAC from which the reserve was derived. NMFS expects, based on recent harvest patterns, that such reserves are not necessary and the entire TAC for each of these species will be caught. The TACs in Table 1 reflect this proposed reapportionment of reserve amounts for these species and species groups, *i.e.*, each proposed TAC for the above-mentioned species or species groups contains the full TAC recommended by the Council.

*Proposed Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components*

In the GOA, pollock is apportioned by season and area, and is further allocated for processing by inshore and offshore components. Pursuant to § 679.20(a)(5)(iv)(B), the annual pollock TAC specified for the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal allowances of 25 percent. As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 through March 7, March 10 through May 31, August 25 through October 1, and October 1 through November 1, respectively.

Pollock TACs in the Western and Central Regulatory Areas of the GOA are

apportioned among Statistical Areas 67, 620, and 630 in proportion to the distribution of pollock biomass, pursuant to § 679.20(a)(5)(iv)(A). In the A and B seasons, the apportionments had historically, since 2000, been based on the proportional distribution of pollock biomass based on the four most recent NMFS winter surveys. In the C and D seasons, the apportionments were in proportion to the distribution of pollock biomass based on the four most recent NMFS summer surveys. For 2019 and 2020, the Council recommends, and NMFS proposes, following the methodology that was used for the 2018 and 2019 harvest specifications. This methodology averages the winter and summer distribution of pollock in the Central Regulatory Area for the A season instead of using the distribution based on only the winter surveys. The average is intended to reflect the best available information about migration patterns, distribution of pollock, and the performance of the fishery in the area during the A season. For the A season, the apportionment is based on the proposed adjusted estimate of the relative distribution of pollock biomass of approximately 3 percent, 73 percent, and 24 percent in Statistical Areas 67, 620, and 630, respectively. For the B season, the apportionment is based on the relative distribution of pollock biomass of approximately 3 percent, 85 percent, and 11 percent in Statistical Areas 67, 620, and 630, respectively. For the C and D seasons, the apportionment is based on the relative distribution of pollock biomass of approximately 37 percent, 27 percent, and 37 percent in Statistical Areas 67, 620, and 630, respectively. The pollock chapter of the 2017 SAFE report (see **ADDRESSES**) contains a comprehensive description of the apportionment process and reasons for the minor changes from past apportionments.

Within any fishing year, the amount by which a seasonal allowance is underharvested or overharvested may be

added to, or subtracted from, subsequent seasonal allowances in a manner to be determined by the Regional Administrator (§ 679.20(a)(5)(iv)(B)). The rollover amount is limited to 20 percent of the seasonal TAC apportionment for the statistical area. Any unharvested pollock above the 20-percent limit could be further distributed to the subsequent season in other statistical areas, in proportion to the estimated biomass and in an amount no more than 20 percent of the seasonal TAC apportionment in those statistical areas (§ 679.20(a)(5)(iv)(B)). The proposed 2019 and 2020 pollock TACs in the WYK District of 4,509 mt and the SEO District of 8,773 mt are not allocated by season.

Table 2 lists the proposed 2019 and 2020 seasonal biomass distribution of pollock in the Western and Central Regulatory Areas, area apportionments, and seasonal allowances. The amounts of pollock for processing by the inshore and offshore components are not shown. Section 679.20(a)(6)(i) requires the allocation of 100 percent of the pollock apportionments in all regulatory areas and all seasonal allowances to vessels catching pollock for processing by the inshore component after subtraction of amounts projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. Thus, the amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount that will be taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed by § 679.20(e) and (f). At this time, the incidental catch amounts of pollock are unknown and will be determined during the 2019 fishing year during the course of fishing activities by the offshore component.

TABLE 2—PROPOSED 2019 AND 2020 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GULF OF ALASKA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC <sup>1</sup>

[Values are rounded to the nearest metric ton]

Season <sup>2</sup>	Shumagin (Area 610)		Chirikof (Area 620)		Kodiak (Area 630)		Total <sup>3</sup>
A (Jan 20–Mar 10) .....	869	(3.50%)	18,025	(72.54%)	5,955	(23.97%)	24,849
B (Mar 10–May 31) .....	869	(3.50%)	21,219	(85.39%)	2,761	(11.11%)	24,849

TABLE 2—PROPOSED 2019 AND 2020 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GULF OF ALASKA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC <sup>1</sup>—Continued

[Values are rounded to the nearest metric ton]

C (Aug 25–Oct 1) .....	9,091	(36.59%)	6,608	(26.59%)	9,150	(36.82%)	24,849
D (Oct 1–Nov 1) .....	9,091	(36.59%)	6,608	(26.59%)	9,150	(36.82%)	24,849
Annual Total .....	19,921	.....	52,459	.....	27,016	.....	99,395

<sup>1</sup> Area apportionments and seasonal allowances may not total precisely due to rounding.

<sup>2</sup> As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 through March 10, March 10 through May 31, August 25 through October 1, and October 1 through November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.

<sup>3</sup> The West Yakutat and Southeast Outside District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

*Proposed Annual and Seasonal Apportionments of Pacific Cod TAC*

Pursuant to § 679.20(a)(12)(i), NMFS proposes allocations for the 2019 and 2020 Pacific cod TACs in the Western and Central Regulatory Areas of the GOA among gear and operational sectors. NMFS also proposes allocating the 2019 and 2020 Pacific cod TACs annually between the inshore and offshore components in the Eastern Regulatory Area of the GOA (§ 679.20(a)(6)(ii)). In the Central GOA, the Pacific cod TAC is apportioned seasonally first to vessels using jig gear, and then among catcher vessels (CVs) less than 50 feet in length overall using hook-and-line gear, CVs equal to or greater than 50 feet in length overall using hook-and-line gear, catcher/processors (C/Ps) using hook-and-line gear, CVs using trawl gear, C/Ps using trawl gear, and vessels using pot gear (§ 679.20(a)(12)(i)(B)). In the Western GOA, the Pacific cod TAC is apportioned seasonally first to vessels using jig gear, and then among CVs using hook-and-line gear, C/Ps using hook-and-line gear, CVs using trawl

gear, C/Ps using trawl gear, and vessels using pot gear (§ 679.20(a)(12)(i)(A)). The overall seasonal apportionments in the Western and Central GOA are 60 percent of the annual TAC to the A season and 40 percent of the annual TAC to the B season.

Under § 679.20(a)(12)(ii), any overage or underage of the Pacific cod allowance from the A season may be subtracted from, or added to, the subsequent B season allowance. In addition, any portion of the hook-and-line, trawl, pot, or jig sector allocations that is determined by NMFS as likely to go unharvested by a sector may be reallocated to other sectors for harvest during the remainder of the fishing year.

Pursuant to § 679.20(a)(12)(i)(A) and (B), a portion of the annual Pacific cod TACs in the Western and Central GOA will be allocated to vessels with a Federal fisheries permit that use jig gear before the TACs are apportioned among other non-jig sectors. In accordance with the FMP, the annual jig sector allocations may increase to up to 6 percent of the annual Western and Central GOA Pacific cod TACs,

depending on the annual performance of the jig sector (see Table 1 of Amendment 83 to the FMP for a detailed discussion of the jig sector allocation process (76 FR 74670, December 1, 2011)). Jig sector allocation increases are established for a minimum of 2 years.

NMFS has evaluated the historical harvest performance of the jig sector in the Western and Central GOA, and is establishing the proposed 2019 and 2020 Pacific cod apportionments to this sector based on its historical harvest performance through 2017. For 2019 and 2020, NMFS proposes that the jig sector receive 1.5 percent of the annual Pacific cod TAC in the Western GOA. This includes a base allocation of 1.5 percent and no additional performance increase. NMFS also proposes that the jig sector receive 1.0 percent of the annual Pacific cod TAC in the Central GOA. This includes a base allocation of 1.0 percent and no additional performance increase. The 2014–2017 Pacific cod jig allocations, catch, and percent allocation changes are listed in Figure 1.

FIGURE 1—SUMMARY OF WESTERN GOA AND CENTRAL GOA PACIFIC COD CATCH BY JIG GEAR IN 2014 THROUGH 2017, AND CORRESPONDING PERCENT ALLOCATION CHANGES

Area	Year	Initial percent of TAC (%)	Initial TAC allocation	Catch (mt)	Percent of initial allocation (%)	>90% of initial allocation?	Change to percent allocation
WGOA .....	2014	2.5	573	785	137	Y	Increase 1%.
	2015	3.5	948	55	6	N	None.
	2016	3.5	992	52	5	N	Decrease 1%.
	2017	2.5	635	49	8	N	Decrease 1%.
CGOA .....	2014	2.0	797	262	33	N	Decrease 1%.
	2015	1.0	460	355	77	N	None.
	2016	1.0	370	267	72	N	None.
	2017	1.0	331	18	6	N	None.

NMFS will re-evaluate the annual 2018 harvest performance of the jig sector in the Western and Central GOA

when the 2018 fishing year is complete to determine whether to change the jig sector allocations proposed by this

action in conjunction with the final 2019 and 2020 harvest specifications. The current catch through October 2018



by the Western GOA jig sector indicates that the Pacific cod allocation percentage to this sector would probably increase by 1 percent in 2019 (from 1.5 percent to 2.5 percent). Also, the current catch by the Central GOA jig sector indicates that this sector's Pacific cod allocation percentage would not change in 2019, and would remain at 1 percent.

NMFS prohibited directed fishing for Pacific cod by vessels using jig gear in the Central GOA in 2018, due to the small apportionment of Pacific cod to this sector and the potential for the Central GOA jig sector to exceed the TAC, were directed fishing to be open. The jig sector allocations for the Western and Central GOA are further

apportioned between the A (60 percent) and B (40 percent) seasons (§§ 679.20(a)(12)(i) and 679.23(d)(3)(iii)).

Table 3 lists the seasonal apportionments and allocations of the proposed 2019 and 2020 Pacific cod TACs.

**TABLE 3—PROPOSED 2019 AND 2020 SEASONAL APPORTIONMENTS AND ALLOCATIONS OF PACIFIC COD TAC AMOUNTS IN THE GOA; ALLOCATIONS IN THE WESTERN GOA AND CENTRAL GOA SECTORS, AND THE EASTERN GOA FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS**

[Values are rounded to the nearest metric ton]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
<b>Western GOA</b>					
Jig (1.5% of TAC) .....	80	N/A	48	N/A	23
Hook-and-line CV .....	74	0.70	37	0.70	37
Hook-and-line C/P .....	1,042	10.90	574	8.90	468
Trawl CV .....	2,021	27.70	1,458	10.70	563
Trawl C/P .....	126	0.90	47	1.50	79
Pot CV and Pot C/P .....	2,000	19.80	1,042	18.20	958
<b>Total .....</b>	<b>5,343</b>	<b>60.00</b>	<b>3,206</b>	<b>40.00</b>	<b>2,137</b>
<b>Central GOA</b>					
Jig (1.0% of TAC) .....	58	N/A	35	N/A	32
Hook-and-line <50 CV .....	831	9.32	530	5.29	301
Hook-and-line ≥50 CV .....	382	5.61	319	1.10	62
Hook-and-line C/P .....	291	4.11	234	1.00	57
Trawl CV <sup>1</sup> .....	2,367	21.13	1,203	20.45	1,164
Trawl C/P .....	239	2.00	114	2.19	125
Pot CV and Pot C/P .....	1,583	17.83	1,015	9.97	568
<b>Total .....</b>	<b>5,750</b>	<b>60.00</b>	<b>3,450</b>	<b>40.00</b>	<b>2,300</b>
<b>Eastern GOA .....</b>		<b>Inshore (90% of Annual TAC)</b>		<b>Offshore (10% of Annual TAC)</b>	
	1,275	1,148		128	

<sup>1</sup> Trawl catcher vessels participating in Rockfish Program cooperatives receive 3.81 percent, or 219 mt, of the annual Central GOA Pacific cod TAC. This apportionment percentage is specified in Table 28c to 50 CFR part 679. This apportionment is deducted from the Trawl CV B season allowance (see Table 8: Apportionments of Rockfish Secondary Species in the Central GOA).

*Proposed Allocations of the Sablefish TAC Amounts to Vessels Using Fixed Gear and Trawl Gear*

Section 679.20(a)(4)(i) and (ii) requires allocations of sablefish TACs for each of the regulatory areas and districts to fixed and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to fixed gear, and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to fixed gear, and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used to support incidental catch of sablefish, while directed fishing for other target species using trawl gear (§ 679.20(a)(4)(i)).

In recognition of the prohibition against trawl gear in the SEO District of

the Eastern Regulatory Area, the Council recommended and NMFS proposes specifying for incidental catch the allocation of 5 percent of the combined Eastern Regulatory Area sablefish TAC to trawl gear in the WYK District. The remainder of the WYK sablefish TAC is available to vessels using fixed gear. This proposed action allocates 100 percent of the sablefish TAC in the SEO District to vessels using fixed gear. This results in a proposed 2019 allocation of 338 mt to trawl gear and 2,235 mt to fixed gear in the WYK District, a proposed 2019 allocation of 4,187 mt to fixed gear in the SEO District, and a proposed 2020 allocation of 338 mt to trawl gear in the WYK District. Table 4 lists the allocations of the proposed 2019 sablefish TACs to fixed and trawl gear. Table 5 lists the allocations of the

proposed 2020 sablefish TACs to trawl gear.

The Council recommended that the trawl sablefish TAC be established for 2 years so that retention of incidental catch of sablefish by trawl gear could commence in January in the second year of the groundfish harvest specifications. Tables 4 and 5 list the proposed 2019 and 2020 trawl allocations, respectively.

The Council recommended that the fixed gear sablefish TAC be established annually to ensure that the sablefish IFQ fishery is conducted concurrently with the halibut IFQ fishery and is based on the most recent survey information. Since there is an annual assessment for sablefish and the final harvest specifications are expected to be published before the IFQ season begins (typically, in early March), the Council

recommended that the fixed gear sablefish TAC be set annually, rather than for 2 years, so that the best available scientific information could be considered in establishing the sablefish ABCs and TACs. Accordingly, Table 4 lists the proposed 2019 fixed gear allocations, and the 2020 fixed gear

allocations will be specified in the 2020 and 2021 harvest specifications. With the exception of the trawl allocations that are provided to the Rockfish Program cooperatives (see Table 28c to 50 CFR part 679), directed fishing for sablefish with trawl gear is closed during the fishing year. Also,

fishing for groundfish with trawl gear is prohibited prior to January 20. Therefore, it is not likely that the sablefish allocation to trawl gear would be reached before the effective date of the final 2019 and 2020 harvest specifications.

TABLE 4—PROPOSED 2019 SABLEFISH TAC AMOUNTS IN THE GULF OF ALASKA AND ALLOCATIONS TO FIXED AND TRAWL GEAR

[Values are rounded to the nearest metric ton]

Area/district	TAC	Fixed gear allocation	Trawl allocation
Western .....	2,174	1,739	435
Central <sup>1</sup> .....	7,260	5,808	1,452
West Yakutat <sup>2</sup> .....	2,573	2,235	338
Southeast Outside .....	4,187	4,187	0
Total .....	16,194	13,969	2,225

<sup>1</sup> The trawl allocation to the Central Regulatory Area is further reduced by the sablefish apportioned to the Rockfish Program cooperatives (747 mt). See Table 8: Apportionments of Rockfish Secondary Species in the Central GOA. This results in 705 mt being available for the non-Rockfish Program trawl fisheries.

<sup>2</sup> The proposed trawl allocation is based on allocating 5 percent of the combined Eastern Regulatory Area (West Yakutat and Southeast Outside Districts combined) sablefish TAC to trawl gear in the West Yakutat District.

TABLE 5—PROPOSED 2020 SABLEFISH TAC AMOUNTS IN THE GULF OF ALASKA AND ALLOCATION TO TRAWL GEAR<sup>1</sup>

[Values are rounded to the nearest metric ton]

Area/district	TAC	Fixed gear allocation	Trawl allocation
Western .....	2,174	n/a .....	435
Central <sup>2</sup> .....	7,260	n/a .....	1,452
West Yakutat <sup>3</sup> .....	2,573	n/a .....	338
Southeast Outside .....	4,187	n/a .....	0
Total .....	16,194	n/a .....	2,225

<sup>1</sup> The Council recommended that harvest specifications for the fixed gear sablefish Individual Fishing Quota fisheries be limited to 1 year.

<sup>2</sup> The trawl allocation to the Central Regulatory Area is further reduced by the sablefish apportioned to the Rockfish Program cooperatives (747 mt). See Table 8: Apportionments of Rockfish Secondary Species in the Central GOA. This results in 705 mt being available for the non-Rockfish Program trawl fisheries.

<sup>3</sup> The proposed trawl allocation is based on allocating 5 percent of the combined Eastern Regulatory Area (West Yakutat and Southeast Outside Districts combined) sablefish TAC to trawl gear in the West Yakutat District.

*Proposed Allocations, Apportionments, and Sideboard Limitations for the Rockfish Program*

These proposed 2019 and 2020 harvest specifications for the GOA include the fishery cooperative allocations and sideboard limitations established by the Rockfish Program. Program participants are primarily trawl CVs and trawl C/Ps, with limited participation by vessels using longline gear. The Rockfish Program assigns quota share and cooperative quota to participants for primary species (Pacific ocean perch, northern rockfish, and dusky rockfish) and secondary species (Pacific cod, roughey rockfish, sablefish, shortraker rockfish, and thornyhead rockfish), allows a participant holding a license limitation program (LLP) license with rockfish quota share to form a rockfish cooperative with other persons, and allows holders of C/P LLP licenses to

opt out of the fishery. The Rockfish Program also has an entry level fishery for rockfish primary species for vessels using longline gear. Longline gear includes hook-and-line, jig, troll, and handline gear.

Under the Rockfish Program, rockfish primary species in the Central GOA are allocated to participants after deducting for incidental catch needs in other directed groundfish fisheries (§ 679.81(a)(2)). Participants in the Rockfish Program also receive a portion of the Central GOA TAC of specific secondary species. Besides groundfish species, the Rockfish Program allocates a portion of the halibut PSC limit (191 mt) from the third season deep-water species fishery allowance for the GOA trawl fisheries to Rockfish Program participants (§ 679.81(d) and Table 28d to 50 CFR part 679). The Rockfish Program also establishes sideboard limits to restrict the ability of harvesters that operate under the Rockfish Program

to increase their participation in other, non-Rockfish Program fisheries. These restrictions, as well as halibut PSC limits, are discussed in a subsequent section titled “Rockfish Program Groundfish Sideboard and Halibut PSC Limitations.”

Section 679.81(a)(2)(ii) and Table 28e to 50 CFR part 679 require allocations of 5 mt of Pacific ocean perch, 5 mt of northern rockfish, and 50 mt of dusky rockfish to the entry level longline fishery in 2019 and 2020. The allocation for the entry level longline fishery may increase incrementally each year if the catch exceeds 90 percent of the allocation of a species. The incremental increase in the allocation would continue each year until it reaches the maximum percentage of the TAC for that species. In 2018, the catch for all three primary species did not exceed 90 percent of any allocated rockfish species. Therefore, NMFS is not proposing any increases to the entry

level longline fishery 2019 and 2020 allocations in the Central GOA. The remainder of the TACs for the rockfish primary species would be allocated to the CV and C/P cooperatives

(§ 679.81(a)(2)(iii)). Table 6 lists the allocations of the proposed 2019 and 2020 TACs for each rockfish primary species to the entry level longline fishery, the potential incremental

increases for future years, and the maximum percentages of the TAC for the entry level longline fishery.

TABLE 6—PROPOSED 2019 AND 2020 ALLOCATIONS OF ROCKFISH PRIMARY SPECIES TO THE ENTRY LEVEL LONGLINE FISHERY IN THE CENTRAL GULF OF ALASKA

Rockfish primary species	2019 and 2020 allocations	Incremental increase in 2020 if ≥90 percent of 2019 allocation is harvested	Up to maximum percent of each TAC of:
Pacific ocean perch .....	5 metric tons .....	5 metric tons .....	1%
Northern rockfish .....	5 metric tons .....	5 metric tons .....	2%
Dusky rockfish .....	50 metric tons .....	20 metric tons .....	5%

Section 679.81 requires allocations of rockfish primary species among various sectors of the Rockfish Program. Table 7 lists the proposed 2019 and 2020 allocations of rockfish primary species in the Central GOA to the entry level longline fishery, and rockfish CV and C/P cooperatives in the Rockfish Program. NMFS also proposes setting aside incidental catch amounts (ICAs) for other directed fisheries in the Central

GOA of 4,000 mt of Pacific ocean perch, 300 mt of northern rockfish, and 250 mt of dusky rockfish. These amounts are based on recent average incidental catches in the Central GOA by other groundfish fisheries.

Allocations among vessels belonging to CV or C/P cooperatives are not included in these proposed harvest specifications. Rockfish Program applications for CV cooperatives and C/

P cooperatives are not due to NMFS until March 1 of each calendar year; therefore, NMFS cannot calculate 2019 and 2020 allocations in conjunction with these proposed harvest specifications. NMFS will post the 2019 allocations on the Alaska Region website at <http://alaskafisheries.noaa.gov/fisheries/central-go-a-rockfish-program> when they become available after March 1.

TABLE 7—PROPOSED 2019 AND 2020 ALLOCATIONS OF ROCKFISH PRIMARY SPECIES IN THE CENTRAL GULF OF ALASKA TO THE ENTRY LEVEL LONGLINE FISHERY AND ROCKFISH COOPERATIVES IN THE ROCKFISH PROGRAM

[Values are rounded to the nearest metric ton]

Rockfish primary species	Central GOA TAC	Incidental catch allowance (ICA)	TAC minus ICA	Allocation to the entry level longline <sup>1</sup> fishery	Allocation to the rockfish cooperatives <sup>2</sup>
Pacific ocean perch .....	19,678	4,000	15,678	5	15,673
Northern rockfish .....	2,965	300	2,665	5	2,660
Dusky rockfish .....	3,246	250	2,996	50	2,946
Total .....	25,889	4,550	21,339	60	21,279

<sup>1</sup> Longline gear includes hook-and-line, jig, troll, and handline gear (§ 679.2).

<sup>2</sup> Rockfish cooperatives include vessels in CV and C/P cooperatives (§ 679.81).

Section 679.81(c) and Table 28c to 50 CFR part 679 requires allocations of rockfish secondary species to CV and C/P cooperatives in the Central GOA. CV cooperatives receive allocations of

Pacific cod, sablefish from the trawl gear allocation, and thornyhead rockfish. C/P cooperatives receive allocations of sablefish from the trawl allocation, roughey rockfish, shortraker rockfish,

and thornyhead rockfish. Table 8 lists the apportionments of the proposed 2019 and 2020 TACs of rockfish secondary species in the Central GOA to CV and C/P cooperatives.

TABLE 8—PROPOSED 2019 AND 2020 APPORTIONMENTS OF ROCKFISH SECONDARY SPECIES IN THE CENTRAL GOA TO CATCHER VESSEL AND CATCHER/PROCESSOR COOPERATIVES

[Values are in metric tons]

Rockfish secondary species	Central GOA annual TAC	Catcher vessel cooperatives		Catcher/processor cooperatives	
		Percentage of TAC	Apportionment (mt)	Percentage of TAC	Apportionment (mt)
Pacific cod .....	5,750	3.81	219	0.0	0
Sablefish .....	7,260	6.78	492	3.51	255
Shortraker rockfish .....	305	0.0	0	40.00	122
Roughey rockfish .....	550	0.0	0	58.87	324
Thornyhead rockfish .....	921	7.84	72	26.50	244

*Halibut PSC Limits*

Section 679.21(d) establishes annual halibut PSC limit apportionments to trawl and hook-and-line gear, and authorizes the establishment of apportionments for pot gear. In October 2018, the Council recommended proposed halibut PSC limits of 1,706 mt for trawl gear, 257 mt for hook-and-line gear, and 9 mt for the demersal shelf rockfish (DSR) fishery in the SEO District.

The DSR fishery in the SEO District is defined at § 679.21(d)(2)(ii)(A). This fishery is apportioned 9 mt of the halibut PSC limit in recognition of its small-scale harvests of groundfish. NMFS estimates low halibut bycatch in the DSR fishery because (1) The duration of the DSR fisheries and the gear soak times are short, (2) the DSR fishery occurs in the winter when there is less overlap in the distribution of DSR and halibut, and (3) the directed commercial DSR fishery has a low DSR TAC. The Alaska Department of Fish and Game sets the commercial GHL for the DSR fishery after deducting (1) estimates of DSR incidental catch in all fisheries (including halibut and subsistence); and (2) the allocation to the DSR sport fish fishery. Of the 250 mt TAC for DSR in 2018, 50 mt were available for directed fishing by the DSR commercial fishery, of which 26 mt were harvested (through November 6, 2018).

The FMP authorizes the Council to exempt specific gear from the halibut PSC limits. NMFS, after consultation with the Council, proposes to exempt pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories

from the non-trawl halibut PSC limit for 2019 and 2020. The Council recommended, and NMFS is proposing, these exemptions because (1) pot gear fisheries have low annual halibut bycatch mortality; (2) IFQ program regulations prohibit discard of halibut if any halibut IFQ permit holder on board a CV holds unused halibut IFQ for that vessel category and the IFQ regulatory area in which the vessel is operating (§ 679.7(f)(11)); (3) some sablefish IFQ permit holders hold halibut IFQ permits and are therefore required to retain the halibut they catch while fishing sablefish IFQ; and (4) NMFS estimates negligible halibut mortality for the jig gear fisheries given the small amount of groundfish harvested by jig gear, the selective nature of jig gear, and the high survival rates of halibut caught and released with jig gear.

The best available information on estimated halibut bycatch consists of data collected by fisheries observers during 2018. The calculated halibut bycatch mortality through October 30, 2018, is 1,037 mt for trawl gear and 44 mt for hook-and-line gear for a total halibut mortality of 1,081 mt. This halibut mortality was calculated using groundfish and halibut catch data from the NMFS Alaska Region’s catch accounting system. This accounting system contains historical and recent catch information compiled from each Alaska groundfish fishery.

Section 679.21(d)(4)(i) and (ii) authorizes NMFS to seasonally apportion the halibut PSC limits after consultation with the Council. The FMP and regulations require that the Council and NMFS consider the following

information in seasonally apportioning halibut PSC limits: (1) Seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry. Based on public comment and the information presented in the 2018 SAFE report, the Council may recommend, or NMFS may make changes to the seasonal, gear-type, or fishery category apportionments of halibut PSC limits for the final 2019 and 2020 harvest specifications pursuant to § 679.21(d)(1) and (d)(4).

The final 2018 and 2019 harvest specifications (83 FR 8768, March 1, 2018) summarized the Council’s and NMFS’ findings with respect to halibut PSC for each of these FMP considerations. The Council’s and NMFS’ findings for 2019 are unchanged from 2018. Table 9 lists the proposed 2019 and 2020 Pacific halibut PSC limits, allowances, and apportionments. The halibut PSC limits in these tables reflect the halibut PSC limits set forth at § 679.21(d)(2) and (3). Section 679.21(d)(4)(iii) and (iv) specifies that any underages or overages of a seasonal apportionment of a halibut PSC limit will be added to or deducted from the next respective seasonal apportionment within the fishing year.

TABLE 9—PROPOSED 2019 AND 2020 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS  
[Values are in metric tons]

Trawl gear			Hook-and-line gear <sup>1</sup>				
Season	Percent	Amount	Other than DSR			DSR	
			Season	Percent	Amount	Season	Amount
January 20–April 1 .....	27.5	469	January 1–June 10 .....	86	221	January 1–December 31	9
April 1–July 1 .....	20	341	June 10–September 1 .....	2	5	.....	.....
July 1–September 1 .....	30	512	September 1–December 31 .....	12	31	.....	.....
September 1–October 1 ...	7.5	128	.....	.....	.....	.....	.....
October 1–December 31 ..	15	256	.....	.....	.....	.....	.....
Total .....	.....	1,706	.....	.....	257	.....	9

<sup>1</sup> The Pacific halibut prohibited species catch (PSC) limit for hook-and-line gear is allocated to the demersal shelf rockfish (DSR) fishery and fisheries other than DSR. The hook-and-line sablefish fishery is exempt from halibut PSC limits, as are pot and jig gear for all groundfish fisheries.

Section 679.21(d)(3)(ii) authorizes further apportionment of the trawl halibut PSC limit as bycatch allowances to trawl fishery categories listed in

§ 679.21(d)(3)(iii). The annual apportionments are based on each category’s proportional share of the anticipated halibut bycatch mortality

during a fishing year and optimization of the total amount of groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut

PSC limits are (1) a deep-water species fishery, composed of sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder; and (2) a shallow-water species fishery, composed of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and “other species” (sculpins, sharks, squids, and octopuses) (§ 679.21(d)(3)(iii)). Halibut mortality incurred while directed fishing for skates with trawl gear accrues towards the shallow-water species fishery halibut PSC limit (69 FR 26320, May 12, 2004).

NMFS will combine available trawl halibut PSC limit apportionments in part of the second season deep-water and shallow-water fisheries for use in either fishery from May 15 through June

30 (§ 679.21(d)(4)(iii)(D)). This is intended to maintain groundfish harvest while minimizing halibut bycatch by these sectors to the extent practicable. This provides the deep-water and shallow-water trawl fisheries additional flexibility and the incentive to participate in fisheries at times of the year that may have lower halibut PSC rates relative to other times of the year.

Table 10 lists the proposed 2019 and 2020 seasonal apportionments of trawl halibut PSC limits between the trawl gear deep-water and the shallow-water species fisheries.

Table 28d to 50 CFR part 679 specifies the amount of the trawl halibut PSC limit that is assigned to the CV and C/P sectors that are participating in the Central GOA Rockfish Program. This

includes 117 mt of halibut PSC limit to the CV sector and 74 mt of halibut PSC limit to the C/P sector. These amounts are allocated from the trawl deep-water species fishery’s halibut PSC third seasonal apportionment.

Section 679.21(d)(4)(iii)(B) limits the amount of the halibut PSC limit allocated to Rockfish Program participants that could be re-apportioned to the general GOA trawl fisheries to no more than 55 percent of the unused annual halibut PSC apportioned to Rockfish Program participants. The remainder of the unused Rockfish Program halibut PSC limit is unavailable for use by any person for the remainder of the fishing year (§ 679.21(d)(4)(iii)(C)).

**TABLE 10—PROPOSED 2019 AND 2020 SEASONAL APPORTIONMENTS OF THE PACIFIC HALIBUT PSC LIMIT APPORTIONED BETWEEN THE TRAWL GEAR SHALLOW-WATER AND DEEP-WATER SPECIES FISHERIES**  
[Values are in metric tons]

Season	Shallow-water	Deep-water <sup>1</sup>	Total
January 20–April 1 .....	384	85 .....	469
April 1–July 1 .....	85	256 .....	341
July 1–September 1 .....	171	341 .....	512
September 1–October 1 .....	128	Any remainder .....	128
Subtotal, January 20–October 1 .....	768	682 .....	1,450
October 1–December 31 <sup>2</sup> .....	.....	.....	256
Total .....	.....	.....	1,706

<sup>1</sup> Vessels participating in cooperatives in the Rockfish Program will receive 191 mt of the third season (July 1 through September 1) deep-water species fishery halibut PSC apportionment.

<sup>2</sup> There is no apportionment between trawl shallow-water and deep-water species fisheries during the fifth season (October 1 through December 31).

Section 679.21(d)(2) requires that the “other hook-and-line fishery” halibut PSC limit apportionment to vessels using hook-and-line gear must be divided between CVs and C/Ps. NMFS must calculate the halibut PSC limit apportionments for the entire GOA to hook-and-line CVs and C/Ps in accordance with § 679.21(d)(2)(iii) in conjunction with these harvest specifications. A comprehensive description and example of the calculations necessary to apportion the “other hook-and-line fishery” halibut PSC limit between the hook-and-line CV and C/P sectors were included in the proposed rule to implement Amendment 83 to the FMP (76 FR

44700, July 26, 2011) and are not repeated here.

For 2019 and 2020, NMFS proposes annual halibut PSC limit apportionments of 120 mt and 137 mt to the hook-and-line CV and hook-and-line C/P sectors, respectively. The 2019 and 2020 annual halibut PSC limits are divided into three seasonal apportionments, using seasonal percentages of 86 percent, 2 percent, and 12 percent. Table 11 lists the proposed 2019 and 2020 annual halibut PSC limits and seasonal apportionments between the hook-and-line CV and hook-and-line C/P sectors in the GOA.

No later than November 1 each year, any halibut PSC limit allocated under § 679.21(d)(2)(ii)(B) not projected by the

Regional Administrator to be used by one of the hook-and-line sectors during the remainder of the fishing year will be made available to the other sector. NMFS calculates the projected unused amount of halibut PSC limit by either the CV hook-and-line or the C/P hook-and-line sectors of the “other hook-and-line fishery” for the remainder of the year. The projected unused amount of halibut PSC limit by either of these sectors is made available to the remaining hook-and-line sector for the remainder of that fishing year if NMFS determines that an additional amount of halibut PSC limit is necessary for that sector to continue its directed fishing operations (§ 679.21(d)(2)(iii)(C)).

TABLE 11—PROPOSED 2019 AND 2020 APPORTIONMENTS OF THE “OTHER HOOK-AND-LINE FISHERIES” HALIBUT PSC ALLOWANCE BETWEEN THE HOOK-AND-LINE GEAR CATCHER VESSEL AND CATCHER/PROCESSOR SECTORS  
[Values are in metric tons]

“Other than DSR” allowance	Hook-and-line sector	Sector annual amount	Season	Seasonal percentage	Sector seasonal amount
257	Catcher Vessel	120	January 1–June 10	86	103
			June 10–September 1	2	2
			September 1–December 31	12	14
	Catcher/Processor	137	January 1–June 10	86	118
			June 10–September 1	2	3
			September 1–December 31	12	16

*Halibut Discard Mortality Rates*

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut incidental catch rates, halibut discard mortality rates (DMRs), and estimates of groundfish catch to project when a fishery’s halibut bycatch mortality allowance or seasonal apportionment is reached. Halibut incidental catch rates are based on observers’ estimates of halibut incidental catch in the groundfish fishery. DMRs are estimates of the proportion of incidentally caught halibut that do not survive after being returned to the sea. The cumulative halibut mortality that accrues to a particular halibut PSC limit is the product of a DMR multiplied by the estimated halibut PSC. DMRs are estimated using the best scientific information available in conjunction with the annual GOA stock assessment process. The DMR methodology and findings are included as an appendix to the annual GOA groundfish SAFE report.

In 2016, the DMR estimation methodology underwent revisions per the Council’s directive. An interagency

halibut working group (International Pacific Halibut Commission, Council, and NMFS staff) developed improved estimation methods that have undergone review by the Plan Team, the SSC, and the Council. A summary of the revised methodology is contained in the GOA proposed 2017 and 2018 harvest specifications (81 FR 87881, December 6, 2016), and the comprehensive discussion of the working group’s statistical methodology is available from the Council (see ADDRESSES). The DMR working group’s revised methodology is intended to improve estimation accuracy, transparency, and transferability in the methodology used for calculating DMRs. The working group will continue to consider improvements to the methodology used to calculate halibut mortality, including potential changes to the reference period (the period of data used for calculating the DMRs). Future DMRs may change based on additional years of observer sampling, which could provide more recent and accurate data, and which could improve the accuracy of estimation and progress on methodology. The new methodology will continue to ensure that NMFS is

using DMRs that more accurately reflect halibut mortality, which will inform the different sectors of their estimated halibut mortality and allow specific sectors to respond with methods that could reduce mortality and, eventually, the DMR for that sector.

In October 2018, the Council recommended adopting the halibut DMRs derived from the revised methodology for the proposed 2019 and 2020 DMRs. The proposed 2019 and 2020 DMRs use an updated 2-year reference period of 2016 and 2017. Comparing the proposed DMRs to the final DMRs from the 2018 and 2019 harvest specifications, the proposed DMR for Rockfish Program CVs using non-pelagic trawl gear decreased to 49 percent from 62 percent, the proposed DMR for C/Ps and motherships using non-pelagic trawl gear decreased to 79 percent from 84 percent, and the proposed DMRs for C/Ps and CVs using hook-and-line gear increased to 11 percent from 10 percent, and to 21 percent from 17 percent, respectively. Finally, the DMR for C/Ps and CVs using pot gear decreased to 4 percent from 7 percent. Table 12 lists the proposed 2019 and 2020 DMRs.

TABLE 12—PROPOSED 2019 AND 2020 DMRs FOR VESSELS FISHING IN THE GULF OF ALASKA  
[Values are percent of halibut assumed to be dead]

Gear	Sector	Groundfish fishery	Halibut discard mortality rate (percent)
Pelagic trawl	Catcher vessel	All	100
	Catcher/processor	All	100
Non-pelagic trawl	Catcher vessel	Rockfish Program	49
	Catcher vessel	All others	67
	Mothership and catcher/processor	All	79
Hook-and-line	Catcher/processor	All	11
	Catcher vessel	All	21
Pot	Catcher vessel and catcher/processor	All	4

*Chinook Salmon Prohibited Species Catch Limits*

Amendment 93 to the FMP (77 FR 42629, July 20, 2012) established

separate Chinook salmon PSC limits in the Western and Central GOA in the directed pollock trawl fishery. These limits require NMFS to close the pollock

directed fishery in the Western and Central regulatory areas of the GOA if the applicable Chinook salmon PSC limit is reached (§ 679.21(h)(8)). The

annual Chinook salmon PSC limits in the pollock directed fishery of 6,684 salmon in the Western GOA and 18,316 salmon in the Central GOA are set in § 679.21(h)(2)(i) and (ii).

Amendment 97 to the FMP (79 FR 71350, December 2, 2014) established an initial annual PSC limit of 7,500 Chinook salmon for the non-pollock groundfish trawl fisheries in the Western and Central GOA. This limit is apportioned among three sectors: 3,600 Chinook salmon to trawl C/Ps; 1,200 Chinook salmon to trawl CVs participating in the Rockfish Program; and 2,700 Chinook salmon to trawl CVs not participating in the Rockfish Program (§ 679.21(h)(4)). NMFS will monitor the Chinook salmon PSC in the non-pollock GOA groundfish fisheries and close an applicable sector if it reaches its Chinook salmon PSC limit.

The Chinook salmon PSC limit for two sectors, trawl C/Ps and trawl CVs not participating in the Rockfish Program, may be increased in subsequent years based on the performance of these two sectors and their ability to minimize their use of their respective Chinook salmon PSC limits. If either or both of these two sectors limit its use of Chinook salmon PSC to a certain threshold amount in 2018 (3,120 for trawl C/Ps and 2,340 for trawl CVs), that sector will receive an incremental increase to its 2019 Chinook salmon PSC limit (4,080 for trawl C/Ps and 3,060 for trawl CVs) (§ 679.21(h)(4)). NMFS will evaluate the annual Chinook salmon PSC by trawl

C/Ps and non-Rockfish Program CVs when the 2018 fishing year is complete to determine whether to increase the Chinook salmon PSC limits for these two sectors. Based on preliminary 2018 Chinook salmon PSC data, the trawl C/P sector and the non-Rockfish Program trawl CV sector may receive an incremental increase of Chinook salmon PSC limit in 2019. This evaluation will be completed in conjunction with the final 2019 and 2020 harvest specifications.

*AFA C/P and CV Groundfish Sideboard Limits*

Section 679.64 establishes groundfish harvesting and processing sideboard limits on AFA C/Ps and CVs in the GOA. These sideboard limits are necessary to protect the interests of fishermen and processors who do not directly benefit from the AFA from those fishermen and processors who receive exclusive harvesting and processing privileges under the AFA. Section 679.7(k)(1)(ii) prohibits listed AFA C/Ps from harvesting any species of fish in the GOA. Additionally, § 679.7(k)(1)(iv) prohibits listed AFA C/Ps from processing any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

AFA CVs that are less than 125 ft (38.1 meters) length overall, have annual landings of pollock in the Bering Sea and Aleutian Islands of less than 5,100 mt, and have made at least 40 landings of GOA groundfish from 1995

through 1997 are exempt from GOA CV groundfish sideboard limits under § 679.64(b)(2)(ii). Sideboard limits for non-exempt AFA CVs in the GOA are based on their traditional harvest levels of TAC in groundfish fisheries covered by the FMP. Section 679.64(b)(3)(iv) establishes for CVs the groundfish sideboard limitations in the GOA based on the retained catch of non-exempt AFA CVs of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period.

As discussed earlier in this preamble, NMFS published a proposed rule (83 FR 40733, August 16, 2018) that would, if implemented, establish regulations to prohibit directed fishing for sideboard limits for specific groundfish species or species groups, rather than prohibiting directed fishing for non-exempt AFA CV sideboards through the GOA annual harvest specifications. This would apply to most, but not all, of the species and area apportionments listed in Table 13. If the final rulemaking to implement the proposed changes to sideboard management is effective prior to the publication of the final 2019 and 2020 harvest specifications, NMFS would incorporate such changes into the specification and management of non-exempt AFA CV sideboard limits.

Table 13 lists the proposed 2019 and 2020 groundfish sideboard limits for non-exempt AFA CVs. NMFS will deduct all targeted or incidental catch of sideboard species made by non-exempt AFA CVs from the sideboard limits listed in Table 13.

TABLE 13—PROPOSED 2019 AND 2020 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUND FISH SIDEBOARD LIMITS  
[Values are rounded to the nearest metric ton]

Species	Apportionments by season/ gear	Area/component	Ratio of 1995– 1997 non-exempt AFA CV catch to 1995–1997 TAC	Proposed 2019 and 2020 TACs <sup>a</sup>	Proposed 2019 and 2020 non-exempt AFA CV sideboard limit
Pollock	A Season	Shumagin (610)	0.6047	869	525
		Chirikof (620)	0.1167	18,025	2,103
		Kodiak (630)	0.2028	5,955	1,208
	B Season	Shumagin (610)	0.6047	869	525
		Chirikof (620)	0.1167	21,219	2,476
		Kodiak (630)	0.2028	2,761	560
	C Season	Shumagin (610)	0.6047	9,091	5,498
		Chirikof (620)	0.1167	6,608	771
		Kodiak (630)	0.2028	9,150	1,856
	D Season	Shumagin (610)	0.6047	9,091	5,498
		Chirikof (620)	0.1167	6,608	771
		Kodiak (630)	0.2028	9,150	1,856
	Annual	WYK (640)	0.3495	4,509	1,576
SEO (650)		0.3495	8,773	3,066	
Pacific cod	A Season <sup>1</sup>	W	0.1331	3,206	427
		C	0.0692	3,450	239
	B Season <sup>2</sup>	W	0.1331	2,137	284
		C	0.0692	2,300	159

TABLE 13—PROPOSED 2019 AND 2020 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUND FISH SIDEBOARD LIMITS—Continued  
[Values are rounded to the nearest metric ton]

Species	Apportionments by season/ gear	Area/component	Ratio of 1995– 1997 non-exempt AFA CV catch to 1995–1997 TAC	Proposed 2019 and 2020 TACs <sup>3</sup>	Proposed 2019 and 2020 non-exempt AFA CV sideboard limit
Sablefish	Annual	E inshore	0.0079	1,148	9
		E offshore	0.0078	128	1
	Annual, trawl gear	W	0.0000	435	0
Flatfish, shallow-water	Annual	C	0.0642	1,452	93
		E	0.0433	338	15
		W	0.0156	13,250	207
Flatfish, deep-water	Annual	C	0.0587	25,655	1,506
		E	0.0126	4,223	53
		W	0.0000	416	0
Rex sole	Annual	C	0.0647	3,442	223
		E	0.0128	5,640	72
		W	0.0007	2,909	2
Arrowtooth flounder	Annual	C	0.0384	8,236	316
		E	0.0029	3,384	10
		W	0.0021	14,500	30
Flathead sole	Annual	C	0.0280	48,000	1,344
		E	0.0002	13,800	3
		W	0.0036	8,650	31
Pacific ocean perch	Annual	C	0.0213	15,400	328
		E	0.0009	2,437	2
		W	0.0023	3,240	7
Northern rockfish	Annual	C	0.0748	19,678	1,472
		E	0.0466	5,687	265
		W	0.0003	382	0
Shortraker rockfish	Annual	C	0.0277	2,965	82
		E	0.0000	44	0
		W	0.0218	305	7
Dusky Rockfish	Annual	E	0.0110	514	6
		W	0.0001	135	0
		C	0.0000	3,246	0
Rougheye rockfish	Annual	E	0.0067	287	2
		W	0.0000	174	0
		C	0.0237	550	13
Demersal shelf rockfish	Annual	E	0.0124	703	9
		SEO	0.0020	250	1
		W	0.0280	344	10
Thornyhead rockfish	Annual	C	0.0280	921	26
		E	0.0280	773	22
		W/C	0.1699	1,737	295
Other Rockfish	Annual	E	0.0000	568	0
		Gulfwide	0.0309	3,000	93
		W	0.0063	504	3
Atka mackerel	Annual	C	0.0063	1,774	11
		E	0.0063	570	4
		W	0.0063	149	1
Big skates	Annual	C	0.0063	2,804	18
		E	0.0063	619	4
		W	0.0063	1,384	9
Longnose skates	Annual	Gulfwide	0.0063	1,384	9
		Gulfwide	0.0063	5,301	33
		Gulfwide	0.0063	4,514	28
Other skates	Annual	Gulfwide	0.0063	975	6
		Gulfwide	0.0063	975	6
		Gulfwide	0.0063	975	6
Sculpins	Annual	Gulfwide	0.0063	975	6
Sharks	Annual	Gulfwide	0.0063	975	6
Octopuses	Annual	Gulfwide	0.0063	975	6

<sup>1</sup> The Pacific cod A season for trawl gear does not open until January 20.  
<sup>2</sup> The Pacific cod B season for trawl gear closes November 1.  
<sup>3</sup> The Western and Central GOA area apportionments of pollock are considered ACLs.

*Non-Exempt AFA Catcher Vessel Halibut PSC Sideboard Limits*  
 The halibut PSC sideboard limits for non-exempt AFA CVs in the GOA are

based on the aggregate retained groundfish catch by non-exempt AFA CVs in each PSC target category from 1995 through 1997 divided by the retained catch of all vessels in that

fishery from 1995 through 1997 (§ 679.64(b)(4)(ii)). Table 14 lists the proposed 2019 and 2020 non-exempt AFA CV halibut PSC limits for vessels using trawl gear in the GOA.



TABLE 14—PROPOSED 2019 AND 2020 NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL HALIBUT PSC  
SIDEBOARD LIMITS FOR VESSELS USING TRAWL GEAR IN THE GOA  
[PSC limits are rounded to the nearest metric ton]

Season	Season dates	Fishery category	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	Proposed 2019 and 2020 PSC limit	Proposed 2019 and 2020 non-exempt AFA CV PSC limit
1	January 20–April 1	shallow-water	0.340	384	131
		deep-water	0.070	85	6
2	April 1–July 1	shallow-water	0.340	85	29
		deep-water	0.070	256	18
3	July 1–September 1	shallow-water	0.340	171	58
		deep-water	0.070	341	24
4	September 1–October 1	shallow-water	0.340	128	44
		deep-water	0.070	0	0
5	October 1–December 31	all targets	0.205	256	52
Annual		Total shallow-water			262
		Total deep-water			48
		Grand Total, all seasons and categories.		1,706	362

*Non-AFA Crab Vessel Groundfish Sideboard Limits*

Section 680.22 establishes groundfish sideboard limits for vessels with a history of participation in the Bering Sea snow crab fishery to prevent these vessels from using the increased flexibility provided by the CR Program to expand their level of participation in the GOA groundfish fisheries. Sideboard harvest limits restrict these vessels' catch to their collective historical landings in each GOA groundfish fishery (except the fixed-gear sablefish fishery). Sideboard limits also apply to landings made using an LLP license derived from the history of a restricted vessel, even if that LLP license is used on another vessel.

The basis for these sideboard harvest limits is described in detail in the final rules implementing the major provisions of the CR Program, including Amendments 18 and 19 to the Fishery Management Plan for Bering Sea/ Aleutian Islands King and Tanner Crabs (Crab FMP) (70 FR 10174, March 2, 2005), Amendment 34 to the Crab FMP (76 FR 35772, June 20, 2011), Amendment 83 to the GOA FMP (76 FR 74670, December 1, 2011), and Amendment 45 to the Crab FMP (80 FR 28539, May 19, 2015).

As discussed earlier in this preamble, NMFS published a proposed rule (83 FR 40733, August 16, 2018) that would, if implemented, establish regulations to prohibit directed fishing for sideboard limits for specific groundfish species or species groups, rather than prohibiting

directed fishing for non-AFA crab vessel sideboards through the GOA annual harvest specifications. This would apply to most, but not all, of the species and area apportionments listed in Table 15. If the final rulemaking to implement the proposed changes to sideboard management is effective prior to the publication of the final 2019 and 2020 harvest specifications, NMFS would incorporate such changes into the specification and the management of non-AFA crab vessel sideboard limits.

Table 15 lists the proposed 2019 and 2020 groundfish sideboard limits for non-AFA crab vessels. All targeted or incidental catch of sideboard species made by non-AFA crab vessels or associated LLP licenses will be deducted from these sideboard limits.

TABLE 15—PROPOSED 2019 AND 2020 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUND FISH SIDEBOARD LIMITS  
[Values are rounded to the nearest metric ton]

Species	Season/gear	Area/component/ gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Proposed 2019 and 2020 TACs	Proposed 2019 and 2020 non-AFA crab vessel sideboard limit	
Pollock	A Season January 20–March 10	Shumagin (610)	0.0098	869	9	
		Chirikof (620)	0.0031	18,025	56	
		Kodiak (630)	0.0002	5,955	1	
	B Season March 10–May 31	Shumagin (610)	0.0098	869	9	
		Chirikof (620)	0.0031	21,219	66	
		Kodiak (630)	0.0002	2,761	1	
	C Season August 25–October 1	Shumagin (610)	0.0098	9,091	89	
		Chirikof (620)	0.0031	6,608	20	
		Kodiak (630)	0.0002	9,150	2	
	D Season	Shumagin (610)		0.0098	9,091	89

TABLE 15—PROPOSED 2019 AND 2020 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUND FISH SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Season/gear	Area/component/ gear	Ratio of 1996– 2000 non-AFA crab vessel catch to 1996– 2000 total harvest	Proposed 2019 and 2020 TACs	Proposed 2019 and 2020 non-AFA crab vessel sideboard limit
Pacific cod	October 1–November 1	Chirikof (620)	0.0031	6,608	20
		Kodiak (630)	0.0002	9,150	2
	Annual	WYK (640)	0.0000	4,509	0
		SEO (650)	0.0000	8,773	0
	A Season <sup>1</sup>	W Jig CV	0.0000	3,206	0
		W Hook-and-line CV	0.0004	3,206	1
	January 1–June 10	W Pot CV	0.0997	3,206	320
		W Pot C/P	0.0078	3,206	25
		W Trawl CV	0.0007	3,206	2
		C Jig CV	0.0000	3,450	0
		C Hook-and-line CV	0.0001	3,450	0
		C Pot CV	0.0474	3,450	164
		C Pot C/P	0.0136	3,450	47
		C Trawl CV	0.0012	3,450	4
	B Season <sup>2</sup>	W Jig CV	0.0000	2,137	0
		W Hook-and-line CV	0.0004	2,137	1
	September 1–December 31	W Pot CV	0.0997	2,137	213
		W Pot C/P	0.0078	2,137	17
		W Trawl CV	0.0007	2,137	1
		C Jig CV	0.0000	2,300	0
		C Hook-and-line CV	0.0001	2,300	0
		C Pot CV	0.0474	2,300	109
		C Pot C/P	0.0136	2,300	31
		C Trawl CV	0.0012	2,300	3
	Annual	E inshore	0.0110	1,148	13
		E offshore	0.0000	128	0
	Sablefish	Annual, trawl gear	W	0.0000	435
		C	0.0000	1,452	0
		E	0.0000	338	0
Flatfish, shallow-water	Annual	W	0.0059	13,250	78
		C	0.0001	25,655	3
		E	0.0000	4,223	0
Flatfish, deep-water	Annual	W	0.0035	416	1
		C	0.0000	3,442	0
		E	0.0000	5,640	0
Rex sole	Annual	W	0.0000	2,909	0
		C	0.0000	8,236	0
		E	0.0000	3,384	0
Arrowtooth flounder	Annual	W	0.0004	14,500	6
		C	0.0001	48,000	5
		E	0.0000	13,800	0
Flathead sole	Annual	W	0.0002	8,650	2
		C	0.0004	15,400	6
		E	0.0000	2,437	0
Pacific ocean perch	Annual	W	0.0000	3,240	0
		C	0.0000	19,678	0
		E	0.0000	5,687	0
Northern rockfish	Annual	W	0.0005	382	0
		C	0.0000	2,965	0
Shortraker rockfish	Annual	W	0.0013	44	0
		C	0.0012	305	0
		E	0.0009	514	0
Dusky rockfish	Annual	W	0.0017	135	0
		C	0.0000	3,246	0
		E	0.0000	287	0
Rougheye rockfish	Annual	W	0.0067	174	1
		C	0.0047	550	3
		E	0.0008	703	1
Demersal shelf rockfish	Annual	SEO	0.0000	250	0
Thornyhead rockfish	Annual	W	0.0047	344	2
		C	0.0066	921	6
		E	0.0045	773	3
Other Rockfish	Annual	W/C	0.0033	1,737	6
		E	0.0000	568	0
Atka mackerel	Annual	Gulfwide	0.0000	3,000	0
Big skate	Annual	W	0.0392	504	20
		C	0.0159	1,774	28
		E	0.0000	570	0
Longnose skate	Annual	W	0.0392	149	6
		C	0.0159	2,804	45
		E	0.0000	619	0
Other skates	Annual	Gulfwide	0.0176	1,384	24
Sculpins	Annual	Gulfwide	0.0176	5,301	93
Sharks	Annual	Gulfwide	0.0176	4,514	79

TABLE 15—PROPOSED 2019 AND 2020 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUND FISH SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Season/gear	Area/component/gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Proposed 2019 and 2020 TACs	Proposed 2019 and 2020 non-AFA crab vessel sideboard limit
Octopuses .....	Annual .....	Gulfwide .....	0.0176	975	17

<sup>1</sup> The Pacific cod A season for trawl gear does not open until January 20.

<sup>2</sup> The Pacific cod B season for trawl gear closes November 1.

**Rockfish Program Groundfish Sideboard and Halibut PSC Limitations**

The Rockfish Program establishes three classes of sideboard provisions: CV groundfish sideboard restrictions, C/P rockfish sideboard restrictions, and C/P opt-out vessel sideboard restrictions (§ 679.82(c)(1)). These sideboards are intended to limit the ability of rockfish harvesters to expand into other fisheries.

CVs participating in the Rockfish Program may not participate in directed fishing for dusky rockfish, northern rockfish, and Pacific ocean perch in the

Western GOA and West Yakutat District from July 1 through July 31. Also, CVs may not participate in directed fishing for arrowtooth flounder, deep-water flatfish, and rex sole in the GOA from July 1 through July 31 (§ 679.82(d)).

C/Ps participating in Rockfish Program cooperatives are restricted by rockfish and halibut PSC sideboard limits. These C/Ps are prohibited from directed fishing for northern rockfish, Pacific ocean perch, and dusky rockfish in the Western GOA and West Yakutat District from July 1 through July 31 (§ 679.82(e)(2)). Holders of C/P-designated LLP licenses that opt out of

participating in a Rockfish Program cooperative will be able to access those sideboard limits that are not assigned to Rockfish Program cooperatives (§ 679.82(e)(7)). The sideboard ratio for each rockfish fishery in the Western GOA and West Yakutat District is set forth in § 679.82(e)(4). Table 16 lists the proposed 2019 and 2020 Rockfish Program C/P rockfish sideboard limits in the Western GOA and West Yakutat District. Due to confidentiality requirements associated with fisheries data, the sideboard limits for the West Yakutat District are not displayed.

TABLE 16—PROPOSED 2019 AND 2020 ROCKFISH PROGRAM SIDEBOARD LIMITS FOR THE WESTERN GOA AND WEST YAKUTAT DISTRICT BY FISHERY FOR THE CATCHER/PROCESSOR (C/P) SECTOR

[Values are rounded to the nearest metric ton]

Area	Fishery	C/P sector (% of TAC)	Proposed 2019 and 2020 TACs	Proposed 2019 and 2020 C/P sideboard limit
Western GOA .....	Dusky rockfish .....	72.3 .....	135	98.
	Pacific ocean perch .....	50.6 .....	3,240	1,639.
	Northern rockfish .....	74.3 .....	382	284.
West Yakutat District .....	Dusky rockfish .....	Confidential <sup>1</sup> .....	215	Confidential. <sup>1</sup>
	Pacific ocean perch .....	Confidential <sup>1</sup> .....	3,298	Confidential. <sup>1</sup>

<sup>1</sup> Not released due to confidentiality requirements associated with fish ticket data, as established by NMFS and the State of Alaska.

Under the Rockfish Program, the C/P sector is subject to halibut PSC sideboard limits for the trawl deep-water and shallow-water species fisheries from July 1 through July 31 (§ 679.82(e)(3) and (e)(5)). Halibut PSC sideboard ratios by fishery are set forth in § 679.82(e)(5). No halibut PSC sideboard limits apply to the CV sector, as vessels participating in a rockfish cooperative receive a portion of the annual halibut PSC limit. C/Ps that opt out of the Rockfish Program would be

able to access that portion of the deep-water and shallow-water halibut PSC sideboard limit not assigned to C/P rockfish cooperatives. The sideboard provisions for C/Ps that elect to opt out of participating in a rockfish cooperative are described in § 679.82(c), (e), and (f). Sideboard limits are linked to the catch history of specific vessels that may choose to opt out. After March 1, NMFS will determine which C/Ps have opted-out of the Rockfish Program in 2019, and will know the ratios and amounts

used to calculate opt-out sideboard ratios. NMFS will then calculate any applicable opt-out sideboard limits and post these limits on the Alaska Region website at <https://alaskafisheries.noaa.gov/fisheries/central-go-rockfish-program>. Table 17 lists the 2019 and 2020 proposed Rockfish Program halibut PSC limits for the C/P sector.

TABLE 17—PROPOSED 2019 AND 2020 ROCKFISH PROGRAM HALIBUT PSC LIMITS FOR THE CATCHER/PROCESSOR SECTOR

[Values are rounded to the nearest metric ton]

Sector	Shallow-water species fishery halibut PSC sideboard ratio (percent)	Deep-water species fishery halibut PSC sideboard ratio (percent)	Annual halibut PSC limit (mt)	Annual shallow-water species fishery halibut PSC sideboard limit (mt)	Annual deep-water species fishery halibut PSC sideboard limit (mt)
Catcher/processor .....	0.10	2.50	1,706	2	43

*Amendment 80 Program Groundfish and PSC Sideboard Limits*

Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (Amendment 80 Program) established a limited access privilege program for the non-AFA trawl C/P sector. The Amendment 80 Program established groundfish and halibut PSC limits for Amendment 80 Program participants to limit the ability of participants eligible for the Amendment

80 Program to expand their harvest efforts in the GOA.

Section 679.92 establishes groundfish harvesting sideboard limits on all Amendment 80 Program vessels, other than the F/V *Golden Fleece*, to amounts no greater than the limits shown in Table 37 to 50 CFR part 679. Under § 679.92(d), the F/V *Golden Fleece* is prohibited from directed fishing for pollock, Pacific cod, Pacific ocean perch, dusky rockfish, and northern rockfish in the GOA.

Groundfish sideboard limits for Amendment 80 Program vessels operating in the GOA are based on their average aggregate harvests from 1998 through 2004 (72 FR 52668, September 14, 2007). Table 18 lists the proposed 2019 and 2020 sideboard limits for Amendment 80 Program vessels. NMFS will deduct all targeted or incidental catch of sideboard species made by Amendment 80 Program vessels from the sideboard limits in Table 18.

TABLE 18—PROPOSED 2019 AND 2020 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS

[Values are rounded to the nearest metric ton]

Species	Season	Area	Ratio of Amendment 80 sector vessels 1998–2004 catch to TAC	Proposed 2019 and 2020 TAC (mt)	Proposed 2019 and 2020 Amendment 80 vessel sideboard limits (mt)
Pollock .....	A Season .....	Shumagin (610) .....	0.003	869	3
	January 20–March 10 .....	Chirikof (620) .....	0.002	18,025	36
	.....	Kodiak (630) .....	0.002	5,955	12
	B Season .....	Shumagin (610) .....	0.003	869	3
	March 10–May 31 .....	Chirikof (620) .....	0.002	21,219	42
	.....	Kodiak (630) .....	0.002	2,761	6
	C Season .....	Shumagin (610) .....	0.003	9,091	27
	August 25–October 1 .....	Chirikof (620) .....	0.002	6,608	13
	.....	Kodiak (630) .....	0.002	9,150	18
	D Season .....	Shumagin (610) .....	0.003	9,091	27
	October 1–November 1 .....	Chirikof (620) .....	0.002	6,608	13
	.....	Kodiak (630) .....	0.002	9,150	18
Pacific cod .....	Annual .....	WYK (640) .....	0.002	4,509	9
	A Season <sup>1</sup> .....	W .....	0.020	3,206	64
	January 1–June 10 .....	C .....	0.044	3,450	152
	B Season <sup>2</sup> .....	W .....	0.020	2,137	43
	September 1–December 31 .....	C .....	0.044	2,300	101
Pacific ocean perch .....	Annual .....	WYK .....	0.034	1,275	43
	.....	W .....	0.994	3,240	3,221
	.....	WYK .....	0.961	3,298	3,169
Northern rockfish .....	Annual .....	W .....	1.000	382	382
Dusky rockfish .....	Annual .....	W .....	0.764	135	103
	.....	WYK .....	0.896	215	193

<sup>1</sup> The Pacific cod A season for trawl gear does not open until January 20.

<sup>2</sup> The Pacific cod B season for trawl gear closes November 1.

The halibut PSC sideboard limits for Amendment 80 Program vessels in the GOA are based on the historic use of halibut PSC by Amendment 80 Program

vessels in each PSC target category from 1998 through 2004. These values are slightly lower than the average historic use to accommodate two factors:

Allocation of halibut PSC cooperative quota under the Rockfish Program and the exemption of the F/V *Golden Fleece* from this restriction (§ 679.92(b)(2)).

Table 19 lists the proposed 2019 and 2020 halibut PSC sideboard limits for Amendment 80 Program vessels. These tables incorporate the maximum

percentages of the halibut PSC sideboard limits that may be used by Amendment 80 Program vessels, as contained in Table 38 to 50 CFR part

679. Any residual amount of a seasonal Amendment 80 sideboard halibut PSC limit may carry forward to the next season limit (§ 679.92(b)(2)).

TABLE 19—PROPOSED 2019 AND 2020 HALIBUT PSC SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS IN THE GOA

[Values are rounded to the nearest metric ton]

Season	Season dates	Fishery category	Historic Amendment 80 use of the annual halibut PSC limit (ratio)	Proposed 2019 and 2020 annual PSC limit (mt)	Proposed 2019 and 2020 Amendment 80 vessel PSC sideboard limit (mt)
1	January 20–April 1	shallow-water	0.0048	1,706	8
		deep-water	0.0115	1,706	20
2	April 1–July 1	shallow-water	0.0189	1,706	32
		deep-water	0.1072	1,706	183
3	July 1–September 1	shallow-water	0.0146	1,706	25
		deep-water	0.0521	1,706	89
4	September 1–October 1	shallow-water	0.0074	1,706	13
		deep-water	0.0014	1,706	2
5	October 1–December 31	shallow-water	0.0227	1,706	39
		deep-water	0.0371	1,706	63
Annual		Total shallow-water			117
Total deep-water.					357
		Grand Total, all seasons and categories.			474

**Classification**

NMFS has determined that the proposed harvest specifications are consistent with the FMP and preliminarily determined that the proposed harvest specifications are consistent with the Magnuson-Stevens Act and other applicable laws, subject to further review after public comment.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared an EIS for this action and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision (ROD) for the Final EIS. A SIR that assesses the need to prepare a Supplemental EIS is being prepared for the final harvest specifications. Copies of the Final EIS, ROD, and annual SIRs for this action are available from NMFS (see ADDRESSES). The Final EIS analyzes the environmental, social, and economic consequences of the proposed groundfish harvest specifications and alternative harvest strategies on resources in the action area. Based on the analysis in the Final EIS, NMFS concluded that the preferred Alternative

(Alternative 2) provides the best balance among relevant environmental, social, and economic considerations and allows for continued management of the groundfish fisheries based on the most recent, best scientific information.

NMFS prepared an IRFA as required by section 603 of the Regulatory Flexibility Act (RFA), analyzing the methodology for establishing the relevant TACs. The IRFA evaluated the economic impacts on small entities of alternative harvest strategies for the groundfish fisheries in the EEZ off Alaska. As set forth in the methodology, TACs are set to a level that falls within the range of ABCs recommended by the SSC; the sum of the TACs must achieve the OY specified in the FMP. While the specific numbers that the methodology produces may vary from year to year, the methodology itself remains constant.

A description of the proposed action, why it is being considered, and the legal basis for this proposed action are contained in the preamble above. A copy of the IRFA is available from NMFS (see ADDRESSES). A summary of the IRFA follows.

The action under consideration is a harvest strategy to govern the catch of groundfish in the GOA. The preferred

alternative is the existing harvest strategy in which TACs fall within the range of ABCs recommended by the SSC. This action is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act.

The entities directly regulated by this action are those that harvest groundfish in the EEZ of the GOA and in parallel fisheries within State of Alaska waters. These include entities operating CVs and C/Ps within the action area and entities receiving direct allocations of groundfish.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of \$11 million for all its affiliated operations worldwide.

The IRFA shows that, in 2017, there were 821 individual CVs with gross revenues less than or equal to \$11 million. This estimate accounts for

corporate affiliations among vessels, and for cooperative affiliations among fishing entities, since some of the fishing vessels operating in the GOA are members of AFA inshore pollock cooperatives, GOA rockfish cooperatives, or BSAI CR Program cooperatives. Therefore, under the RFA, it is the aggregate gross receipts of all participating members of the cooperative that must meet the “under \$11 million” threshold. Vessels that participate in these cooperatives are considered to be large entities within the meaning of the RFA. After accounting for membership in these cooperatives, there are an estimated 821 small CV entities remaining in the GOA groundfish sector. This latter group of vessels had average gross revenues that varied by gear type. Average gross revenues for hook-and-line CVs, pot gear CVs, and trawl gear CVs are estimated to be \$380,000, \$790,000, and \$1.97 million, respectively. Revenue data for the three C/Ps considered to be small entities are confidential.

The preferred alternative (Alternative 2) was compared to four other alternatives. Alternative 1 would have set TACs to generate fishing rates equal to the maximum permissible ABC (if the full TAC were harvested), unless the sum of TACs exceeded the GOA OY, in which case TACs would be limited to the OY. Alternative 3 would have set TACs to produce fishing rates equal to the most recent 5-year average fishing rate. Alternative 4 would have set TACs to equal the lower limit of the GOA OY range. Alternative 5, the “no action alternative,” would have set TACs equal to zero.

The TACs associated with Alternative 2, the preferred harvest strategy, are those recommended by the Council in October 2018. OFLs and ABCs for the species were based on recommendations prepared by the Council’s Plan Team in September 2018, and reviewed by the Council’s SSC in October 2018. The Council based its TAC recommendations on those of its AP, which were consistent with the SSC’s OFL and ABC recommendations.

Alternative 1 selects harvest rates that would allow fishermen to harvest stocks at the level of ABCs, unless total harvests were constrained by the upper bound of the GOA OY of 800,000 mt. As shown in Table 1 of the preamble, the sum of ABCs in 2019 and 2020 would be 479,050 mt, which falls below the upper bound of the OY range. The sum of TACs is 375,280 mt, which is less than the sum of ABCs. In this instance, Alternative 1 is consistent with the preferred alternative (Alternative 2), meets the objectives of that action, and

has small entity impacts that may be equivalent to the preferred alternative. However, it is not likely that Alternative 1 would result in reduced adverse economic impacts to directly-regulated small entities relative to Alternative 2. The selection of Alternative 1, which could increase all TACs up to the sum of ABCs, would not reflect the practical implications that increased TACs for some species probably would not be fully harvested. This could be due to a variety of reasons, including the lack of commercial or market interest in some species. Additionally, an underharvest of flatfish TACs could result due to other factors, such as the fixed, and therefore constraining, PSC limits associated with the harvest of the GOA groundfish species. Furthermore, TACs may be set lower than ABC for conservation purposes, as is the case with other rockfish in the Eastern GOA. Finally, the TACs for two species (pollock and Pacific cod) cannot be set equal to ABC, as the TAC must be reduced to account for the State’s GHLS in these fisheries.

Alternative 3 selects harvest rates based on the most recent 5 years of harvest rates (for species in Tiers 1 through 3) or based on the most recent 5 years of harvests (for species in Tiers 4 through 6). This alternative is inconsistent with the objectives of this action because it does not take account of the most recent biological information for this fishery, as required by the Magnuson-Stevens Act. NMFS annually conducts at-sea stock surveys for different species, as well as statistical modeling, to estimate stock sizes and permissible harvest levels. Actual harvest rates or harvest amounts are a component of these estimates, but in and of themselves may not accurately portray stock sizes and conditions. Harvest rates are listed for each species category for each year in the SAFE report (see **ADDRESSES**).

Alternative 4 would lead to significantly lower harvests of all groundfish species and reduce the TACs from the upper end of the OY range in the GOA to its lower end of 116,000 mt. Overall, this alternative would reduce 2019 TACs by about 80 percent and would lead to significant reductions in harvests of species harvested by small entities. While production declines in the GOA would be associated with offsetting price increases in the GOA, the size of these increases is uncertain and would still be constrained by production of substitutes. There are close substitutes for GOA groundfish species available in significant quantities from the Bering Sea and Aleutian Islands management area.

Thus, price increases associated with reduction production are not likely to fully offset revenue declines from reduced production, and this alternative would have a detrimental impact on small entities.

Alternative 5, which sets all harvests equal to zero, would have a significant adverse economic impact on small entities and would be contrary to obligations to achieve OY on a continuing basis, as mandated by the Magnuson-Stevens Act. Under Alternative 5, all 821 individual CVs impacted by this rule would have gross revenues of \$0. Additionally, the three small C/Ps impacted by this rule also would have gross revenues of \$0.

The proposed harvest specifications (Alternative 2) extend the current 2019 OFLs, ABCs, and TACs to 2019 and 2020, with the exceptions of the removal of the squid OFL, ABC, and TAC. As noted in the IRFA, the Council may modify its recommendations for final OFLs, ABCs, and TACs in December 2018, when it reviews the November 2018 SAFE report from its Groundfish Plan Team, and the December 2018 Council meeting reports of its SSC and AP. Because the 2019 TACs (with the exception of squid) in the proposed 2019 and 2020 harvest specifications are unchanged from the 2019 TACs, and because the sum of all TACs remains within OY for the GOA, NMFS does not expect adverse impacts on small entities. Also, NMFS does not expect any changes made by the Council in December 2018 to have significant adverse impacts on small entities.

This action does not modify recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any Federal rules.

Adverse impacts on marine mammals or endangered species resulting from fishing activities conducted under this rule are discussed in the Final EIS and its accompanying annual SIRs (see **ADDRESSES**).

**Authority:** 16 U.S.C. 773 *et seq.*; 16 U.S.C. 1540(f); 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 3631 *et seq.*; Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–199; Pub. L. 108–447; Pub. L. 109–241; Pub. L. 109–479.

Dated: November 29, 2018.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 180713633–8633–01]

RIN 0648–XG356

**Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; 2019 and 2020 Harvest Specifications for Groundfish**

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

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

**SUMMARY:** NMFS proposes 2019 and 2020 harvest specifications, apportionments, and prohibited species catch allowances for the groundfish fisheries of the Bering Sea and Aleutian Islands (BSAI) management area. This action is necessary to establish harvest limits for groundfish during the 2019 and 2020 fishing years, and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

**DATES:** Comments must be received by January 7, 2019.

**ADDRESSES:** Submit your comments, identified by NOAA–NMFS–2018–0089, by either of the following methods:

- *Federal e-Rulemaking Portal:* Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0089](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0089), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

*Instructions:* NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record, and NMFS will post the comments for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information

submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (Final EIS), Record of Decision (ROD), the annual Supplementary Information Reports (SIRs) to the Final EIS, and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action may be obtained from <https://www.regulations.gov> or from the Alaska Region website at <https://alaskafisheries.noaa.gov>. An updated 2019 SIR for the final 2019 and 2020 harvest specifications will be available from the same sources. The final 2017 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the BSAI, dated November 2017, is available from the North Pacific Fishery Management Council (Council) at 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252, phone 907–271–2809, or from the Council’s website at <https://www.npfmc.org/>. The 2018 SAFE report for the BSAI is available from the same source.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** Federal regulations at 50 CFR part 679 implement the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) and govern the groundfish fisheries in the BSAI. The Council prepared the FMP, and NMFS approved it, under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species category. The sum of TACs for all groundfish species in the BSAI must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (see § 679.20(a)(1)(i)(A)). Section 679.20(c)(1) further requires NMFS to publish proposed harvest specifications in the **Federal Register** and solicit public comments on proposed annual TACs and apportionments thereof, prohibited species catch (PSC) allowances, prohibited species quota (PSQ) reserves established by § 679.21, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC, American Fisheries Act allocations, Amendment

80 allocations, Community Development Quota (CDQ) reserve amounts established by § 679.20(b)(1)(ii), and acceptable biological catch (ABC) surpluses and reserves for CDQ groups and Amendment 80 cooperatives for flathead sole, rock sole, and yellowfin sole. The proposed harvest specifications set forth in Tables 1 through 16 of this action satisfy these requirements.

Under § 679.20(c)(3), NMFS will publish the final harvest specifications for 2019 and 2020 after (1) considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its December 2018 meeting, (3) considering information presented in the 2019 SIR to the EIS that assesses the need to prepare a Supplemental EIS (see **ADDRESSES**), and (4) considering information presented in the final 2018 SAFE reports prepared for the 2019 and 2020 groundfish fisheries.

**Other Actions Affecting or Potentially Affecting the 2019 and 2020 Harvest Specifications**

*Amendment 117: Reclassify Squid as an Ecosystem Species*

On July 6, 2018, NMFS published the final rule to implement Amendment 117 to the FMP (83 FR 31460). This rule reclassified squid in the FMP as an “Ecosystem Component” species, which is a category of non-target species that are not in need of conservation and management. Accordingly, NMFS will no longer set an Overfishing Level (OFL), ABC, and TAC for squid in the BSAI groundfish harvest specifications, beginning with the proposed 2019 and 2020 harvest specifications. Amendment 117 prohibits directed fishing for squid, while maintaining recordkeeping and reporting requirements for squid. Amendment 117 also establishes a squid maximum retainable amount when directed fishing for halibut and groundfish species at 20 percent to discourage targeting squid.

*Rulemaking To Prohibit Directed Fishing for American Fisheries Act (AFA) Sideboard Limits*

On August 16, 2018, NMFS published a proposed rule (83 FR 40733) that would modify regulations for the American Fisheries Act (AFA) Program participants subject to limits on the catch of specific species (sideboard limits) in the BSAI. Sideboard limits are intended to prevent AFA Program participants who benefit from receiving exclusive harvesting privileges in a particular fishery from shifting effort into other fisheries.

Specifically, the proposed rule would primarily establish regulations to prohibit directed fishing for sideboard limits for specific groundfish species or species groups, rather than prohibiting directed fishing for AFA sideboard limits through the BSAI annual harvest specifications. The proposed rule would streamline and simplify NMFS's management of applicable groundfish sideboard limits. Currently, NMFS calculates numerous AFA Program sideboard limits as part of the annual BSAI groundfish harvest specifications process and publishes these sideboard limits in the **Federal Register**. Concurrently, NMFS prohibits directed fishing for the majority of the groundfish sideboard limits because most limits are too small to support directed fishing. Rather than continue this annual process, this action proposes to revise regulations to prohibit directed fishing in regulation for most AFA Program groundfish sideboard limits. NMFS would no longer calculate and publish AFA Program sideboard limit amounts for most groundfish species in the annual BSAI harvest specifications. If the final rulemaking implementing these changes is effective prior to the publication of the final 2019 and 2020 harvest specifications, NMFS would no longer publish the majority of the sideboard limits contained in Tables 13 and 15 of this proposed action.

#### *State of Alaska Guideline Harvest Levels*

For 2019 and 2020, the Board of Fisheries (BOF) for the State of Alaska (State) established the guideline harvest level (GHL) for vessels using pot gear in State waters in the Bering Sea subarea (BS) equal to 8 percent of the Pacific cod ABC in the BS. Also, for 2019 and 2020, the BOF established an additional GHL for vessels using jig gear in State waters in the BS equal to 45 mt of Pacific cod. The Council and its BSAI Groundfish Plan Team (Plan Team), Scientific and Statistical Committee (SSC), and Advisory Panel (AP) recommended that the sum of all State and Federal water Pacific cod removals from the BS not exceed the proposed ABC recommendations of 170,000 mt. Accordingly, the Council recommended, and NMFS proposes, that the 2019 and 2020 Pacific cod TACs in the BS account for the State's GHLs for Pacific cod caught in State waters in the BS. Also, the BOF approved a one percent annual increase in the BS GHL, up to 15 percent of the Pacific cod ABC in the BS, if 90 percent of the GHL is harvested by November 15 of the preceding year. If 90 percent of the 2019 BS GHL is not harvested by November 15, 2019, the 2020 GHL will remain at 8 percent. If,

however, 90 percent of the 2019 BS GHL is harvested by November 15, 2019, the 2020 GHL will increase by 1 percent to 9 percent of the 2020 Pacific cod ABC in the BS, and the 2020 BS TAC will decrease to account for the increased BS GHL.

For 2019 and 2020, the BOF established a GHL in State waters in the Aleutian Islands subarea (AI) equal to 31 percent of the Pacific cod ABC for the AI. The Council and its Plan Team, SSC, and AP recommended that the sum of all State and Federal water Pacific cod removals from the AI not exceed the proposed ABC recommendations of 21,500 mt. Accordingly, the Council recommended, and NMFS proposes, that the 2019 and 2020 Pacific cod TACs in the AI account for the State's GHL for Pacific cod caught in State waters in the AI.

#### **Proposed ABC and TAC Harvest Specifications**

At the October 2018 Council meeting, the SSC, AP, and Council reviewed the most recent biological and harvest information on the condition of the BSAI groundfish stocks. This information was compiled by the Plan Team and presented in the final 2017 SAFE report for the BSAI groundfish fisheries, dated November 2017 (see **ADDRESSES**). The final 2018 SAFE report will be available from the same source.

The only changes to the proposed 2019 and 2020 harvest specifications from the final 2019 harvest specifications published in February 2018 (83 FR 8365, February 27, 2018) are associated with squid OFL, ABC, and TAC; BS pollock TAC; and Pacific cod TACs. Consistent with the final approval of Amendment 117 and the reclassification of squid as an ecosystem component species (83 FR 31460), the 2019 harvest specifications include the removal of the squid OFL (6,912 mt), squid ABC (5,184 mt), and squid TAC (1,200 mt) in the BSAI. The Council recommended, and NMFS includes in these proposed specifications, a corresponding 1,200 mt increase in the BS pollock TAC. The net increase of the BS pollock TAC equals the decrease of the squid TAC. As discussed earlier in this preamble, the BS and AI Pacific cod TACs were reduced to account for the increases in the BS and AI Pacific cod GHLs. This reduced the 2019 and 2020 BS Pacific cod TAC from 159,120 mt to 156,355 mt, and the AI Pacific cod TAC from 15,695 mt to 14,835 mt. Therefore, the sum of the 2019 and 2020 proposed TACs decreased from 2.0 million mt to 1,996,375 mt.

The proposed 2019 and 2020 harvest specifications are based on the final

2019 harvest specifications published in February 2018, which were set after consideration of the most recent 2017 SAFE report, and are based on the initial survey data that were presented at the September 2018 Plan Team meeting. These proposed 2019 and 2020 harvest specifications are subject to change in the final harvest specifications to be published by NMFS following the Council's December 2018 meeting. In November 2018, the Plan Team will update the 2017 SAFE report to include new information collected during 2018, such as NMFS stock surveys, revised stock assessments, and catch data. The Plan Team will compile this information and present the draft 2018 SAFE report at the December 2018 Council meeting. At that meeting, the SSC and the Council will review the 2018 SAFE report, and the Council will approve the 2018 SAFE report. The Council will consider information contained in the 2018 SAFE report, recommendations from the November 2018 Plan Team meeting and December 2018 SSC and AP meetings, public testimony, and relevant written comments in making its recommendations for the final 2019 and 2020 harvest specifications.

In previous years, the most significant changes (relative to the amount of assessed tonnage of fish) to the OFLs and ABCs from the proposed to the final harvest specifications have been based on the most recent NMFS stock surveys. These surveys provide updated estimates of stock biomass and spatial distribution, and changes to the models or the models' results used for producing stock assessments. Any changes to models used in stock assessments will be recommended by the Plan Team in November 2018 and then included in the final 2018 SAFE report. Model changes can result in changes to final OFLs, ABCs, and TACs. The final 2018 SAFE report will include the most recent information, such as catch data.

The final harvest specification amounts for these stocks are not expected to vary greatly from the proposed harvest specification amounts published here. If the 2018 SAFE report indicates that the stock biomass trend is increasing for a species, then the final 2019 and 2020 harvest specifications may reflect an increase from the proposed harvest specifications. Conversely, if the 2018 SAFE report indicates that the stock biomass trend is decreasing for a species, then the final 2019 and 2020 harvest specifications may reflect a decrease from the proposed harvest specifications. In addition to changes driven by biomass



trends, there may be changes in TACs due to the sum of ABCs exceeding 2 million mt. Since the regulations require TACs to be set to an OY between 1.4 and 2 million mt, the Council may be required to recommend TACs that are lower than the ABCs recommended by the Plan Team and the SSC, if setting TACs equal to ABCs would cause total TACs to exceed an OY of 2 million mt. Generally, total ABCs greatly exceed 2 million mt in years with a large pollock biomass. For both 2019 and 2020, NMFS anticipates that the sum of the ABCs will exceed 2 million mt. NMFS expects that the final total TAC for the BSAI for both 2019 and 2020 will equal 2 million mt each year.

The proposed OFLs, ABCs, and TACs are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. The FMP specifies a series of six tiers to define OFLs and ABCs based on the level of reliable information available to fishery scientists. Tier 1 represents the highest level of information quality available, while Tier 6 represents the lowest.

In October 2018, the SSC adopted the proposed 2019 and 2020 OFLs and ABCs recommended by the Plan Team for all groundfish species. The Council adopted the SSC's OFL and ABC recommendations. These amounts are

unchanged from the final 2019 harvest specifications published in the **Federal Register** on February 27, 2018 (83 FR 8365), with the exception of the removal of the squid OFL and ABC. The Council adopted the AP's TAC recommendations, including the 1,200 mt increase in the BS pollock TAC because of the removal of the 2019 squid TAC of 1,200 mt. For 2019 and 2020, the Council recommended, and NMFS proposes, the OFLs, ABCs, and TACs listed in Table 1. The proposed ABCs reflect harvest amounts that are less than the specified OFLs. The sum of the proposed 2019 and 2020 ABCs for all assessed groundfish is 3,573,772 mt. The sum of the proposed TACs is 1,996,375 mt, which accounts for the increases in the BS and AI Pacific cod GHLS and subsequent reductions of the proposed BS and AI Pacific cod TACs. As discussed above, NMFS expects that the final total BSAI TAC for both 2019 and 2020 will equal 2 million mt each year.

*Specification and Apportionment of TAC Amounts*

The Council recommended proposed TACs for 2019 and 2020 Aleutian Islands sablefish, BS sablefish, BS and Eastern Aleutian Islands Atka mackerel, BS Pacific ocean perch, Central Aleutian Islands Pacific ocean perch, and Eastern Aleutian Islands Pacific ocean perch that are equal to the proposed ABCs. The Council recommended proposed

TACs less than the respective proposed ABCs for all other species. Section 679.20(a)(5)(iii)(B)(1) requires the AI pollock TAC to be set at 19,000 mt when the AI pollock ABC equals or exceeds 19,000 mt. The Bogoslof pollock TAC is set to accommodate incidental catch amounts. TACs are set so that the sum of the overall TAC does not exceed the BSAI OY.

The proposed groundfish OFLs, ABCs, and TACs are subject to change pending the completion of the final 2018 SAFE report and the Council's recommendations for the final 2019 and 2020 harvest specifications during its December 2018 meeting. These proposed amounts are consistent with the biological condition of groundfish stocks as described in the 2018 SAFE report, and have been adjusted for other biological and socioeconomic considerations. Pursuant to Section 3.2.3.4.1 of the FMP, the Council could recommend adjusting the final TACs if "warranted on the basis of bycatch considerations, management uncertainty, or socioeconomic considerations; or if required in order to cause the sum of the TACs to fall within the OY range." Table 1 lists the proposed 2019 and 2020 OFL, ABC, TAC, initial TAC (ITAC), and CDQ amounts for groundfish for the BSAI. The proposed apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1—PROPOSED 2019 AND 2020 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND CDQ RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI<sup>1</sup>

[Amounts are in metric tons]

Species	Area	Proposed 2019 and 2020				
		OFL	ABC	TAC	ITAC <sup>2</sup>	CDQ <sup>3,4</sup>
Pollock <sup>4</sup>	BS	4,592,000	2,467,000	1,384,200	1,245,780	138,420
	AI	37,431	30,803	19,000	17,100	1,900
	Bogoslof	130,428	60,800	500	500	.....
Pacific cod <sup>5</sup>	BS	201,000	170,000	156,355	139,625	16,730
	AI	28,700	21,500	14,835	13,248	1,587
Sablefish	BS	4,576	2,061	2,061	876	77
	AI	6,209	2,798	2,798	595	52
Yellowfin sole	BSAI	295,600	267,500	156,000	139,308	16,692
Greenland turbot	BSAI	13,540	11,473	5,294	4,500	n/a
	BS	n/a	7,016	5,125	4,356	548
	AI	n/a	1,457	169	144	.....
Arrowtooth flounder	BSAI	75,084	64,494	14,000	11,900	1,498
Kamchatka flounder	BSAI	12,022	7,317	5,000	4,250	.....
Rock sole <sup>6</sup>	BSAI	136,000	132,000	49,100	43,846	5,254
Flathead sole <sup>7</sup>	BSAI	78,036	65,227	16,500	14,735	1,766
Alaska plaice	BSAI	38,800	32,700	16,252	13,814	.....
Other flatfish <sup>8</sup>	BSAI	17,591	13,193	4,000	3,400	.....
Pacific Ocean perch	BSAI	50,098	41,212	37,880	33,332	n/a
	BS	n/a	11,499	11,499	9,774	.....
	EAI	n/a	9,715	9,715	8,675	1,040
	CAI	n/a	7,549	7,549	6,741	808
	WAI	n/a	12,449	9,117	8,141	976
Northern rockfish	BSAI	15,563	12,710	6,500	5,525	.....
Blackspotted and Rougheye rockfish <sup>9</sup>	BSAI	829	678	225	191	.....
	EBS/EAI	n/a	414	75	64	.....

TABLE 1—PROPOSED 2019 AND 2020 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND CDQ RESERVE ALLOCATION OF GROUND FISH IN THE BSAI<sup>1</sup>—Continued

[Amounts are in metric tons]

Species	Area	Proposed 2019 and 2020				
		OFL	ABC	TAC	ITAC <sup>2</sup>	CDQ <sup>3,4</sup>
Shortraker rockfish	CAI/WAI	n/a	264	150	128	
	BSAI	666	499	150	128	
Other rockfish <sup>10</sup>	BSAI	1,816	1,362	845	718	
	BS	n/a	791	275	234	
Atka mackerel	AI	n/a	571	570	485	
	BSAI	97,200	84,400	72,500	64,743	7,758
	EAI/BS	n/a	33,780	33,780	30,166	3,614
	CAI	n/a	29,350	24,895	22,231	2,664
	WAI	n/a	21,270	13,825	12,346	1,479
Skates	BSAI	44,202	36,957	27,000	22,950	
Sculpins	BSAI	53,201	39,995	5,000	4,250	
Sharks	BSAI	689	517	180	153	
Octopuses	BSAI	4,769	3,576	200	170	
<b>Total</b>		<b>5,936,050</b>	<b>3,573,772</b>	<b>1,996,375</b>	<b>1,785,636</b>	<b>195,105</b>

<sup>1</sup> These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these harvest specifications, the BS includes the Bogoslof District.

<sup>2</sup> Except for pollock, the portion of the sablefish TAC allocated to hook-and-line and pot gear, and the Amendment 80 species (Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod), 15 percent of each TAC is put into a non-specified reserve. The ITAC for these species is the remainder of the TAC after the subtraction of these reserves. For pollock and Amendment 80 species, ITAC is the non-CDQ allocation of TAC (see footnote 3 and 4).

<sup>3</sup> For the Amendment 80 species (Atka mackerel, flathead sole, Pacific cod, rock sole, yellowfin sole, and Aleutian Islands Pacific ocean perch), 10.7 percent of the TAC is reserved for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31). Twenty percent of the sablefish TAC is allocated to hook-and-line gear or pot gear, 7.5 percent of the sablefish TAC is allocated to trawl gear, and 10.7 percent of the TACs for Bering Sea Greenland turbot and BSAI arrowtooth flounder are reserved for use by CDQ participants (see § 679.20(b)(1)(ii)(B) and (D)). The 2019 hook-and-line or pot gear portion of the sablefish ITAC and CDQ reserve will not be specified until the final 2019 and 2020 harvest specifications. Aleutian Islands Greenland turbot, "other flatfish," Alaska plaice, Bering Sea Pacific ocean perch, Kamchatka flounder, northern rockfish, shortraker rockfish, blackspotted and rougheye rockfish, "other rockfish," octopuses, skates, sculpins, and sharks are not allocated to the CDQ Program.

<sup>4</sup> Under § 679.20(a)(5)(i)(A), the annual BS pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (3.9 percent), is further allocated by sector for a pollock directed fishery as follows: Inshore—50 percent; catcher/processor—40 percent; and motherships—10 percent. Under § 679.20(a)(5)(iii)(B)(2), the annual AI subarea pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (2,400 mt), is allocated to the Aleut Corporation for a directed pollock fishery.

<sup>5</sup> The BS Pacific cod TAC is set to account for the 8 percent of the BS ABC for the State of Alaska's (State) guideline harvest level in State waters of the BS. The AI Pacific cod TAC is set to account for 31 percent of the AI ABC for the State guideline harvest level in State waters of the AI.

<sup>6</sup> "Rock sole" includes *Lepidopsetta polyxystra* (Northern rock sole) and *Lepidopsetta bilineata* (Southern rock sole).

<sup>7</sup> "Flathead sole" includes *Hippoglossoides elassodon* (flathead sole) and *Hippoglossoides robustus* (Bering flounder).

<sup>8</sup> "Other flatfish" includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder, Kamchatka flounder, and Alaska plaice.

<sup>9</sup> "Blackspotted and Rougheye rockfish" includes *Sebastes melanostictus* (blackspotted) and *Sebastes aleutianus* (rougheye).

<sup>10</sup> "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

**Note:** Regulatory areas and districts are defined at § 679.2 (BSAI = Bering Sea and Aleutian Islands management area, BS = Bering Sea subarea, AI = Aleutian Islands subarea, EAI = Eastern Aleutian district, CAI = Central Aleutian district, WAI = Western Aleutian district).

*Groundfish Reserves and the Incidental Catch Allowance (ICA) for Pollock, Atka Mackerel, Flathead Sole, Rock Sole, Yellowfin Sole, and AI Pacific Ocean Perch*

Section 679.20(b)(1)(i) requires NMFS to reserve 15 percent of the TAC for each target species category, except for pollock, hook-and-line and pot gear allocation of sablefish, and Amendment 80 species, in a non-specified reserve. Section 679.20(b)(1)(ii)(B) requires NMFS to allocate 20 percent of the hook-and-line or pot gear allocation of sablefish to the fixed gear sablefish CDQ reserve. Section 679.20(b)(1)(ii)(D) requires NMFS to allocate 7.5 percent of the trawl gear allocation of sablefish and

10.7 percent of BS Greenland turbot and arrowtooth flounder TACs to the respective CDQ reserves. Section 679.20(b)(1)(ii)(C) requires NMFS to allocate 10.7 percent of the TACs for Atka mackerel, AI Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod to the respective CDQ reserves. Sections 679.20(a)(5)(i)(A) and 679.31(a) require allocation of 10 percent of the BS pollock TAC to the pollock CDQ directed fishing allowance (DFA). Sections 679.20(a)(5)(iii)(B)(2)(i) and 679.31(a) require 10 percent of the Aleutian Islands pollock TAC be allocated to the pollock CDQ DFA. The entire Bogoslof District pollock TAC is allocated as an ICA pursuant to

§ 679.20(a)(5)(ii) because the Bogoslof Area is closed to directed fishing for pollock by regulation (§ 679.22(a)(7)(i)(B)). With the exception of the hook-and-line or pot gear sablefish CDQ reserve, the regulations do not further apportion the CDQ reserves by gear.

Pursuant to § 679.20(a)(5)(i)(A)(1), NMFS proposes a pollock ICA of 3.9 percent or 48,585 mt of the BS pollock TAC after subtracting the 10 percent CDQ reserve. This allowance is based on NMFS' examination of the pollock incidentally retained and discarded catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 2000 through 2018.

During this 19-year period, the pollock incidental catch ranged from a low of 2.2 percent in 2006 to a high of 4.6 percent in 2014, with a 19-year average of 3 percent. Pursuant to §§ 679.20(a)(5)(iii)(B)(2)(i) and (ii), NMFS proposes a pollock ICA of 14 percent or 2,400 mt of the AI pollock TAC after subtracting the 10-percent CDQ reserve. This allowance is based on NMFS' examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 2003 through 2018. During this 16-year period, the incidental catch of pollock ranged from a low of 5 percent in 2006 to a high of 17 percent in 2014, with a 16-year average of 8 percent.

Pursuant to §§ 679.20(a)(8) and (10), NMFS proposes ICAs of 4,000 mt of flathead sole, 6,000 mt of rock sole, 4,000 mt of yellowfin sole, 10 mt of Western Aleutian District Pacific ocean perch, 60 mt of Central Aleutian District Pacific ocean perch, 100 mt of Eastern Aleutian District Pacific ocean perch, 20 mt of Western Aleutian District Atka mackerel, 75 mt of Central Aleutian District Atka mackerel, and 800 mt of Eastern Aleutian District and BS Atka mackerel after subtracting the 10.7 percent CDQ reserve. These ICAs are based on NMFS' examination of the average incidental retained and discarded catch in other target fisheries from 2003 through 2018.

The regulations do not designate the remainder of the non-specified reserve by species or species group. Any amount of the reserve may be apportioned to a target species that contributed to the non-specified reserve during the year, provided that such apportionments are consistent with § 679.20(a)(3) and do not result in overfishing (see § 679.20(b)(1)(i)).

*Allocations of Pollock TAC Under the American Fisheries Act (AFA)*

Section 679.20(a)(5)(i)(A) requires that BS pollock TAC be apportioned as a DFA, after subtracting 10 percent for the CDQ Program and 3.9 percent for the ICA, as follows: 50 percent to the inshore sector, 40 percent to the catcher/processor sector, and 10 percent to the mothership sector. In the BS, 45 percent of the DFA is allocated to the A season (January 20 to June 10), and 55 percent of the DFA is allocated to the B season (June 10 to November 1) (§§ 679.20(a)(5)(i)(B)(1) and 679.23(e)(2)). The AI directed pollock fishery allocation to the Aleut Corporation is the amount of pollock TAC remaining in the AI after subtracting 1,900 mt for the CDQ DFA (10 percent), and 2,400 mt for the ICA (§ 679.20(a)(5)(iii)(B)(2)). In the AI, the total A season apportionment of the pollock TAC (including the AI directed fishery allocation, the CDQ allowance, and the ICA) may equal up to 40 percent of the ABC for AI pollock, and the remainder of the pollock TAC is allocated to the B season (§ 679.20(a)(5)(iii)(B)(3)). Table 2 lists these proposed 2019 and 2020 amounts.

Section 679.20(a)(5)(iii)(B)(6) sets harvest limits for pollock in the A season (January 20 to June 10) in Areas 543, 542, and 541. In Area 543, the A season pollock harvest limit is no more than 5 percent of the Aleutian Islands pollock ABC. In Area 542, the A season pollock harvest limit is no more than 15 percent of the Aleutian Islands pollock ABC. In Area 541, the A season pollock harvest limit is no more than 30 percent of the Aleutian Islands pollock ABC.

Section 679.20(a)(5)(i)(A)(4) includes several specific requirements regarding BS pollock allocations. First, it requires that 8.5 percent of the pollock allocated to the catcher/processor sector be available for harvest by AFA catcher

vessels with catcher/processor sector endorsements, unless the Regional Administrator receives a cooperative contract that allows the distribution of harvest among AFA catcher/processors and AFA catcher vessels in a manner agreed to by all members. Second, AFA catcher/processors not listed in the AFA are limited to harvesting not more than 0.5 percent of the pollock allocated to the catcher/processor sector. Table 2 lists the proposed 2019 and 2020 allocations of pollock TAC. Tables 13 through 16 list the AFA catcher/processor and catcher vessel harvesting sideboard limits. The BS inshore pollock cooperative and open access sector allocations are based on the submission of AFA inshore cooperative applications due to NMFS on December 1 of each calendar year. Because AFA inshore cooperative applications for 2019 have not been submitted to NMFS, and NMFS therefore cannot calculate 2019 allocations, NMFS has not included inshore cooperative tables in these proposed harvest specifications. NMFS will post 2019 AFA inshore pollock cooperative and open access sector allocations on the Alaska Region website at <https://alaskafisheries.noaa.gov> prior to the start of the fishing year on January 1, 2019, based on the harvest specifications effective on that date.

Table 2 also lists proposed seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest of pollock within the SCA, as defined at § 679.22(a)(7)(vii), is limited to no more than 28 percent of the DFA before 12:00 noon, April 1, as provided in § 679.20(a)(5)(i)(C). The A season pollock SCA harvest limit will be apportioned to each sector in proportion to each sector's allocated percentage of the DFA. Table 2 lists these proposed 2019 and 2020 amounts by sector.

TABLE 2—PROPOSED 2019 AND 2020 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) <sup>1</sup>

[Amounts are in metric tons]

Area and sector	2019 and 2020 allocations	A season <sup>1</sup>		B season <sup>1</sup>
		A season DFA	SCA harvest limit <sup>2</sup>	B season DFA
Bering Sea subarea TAC .....	1,384,200	n/a	n/a	n/a
CDQ DFA .....	138,420	62,289	38,758	76,131
ICA <sup>1</sup> .....	48,585	n/a	n/a	n/a
AFA Inshore .....	598,597	269,369	167,607	329,229
AFA Catcher/Processors <sup>3</sup> .....	478,878	215,495	134,086	263,383
Catch by C/Ps .....	438,173	197,178	n/a	240,995
Catch by C/Vs <sup>3</sup> .....	40,705	18,317	n/a	22,388
Unlisted C/P Limit <sup>4</sup> .....	2,394	1,077	n/a	1,317
AFA Motherships .....	119,719	53,874	33,521	65,846
Excessive Harvesting Limit <sup>5</sup> .....	209,509	n/a	n/a	n/a
Excessive Processing Limit <sup>6</sup> .....	359,158	n/a	n/a	n/a

TABLE 2—PROPOSED 2019 AND 2020 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) <sup>1</sup>—Continued

[Amounts are in metric tons]

Area and sector	2019 and 2020 allocations	A season <sup>1</sup>		B season <sup>1</sup>
		A season DFA	SCA harvest limit <sup>2</sup>	B season DFA
Total Bering Sea DFA (non-CDQ) .....	1,197,195	538,738	335,214	658,457
Aleutian Islands subarea ABC .....	30,803	n/a	n/a	n/a
Aleutian Islands subarea TAC .....	19,000	n/a	n/a	n/a
CDQ DFA .....	1,900	760	n/a	1,140
ICA .....	2,400	1,200	n/a	1,200
Aleut Corporation .....	14,700	7,361	n/a	4,339
Area harvest limit <sup>7</sup> .....	n/a	n/a	n/a	n/a
Area 541 harvest limit <sup>7</sup> .....	9,241	n/a	n/a	n/a
Area 542 harvest limit <sup>7</sup> .....	4,620	n/a	n/a	n/a
Area 543 harvest limit <sup>7</sup> .....	1,540	n/a	n/a	n/a
Bogoslof District ICA <sup>8</sup> .....	500	n/a	n/a	n/a

<sup>1</sup> Pursuant to § 679.20(a)(5)(i)(A), the annual Bering Sea subarea pollock TAC, after subtracting the CDQ DFA (10 percent) and the ICA (3.9 percent), is allocated as a DFA as follows: Inshore sector—50 percent, catcher/processor sector (C/Ps)—40 percent, and mothership sector—10 percent. In the Bering Sea subarea, 45 percent of the DFA is allocated to the A season (January 20–June 10) and 55 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(2)(i) through (iii), the annual AI pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (2,400 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated up to 40 percent of the ABC, and the B season is allocated the remainder of the directed pollock fishery.

<sup>2</sup> In the Bering Sea subarea, pursuant to § 679.20(a)(5)(i)(c), no more than 28 percent of each sector's annual DFA may be taken from the SCA before noon, April 1.

<sup>3</sup> Pursuant to § 679.20(a)(5)(i)(A)(4), 8.5 percent of the DFA allocated to listed C/Ps shall be available for harvest only by AFA catcher vessels (CVs) with CP endorsements delivering to listed CPs, unless there is a C/P sector cooperative for the year.

<sup>4</sup> Pursuant to § 679.20(a)(5)(i)(A)(4)(iii), the AFA unlisted C/Ps are limited to harvesting not more than 0.5 percent of the C/Ps sector's allocation of pollock.

<sup>5</sup> Pursuant to § 679.20(a)(5)(i)(A)(6), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

<sup>6</sup> Pursuant to § 679.20(a)(5)(i)(A)(7), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

<sup>7</sup> Pursuant to § 679.20(a)(5)(iii)(B)(6), NMFS establishes harvest limits for pollock in the A season in Area 541 no more than 30 percent, in Area 542 no more than 15 percent, and in Area 543 no more than 5 percent of the Aleutian Islands pollock ABC.

<sup>8</sup> Pursuant to § 679.22(a)(7)(i)(B), the Bogoslof District is closed to directed fishing for pollock. The amounts specified are for incidental catch only and are not apportioned by season or sector.

*Allocation of the Atka Mackerel TACs*

Section 679.20(a)(8) allocates the Atka mackerel TACs to the Amendment 80 and BSAI trawl limited access sectors, after subtracting the CDQ reserves, ICAs for the BSAI trawl limited access sector and non-trawl gear sectors, and the jig gear allocation (Table 3). The percentage of the ITAC for Atka mackerel allocated to the Amendment 80 and BSAI trawl limited access sectors is listed in Table 33 to 50 CFR part 679 and in § 679.91. Pursuant to § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian District and Bering Sea subarea Atka mackerel TAC may be allocated to vessels using jig gear. The percent of this allocation is recommended annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. The Council recommended, and NMFS proposes, a 0.5 percent allocation of the Atka mackerel TAC in the Eastern Aleutian District and Bering Sea subarea to jig gear in 2019 and 2020. This percentage is applied to the TAC after subtracting the CDQ reserve.

Section 679.20(a)(8)(ii)(A) apportions the Atka mackerel TAC into two equal seasonal allowances. Section 679.23(e)(3) sets the first seasonal allowance for directed fishing with trawl gear from January 20 through June 10 (A season), and the second seasonal allowance from June 10 through December 31 (B season). Section 679.23(e)(4)(iii) applies Atka mackerel seasons to trawl CDQ Atka mackerel fishing. The ICA and jig gear allocations are not apportioned by season.

Section 679.20(a)(8)(ii)(C)(1)(i) and (ii) limits Atka mackerel catch within waters 0 nm to 20 nm of Steller sea lion sites listed in Table 6 to 50 CFR part 679 and located west of 178° W longitude to no more than 60 percent of the annual TACs in Areas 542 and 543, and equally divides the annual TAC between the A and B seasons as defined at § 679.23(e)(3). Section 679.20(a)(8)(ii)(C)(2) requires that the annual TAC in Area 543 will be no more than 65 percent of the ABC in Area 543. Section 679.20(a)(8)(ii)(D) requires that any unharvested Atka mackerel A season allowance that is added to the B

season be prohibited from being harvested within waters 0 nm to 20 nm of Steller sea lion sites listed in Table 6 to 50 CFR part 679 and located in Areas 541, 542, and 543.

Table 3 lists the proposed 2019 and 2020 Atka mackerel season allowances, area allowances, and the sector allocations. One Amendment 80 cooperative has formed for the 2019 fishing year. Because all Amendment 80 vessels are part of the cooperative, no allocation to the Amendment 80 limited access sector is required. The 2020 allocations for Atka mackerel between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2019. NMFS will post 2020 Amendment 80 cooperatives and Amendment 80 limited access sector allocations on the Alaska Region website at <https://alaskafisheries.noaa.gov> prior to the start of the fishing year on January 1, 2020, based on the harvest specifications effective on that date.

TABLE 3—PROPOSED 2019 AND 2020 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector <sup>1</sup>	Season <sup>2,3,4</sup>	2019 and 2020 allocation by area		
		Eastern Aleutian District/Bering Sea	Central Aleutian District <sup>5</sup>	Western Aleutian District <sup>5</sup>
TAC	n/a	33,780	24,895	13,825
CDQ reserve	Total	3,614	2,664	1,479
	A	1,807	1,332	740
	Critical habitat <sup>5</sup>	n/a	799	444
	B	1,807	1,332	740
	Critical habitat <sup>5</sup>	n/a	799	444
non-CDQ TAC	n/a	30,166	22,231	12,346
Jig <sup>6</sup>	Total	151		
ICA	Total	800	75	20
BSAI trawl limited access	Total	2,921	2,216	
	A	1,461	1,108	
	Critical habitat <sup>5</sup>	n/a	665	
	B	1,461	1,108	
	Critical habitat <sup>5</sup>	n/a	665	
Amendment 80	Total	26,293	19,941	12,326
	A	13,147	9,970	6,163
	Critical habitat <sup>5</sup>	n/a	5,982	3,698
	B	13,147	9,970	6,163
	Critical habitat <sup>5</sup>	n/a	5,982	3,698

<sup>1</sup> Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, ICAs, and the jig gear allocation, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to 50 CFR part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

<sup>2</sup> Sections 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

<sup>3</sup> The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

<sup>4</sup> Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 7, and the B season from June 10 to December 31.

<sup>5</sup> Section 679.20(a)(8)(ii)(C)(1)(i) limits no more than 60 percent of the annual TACs in Areas 542 and 543 to be caught inside of Steller sea lion critical habitat; § 679.20(a)(8)(ii)(C)(1)(ii) equally divides the annual TACs between the A and B seasons as defined at § 679.23(e)(3); and § 679.20(a)(8)(ii)(C)(2) requires the TAC in Area 543 shall be no more than 65 percent of ABC in Area 543.

<sup>6</sup> Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and Bering Sea subarea TAC be allocated to jig gear after subtraction of the CDQ reserve. The amount of this allocation for 2019 and 2020 is proposed at 0.5 percent. The jig gear allocation is not apportioned by season.

*Allocation of the Pacific Cod TAC*

The Council separated Bering Sea and Aleutian Islands subarea OFLs, ABCs, and TACs for Pacific cod in 2014 (79 FR 12108, March 4, 2014). Section 679.20(b)(1)(ii)(C) allocates 10.7 percent of the BS TAC and the AI TAC to the CDQ Program. After CDQ allocations have been deducted from the respective BS and AI Pacific cod TACs, the remaining BS and AI Pacific cod TACs are combined for calculating further BSAI Pacific cod sector allocations. If the non-CDQ Pacific cod TAC is or will be reached in either the BS or the AI subareas, NMFS will prohibit non-CDQ directed fishing for Pacific cod in that subarea, as provided in § 679.20(d)(1)(iii).

Section 679.20(a)(7)(i) and (ii) allocates to the non-CDQ sectors the combined BSAI Pacific cod TAC, after subtracting 10.7 percent for the CDQ Program, as follows: 1.4 percent to vessels using jig gear, 2.0 percent to hook-and-line or pot catcher vessels less than 60 ft (18.3 m) length overall (LOA), 0.2 percent to hook-and-line catcher

vessels greater than or equal to 60 ft (18.3 m) LOA, 48.7 percent to hook-and-line catcher/processors, 8.4 percent to pot catcher vessels greater than or equal to 60 ft (18.3 m) LOA, 1.5 percent to pot catcher/processors, 2.3 percent to AFA trawl catcher/processors, 13.4 percent to the Amendment 80 sector, and 22.1 percent to trawl catcher vessels. The BSAI ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of BSAI Pacific cod TAC allocated to the hook-and-line and pot sectors. For 2019 and 2020, the Regional Administrator proposes a BSAI ICA of 400 mt, based on anticipated incidental catch by these sectors in other fisheries.

The BSAI ITAC allocation of Pacific cod to the Amendment 80 sector is established in Table 33 to 50 CFR part 679 and § 679.91. One Amendment 80 cooperative has formed for the 2019 fishing year. Because all Amendment 80 vessels are part of the cooperative, no allocation to the Amendment 80 limited access sector is required.

The 2020 allocations for Amendment 80 species between Amendment 80

cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2019. NMFS will post 2020 Amendment 80 cooperatives and Amendment 80 limited access allocations on the Alaska Region website at <https://alaskafisheries.noaa.gov> prior to the start of the fishing year on January 1, 2020, based on the harvest specifications effective on that date.

The Pacific cod TAC is apportioned into seasonal allowances to disperse the Pacific cod fisheries over the fishing year (see §§ 679.20(a)(7)(i)(B), 679.20(a)(7)(iv)(A), and 679.23(e)(5)). In accordance with §§ 679.20(a)(7)(iv)(B) and (C), any unused portion of a seasonal Pacific cod allowance for any sector, except the jig sector, will become available at the beginning of that sector's next seasonal allowance.

Section 679.20(a)(7)(vii) requires the Regional Administrator to establish an Area 543 Pacific cod harvest limit based on Pacific cod abundance in Area 543. Based on the 2017 stock assessment, the

Regional Administrator determined the Area 543 Pacific cod harvest limit to be 25.6 percent of the AI Pacific cod TAC for 2019 and 2020. NMFS will first subtract the State GHL Pacific cod amount from the AI Pacific cod ABC. Then NMFS will determine the harvest limit in Area 543 by multiplying the percentage of Pacific cod estimated in Area 543 by the remaining ABC for AI Pacific cod. Based on these calculations, the proposed Area 543 harvest limit is 3,798 mt.

Section 679.20(a)(7)(viii) requires specification of the 2019 and 2020 Pacific cod allocations for the Aleutian Islands non-CDQ ICA, non-CDQ DFA, CV Harvest Set-Aside, and Unrestricted Fishery, as well as the Bering Sea Trawl CV A-Season Sector Limitation. The CV Harvest Set-Aside is a portion of the AI

Pacific cod TAC that is available for harvest by catcher vessels directed fishing for AI Pacific cod and delivering their catch for processing to an AI shoreplant. If NMFS receives notification of intent to process AI Pacific cod from either the City of Adak or the City of Atka by October 31 of the previous year, the harvest limits in Table 4a will be in effect in the following year.

Prior to October 31, 2018, NMFS received timely notice from the City of Adak indicating an intent to process AI Pacific cod in 2019. Accordingly, the harvest limits in Table 4a will be in effect in 2019, subject to the requirements outlined in § 679.20(a)(7)(viii)(E). If less than 1,000 mt of the Aleutian Islands CV Harvest Set-Aside is delivered to Aleutian

Islands shoreplants by February 28 of that year, then the Aleutian Islands CV Harvest Set-Aside is lifted and the Bering Sea Trawl CV A-Season Sector Limitation is suspended. If the entire Aleutian Islands CV Harvest Set-Aside is fully harvested and delivered to Aleutian Islands shoreplants before March 15 of that year, then the Bering Sea Trawl CV A-Season Sector Limitation is suspended for the remainder of the fishing year.

The CDQ and non-CDQ seasonal allowances by gear based on the proposed 2019 and 2020 Pacific cod TACs are listed in Table 4 based on the sector allocation percentages of Pacific cod set forth at §§ 679.20(a)(7)(i)(B) and (a)(7)(iv)(A); and the seasons set forth at § 679.23(e)(5).

TABLE 4—PROPOSED 2019 AND 2020 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI<sup>1</sup> PACIFIC COD TAC  
[Amounts are in metric tons]

Sector	Percent	2019 and 2020 share of gear sector total	2019 and 2020 share of sector total	2019 and 2020 seasonal apportionment	
				Season	Amount
Total Bering Sea TAC .....	n/a	156,355	n/a	n/a .....	n/a
Bering Sea CDQ .....	n/a	16,730	n/a	See § 679.20(a)(7)(i)(B) .....	n/a
Bering Sea non-CDQ TAC .....	n/a	139,625	n/a	n/a .....	n/a
Total Aleutian Islands TAC .....	n/a	14,835	n/a	n/a .....	n/a
Aleutian Islands CDQ .....	n/a	1,587	n/a	See § 679.20(a)(7)(i)(B) .....	n/a
Aleutian Islands non-CDQ TAC .....	n/a	13,248	n/a	n/a .....	n/a
Western Aleutians Islands Limit .....	n/a	3,798	n/a	n/a .....	n/a
Total BSAI non-CDQ TAC <sup>1</sup> .....	100	152,873	n/a	n/a .....	n/a
Total hook-and-line/pot gear .....	61	92,947	n/a	n/a .....	n/a
Hook-and-line/pot ICA <sup>2</sup> .....	n/a	n/a	400	n/a .....	n/a
Hook-and-line/pot sub-total .....	n/a	92,547	n/a	n/a .....	n/a
Hook-and-line catcher/processors .....	49	n/a	74,129	Jan-1–Jun 10 .....	37,806
				Jun 10–Dec 31 .....	36,323
Hook-and-line catcher vessels ≥60 ft LOA .....	0	n/a	304	Jan 1–Jun 10 .....	155
				Jun 10–Dec 31 .....	149
Pot catcher/processors .....	2	n/a	2,283	Jan 1–Jun 10 .....	1,164
				Sept 1–Dec 31 .....	1,119
Pot catcher vessels ≥60 ft LOA .....	8	n/a	12,786	Jan 1–Jun 10 .....	6,521
				Sept-1–Dec 31 .....	6,265
Catcher vessels <60 ft LOA using hook-and-line or pot gear .....	2	n/a	3,044	n/a .....	n/a
Trawl catcher vessels .....	22	33,785	n/a	Jan 20–Apr 1 .....	25,001
				Apr 1–Jun 10 .....	3,716
				Jun 10–Nov 1 .....	5,068
AFA trawl catcher/processors .....	2	3,516	n/a	Jan 20–Apr 1 .....	2,637
				Apr 1–Jun 10 .....	879
				Jun 10–Nov 1 .....	.....
Amendment 80 .....	13	20,485	n/a	Jan 20–Apr 1 .....	15,364
				Apr 1–Jun 10 .....	5,121
				Jun 10–Nov 1 .....	.....
Jig .....	1	2,140	n/a	Jan 1–Apr 30 .....	1,284
				Apr 30–Aug 31 .....	428
				Aug 31–Dec 31 .....	428

<sup>1</sup> The gear shares and seasonal allowances for BSAI Pacific cod TAC are based on the sum of the BS and AI Pacific cod TACs, after subtraction of CDQ. If the TAC for Pacific cod in either the AI or BS is reached, then directed fishing for Pacific cod in that subarea will be prohibited, even if a BSAI allowance remains.

<sup>2</sup> The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator proposes an ICA of 400 mt for 2019 and 2020 based on anticipated incidental catch in these fisheries.

TABLE 4a—PROPOSED 2019 AND 2020 BSAI A-SEASON PACIFIC COD ALLOCATIONS AND LIMITS IF REQUIREMENTS IN § 679.20(A)(7)(VIII) ARE MET <sup>1</sup>

2019 and 2020 allocations under Aleutian Islands CV Harvest Set-Aside	Amount (mt)
AI non-CDQ TAC .....	13,248
AI ICA .....	2,500
AI DFA .....	7,748
AI CV Harvest Set-Aside <sup>2</sup> .....	5,000
AI Unrestricted Fishery <sup>3</sup> .....	5,748
BSAI Trawl CV A-Season Allocation .....	25,001
BSAI Trawl CV A-Season Allocation minus Sector Limitation <sup>4</sup> .....	20,001
BS Trawl CV A-Season Sector Limitation .....	5,000

<sup>1</sup> These allocations will apply in 2019, and will apply in 2020 only if NMFS receives notice of intent to process AI Pacific cod by October 31, 2019, pursuant to § 679.20(a)(7)(viii)(D). In addition, the allocations apply in 2019 and 2020 if the requirements set forth in § 679.20(a)(7)(viii)(E) are likewise met during the fishing year. Prior to October 31, 2018, NMFS received timely notice from the City of Adak indicating an intent to process AI Pacific cod for the 2019 season. Accordingly, the harvest limits in Table 4a will be in effect in 2019, subject to the requirements outlined in § 679.20(a)(7)(viii)(E).

<sup>2</sup> Prior to March 15, 2019, only catcher vessels that deliver their catch of AI Pacific cod to AI shoreplants for processing may directed fish for that portion of the AI Pacific cod non-CDQ DFA that is specified as the AI CV Harvest Set-Aside, unless lifted because the requirements pursuant to § 679.20(a)(7)(viii)(E) were not met.

<sup>3</sup> Prior to March 15, 2019, vessels otherwise authorized to directed fish for Pacific cod in the AI may directed fish for that portion of the AI Pacific cod non-CDQ DFA that is specified as the AI Unrestricted Fishery.

<sup>4</sup> This is the amount of the BSAI trawl CV A season allocation that may be harvested in the Bering Sea prior to March 21, 2019, unless modified because the requirements in § 679.20(a)(7)(viii)(E) were not met.

**Sablefish Gear Allocation**

Section 679.20(a)(4)(iii) and (iv) require allocation of sablefish TAC for the BS and AI between trawl gear and hook-and-line or pot gear. Gear allocations of the TAC for the BS are 50 percent for trawl gear and 50 percent for hook-and-line or pot gear. Gear allocations for the TAC for the AI are 25 percent for trawl gear and 75 percent for hook-and-line or pot gear. Section 679.20(b)(1)(ii)(B) requires NMFS to apportion 20 percent of the hook-and-

line or pot gear allocation of sablefish to the CDQ reserve for each subarea. Also, § 679.20(b)(1)(ii)(D)(1) requires that 7.5 percent of the trawl gear allocation of sablefish from the non-specified reserves, established under § 679.20(b)(1)(i), be apportioned to the CDQ reserve. The Council recommended that only trawl sablefish TAC be established biennially. The harvest specifications for the hook-and-line or pot gear sablefish Individual Fishing Quota (IFQ) fisheries are limited to the 2019 fishing year to ensure those

fisheries are conducted concurrently with the halibut IFQ fishery. Concurrent sablefish and halibut IFQ fisheries reduce the potential for discards of halibut and sablefish in those fisheries. The sablefish IFQ fisheries remain closed at the beginning of each fishing year until the final harvest specifications for the sablefish IFQ fisheries are in effect. Table 5 lists the proposed 2019 and 2020 gear allocations of the sablefish TAC and CDQ reserve amounts.

TABLE 5—PROPOSED 2019 AND 2020 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS  
[Amounts are in metric tons]

Subarea and gear	Percent of TAC	2019 Share of TAC	2019 ITAC <sup>1</sup>	2019 CDQ reserve	2020 Share of TAC	2020 ITAC	2020 CDQ reserve
<b>Bering Sea</b>							
Trawl .....	50	1,031	876	77	1,031	876	77
Hook-and-line gear/pot <sup>2</sup> .....	50	1,031	n/a	206	n/a	n/a	n/a
Total .....	100	2,061	876	283	1,031	876	77
<b>Aleutian Islands</b>							
Trawl .....	25	700	595	52	700	595	52
Hook-and-line gear/pot <sup>2</sup> .....	75	2,099	n/a	420	n/a	n/a	n/a
Total .....	100	2,798	595	472	700	595	52

<sup>1</sup> Except for the sablefish hook-and-line and pot gear allocation, 15 percent of TAC is apportioned to the non-specified reserve (§ 679.20(b)(1)(i)). The ITAC is the remainder of the TAC after the subtraction of these reserves.

<sup>2</sup> For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants (§ 679.20(b)(1)). The Council recommended that specifications for the hook-and-line or pot gear sablefish IFQ fisheries be limited to one year.

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

**Allocation of the Aleutian Islands Pacific Ocean Perch, and BSAI Flathead Sole, Rock Sole, and Yellowfin Sole TACs**

Section 679.20(a)(10)(i) and (ii) requires that NMFS allocate AI Pacific ocean perch, and BSAI flathead sole,

rock sole, and yellowfin sole TACs between the Amendment 80 sector and the BSAI trawl limited access sector, after subtracting 10.7 percent for the CDQ reserve and an ICA for the BSAI trawl limited access sector and vessels using non-trawl gear. The allocation of

the ITAC for AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole to the Amendment 80 sector is established in Tables 33 and 34 to 50 CFR part 679 and in § 679.91.

One Amendment 80 cooperative has formed for the 2019 fishing year.

Because all Amendment 80 vessels are part of the cooperative, no allocation to the Amendment 80 limited access sector is required.

The 2020 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known

until eligible participants apply for participation in the program by November 1, 2019. NMFS will post 2020 Amendment 80 cooperatives and Amendment 80 limited access allocations on the Alaska Region website at <https://alaskafisheries.noaa.gov> prior to the

start of the fishing year on January 1, 2020, based on the harvest specifications effective on that date.

Table 6 lists the proposed 2019 and 2020 allocations of the AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole TACs.

TABLE 6—PROPOSED 2019 AND 2020 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACs

(Amounts are in metric tons)

Sector	2019 and 2020 allocations					
	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian District	Central Aleutian District	Western Aleutian District			
				BSAI	BSAI	BSAI
TAC .....	9,715	7,549	9,117	16,500	49,100	156,000
CDQ .....	1,040	808	976	1,766	5,254	16,692
ICA .....	100	60	10	4,000	6,000	4,000
BSAI trawl limited access .....	858	668	163	0	0	19,065
Amendment 80 .....	7,718	6,013	7,969	7,735	37,846	116,243

Section 679.2 defines the ABC surplus for flathead sole, rock sole, and yellowfin sole as the difference between the annual ABC and TAC for each species. Section 679.20(b)(1)(iii) establishes ABC reserves for flathead sole, rock sole, and yellowfin sole. The ABC surpluses and the ABC reserves are necessary to mitigate the operational variability, environmental conditions, and economic factors that may constrain

the CDQ groups and the Amendment 80 cooperatives from achieving, on a continuing basis, the optimum yield in the BSAI groundfish fisheries. NMFS, after consultation with the Council, may set the ABC reserve at or below the ABC surplus for each species, thus maintaining the TAC below ABC limits. An amount equal to 10.7 percent of the ABC reserves will be allocated as CDQ ABC reserves for flathead sole, rock

sole, and yellowfin sole. Section 679.31(b)(4) establishes the annual allocations of CDQ ABC reserves among the CDQ groups. The Amendment 80 ABC reserves shall be the ABC reserves minus the CDQ ABC reserves. Table 7 lists the proposed 2019 and 2020 ABC surplus and ABC reserves for BSAI flathead sole, rock sole, and yellowfin sole.

TABLE 7—PROPOSED 2019 AND 2020 ABC SURPLUS, ABC RESERVES, COMMUNITY DEVELOPMENT QUOTA (CDQ) ABC RESERVES, AND AMENDMENT 80 ABC RESERVES IN THE BSAI FOR FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE

(Amounts are in metric tons)

Sector	Flathead sole	Rock sole	Yellowfin sole
ABC .....	65,227	132,000	267,500
TAC .....	16,500	49,100	156,000
ABC surplus .....	48,727	82,900	111,500
ABC reserve .....	48,727	82,900	111,500
CDQ ABC reserve .....	5,214	8,870	11,931
Amendment 80 ABC reserve .....	43,513	74,030	99,570

*Proposed PSC Limits for Halibut, Salmon, Crab, and Herring*

Subsections 679.21(b), (e), (f), and (g) set forth the BSAI PSC limits. Pursuant to § 679.21(b)(1), the annual BSAI halibut PSC limits total 3,515 mt. Section 679.21(b)(1) allocates 315 mt of the halibut PSC limit as the PSQ reserve for use by the groundfish CDQ Program, 1,745 mt of the halibut PSC limit for the Amendment 80 sector, 745 mt of the halibut PSC limit for the BSAI trawl limited access sector, and 710 mt of the halibut PSC limit for the BSAI non-trawl sector.

Section 679.21(b)(1)(iii)(A) and (B) authorize apportionment of the BSAI non-trawl halibut PSC limit into PSC allowances among six fishery categories, and § 679.21(b)(1)(ii)(A) and (B), (e)(3)(i)(B), and (e)(3)(iv) require apportionment of the BSAI trawl limited access halibut and crab PSC limits into PSC allowances among seven fishery categories. Table 10 lists the proposed fishery PSC allowances for the BSAI trawl limited access fisheries, and Table 11 lists the proposed fishery PSC allowances for the non-trawl fisheries.

Pursuant to Section 3.6 of the FMP, the Council recommends, and NMFS proposes, that certain specified non-trawl fisheries be exempt from the halibut PSC limit. As in past years, after consultation with the Council, NMFS proposes to exempt pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions for the following reasons: (1) The pot gear fisheries have low halibut bycatch mortality; (2) NMFS estimates halibut mortality for the jig gear fleet to be negligible because of the small size of the fishery and the selectivity of the



gear; and (3) the sablefish and halibut IFQ fisheries have low halibut bycatch mortality because the IFQ Program requires legal-size halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder or a hired master is aboard and is holding unused halibut IFQ for that vessel category and the IFQ regulatory area in which the vessel is operating (§ 679.7(f)(11)).

As of November 2018, total groundfish catch for the pot gear fishery in the BSAI was 46,571 mt, with an associated halibut bycatch mortality of 19 mt. The 2018 jig gear fishery harvested about 56 mt of groundfish. Most vessels in the jig gear fleet are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. As mentioned above, NMFS estimates a negligible amount of halibut bycatch mortality because of the selective nature of jig gear and the low mortality rate of halibut caught with jig gear and released.

Under § 679.21(f)(2), NMFS annually allocates portions of either 33,318, 45,000, 47,591, or 60,000 Chinook salmon PSC limits among the AFA sectors, depending on past bycatch performance, on whether Chinook salmon bycatch incentive plan agreements (IPAs) are formed, and on whether NMFS determines it is a low Chinook salmon abundance year. NMFS will determine that it is a low Chinook salmon abundance year when abundance of Chinook salmon in western Alaska is less than or equal to 250,000 Chinook salmon. The State provides to NMFS an estimate of Chinook salmon abundance using the 3-System Index for western Alaska, based on the Kuskokwim, Unalakleet, and Upper Yukon aggregate stock grouping.

If an AFA sector participates in an approved IPA and has not exceeded its performance standard under § 679.21(f)(6), and if it is not a low Chinook salmon abundance year, then NMFS will allocate a portion of the 60,000 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(A). If no IPA is approved, or if the sector has exceeded its performance standard under § 679.21(f)(6), and it is not a low abundance year, NMFS will allocate a portion of the 47,591 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(C). If an AFA sector participates in an approved IPA and has not exceeded its performance standard under § 679.21(f)(6) in a low abundance year, then NMFS will allocate a portion of the 45,000 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(B). If no IPA is

approved, or if the sector has exceeded its performance standard under § 679.21(f)(6) in a low abundance year, NMFS will allocate a portion of the 33,318 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(D).

As of October 1, 2018, NMFS has determined that 2018 was a low Chinook salmon abundance year, based on the State's estimate that Chinook salmon abundance in western Alaska is less than 250,000 Chinook salmon. Therefore, in 2019, the Chinook salmon PSC limit is 45,000 Chinook salmon, allocated to each sector as specified in § 679.21(f)(3)(iii)(B). The AFA sector Chinook salmon allocations are also seasonally apportioned with 70 percent of the allocation for the A season pollock fishery, and 30 percent of the allocation for the B season pollock fishery (§§ 679.21(f)(3)(i) and 679.23(e)(2)). In 2019, the Chinook salmon bycatch performance standard under § 679.21(f)(6) is 33,318 Chinook salmon, allocated to each sector as specified in § 679.21(f)(3)(iii)(D).

NMFS publishes the approved IPAs, allocations, and reports at <https://alaskafisheries.noaa.gov/sustainable-fisheries/bycatch/default.htm>.

Section 679.21(g)(2)(i) specifies 700 fish as the 2019 and 2020 Chinook salmon PSC limit for the AI pollock fishery. Section 679.21(g)(2)(ii) allocates 7.5 percent, or 53 Chinook salmon, as the AI PSQ reserve for the CDQ Program, and allocates the remaining 647 Chinook salmon to the non-CDQ fisheries.

Section 679.21(f)(14)(i) specifies 42,000 fish as the 2019 and 2020 non-Chinook salmon PSC limit for vessels using trawl gear from August 15 through October 14 in the Catcher Vessel Operational Area (CVOA). Section 679.21(f)(14)(ii) allocates 10.7 percent, or 4,494 non-Chinook salmon, in the CVOA as the PSQ reserve for the CDQ Program, and allocates the remaining 37,506 non-Chinook salmon in the CVOA to the non-CDQ fisheries.

PSC limits for crab and herring are specified annually based on abundance and spawning biomass. Due to the lack of new information as of October 2018 regarding herring PSC limits and apportionments, the Council recommended, and NMFS proposes, basing the herring 2019 and 2020 PSC limits and apportionments on the 2017 survey data. The Council will reconsider these amounts in December 2018. Section 679.21(e)(3)(i)(A)(1) allocates 10.7 percent of each trawl gear PSC limit specified for crab as a PSQ reserve for use by the groundfish CDQ Program.

Based on 2018 survey data, the red king crab mature female abundance is estimated at 13.1 million red king crabs, and the effective spawning biomass is estimated at 33,275 million lbs (15,093 mt). Based on the criteria set out at § 679.21(e)(1)(i), the proposed 2019 and 2020 PSC limit of red king crab in Zone 1 for trawl gear is 97,000 animals. This limit derives from the mature female abundance estimate of more than 8.4 million red king crab and the effective spawning biomass estimate of more than 14.5 million lbs (6,577 mt) but less than 55 million lbs (24,948 mt).

Section 679.21(e)(3)(ii)(B)(2) establishes criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The regulations limit the bycatch in the RKCSS to up to 25 percent of the red king crab PSC allowance, based on the need to optimize the groundfish harvest relative to red king crab bycatch. NMFS proposes the Council's recommendation that the red king crab bycatch limit be equal to 25 percent of the red king crab PSC allowance within the RKCSS (Table 9).

Based on 2018 survey data, Tanner crab (*Chionoecetes bairdi*) abundance is estimated at 1,238 million animals. Pursuant to criteria set out at § 679.21(e)(1)(ii), the calculated 2019 and 2020 *C. bairdi* crab PSC limit for trawl gear is 980,000 animals in Zone 1, and 2,970,000 animals in Zone 2. The limit in Zone 1 is based on the abundance of *C. bairdi* estimated at 1,238 million animals, which is greater than 400 million animals. The limit in Zone 2 is based on the abundance of *C. bairdi* estimated at 1,238 million animals, which is greater than 400 million animals.

Pursuant to § 679.21(e)(1)(iii), the PSC limit for trawl gear for snow crab (*C. opilio*) is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit in the *C. opilio* bycatch limitation zone (COBLZ) is set at 0.1133 percent of the Bering Sea abundance index minus 150,000 crabs. Based on the 2018 survey estimate of 10.65 billion animals, the calculated *C. opilio* crab PSC limit is 11,916,450 animals, which is above the minimum PSC limit of 4.5 million and below the maximum PSC limit of 13 million animals.

Pursuant to § 679.21(e)(1)(v), the PSC limit of Pacific herring caught while conducting any trawl operation for BSAI groundfish is 1 percent of the annual eastern Bering Sea herring biomass. The best estimate of 2019 and 2020 herring biomass is 183,017 mt. This amount was developed by the Alaska Department of

Fish and Game based on biomass for spawning aggregations. Therefore, the herring PSC limit proposed for 2019 and 2020 is 1,830 mt for all trawl gear as listed in Tables 8 and 9.

Section 679.21(e)(3)(i)(A) requires PSQ reserves to be subtracted from the total trawl PSC limits. The 2019 crab and halibut PSC limits assigned to the Amendment 80 and BSAI trawl limited access sectors are listed in Table 35 to 50 CFR part 679. The resulting proposed allocations of PSC limits to CDQ PSQ, the Amendment 80 sector, and the BSAI trawl limited access sector are listed in Table 8.

One Amendment 80 cooperative has formed for the 2019 fishing year. Because all Amendment 80 vessels are part of the cooperative, no PSC limit allocation to the Amendment 80 limited access sector is required.

The 2020 PSC limit allocations between Amendment 80 cooperatives

and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2019. NMFS will post 2020 Amendment 80 cooperatives and Amendment 80 limited access allocations on the Alaska Region website at <https://alaskafisheries.noaa.gov> prior to the start of the fishing year on January 1, 2020, based on the harvest specifications effective on that date.

Subsections 679.21(b)(2) and (e)(5) authorize NMFS, after consulting with the Council, to establish seasonal apportionments of halibut and crab PSC amounts for the BSAI non-trawl, BSAI trawl limited access, and Amendment 80 limited access sectors to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize bycatch. The factors considered are (1) seasonal distribution of prohibited species, (2) seasonal

distribution of target groundfish species relative to prohibited species distribution, (3) prohibited species bycatch needs on a seasonal basis relevant to prohibited species biomass and expected catches of target groundfish species, (4) expected variations in bycatch rates throughout the year, (5) expected changes in directed groundfish fishing seasons, (6) expected start of fishing effort, and (7) economic effects of establishing seasonal prohibited species apportionments on segments of the target groundfish industry. Based on this criteria, the Council recommended, and NMFS proposes, the seasonal PSC apportionments in Tables 10 and 11 to maximize harvest among gear types, fisheries, and seasons, while minimizing bycatch of PSC.

TABLE 8—PROPOSED 2019 AND 2020 APPORTIONMENT OF PROHIBITED SPECIES CATCH ALLOWANCES TO NON-TRAWL GEAR, THE CDQ PROGRAM, AMENDMENT 80, AND THE BSAI TRAWL LIMITED ACCESS SECTORS

PSC species and area <sup>1</sup>	Total PSC	Non-trawl PSC	CDQ PSQ reserve <sup>2</sup>	Trawl PSC remaining after CDQ PSQ	Amendment 80 sector <sup>3</sup>	BSAI trawl limited access fishery
Halibut mortality (mt) BSAI .....	3,515	710	315	n/a	1,745	745
Herring (mt) BSAI .....	1,830	n/a	n/a	n/a	n/a	n/a
Red king crab (animals) Zone 1 .....	97,000	n/a	7,379	86,621	43,293	26,489
<i>C. opilio</i> (animals) COBLZ .....	11,916,450	n/a	1,275,060	7,641,390	5,230,243	3,420,143
<i>C. bairdi</i> crab (animals) Zone 1 .....	980,000	n/a	104,860	875,140	368,521	411,228
<i>C. bairdi</i> crab (animals) Zone 2 .....	2,970,000	n/a	317,790	2,652,210	627,778	1,241,500

<sup>1</sup> Refer to § 679.2 for definitions of zones.

<sup>2</sup> The PSQ reserve for crab species is 10.7 percent of each crab PSC limit.

<sup>3</sup> The Amendment 80 program reduced apportionment of the trawl PSC limits for crab below the total PSC limit. These reductions are not apportioned to other gear types or sectors.

TABLE 9—PROPOSED 2019 AND 2020 HERRING AND RED KING CRAB SAVINGS SUBAREA PROHIBITED SPECIES CATCH ALLOWANCES FOR ALL TRAWL SECTORS

Fishery categories	Herring (mt) BSAI	Red king crab (animals) Zone 1
Yellowfin sole .....	80	n/a
Rock sole/flathead sole/other flatfish <sup>1</sup> .....	39	n/a
Greenland turbot/arrowtooth flounder/Kamchatka flounder/sablefish .....	5	n/a
Rockfish .....	5	n/a
Pacific cod .....	9	n/a
Midwater trawl pollock .....	1,662	n/a
Pollock/Atka mackerel/other species <sup>2 3</sup> .....	30	n/a
Red king crab savings subarea non-pelagic trawl gear <sup>4</sup> .....	n/a	24,250
Total trawl PSC .....	1,830	97,000

<sup>1</sup> “Other flatfish” for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.

<sup>2</sup> Pollock other than midwater trawl pollock, Atka mackerel, and “other species” fishery category.

<sup>3</sup> “Other species” for PSC monitoring includes sculpins, sharks, skates, and octopuses.

<sup>4</sup> In October 2018, the Council recommended that the red king crab bycatch limit for non-pelagic trawl fisheries within the RKCSS be limited to 25 percent of the red king crab PSC allowance (see § 679.21(e)(3)(ii)(B)(2)).

**Note:** Species apportionments may not total precisely due to rounding.

TABLE 10—PROPOSED 2019 AND 2020 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS SECTOR

BSAI trawl limited access fisheries	Prohibited species and area <sup>1</sup>				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	<i>C. opilio</i> (animals) COBLZ	<i>C. bairdi</i> (animals)	
				Zone 1	Zone 2
Yellowfin sole .....	150	23,338	3,224,126	346,228	1,185,500
Rock sole/flathead sole/other flatfish <sup>2</sup> .....					0
Greenland turbot/arrowtooth flounder/Kamchatka flounder/sablefish .....					0
Rockfish April 15–December 31 .....	4		5,326		1,000
Pacific cod .....	391	2,954	137,426	60,000	49,999
Pollock/Atka mackerel/other species <sup>3</sup> .....	200	197	53,265	5,000	5,000
Total BSAI trawl limited access PSC .....	745	26,489	3,420,143	411,228	1,241,500

<sup>1</sup> Refer to § 679.2 for definitions of areas.

<sup>2</sup> “Other flatfish” for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.

<sup>3</sup> “Other species” for PSC monitoring includes sculpins, sharks, skates, and octopuses.

**Note:** Species apportionments may not total precisely due to rounding.

TABLE 11—PROPOSED 2019 AND 2020 HALIBUT PROHIBITED SPECIES BYCATCH ALLOWANCES FOR NON-TRAWL FISHERIES

Non-trawl fisheries	Halibut mortality (mt) BSAI			
	Seasons	Catcher/processor	Catcher vessel	All non-trawl
Pacific cod .....	Annual Pacific cod .....	648	13	n/a
	January 1–June 10 .....	388	9	n/a
	June 10–August 15 .....	162	2	n/a
	August 15–December 31 .....	98	2	n/a
Non-Pacific cod non-trawl-Total .....	May 1–December 31 .....	n/a	n/a	49
Groundfish pot and jig .....	n/a .....	n/a	n/a	Exempt
Sablefish hook-and-line .....	n/a .....	n/a	n/a	Exempt
Total for all non-trawl PSC .....	n/a .....	n/a	n/a	710

*Halibut Discard Mortality Rates*

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut incidental catch rates, halibut discard mortality rates (DMRs), and estimates of groundfish catch to project when a fishery’s halibut bycatch mortality allowance or seasonal apportionment is reached. Halibut incidental catch rates are based on observers’ estimates of halibut incidental catch in the groundfish fishery. DMRs are estimates of the proportion of incidentally caught halibut that do not survive after being returned to the sea. The cumulative halibut mortality that accrues to a particular halibut PSC limit is the product of a DMR multiplied by the estimated halibut PSC. DMRs are estimated using the best scientific information available in conjunction with the annual BSAI stock assessment process. The DMR methodology and findings are included as an appendix to the annual BSAI groundfish SAFE report.

In 2016, the DMR estimation methodology underwent revisions per

the Council’s directive. An interagency halibut working group (International Pacific Halibut Commission, Council, and NMFS staff) developed improved estimation methods that have undergone review by the Plan Team, SSC, and the Council. A summary of the revised methodology is included in the BSAI proposed 2017 and 2018 harvest specifications (81 FR 87863, December 6, 2016), and the comprehensive discussion of the working group’s statistical methodology is available from the Council (see **ADDRESSES**). The DMR working group’s revised methodology is intended to improve estimation accuracy, transparency, and transferability in the methodology used for calculating DMRs. The working group will continue to consider improvements to the methodology used to calculate halibut mortality, including potential changes to the reference period (the period of data used for calculating the DMRs). Future DMRs may change based on additional years of observer sampling, which could provide more recent and accurate data and which could improve the accuracy of estimation and progress on

methodology. The new methodology will continue to ensure that NMFS is using DMRs that more accurately reflect halibut mortality, which will inform the different sectors of their estimated halibut mortality and allow specific sectors to respond with methods that could reduce mortality and, eventually, the DMR for that sector.

In October 2018, the Council recommended adopting the halibut DMRs derived from the revised methodology for the proposed 2019 and 2020 DMRs. The proposed 2019 and 2020 DMRs use an updated 2-year reference period. Comparing the proposed DMRs to the final DMRs from the 2018 and 2019 harvest specifications, the proposed DMR for motherships and catcher/processors using non-pelagic trawl gear decreased to 78 percent from 84 percent, the proposed DMR for catcher vessels using non-pelagic trawl gear decreased to 59 percent from 60 percent, the proposed DMR for catcher vessels using hook-and-line gear decreased to percent from 17 percent, and the proposed DMR for pot gear increased to 19 percent from 9

percent. Table 12 lists the proposed 2019 and 2020 DMRs.

TABLE 12—PROPOSED 2019 AND 2020 PACIFIC HALIBUT DISCARD MORTALITY RATES (DMR) FOR THE BSAI

Gear	Sector	Halibut discard mortality rate (percent)
Pelagic trawl	All	100
Non-pelagic trawl	Mothership and catcher/processor	78
Non-pelagic trawl	Catcher vessel	59
Hook-and-line	Catcher vessel	4
Hook-and-line	Catcher/processor	8
Pot	All	19

Listed AFA Catcher/Processor Sideboard Limits

Pursuant to § 679.64(a), the Regional Administrator is responsible for restricting the ability of listed AFA catcher/processors to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. These restrictions are set out as “sideboard” limits on catch. The basis for these proposed sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668,

September 14, 2007). Section 679.64(a)(1)(v) exempts AFA catcher/processors from a yellowfin sole sideboard limit because the 2019 and 2020 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than 125,000 mt.

As discussed earlier in this preamble, NMFS published a proposed rule (83 FR 40733, August 16, 2018) that would, if implemented, establish regulations to prohibit directed fishing for AFA sideboard limits for specific groundfish species or species groups, rather than prohibiting directed fishing for AFA sideboard limits through the BSAI annual harvest specifications. If that

rule becomes effective prior to the publication of the final 2019 and 2020 harvest specifications, NMFS will no longer publish most of the sideboards listed below in Table 13. Table 13 lists the proposed 2019 and 2020 catcher/processor groundfish sideboard limits.

All harvest of groundfish sideboard species by listed AFA catcher/processors, whether as targeted catch or incidental catch, will be deducted from the sideboard limits in Table 13. However, groundfish sideboard species that are delivered to listed AFA catcher/processors by catcher vessels will not be deducted from the 2019 and 2020 sideboard limits for the listed AFA catcher/processors.

TABLE 13—PROPOSED 2019 AND 2020 BSAI GROUND FISH SIDEBOARD LIMITS FOR LISTED AMERICAN FISHERIES ACT CATCHER/PROCESSORS (C/PS)

[Amounts are in metric tons]

Target species	Area	1995–1997			2019 and 2020 ITAC available to all trawl C/Ps <sup>1</sup>	2019 and 2020 AFA C/P sideboard limit
		Retained catch	Total catch	Ratio of retained catch to total catch		
Sablefish trawl	BS	8	497	0.016	876	14
	AI		145		595	
Greenland turbot	BS	121	17,305	0.007	4,356	30
	AI	23	4,987	0.005	144	1
Arrowtooth flounder	BSAI	76	33,987	0.002	11,900	24
Kamchatka flounder	BSAI	76	33,987	0.002	4,250	9
Rock sole	BSAI	6,317	169,362	0.037	43,846	1,622
Flathead sole	BSAI	1,925	52,755	0.036	14,735	530
Alaska plaice	BSAI	14	9,438	0.001	13,814	14
Other flatfish	BSAI	3,058	52,298	0.058	3,400	197
	BS	12	4,879	0.002	9,774	20
Pacific ocean perch	Eastern AI	125	6,179	0.020	8,675	174
	Central AI	3	5,698	0.001	6,741	7
	Western AI	54	13,598	0.004	8,141	33
Northern rockfish	BSAI	91	13,040	0.007	5,525	39
Rougheye rockfish	EBS/EAI	50	2,811	0.018	64	1
	CAI/WAI	50	2,811	0.018	128	2
Shortraker rockfish	BSAI	50	2,811	0.018	128	2
Other rockfish	BS	18	621	0.029	234	7
	AI	22	806	0.027	485	13
Atka mackerel	Central AI	n/a	n/a	0.115	22,231	2,557
	A season <sup>2</sup>	n/a	n/a	0.115	11,116	1,278
	B season <sup>2</sup>	n/a	n/a	0.115	11,116	1,278
	Western AI	n/a	n/a	0.2	12,346	2,469
	A season <sup>2</sup>	n/a	n/a	0.2	6,173	1,235
	B season <sup>2</sup>	n/a	n/a	0.2	6,173	1,235

TABLE 13—PROPOSED 2019 AND 2020 BSAI GROUNDFISH SIDEBOARD LIMITS FOR LISTED AMERICAN FISHERIES ACT CATCHER/PROCESSORS (C/PS)—Continued

[Amounts are in metric tons]

Target species	Area	1995–1997			2019 and 2020 ITAC available to all trawl C/PS <sup>1</sup>	2019 and 2020 AFA C/P sideboard limit
		Retained catch	Total catch	Ratio of retained catch to total catch		
Skates .....	BSAI .....	553	68,672	0.008	22,950	184
Sculpins .....	BSAI .....	553	68,672	0.008	4,250	34
Sharks .....	BSAI .....	553	68,672	0.008	153	1
Octopuses .....	BSAI .....	553	68,672	0.008	170	1

<sup>1</sup> Aleutians Islands Pacific ocean perch, and BSAI Atka mackerel, flathead sole, rock sole, and yellowfin sole are multiplied by the remainder of the TAC after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C).

<sup>2</sup> The seasonal apportionment of Atka mackerel in the BSAI trawl limited access sector is 50 percent in the A season and 50 percent in the B season. Listed AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian District and Bering Sea subarea, 20 percent of the annual ITAC specified for the Western Aleutian District, and 11.5 percent of the annual ITAC specified for the Central Aleutian District.

**Note:** Section 679.64(a)(1)(v) exempts AFA catcher/processors from a yellowfin sole sideboard limit because the 2019 and 2020 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than 125,000 mt.

Section 679.64(a)(2) and Tables 40 and 41 to 50 CFR part 679 establish a formula for calculating PSC sideboard limits for halibut and crab caught by listed AFA catcher/processors. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007).

PSC species listed in Table 14 that are caught by listed AFA catcher/processors participating in any groundfish fishery other than pollock will accrue against the proposed 2019 and 2020 PSC sideboard limits for the listed AFA catcher/processors. Section 679.21(b)(4)(iii), (e)(3)(v), and (e)(7) authorize NMFS to close directed fishing for groundfish other than pollock for listed AFA catcher/

processors once a proposed 2019 or 2020 PSC sideboard limit listed in Table 14 is reached.

Pursuant to §§ 679.21(b)(1)(ii)(C) and (e)(3)(ii)(C), halibut or crab PSC caught by listed AFA catcher/processors while fishing for pollock will accrue against the PSC allowances annually specified for the pollock/Atka mackerel/“other species” fishery categories, according to §§ 679.21(b)(1)(ii)(B) and (e)(3)(iv).

TABLE 14—PROPOSED 2019 AND 2020 BSAI PROHIBITED SPECIES SIDEBOARD LIMITS FOR AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSORS

PSC species and area <sup>1</sup>	Ratio of PSC to total PSC	Proposed 2019 and 2020 PSC available to trawl vessels after subtraction of PSQ <sup>2</sup>	Proposed 2019 and 2020 C/P sideboard limit <sup>2</sup>
BSAI Halibut mortality .....	n/a	n/a	286
Red king crab Zone 1 .....	0.007	86,621	606
<i>C. opilio</i> (COBLZ) .....	0.153	8,144,641	1,246,130
<i>C. bairdi</i> Zone 1 .....	0.140	741,190	103,767
<i>C. bairdi</i> Zone 2 .....	0.050	2,250,360	112,518

<sup>1</sup> Refer to § 679.2 for definitions of areas.

<sup>2</sup> Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

*AFA Catcher Vessel Sideboard Limits*

Pursuant to § 679.64(b), the Regional Administrator is responsible for restricting the ability of AFA catcher vessels to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. Section 679.64(b)(3) and (b)(4) establish formulas for setting AFA catcher vessel groundfish and PSC sideboard limits for the BSAI. The basis

for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007). Tables 15 and 16 list the proposed 2019 and 2020 AFA catcher vessel sideboard limits.

As discussed earlier in this preamble, NMFS published a proposed rule (83 FR 40733, August 16, 2018) that would, if implemented, establish regulations to prohibit directed fishing for AFA sideboard limits for specific groundfish species or species groups, rather than

prohibiting directed fishing for AFA sideboard limits through the BSAI annual harvest specifications. If that rule becomes effective prior to the publication of the final 2019 and 2020 harvest specifications, NMFS will no longer publish most of the sideboards listed in Table 15. All catch of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or as incidental catch, will be deducted from the 2019 and 2020 sideboard limits listed in Table 15.

TABLE 15—PROPOSED 2019 AND 2020 BSAI GROUND FISH SIDEBOARD LIMITS FOR AMERICAN FISHERIES ACT CATCHER VESSELS (CVs)

[Amounts are in metric tons]

Species	Fishery by area/gear/season	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2019 and 2020 initial TAC <sup>1</sup>	2019 and 2020 AFA catcher vessel sideboard limits
Pacific cod	BSAI	n/a	n/a	n/a
	Jig gear		2,140	
	Hook-and-line CV >60 ft LOA	n/a	n/a	n/a
	Jan 1–Jun 10	0.0006	155	0
	Jun 10–Dec 31	0.0006	149	0
	Pot gear CV >60 ft LOA	n/a	n/a	n/a
	Jan 1–Jun 10	0.0006	6,521	4
	Sept 1–Dec 31	0.0006	6,265	4
	CV <60 ft LOA using hook-and-line or pot gear.	0.0006	3,044	2
	Trawl gear CV	n/a	n/a	n/a
	Jan 20–Apr 1	0.8609	25,001	21,523
Apr 1–Jun 10	0.8609	3,716	3,199	
Jun 10–Nov 1	0.8609	5,068	4,363	
Sablefish	BS trawl gear	0.0906	876	79
	AI trawl gear	0.0645	595	38
Greenland turbot	BS	0.0645	4,356	281
	AI	0.0205	144	3
Arrowtooth flounder	BSAI	0.0690	11,900	821
Kamchatka flounder	BSAI	0.0690	4,250	293
Rock sole	BSAI	0.0341	43,846	1,495
Flathead sole	BS trawl gear	0.0505	14,735	744
Alaska plaice	BSAI	0.0441	13,814	609
Other flatfish	BSAI	0.0441	3,400	150
Pacific ocean perch	BS	0.1000	9,774	977
	Eastern AI	0.0077	8,675	67
	Central AI	0.0025	6,741	17
	Western AI		8,141	
Northern rockfish	BSAI	0.0084	5,525	46
Rougeye rockfish	EBS/EAI	0.0037	64	0
	CAI/WAI	0.0037	128	0
	BSAI	0.0037	128	0
Shortraker rockfish	BSAI	0.0037	128	0
Other rockfish	BS	0.0048	234	1
	AI	0.0095	485	5
	Eastern AI/BS	n/a	30,166	n/a
Atka mackerel	Jan 1–Jun 10	0.0032	15,083	48
	Jun 10–Nov 1	0.0032	15,083	48
	Central AI	n/a	22,231	n/a
	Jan 1–Jun 10	0.0001	11,116	1
	Jun 10–Nov 1	0.0001	11,116	1
	Western AI	n/a	12,346	n/a
	Jan 1–Jun 10		6,173	
	Jun 10–Nov 1		6,173	
Skates	BSAI	0.0541	22,950	1,242
Sculpins	BSAI	0.0541	4,250	230
Sharks	BSAI	0.0541	153	8
Octopuses	BSAI	0.0541	170	9

<sup>1</sup> Aleutians Islands Pacific ocean perch, and BSAI Atka mackerel, flathead sole, Pacific cod, rock sole, and yellowfin sole are multiplied by the remainder of the TAC of that species after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C).

**Note:** Section 679.64(b)(6) exempts AFA catcher vessels from a yellowfin sole sideboard limit because the 2019 and 2020 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than 125,000 mt.

Halibut and crab PSC limits listed in Table 16 that are caught by AFA catcher vessels participating in any groundfish fishery other than pollock will accrue against the 2019 and 2020 PSC sideboard limits for the AFA catcher vessels. Section 679.21(b)(4)(iii), (e)(7), and (e)(3)(v) authorize NMFS to close

directed fishing for groundfish other than pollock for AFA catcher vessels once a proposed 2019 and 2020 PSC sideboard limit listed in Table 16 is reached. Pursuant to §§ 679.21(b)(1)(ii)(C) and (e)(3)(ii)(C), halibut or crab PSC caught by AFA catcher vessels while fishing for pollock

in the BS will accrue against the PSC allowances annually specified for the pollock/Atka mackerel/“other species” fishery categories under §§ 679.21(b)(1)(ii)(B) and (e)(3)(iv).

TABLE 16—PROPOSED 2019 AND 2020 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI <sup>1</sup>

PSC species and area <sup>1</sup>	Target fishery category <sup>2</sup>	AFA catcher vessel PSC sideboard limit ratio	Proposed 2019 and 2020 PSC limit after subtraction of PSQ reserves <sup>3</sup>	Proposed 2019 and 2020 AFA catcher vessel PSC sideboard limit <sup>3</sup>
Halibut .....	Pacific cod trawl .....	n/a	n/a	887
	Pacific cod hook-and-line or pot .....	n/a	n/a	2
	Yellowfin sole total .....	n/a	n/a	101
	Rock sole/flathead sole/other flatfish <sup>4</sup> .....	n/a	n/a	228
	Greenland turbot/arrowtooth flounder/Kamchatka flounder/sablefish	n/a	n/a	
	Rockfish .....	n/a	n/a	2
Red king crab Zone 1	Pollock/Atka mackerel/other species <sup>5</sup> .....	n/a	n/a	5
	n/a .....	0.2990	86,621	25,900
	<i>C. opilio</i> COBLZ .....	0.1680	8,144,641	1,368,300
	<i>C. bairdi</i> Zone 1 .....	0.3300	741,190	244,593
<i>C. bairdi</i> Zone 2 .....	n/a	0.1860	2,250,360	418,567

<sup>1</sup> Refer to § 679.2 for definitions of areas.

<sup>2</sup> Target fishery categories are defined at § 679.21(b)(1)(ii)(B) and (e)(3)(iv).

<sup>3</sup> Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

<sup>4</sup> "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), arrowtooth flounder, Kamchatka flounder, flathead sole, Greenland turbot, rock sole, and yellowfin sole.

<sup>5</sup> "Other species" for PSC monitoring includes skates, sculpins, sharks, and octopuses.

**Classification**

NMFS has determined that the proposed harvest specifications are consistent with the FMP and preliminarily determined that the proposed harvest specifications are consistent with the Magnuson-Stevens Act and other applicable laws, subject to further review after public comment.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared an EIS for this action and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision (ROD) for the Final EIS. A SIR that assesses the need to prepare a Supplemental EIS is being prepared for the final harvest specifications. Copies of the Final EIS, ROD, and annual SIRs for this action are available from NMFS (see ADDRESSES). The Final EIS analyzes the environmental, social, and economic consequences of the proposed groundfish harvest specifications and alternative harvest strategies on resources in the action area. Based on the analysis in the Final EIS, NMFS concluded that the preferred Alternative (Alternative 2) provides the best balance among relevant environmental, social, and economic considerations and allows for continued management of the groundfish fisheries based on the most recent, best scientific information.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), analyzing the methodology for establishing the

relevant TACs. The IRFA evaluates the economic impacts on small entities of alternative harvest strategies for the groundfish fisheries in the exclusive economic zone off Alaska. As described in the methodology, TACs are set to a level that falls within the range of ABCs recommended by the SSC; the sum of the TACs must achieve the OY specified in the FMP. While the specific numbers that the methodology produces may vary from year to year, the methodology itself remains constant.

A description of the proposed action, why it is being considered, and the legal basis for this proposed action are contained in the preamble above. A copy of the IRFA is available from NMFS (see ADDRESSES). A summary of the IRFA follows.

The action under consideration is a harvest strategy to govern the catch of groundfish in the BSAI. The preferred alternative is the existing harvest strategy in which TACs fall within the range of ABCs recommended by the SSC, but, as discussed below, NMFS considered other alternatives. This action is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act.

The entities directly regulated by this action are those that harvest groundfish in the exclusive economic zone of the BSAI and in parallel fisheries within State waters. These include entities operating catcher vessels and catcher/processors within the action area and entities receiving direct allocations of groundfish.

For RFA purposes only, NMFS has established a small business size

standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of \$11 million for all its affiliated operations worldwide.

The IRFA shows that, in 2017, the estimated number of directly regulated small entities include approximately 170 catcher vessels, four catcher/processors, and six CDQ groups. Some of these vessels are members of AFA inshore pollock cooperatives, Gulf of Alaska rockfish cooperatives, or BSAI Crab Rationalization Program cooperatives, and, since under the RFA the aggregate gross receipts of all participating members of the cooperative must meet the "under \$11 million" threshold, the cooperatives are considered to be large entities within the meaning of the RFA. Thus, the estimate of 170 catcher vessels may be an overstatement of the number of small entities. Average gross revenues were \$570,000 for small hook-and-line vessels, \$1.37 million for small pot vessels, and \$3.15 million for small trawl vessels. The average gross revenue for catcher/processors are not reported, due to confidentiality considerations.

The preferred alternative (Alternative 2) was compared to four other alternatives. Alternative 1 would have set TACs to generate fishing rates equal

to the maximum permissible ABC (if the full TAC were harvested), unless the sum of TACs exceeded the BSAI OY, in which case TACs would have been limited to the OY. Alternative 3 would have set TACs to produce fishing rates equal to the most recent 5-year average fishing rates. Alternative 4 would have set TACs equal to the lower limit of the BSAI OY range. Alternative 5, the “no action” alternative, would have set TACs equal to zero.

The TACs associated with Alternative 2, the preferred harvest strategy, are those recommended by the Council in October 2018. OFLs and ABCs for the species were based on recommendations prepared by the Council’s BSAI Groundfish Plan Team in September 2018, and reviewed and modified by the Council’s SSC in October 2018. The Council based its TAC recommendations on those of its AP, which were consistent with the SSC’s OFL and ABC recommendations.

Alternative 1 selects harvest rates that would allow fishermen to harvest stocks at the level of ABCs, unless total harvests were constrained by the upper bound of the BSAI OY of two million mt. As shown in Table 1 of the preamble, the sum of ABCs in 2019 and 2020 would be 3,573,772 mt, which is above the upper bound of the OY range. Under Alternative 1, the sum of TACs is equal to the sum of ABCs. In this instance, Alternative 1 is consistent with the preferred alternative (Alternative 2), meets the objectives of that action, and has small entity impacts that are equivalent to small entity impacts of the preferred alternative. However, NMFS cannot set TACs equal to the sum of ABCs in the BSAI due to the constraining OY limit of two million mt, which Alternative 1 would exceed.

Alternative 3 selects harvest rates based on the most recent 5 years of harvest rates (for species in Tiers 1 through 3) or based on the most recent 5 years of harvests (for species in Tiers 4 through 6). This alternative is inconsistent with the objectives of this

action (as reflected in Alternative 2, the Council’s preferred harvest strategy) because it does not take account of the most recent biological information for this fishery, as required by the Magnuson-Stevens Act. NMFS annually conducts at-sea stock surveys for different species, as well as statistical modeling, to estimate stock sizes and permissible harvest levels. Actual harvest rates or harvest amounts are a component of these estimates, but in and of themselves may not accurately portray stock sizes and conditions. Harvest rates are listed for each species category for each year in the SAFE report (see **ADDRESSES**).

Alternative 4 would lead to significantly lower harvests of all groundfish species and reduce TACs from the upper end of the OY range in the BSAI, to its lower end of 1.4 million mt. Overall, this would reduce 2019 TACs by about 30 percent, which would lead to significant reductions in harvests of species by small entities. While reductions of this size would alter the supply, and, therefore, would be associated with offsetting price increases, the size of these associated price increases is uncertain. While production declines in the BSAI would undoubtedly be associated with price increases in the BSAI, these increases still would be constrained by production of substitutes, and are unlikely to completely offset revenue declines resulting from reductions in harvests of these species by small entities. Thus, this alternative would have a detrimental impact on small entities.

Alternative 5, which sets all harvests equal to zero, would have a significant adverse impact on small entities and would be contrary to the requirement for achieving OY on a continuing basis, as mandated by the Magnuson-Stevens Act.

The proposed harvest specifications (Alternative 2) extend the current 2019 OFLs, ABCs, and TACs to 2019 and 2020, with the exceptions for removal of

the squid OFL, ABC, and TAC in the BSAI and the related increase in BS pollock TAC amounts, and for the decreases of the Pacific cod BS and AI TACs to account for the State’s GHLs. As noted in the IRFA, the Council may modify its recommendations for final OFLs, ABCs, and TACs in December 2018, when it reviews the November 2018 SAFE report from its groundfish Plan Team, and the reports of the SSC and AP, at the 2018 December Council meeting. NMFS does not expect adverse impacts on small entities, because most of the TACs in the proposed 2019 and 2020 harvest specifications are unchanged from the 2019 harvest specification TACs, with the exception of changes for TACs for squid, BS pollock, and Pacific cod, and because the sum of all TACs remains within the upper limit of OY for the BSAI of 2.0 million mt. Also, NMFS does not expect any changes that might be made by the Council in December 2018 to be large enough to have an impact on small entities.

This action does not modify recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any Federal rules.

Adverse impacts on marine mammals or endangered species resulting from fishing activities conducted under these harvest specifications are discussed in the Final EIS and its accompanying annual SIRs (see **ADDRESSES**).

**Authority:** 16 U.S.C. 773 *et seq.*; 16 U.S.C. 1540(f); 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 3631 *et seq.*; Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–199; Pub. L. 108–447; Pub. L. 109–241; Pub. L. 109–479.

Dated: November 29, 2018.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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# Notices

Federal Register

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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

### Office of the Chief Financial Officer

#### Notice of Request for Approval of a Renewal Information Collection

**AGENCY:** Office of the Chief Financial Officer, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** This notice announces the intention of the Office of the Chief Financial Officer to request the renewal of a currently approved information collection (OMB No. 0505-0025) associated with Representations Regarding Felony Conviction and Tax Delinquent Status For Corporate Applicants and Assurance Regarding Felony Conviction or Tax Delinquent Status For Corporate Applicants.

**DATES:** Written comments on this notice must be received by February 4, 2019 to be assured of consideration.

**ADDRESSES:** Comments may be submitted by either/one of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to <http://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- *Postal Mail/Commercial Delivery:* Send to Director, Transparency and Accountability Reporting Division, Office of the Chief Financial Officer, Room 3027-S, Stop Code 9011, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250.

All comments received will be available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>, or during regular business hours at the same address.

#### FOR FURTHER INFORMATION CONTACT:

Martha E. Burton, Management Analyst, Transparency and Accountability Reporting Division, Office of the Chief Financial Officer, Room 3027-S, Stop Code 9011, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250; (202) 205-6182; [martha.burton@usda.gov](mailto:martha.burton@usda.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Office of the Chief Financial Officer to request approval from the Office of Management and Budget (OMB) to renew an approved information collection (OMB No. 0505-0025) associated with Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants and Awardees in nonprocurement programs.

*Title:* Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants and Awardees in Nonprocurement Programs.

*OMB Number:* 0505-0025.

*Expiration Date of Current Approval:* April 2019.

*Form Numbers:* AD-3030 (Representations Regarding Felony Conviction and Tax Delinquent Status For Corporate Clients), AD-3031 (Assurance Regarding Felony Conviction or Tax Delinquent Status For Corporate Applicants).

*Type of Request:* Renewal of a currently approved information collection.

*Abstract:* The U.S. Department of Agriculture's (USDA) agencies and staff offices must comply with the restrictions set forth in sections 745 and 746 of the Consolidated Appropriations Act, 2017, Public Law 115-31, as amended and/or subsequently enacted), hereinafter Public Law 115-31, which prevents agencies from doing business with corporations that (1) have been convicted of a felony criminal violation under Federal law within the preceding 24 months preceding the award and/or (2) have any unpaid Federal tax liability that has been assessed, for which all judicial administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; unless the agency or staff

office has considered suspension or debarment of the recipient corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government.

To comply with the appropriation restrictions, the information collection requires corporate applicants and awardees for USDA programs to represent accurately whether they have or do not have qualifying felony convictions or tax delinquencies that would prevent entrance into proposed business transactions with USDA. For nonprocurement programs and transactions, these representations are collected on Forms AD-3030 (Representations Regarding Felony Conviction and Tax Delinquent Status For Corporate Applicants) and AD-3031 (Assurance Regarding Felony Conviction Or Tax Delinquent Status For Corporate Applicants). This notice and proposed renewal of an approved information collection deal only with USDA nonprocurement transactions. The categories of nonprocurement transactions covered include: Nonprocurement contracts, grants, loans, loan guarantees, cooperative agreements, and some memoranda of understanding/agreement. For more specific information about whether a particular nonprocurement program or transaction is included in this list please contact the USDA agency or staff office responsible for the program or transaction in question.

In fiscal years 2012-2014 the appropriation restriction provisions were not uniform across the government. To effectuate compliance, USDA initially created and received clearance of two sets of forms—one set for use by all USDA agencies and offices, except the Forest Service (AD-3030, AD-3031) and one set for use by the Forest Service (AD-3030-FS and AD-3031-FS). In 2015, Congress eliminated the multiple versions of the appropriation restriction provisions and enacted a single set of governmentwide provisions for all agencies and departments, thereby allowing USDA to collect this data with one set of forms—AD-3030 and AD-3031. The current clearance for these forms expires April 2019. The representations continue to be required as reflected in Public Law 115-31. To ensure that USDA agencies and staff offices are positioned to

continue compliance with the appropriation restrictions for their duration, the Office of the Chief Financial Officer is issuing this renewal approval notice for another formal three year clearance of the information collection request. Should the appropriation restrictions become ineffective or not be continued during the three year clearance period, this information request will be cancelled when it is no longer required.

Form AD-3030 (required during the application process) will effectuate compliance with the appropriation restrictions by requiring all corporate applicants to represent at the time of application for a nonprocurement program whether they have any felony convictions or tax delinquencies that would prevent USDA from doing business with them. Form AD-3031 (applicable at the time of the award) requires an affirmative representation that corporate awardees for nonprocurement transactions do not have any felony convictions or tax delinquencies. If the application and award process occurs in a single step, the agency or staff office may require concurrent submission of both forms. Corporations (for profit and non-profit entities) include, but are not limited to, any entity that has filed articles of incorporation in one of the 50 States, the District of Columbia, or the various territories of the United States.

Collection of this information is necessary to ensure that USDA agencies and staff offices comply with the appropriation restrictions prohibiting the Government from doing business with corporations with felony convictions and/or tax delinquencies.

*Estimate of Burden:* Public reporting burden for this information collection is estimated to average 0.25 hours per response.

*Frequency of Collection:* Other: Corporations—AD-3030—each time they apply to participate in a multitude of USDA nonprocurement programs; Awardees—AD-3031—each time they receive an award from USDA nonprocurement programs.

*Type of Respondents.* Corporate applicants and awardees for USDA nonprocurement programs, including grants, cooperative agreements, loans, loan guarantees, some memoranda of understanding/agreement, and nonprocurement contracts.

*Estimated Number of Annual Respondents:* 352,523.

*Estimated Number of Responses per Respondent:* 2.75.

*Estimated Total Annual Burden on Respondents:* 969,438.

*Estimate Total Annual Burden Hours on Respondents:* 242,360.

Comments from interested parties are invited to help us to: (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agencies and staff offices, including whether the information will have practical utility; (2) evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, technological, and other forms of information technology collection methods.

All responses to this notice, including names and addresses when provided, will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed:

**Tyson P. Whitney,**

*Director, Transparency and Accountability Reporting Division.*

[FR Doc. 2018-26496 Filed 12-4-18; 8:45 am]

**BILLING CODE 3410-KS-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. APHIS-2018-0079]

#### Notice of Request for Reinstatement of Approval of an Information Collection; National Management Information System

**ACTION:** Reinstatement of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a reinstatement of approval of an information collection associated with the national management information system for cooperative wildlife damage management programs.

**DATES:** We will consider all comments that we receive on or before February 4, 2019.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#/docketDetail;D=APHIS-2018-0079>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2018-0079, 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-2018-0079> 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:** For information on the national management information system for cooperative wildlife damage management programs, contact Mr. Robert Myers, Wildlife Biologist, Wildlife Services, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737; (301) 651-8845. For more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2483.

**SUPPLEMENTARY INFORMATION:** *Title:* National Management Information System.

*OMB Control Number:* 0579-0335.

*Type of Request:* Reinstatement of approval of an information collection.

*Abstract:* The Secretary of Agriculture is authorized under Section 426 of the Act of March 2, 1931, as amended (7 U.S.C. 8351-8354; 46 Stat. 1468), to conduct a program of wildlife services with respect to injurious animal species. Large populations of aggressive wildlife species, if left unmanaged, may cause tremendous amounts of damage to crops, livestock herds, and private property within the United States. Without mitigation, the damage could result in severe economic losses for agricultural businesses and private property owners. The Act authorizes the Secretary to take any action he considers necessary for the control of nuisance mammals and birds and those mammal and bird species that are reservoirs for zoonotic diseases.

The United States Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services (WS), is responsible for assisting the public with mitigating wildlife damage. WS provides advice or enters into agreements with State and local jurisdictions, Tribes, public and private agencies, organizations, institutions,

and individuals to provide its services. Through its technical assistance approach, WS offers advice through telephone or onsite consultations, training sessions, demonstration projects, and other means. Mitigation activities are then performed by the requester. WS also provides a cooperative direct control approach where goods, services, and expertise are provided on a cost reimbursable basis. WS collects only information needed to determine appropriate courses of action for providing effective services.

Information is used by the agency to:

- Identify cooperators appropriately;
- Identify lands on which WS personnel will work;
- Differentiate between cooperators (*i.e.*, property owners, land managers, or resource owners) who request assistance to manage damage caused by wildlife;
- Identify the land areas on which wildlife damage management activities would be conducted;
- Identify the relationship between resources or property, WS' protection of such resources or property, and the damage caused by wildlife;
- Determine the methods or damage management activities to deal with the damage;
- Establish a record that a cooperative agreement has been entered into with a cooperator;
- Document that permission has been obtained from landowners to go on the cooperator's property;
- Record wildlife damage occurrences on cooperator's property and steps to address them;
- Record occurrences which may have affected non-target species or humans during, or related to, WS project actions; and
- Determine satisfaction with service to help WS evaluate, modify, and improve its programs.

Information collection activities include work initiation documents, assistance requests, protected resource queries, project reports, order forms and sales records, equipment issuances, migratory bird damage reports, permits, reports of injury or death to non-target animals, accident reports, pilot proficiency reviews, and invoice transmittals.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

*Estimate of burden:* The public burden for this collection of information is estimated to average 0.05 hours per response.

*Respondents:* State, local, and Tribal governments; businesses, not-for-profits, and other public sector organizations; and individuals who request services from WS or engage in wildlife damage management projects with WS.

*Estimated annual number of respondents:* 98,906.

*Estimated annual number of responses per respondent:* 1.123.

*Estimated annual number of responses:* 111,120.

*Estimated total annual burden on respondents:* 5,503 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 29th day of November 2018.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2018-26434 Filed 12-4-18; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

#### Information Collection Activity; Comment Request

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the United States Department of Agriculture (USDA) Rural Business-Cooperative Service's (RBS) invites comments on

this information collection of the Intermediary Relending Program (IRP), for which the Agency intends to request approval from the Office of Management and Budget (OMB).

**DATES:** Comments on this notice must be received by February 4, 2019.

**FOR FURTHER INFORMATION CONTACT:**

Thomas P. Dickson, Rural Development Innovation Center, 1400 Independence Avenue SW, STOP 1522, Room 5164, South Building, Washington, DC 20250-1522. Telephone: (202) 690-4492. Email: *Thomas.Dickson@wdc.usda.gov*.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that RUS is submitting to OMB for revision. Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments may be sent by any of the following methods:

- *Mail:* Thomas P. Dickson, Rural Development Innovation Center, 1400 Independence Avenue SW, STOP 1522, Room 5164, South Building, Washington, DC 20250-1522.

Telephone: (202) 690-4492. Email: *Thomas.Dickson@wdc.usda.gov*.

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

*Title:* Intermediary Relending Program.

*OMB Control Number:* 0570-0021.

*Type of Request:* Revision of a currently approved information collection.

*Abstract:* The regulations contain various requirements for information from the intermediaries, and some requirements may cause the intermediary to seek information from

ultimate recipients. The information requested is necessary for RBS to be able to process applications in a responsible manner, make prudent credit and program decisions, and effectively monitor the intermediaries' activities to protect the Government's financial interest and ensure that funds obtained from the Government are used appropriately. It includes information to identify the intermediary; describe the intermediary's experience and expertise; describe how the intermediary will operate its revolving loan fund; provide for debt instruments, loan agreements, and security; and other material necessary for prudent credit decisions and reasonable program monitoring.

**Estimate of Burden:** Public reporting burden for this collection of information is estimated to average 7.5 hours per response.

**Respondents:** Non-profit corporations, public agencies, Indian tribes and cooperatives.

**Estimated Number of Respondents:** 240.

**Estimated Number of Responses per Respondent:** 13.

**Estimated Number of Responses:** 3,566.

**Estimated Total Annual Burden on Respondents:** 24,580 hours.

Copies of this information collection can be obtained from Robin M. Jones, Innovation Center, at (202) 772-1172, Email: [robin.m.jones@wdc.usda.gov](mailto:robin.m.jones@wdc.usda.gov).

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 26, 2018.

**Bette B. Brand,**

*Administrator, Rural Business—Cooperative Service.*

[FR Doc. 2018-26435 Filed 12-4-18; 8:45 am]

**BILLING CODE 3410-XY-P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

**AGENCY:** Commission on Civil Rights.

**ACTION:** Announcement of meetings.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Rhode Island State Advisory Committee to the Commission will convene by conference call, on Tuesday, December 11, 2018 at 11:00 a.m. (EST). The purpose of the meeting is to discuss

next steps on the payday lending report, voting on voting rights report and project planning.

**DATES:** Tuesday, December 11, 2018, at 11:00 a.m. (EST).

**ADDRESSES:** Public call-in information: Conference call number: 1-877-260-1479 and conference call ID: 7607277.

**FOR FURTHER INFORMATION CONTACT:** Evelyn Bohor, at [ero@usccr.gov](mailto:ero@usccr.gov) or by phone at 202-376-7533

**SUPPLEMENTARY INFORMATION:** Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1-877-260-1479 and conference call ID: 7607277. Please be advised that before placing them into the conference call, the conference call operator may ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). 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 herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1-800-877-8339 and providing the operator with the toll-free conference call number: 1-877-260-1479 and conference call ID: 7607277.

Members of the public are invited to submit written comments; the comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, or emailed to Evelyn Bohor at [ero@usccr.gov](mailto:ero@usccr.gov). Persons who desire additional information may contact the Eastern Regional Office at (202) 376-7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at <https://gsageo.force.com/FACA/apex/FACAPublicCommittee?id=a10t0000001gzm4AAA>; click the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, [www.usccr.gov](http://www.usccr.gov), or to contact the Eastern Regional Office

at the above phone number, email or street address.

### Agenda

*Tuesday, December 11, 2018 at 11:00 a.m. (EST)*

- I. Rollcall
- II. Discussion Next Steps on Payday Lending Report
- III. Vote on Voting Rights Report
- IV. Project Planning
- V. Open Comment
- VI. Adjournment

Dated: November 30, 2018.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2018-26490 Filed 12-4-18; 8:45 am]

**BILLING CODE 6335-01-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### United States Travel and Tourism Advisory Board: Meeting of the United States Travel and Tourism Advisory Board

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of an open meeting.

**SUMMARY:** The United States Travel and Tourism Advisory Board (Board or TTAB) will hold a meeting on Wednesday, December 19, 2018. The Board advises the Secretary of Commerce on matters relating to the U.S. travel and tourism industry. The purpose of the meeting is for Board members to consider its recommendation on a new international visitor spending and arrivals goal. The final agenda will be posted on the Department of Commerce website for the Board at <http://trade.gov/ttab> at least one week in advance of the meeting.

**DATES:** Wednesday, December 19, 2018, 2:00 p.m.–3:00 p.m. EST. The deadline for members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. EST on Wednesday, December 12, 2018.

**ADDRESSES:** The meeting will be held via conference call. The call-in number and passcode will be provided by email to registrants.

Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted to: National Travel and Tourism Office, U.S. Department of Commerce, 1401 Constitution Ave. NW, Room 10003,

Washington, DC 20230 or by email to [TTAB@trade.gov](mailto:TTAB@trade.gov). Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

**FOR FURTHER INFORMATION CONTACT:**

Brian Beall, the United States Travel and Tourism Advisory Board, National Travel and Tourism Office, U.S. Department of Commerce, 1401 Constitution Ave. NW, Room 10003, Washington, DC 20230; telephone: 202-482-0140; email: [TTAB@trade.gov](mailto:TTAB@trade.gov).

**SUPPLEMENTARY INFORMATION:**

*Background:* The Board advises the Secretary of Commerce on matters relating to the U.S. travel and tourism industry.

*Public Participation:* The meeting will be open to the public and will be accessible to people with disabilities. Any member of the public requesting to join the meeting is asked to register in advance by the deadline identified under the DATES caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted, but may not be possible to fill. There will be fifteen (15) minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for public comments may be limited to three (3) minutes per person. Members of the public wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name and address of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks by 5:00 p.m. EST on Wednesday, December 12, 2018, for inclusion in the meeting records and for circulation to the members of the Board.

In addition, any member of the public may submit pertinent written comments concerning the Board's affairs at any time before or after the meeting. Comments may be submitted to Brian Beall at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. EST on Wednesday, December 12, 2018, to ensure transmission to the Board prior to the meeting. Comments received after that date and time will be distributed to the members but may not be considered during the meeting. Copies of Board

meeting minutes will be available within 90 days of the meeting.

**Brian Beall,**

*Designated Federal Officer, United States Travel and Tourism Advisory Board.*

[FR Doc. 2018-26419 Filed 12-4-18; 8:45 am]

**BILLING CODE 3510-DR-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**Civil Nuclear Trade Advisory Committee: Meeting of the Civil Nuclear Trade Advisory Committee**

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda for a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

**DATES:** The meeting is scheduled for Thursday, December 20, 2018, from 1:00 p.m. to 4:00 p.m. Eastern Standard Time (EST). The deadline for members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. EST on Monday, December 17, 2018.

**ADDRESSES:** The meeting will be held via conference call. The call-in number and passcode will be provided by email to registrants. Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted to: Mr. Devin Horne, Office of Energy & Environmental Industries, International Trade Administration, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. (Fax: 202-482-5665; email: [devin.horne@trade.gov](mailto:devin.horne@trade.gov)). Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

**FOR FURTHER INFORMATION CONTACT:** Mr. Devin Horne, Office of Energy & Environmental Industries, International Trade Administration, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. (Phone: 202-482-0775; Fax: 202-482-5665; email: [devin.horne@trade.gov](mailto:devin.horne@trade.gov)).

**SUPPLEMENTARY INFORMATION:**

*Background:* The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need

for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand U.S. exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

*Topics to be considered:* The agenda for the Thursday, December 20, 2018 CINTAC meeting is a discussion on activities related to the U.S. Department of Commerce's Civil Nuclear Trade Initiative.

Public attendance is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Mr. Devin Horne at the contact information above by 5:00 p.m. EST on Monday, December 17, 2018 in order to pre-register. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting.

A limited amount of time will be available for brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 20 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Horne and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EST on Monday, December 17, 2018. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers. Any member of the public may submit written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EST on Monday, December 17, 2018. Comments received after that date will be distributed to the members but may not be considered at the meeting. Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: November 29, 2018.

**Man Cho,**

*Deputy Director, Office of Energy and Environmental Industries.*

[FR Doc. 2018-26421 Filed 12-4-18; 8:45 am]

**BILLING CODE 3510-DR-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651, as amended by Public Law 106-36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before (Insert date 20 days after publication in the **Federal Register**). Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 18-006. Applicant: Fermi Research Alliance, LLC., 2000 East Wilson Street, Batavia, IL 60510. Instrument: Short Baseline Near Detector (SBND) Liquid Argon Time Projection Chamber (LArTPC). Manufacturer: The Scientific Facilities Research Council (STFC), United Kingdom. Intended Use: The instrument will be used for a basic scientific research project that will study neutrinos, a type of elementary particle. There are three known types of neutrinos in the universe, although there could be more that have not yet been observed. The phenomena to be studied are the number of neutrino types and interaction cross-sections for the currently known neutrino types. Two detectors are required to perform the neutrino oscillation studies: The Short Baseline Near Detector (SBND) is one of these detectors. The primary objective of the SBN program is to look for evidence of neutrino oscillations, over distances of 1 kilometer or less, and if found to measure the oscillation parameters. The SBND TPC is a complex and unique instrument. Justification for Duty-Free Entry: There are no instruments of the same general

category manufactured in the United States. Application accepted by Commissioner of Customs: July 13, 2018.

Docket Number: 18-008. Applicant: Lawrence Berkeley National Laboratory, One Cyclotron Road, Berkeley, CA 94720. Instrument: In Vacuum Insertion Device (aka Undulator). Manufacturer: Hitachi Metals America, LLC, Japan. Intended Use: The instrument will be installed in Sector 2.0 of the Advanced Light Source (ALS) facility at Lawrence Berkeley Laboratory, for use as a high brightness beamline source for the sector. Sector 2.0 of the ALS is dedicated to the study and analysis of protein crystallography. The objectives pursued are to determine the atomic-resolution, three-dimensional structures of proteins and nucleic acids—the building blocks of life—as well as complexes of these molecules, the interactions of which give rise to biological processes. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: September 11, 2018.

Dated: November 29, 2018.

**Gregory W. Campbell,**

*Director, Subsidies Enforcement, Enforcement and Compliance.*

[FR Doc. 2018-26432 Filed 12-4-18; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-475-819]

#### Certain Pasta From Italy: Final Results of the Expedited Fourth Sunset Review of the Countervailing Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) finds that revocation of the countervailing duty order would be likely to lead to the continuation or recurrence of a countervailable subsidy at the levels indicated in the “Final Results of Review” section of this notice.

**DATES:** Applicable December 5, 2018.

**FOR FURTHER INFORMATION CONTACT:** Mary Kolberg, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1785.

**SUPPLEMENTARY INFORMATION:**

## Background

On July 24, 1996, Commerce published the countervailing duty order on certain pasta from Italy.<sup>1</sup> On August 1, 2018, Commerce published the notice of initiation of the fourth sunset review of this order, pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act).<sup>2</sup> On August 16, 2018, Commerce received a notice of intent to participate from A. Zerega's Sons, Inc. (Zerega), Dakota Growers Pasta Company, Inc. (Dakota Growers), Riviana Foods, Inc. (Riviana) (formerly, New World Pasta Company),<sup>3</sup> and TreeHouse Foods, Inc. (TreeHouse)<sup>4</sup> within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>5</sup> Zerega, Dakota Growers, Riviana, and TreeHouse claimed interested party status under section 771(9)(C) of the Act as producers of pasta in the United States.

On August 31, 2018, Commerce received an adequate substantive response to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).<sup>6</sup> On September 10, 2018, Commerce received a substantive response from the Government of Italy (GOI).<sup>7</sup> However, we received no substantive responses from respondent interested parties who are producers or exporters of the subject merchandise. A government's response alone, normally, is not sufficient for Commerce to conduct a full sunset review, unless the investigation was conducted on an aggregate basis.<sup>8</sup> This investigation was conducted on a company-specific, rather than an aggregate, basis.

On September 20, 2018, Commerce notified the U.S. International Trade

<sup>1</sup> See *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") from Italy*, 61 FR 38544 (July 24, 1996).

<sup>2</sup> See *Initiation of Five-Year (Sunset) Reviews*, 83 FR 37463 (August 1, 2018) (Initiation Notice).

<sup>3</sup> New World Pasta Company merged into Riviana Foods Inc. effective January 1, 2017.

<sup>4</sup> TreeHouse acquired the American Italian Pasta Company in February 2016.

<sup>5</sup> See letter from Zerega, Dakota Growers, Riviana, and TreeHouse, “Five-Year (“Sunset”) Review of the Countervailing Duty Order on Certain Pasta from Italy—Domestic Interested Parties’ Notice of Intent to Participate,” dated August 16, 2018.

<sup>6</sup> See letter from Zerega, Dakota Growers, Riviana, and TreeHouse, “Certain Pasta From Italy—Five-Year (“4th Sunset”) Review of the Countervailing Duty Order,” dated August 31, 2018.

<sup>7</sup> See letter from the GOI, “Five-Year (Sunset) Review of the Countervailing Duty Order on Certain Pasta From Italy: Response of the Government of Italy,” dated September 10, 2018.

<sup>8</sup> See, e.g., *Certain Pasta from Turkey: Final Results of Expedited Five-Year (“Sunset”) Review of the Countervailing Duty Order*, 72 FR 5269 (February 5, 2007); *Certain Carbon Steel Products from Sweden: Final Results of Expedited Sunset Review of Countervailing Duty Order*, 65 FR 18304 (April 7, 2000).

Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.<sup>9</sup> As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce has conducted an expedited (120-day) sunset review of the countervailing duty order on certain pasta from Italy.

**Scope of the Order**

Imports covered by the *Order* are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the scope of the *Order* is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of the *Order* are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the *Order*.<sup>10</sup> Pursuant to Commerce’s May 12, 2011, changed circumstances review, effective January 1, 2009, gluten free pasta is also excluded from the scope of the *Order*.<sup>11</sup> Effective January 1, 2012, ravioli and tortellini filled with cheese and/or vegetables are also excluded from the scope of the *Order*.<sup>12</sup>

Also excluded are imports of organic pasta from Italy that are certified by an EU authorized body in accordance with the United States Department of Agriculture’s National Organic Program for organic products. The organic pasta certification must be retained by exporters and importers and made available to U.S. Customs and Border

Protection or the Department of Commerce upon request. The merchandise subject to the order is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the *Order* is dispositive.

**Analysis of Comments Received**

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum,<sup>13</sup> which is dated concurrently with and hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum are the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy likely to prevail if the order were revoked. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

**Final Results of Review**

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the countervailing duty order on pasta from Italy would be likely to lead to the continuation or recurrence of a countervailable subsidy at the rates listed below:

Producer/exporter	Net subsidy rate (percent)
Agritalia, S.r.l .....	10.45
Arrighi S.p.A. Industrie Alimentari .....	10.34
De Matteis Agroalimentare S.p.A .....	9.64
Delverde, S.r.l .....	13.25
F.lli DeCecco di Fillippo Fara S. Martino S.p.A .....	9.90

<sup>13</sup> See Memorandum “Issues and Decision Memorandum for the Final Results of the Fourth Expedited Five-Year Sunset Review of the Countervailing Duty Order on Certain Pasta from Italy,” dated concurrently with and hereby adopted by this notice (Issues and Decision Memorandum).

Producer/exporter	Net subsidy rate (percent)
Industria Alimentare Colavita, S.p.A .....	9.50
Isola del Grano, S.r.l .....	17.19
Italpast S.p.A .....	17.19
Italpasta S.r.l .....	10.34
La Molisana Alimentari S.p.A .....	11.31
Labor, S.r.l .....	17.19
Molino e Pastificio DeCecco S.p.A. Pescara .....	9.90
Pastificio Guido Ferrara .....	8.83
Pastificio Campano, S.p.A ....	9.96
Pastificio Riscossa F.lli Mastromauro S.r.l .....	14.30
Tamma Industrie Alimentari di Capitanata .....	13.25
All Others .....	11.01

**Notification to Interested Parties**

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. 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 terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: November 28, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

**Appendix**

**List of Topics Discussed in the Issues and Decision Memorandum**

- I. Summary
- II. History of the Order
- III. Background
- IV. Scope of the Order
- V. Discussion of the Issues
  - 1. Revocation of the Order is Likely to Lead to a Continuation or Recurrence of a Countervailable Subsidy
  - 2. Net Countervailable Subsidy Rates that are Likely to Prevail
  - 3. Nature of the Subsidies
- VI. Final Results of the Review
- VII. Recommendation

[FR Doc. 2018–26431 Filed 12–4–18; 8:45 am]

**BILLING CODE 3510-DS-P**

<sup>9</sup> See Commerce Letter re: “Sunset Reviews Initiated on August 1, 2018,” dated September 20, 2018.

<sup>10</sup> See Memorandum to Richard Moreland, dated August 25, 1997, which is on file in the Central Records Unit.

<sup>11</sup> See *Certain Pasta from Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation*, In Part, 76 FR 27634 (May 12, 2011).

<sup>12</sup> See *Certain Pasta from Italy: Final Results of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews and Revocation*, in Part 79 FR 58319, 58320 (September 29, 2014).

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-475-818, A-489-805]

**Certain Pasta From Italy and Turkey: Final Results of Expedited Fourth Sunset Reviews of the Antidumping Duty Orders**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of these sunset reviews, the Department of Commerce (Commerce) finds that revocation of the antidumping duty orders on certain pasta (pasta) from Italy and Turkey would be likely to lead to the continuation or recurrence of dumping at the levels indicated in the "Final Results of Review" section of this notice.

**DATES:** Applicable December 5, 2018.

**FOR FURTHER INFORMATION CONTACT:** Daniel Deku or Scott Hoefke, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202-482-5075 or 202-482-4947, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

Commerce published antidumping duty orders on pasta from Italy and Turkey on July 24, 1996.<sup>1</sup> On August 1, 2018, Commerce published the notice of initiation of the fourth sunset reviews of the *Orders*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>2</sup> On August 16, 2018, Commerce received notices of intent to participate from the following domestic interested parties: A. Zerega's Sons, Inc.; Dakota Growers Pasta Company, Inc.; Riviana Foods, Inc. (formerly, New World Pasta Company); and TreeHouse Foods, Inc.<sup>3</sup> (collectively, domestic interested parties),<sup>4</sup> within the deadline specified

in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status within the meaning of section 771(9)(C) of the Act, as U.S. producers of certain pasta.<sup>5</sup>

On August 22, 2018, we received an extension request from the Government of Italy (GOI) for its response.<sup>6</sup> On August 31, 2018, we granted an extension to the GOI to submit its substantive response by September 10, 2018.<sup>7</sup>

On August 31, 2018, Commerce received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).<sup>8</sup> We received no substantive responses from respondent interested parties with respect to the orders covered by these sunset reviews.

On August 21, 2018, Commerce notified the U.S. International Trade Commission that it received a notice of intent to participate from domestic interested parties as required by 19 CFR 351.218(d).<sup>9</sup> As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset reviews of the *Orders*.

**Scope of the Orders***Italy (A-475-818)*

The merchandise subject to the order is pasta. The product is currently classified under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS numbers are provided for conveniences and customs purposes, the written product description available in *Italian Order* remains dispositive. The full scope language can be found in the accompanying Issues and Decision Memorandum.

*Turkey (A-489-805)*

The merchandise subject to the order is pasta. The product is currently classified under items 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS numbers are provided for conveniences and custom purposes, the

written product description available in *Turkish Order* remains dispositive. The full scope language can be found in the accompanying Issues and Decision Memorandum.

**Analysis of Comments Received**

All issues raised in these sunset reviews, including the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the *Orders* were revoked, are addressed in Issues and Decision Memorandum,<sup>10</sup> which is hereby adopted by this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn>. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

**Final Results of Reviews**

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, we determine that revocation of the antidumping duty orders on pasta from Italy and Turkey would likely lead to the continuation or recurrence of dumping and that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins up to 20.84 percent for Italy and up to 63.29 percent for Turkey.

**Notification Regarding Administrative Protective Order**

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to

<sup>1</sup> See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996) (*Italy Order*), see also *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 38545 (July 24, 1996) (*Turkey Order*) (collectively, the *Orders*).

<sup>2</sup> See *Initiation of Five-Year (Sunset) Reviews*, 83 FR 37463 (August 1, 2018) (*Sunset Initiation*).

<sup>3</sup> The domestic interested parties stated that TreeHouse Foods, Inc. acquired the American Italian Pasta Company in February 2016, and that the American Italian Pasta Company is now an indirect wholly owned subsidiary of TreeHouse Foods, Inc. See *Domestic Interested Parties' August 16, 2018 Intent to Participate for Italy*. See *Domestic August 16, 2018 Intent to Participate for Turkey*.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See GOI's August 22, 2018 Extension Request.

<sup>7</sup> See Commerce Letter "Five-Year (Sunset) Review of the Antidumping Duty Order on Certain Pasta from Italy: Request for Extension of Time to File Substantive Responses," dated August 29, 2018.

<sup>8</sup> See *Domestic Interested Parties' August 31, 2018 Substantive Response for Italy*; see also *Domestic Interested Parties' August 31, 2018 Substantive Response for Turkey*.

<sup>9</sup> See Commerce Letter re: "Sunset Reviews Initiated on August 1, 2018," dated August 21, 2018.

<sup>10</sup> See Memorandum, "Issues and Decision Memorandum for the Final Results of the Expedited Fourth Sunset Reviews of the Antidumping Duty Orders on Certain Pasta from Italy and Turkey," dated concurrently with this notice (Issues and Decision Memorandum).



sanction. We are issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: November 28, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-executive functions and duties of the Assistance Secretary for Enforcement and Compliance.*

**Appendix**

**List of Topics Discussed in the Issues and Decision Memorandum**

1. Summary
2. Background
3. Scope of the Orders
4. History of the Orders
5. Legal Framework
6. Discussion of the Issues
  - I. Likelihood of Continuation or Recurrence of Dumping
  - II. Magnitude of the Margins Likely to Prevail
7. Final Results of Reviews
8. Recommendation

[FR Doc. 2018–26429 Filed 12–4–18; 8:45 am]

**BILLING CODE 3510–DS–P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[C–489–806]

**Certain Pasta From Turkey: Final Results of the Expedited Fourth Sunset Review of the Countervailing Duty Order**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on certain pasta from Turkey would be likely to lead to continuation or recurrence of a countervailable subsidy at the levels indicated in the “Final Results of Review” section of this notice.

**DATES:** Applicable December 5, 2018.

**FOR FURTHER INFORMATION CONTACT:** Aimee Phelan or Mary Kolberg at (202) 482–0697 or (202) 482–1785, respectively; AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 24, 1996, Commerce published the CVD order on certain

pasta from Turkey.<sup>1</sup> On August 1, 2018, Commerce published the notice of initiation of the fourth sunset review of this order, pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act).<sup>2</sup> On August 16, 2018, Commerce received a notice of intent to participate from A. Zerega’s Sons, Inc. (Zerega), Dakota Growers Pasta Company, Inc. (Dakota Growers), Riviana Foods, Inc. (Riviana) (formerly, New World Pasta Company),<sup>3</sup> and TreeHouse Foods, Inc. (TreeHouse) (formerly, The American Italian Pasta Company)<sup>4</sup> within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>5</sup> Zerega, Dakota Growers, Riviana, and TreeHouse claimed interested party status under section 771(9)(C) of the Act as producers of pasta in the United States.<sup>6</sup>

On August 31, 2018, Commerce received an adequate substantive response to the notice of initiation from domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).<sup>7</sup> On August 31, 2018, Commerce also received a substantive response from the Government of Turkey (GOT).<sup>8</sup> However, we received no substantive responses from respondent interested parties who are producers or exporters of merchandise subject to the order covered by this sunset review. A government’s response alone, normally, is not sufficient for Commerce to conduct a full sunset review, unless the investigation was

<sup>1</sup> See *Notice of Countervailing Duty Order: Certain Pasta (“Pasta”) From Turkey*, 61 FR 38546 (July 24, 1996) (Order); see also *Final Affirmative Countervailing Duty Determination: Certain Pasta (“Pasta”) from Turkey*, 61 FR 30366 (June 14, 1996) (Final Determination).

<sup>2</sup> See *Initiation of Five-Year (Sunset) Reviews*, 83 FR 37463 (August 1, 2018).

<sup>3</sup> New World Pasta Company merged into Riviana Foods Inc. effective January 1, 2017.

<sup>4</sup> The American Italian Pasta Company was acquired by TreeHouse Foods in February 1, 2016.

<sup>5</sup> See Letter from Zerega, Dakota Growers, Riviana, and Treehouse, “Five-Year (Sunset) Review of the Countervailing Duty Order on Certain Pasta from Turkey—Domestic Interested Parties’ Notice of Intent to Participate,” dated August 16, 2018 (Domestic Parties’ Notice of Intent to Participate).

<sup>6</sup> See Letter from Domestic Interested Parties, “Five-Year (Sunset) Review of the Countervailing Duty Order on Certain Pasta—Domestic Interested Parties’ Notice of Intent to Participate,” August 16, 2018. As domestic producers of certain pasta, the petitioners are interested parties to this proceeding pursuant to section 771(9)(C) of the Act.

<sup>7</sup> See Letter from the petitioner, “Certain Pasta from Turkey—Five-Year (“4th Sunset”) Review of Countervailing Duty Order,” dated August 31, 2018 (Petitioners’ Substantive Response).

<sup>8</sup> See Letter from the GOT, “Substantive Response of the Government of Turkey in the Countervailing Duty 4th Sunset Review Involving Certain Pasta from Turkey,” dated August 31, 2018 (GOT substantive response).

conducted on an aggregate basis.<sup>9</sup> This investigation was conducted on a company-specific, rather than an aggregate, basis.

On September 20, 2018, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.<sup>10</sup> As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce has conducted an expedited (120-day) sunset review of the CVD order on certain pasta from Turkey.

**Scope of the Order**

The scope of the CVD order consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the order is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polyethylene bags, of varying dimensions.

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise under review is currently classifiable under subheading 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

**Analysis of Comments Received**

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum,<sup>11</sup> which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum are the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy likely to prevail if the order were revoked. The Issues and Decision Memorandum is a public

<sup>9</sup> See, e.g., *Certain Pasta from Turkey: Final Results of Expedited Five-Year (“Sunset”) Review of the Countervailing Duty Order*, 72 FR 5269 (February 5, 2007); *Certain Carbon Steel Products from Sweden: Final Results of Expedited Sunset Review of Countervailing Duty Order*, 65 FR 18304 (April 7, 2000).

<sup>10</sup> See Letter re: “Sunset Reviews Initiated on August 1, 2018,” dated September 20, 2018.

<sup>11</sup> See Memorandum “Issues and Decision Memorandum for the Expedited Fourth Sunset Review of the Countervailing Duty Order on Certain Pasta from Turkey,” dated concurrently with this notice (Issues and Decision Memorandum).

document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and to all in the Central Records Unit, Room B8024, of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

**Final Results of Review**

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the CVD order on pasta from Turkey would be likely to lead to the continuation or recurrence of a countervailable subsidy at the rates listed below:

Exporter/producer	Net countervailable subsidy rate (percent)
Filiz Gida Sanayi ve Ticaret (Filiz) .....	1.73
Maktas Makarnacilik ve Ticaret (Maktas) .....	13.19
Oba Makarnacilik Sanayi ve Ticaret (Oba) .....	13.18
All Others .....	8.95

**Notification to Interested Parties**

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. 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 terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: November 28, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

**Appendix**

**List of Topics Discussed in the Issues and Decision Memorandum**

- I. Summary
- II. History of the Order

- III. Background
- IV. Scope of the Order
  - 1. Rulings Relevant to Scope
- V. Discussion of the Issues
  - 1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
  - 2. Net Countervailable Subsidy Likely to Prevail
  - 3. Nature of Subsidy
- VI. Final Results of the Review
- VII. Recommendation

[FR Doc. 2018-26430 Filed 12-4-18; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**National Institute of Standards and Technology**

**Submission for OMB Review; Comment Request**

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Institute of Standards and Technology (NIST).  
*Title:* NIST Generic Clearance for Usability Data Collections  
*OMB Control Number:* 0693-0043.  
*Form Number(s):* None.  
*Type of Request:* Regular Submission (revision and extension of a currently approved information collection).  
*Number of Respondents:* 150,000.  
*Average Hours per Response:* Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire may be 15 minutes or 2 hours to participate in an empirical study.  
*Burden Hours:* 100,000.

*Needs and Uses:* NIST will conduct information collections to evaluate the usability and utility of NIST research for measurement and standardization work. These data collections efforts may include, but may not be limited to electronic methodologies, empirical studies, video and audio collections, interview, and questionnaires.

*Affected Public:* Individual or households; State, Local or Tribal Government; Federal Government.

*Frequency:* On occasion.  
*Respondent's Obligation:* Voluntary.

This information collection request may be viewed at [reginfo.gov](http://reginfo.gov). Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395-5806.

**Sheleen Dumas,**

*Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2018-26408 Filed 12-4-18; 8:45 am]

**BILLING CODE 3510-13-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XG619**

**Implementation of Fish and Fish Product Import Provisions of the Marine Mammal Protection Act— Notification of Comparability Findings**

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

**ACTION:** Notice; comparability findings for Mexico.

**SUMMARY:** Under the authority of the Marine Mammal Protection Act (MMPA), the NMFS Assistant Administrator for Fisheries (Assistant Administrator) has issued comparability findings for the Government of Mexico's following fisheries: Upper Gulf of California shrimp trawl fishery for both small and large vessels; Upper Gulf of California shrimp *suripera* fishery; Upper Gulf of California sierra purse seine fishery; Upper Gulf of California sierra hook and line fishery; Upper Gulf of California chano trawl fishery, for small vessels; Upper Gulf of California *curvina* purse seine fishery; and Upper Gulf of California sardine/*curvina* purse seine fishery for both small and large vessels. The Assistant Administrator is denying a comparability finding for the El Golfo de Santa Clara *curvina* rodeo-style gillnet fishery. NMFS bases the comparability findings on documentary evidence submitted by the Government of Mexico and other relevant, readily-available information including scientific literature and the reports of the "Comité Internacional para la Recuperación de la Vaquita" (CIRVA) (the international recovery team for vaquita).

**DATES:** These comparability findings are valid for the period of November 30, 2018, through January 1, 2022, unless revoked by the Assistant Administrator in a subsequent action.

**FOR FURTHER INFORMATION CONTACT:** Nina Young, at email: [Nina.Young@noaa.gov](mailto:Nina.Young@noaa.gov) or phone: 301-427-8383.

**SUPPLEMENTARY INFORMATION:** The MMPA, 16 U.S.C. 1371 *et seq.*, states that the Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying this import restriction, the Secretary of Commerce shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States.

On August 15, 2016, NMFS published a final rule (81 FR 54389) amending the fish and fish product import provisions of Section 101(a)(2) of the MMPA (see implementing regulations at 50 CFR 216.24(h)). This final rule established conditions for evaluating a harvesting nation's regulatory programs to address incidental and intentional mortality and serious injury of marine mammals in its commercial fisheries producing fish and fish products exported to the United States.

Under the final rule, fish or fish products cannot be imported into the United States from commercial fishing operations that result in the incidental mortality or serious injury of marine mammals in excess of U.S. standards (16 U.S.C. 1371(a)(2)). NMFS published a List of Foreign Fisheries (LOFF) on March 16, 2018 (83 FR 11703) to classify fisheries subject to the import requirements. Effective January 1, 2022, fish and fish products from fisheries identified by the Assistant Administrator in the LOFF can only be imported into the United States if the harvesting nation has applied for and received a comparability finding from NMFS for those fisheries on the LOFF. The rule established the procedures that a harvesting nation must follow, and the conditions it must meet, to receive a comparability finding for a fishery on the LOFF. The final rule established a five-year exemption period, ending January 1, 2022, before imports would be subject to any trade restrictions (see 50 CFR 216.24(h)(2)(ii)).

Vaquita are listed as an endangered species under the U.S. Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and are endemic to northern Gulf of California waters in Mexico. In 2017, the International Committee for the Recovery of the Vaquita (CIRVA)—a group of international scientists supported by Mexico and led by

Mexican scientists—estimated that fewer than 30 individuals remain. Gillnets used to illegally fish for totoaba are the direct primary source of current vaquita mortality and continue to be deployed to supply China's black market demand for totoaba swim bladders.

On May 18, 2017, Natural Resources Defense Council (NRDC), Center for Biological Diversity (CBD), and the Animal Welfare Institute (AWI) petitioned the Secretaries of Homeland Security, the Treasury, and Commerce to “ban the importation of commercial fish or products from fish” sourced using fishing activities that “result in the incidental mortality or incidental serious injury” of vaquita “in excess of United States standards.” The petitioners requested that the Secretaries immediately ban imports of all fish and fish products from Mexico that do not satisfy the MMPA import provision requirements, claiming that emergency action banning such imports is necessary to avoid immediate, ongoing, and “unacceptable risks” to vaquita. NMFS published a notice of the petition's receipt on August 22, 2017, in the **Federal Register** for a 60-day comment period.

On December 21, 2017, the petitioners filed suit in the United States District Court for the District of Columbia, which among other things challenges the failure of NMFS, the U.S. Department of Commerce, the U.S. Department of the Treasury, and the U.S. Department of Homeland Security (“Defendants”) to respond to the petition pursuant to the Administrative Procedure Act (“APA”). 5 U.S.C. 551–559; 701–706. On March 21, 2018, the petitioners filed suit before the Court of International Trade seeking an injunction requiring the U.S. Government to ban the import of fish or fish products from any Mexican commercial fishery that uses gillnets within the vaquita's range. On April 16, 2018, Petitioners filed a motion for a preliminary injunction on which oral argument was held on July 10, 2018. The Court of International Trade found in favor of the petitioners and granted the preliminary injunction.

On July 26, 2018, and August 14, 2018, the Court of International Trade (CIT) (Slip-Op 18–92) required the U.S. Government to ban all fish and fish products from Mexican commercial fisheries that use gillnets within the vaquita's range, pending final adjudication of the merits. This ban includes the importation from Mexico of all shrimp, curvina, sierra, and chano fish and their products caught with gillnets inside the vaquita's range. To

effect this court order, NMFS published a **Federal Register** document on August 28, 2018 (83 FR 43792) giving notice of import restrictions on fish and fish products from Mexico caught with gillnets deployed in the range of the vaquita. In that notice, NMFS also required that all other fish and fish products not within the scope of the import restrictions but imported under the Harmonized Tariff Schedule (HTS) codes associated with the prohibited fish and fish products be accompanied by a Certification of Admissibility in accordance with the provisions of 50 CFR 216.24(h)(9).

On November 9, 2018, the Government of Mexico requested that the Assistant Administrator make comparability findings based upon documentary evidence provided by the Government of Mexico for the Upper Gulf of California shrimp trawl fishery for both small and large vessels; Upper Gulf of California shrimp *suripera*<sup>1</sup> fishery; Upper Gulf of California sierra purse seine fishery; Upper Gulf of California sierra hook and line fishery; Upper Gulf of California chano trawl fishery, for small vessels; Upper Gulf of California *curvina* purse seine fishery; Upper Gulf of California sardine/*curvina* purse seine fishery for both small and large vessel; and El Golfo de Santa Clara *curvina* rodeo-style gillnet fishery. As stated in the final rule (81 FR 54397, Aug. 15, 2016) in response to comments on the proposed rule, nothing within the procedures set forth in 50 CFR 216.24(h) prevents a nation from implementing a bycatch reduction regulatory program and seeking a comparability finding during the five-year exemption period (see 50 CFR 216.24(h)(2)(i)).

NMFS used the comparability finding process set forth at 50 CFR 216.24(h)(6), which is the process that will be used for all nations and fisheries at the conclusion of the five-year exemption, with the Assistant Administrator considering documentary evidence submitted by the Government of Mexico and other relevant, readily-available information. This information includes including scientific literature and the reports of the “Comité Internacional para la Recuperación de la Vaquita” (CIRVA) (the international recovery team for vaquita) and has determined that the Upper Gulf of California shrimp trawl fishery for both small and large vessels; Upper Gulf of California shrimp *suripera* fishery; Upper Gulf of California sierra purse seine fishery;

<sup>1</sup> *Suripera* nets rely on utilizing the movement of the wind and water currents to draw shrimp into a small-mesh modified cast net.

Upper Gulf of California sierra hook and line fishery; Upper Gulf of California chano trawl fishery, for small vessels; Upper Gulf of California curvina purse seine fishery; and Upper Gulf of California sardine/curvina purse seine fishery for both small and large vessels; have met the MMPA's requirements to receive comparability findings. The Assistant Administrator has determined that the El Golfo de Santa Clara curvina rodeo-style gillnet fishery has not met the requirements to receive a comparability finding, will be denied such, and will remain subject to import restrictions in accordance with 50 CFR 216.24(h)(9).

Although this comparability finding would allow the importation into the United States of fish and fish product derived from these non-gillnet fisheries operating in the Upper Gulf of California under the Government of Mexico's jurisdiction, as noted above, CIT required the U.S. Government to ban all fish and fish products from said fisheries (effectuated through 83 FR 43792, August 28, 2018). Due to CIT's injunction, imports of sierra, shrimp, chano, and curvina fish and fish products must continue to be accompanied by a Certification of Admissibility in accordance with the provisions of 50 CFR 216.24(h)(9) until a court of competent jurisdiction lifts the injunction and further notice from NMFS (See August 28, 2018 (83 FR 43792) for a list of HTS and instructions for the Certification of Admissibility).

In accordance with 50 CFR 216.24(h)(8)(vii), a comparability finding will be terminated or revoked if the Assistant Administrator determines that the requirements of 50 CFR 216.24(h)(6) are no longer being met.

Pursuant to 50 CFR 216.24(h)(8)(iv) the Assistant Administrator may specify the period for which a comparability finding is valid, particularly, when nations are requesting a finding during the exemption period. The comparability finding for the Government of Mexico's affected fisheries included in this **Federal Register** notice will remain valid through January 1, 2022. Additionally, in accordance with 50 CFR 216.24(h)(9)(ii), the Government of Mexico can reapply for a comparability finding for the El Golfo de Santa Clara curvina rodeo-style gillnet fishery at any time. All other exempt and export fisheries operating under the control of the Government of Mexico are still subject to the five-year exemption period under 50 CFR 216.24(h)(2)(ii). Therefore, prior to the conclusion of the five-year exemption period, per the requirements of 50 CFR 216.24(h)(6), the

Government of Mexico, as is the case with all harvesting nations, must apply for and receive a comparability finding for all fisheries, including those in this **Federal Register** document, in order to export fish and fish products from those fisheries to the United States after January 1, 2022. Also, the Government of Mexico is still required to provide a progress report in accordance with 50 CFR 216.24(h)(10) for these fisheries and all other fisheries on its List of Foreign Fisheries.

The Government of Mexico has requested that NMFS update its LOFF to reflect only those fisheries and gear types authorized to fish in the upper Gulf of California. NMFS will add these fisheries (both those that have and were denied a comparability finding) and remove all gillnet fisheries listed as operating in the upper Gulf of California from the List of Foreign Fisheries for Mexico. This action is taken in accordance with 50 CFR 216.24(h)(8)(vi).

Dated: November 30, 2018.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2018-26418 Filed 11-30-18; 4:15 pm]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2018-0875]

### Merchant Mariner Medical Advisory Committee; Vacancies

**AGENCY:** U.S. Coast Guard, Department of Homeland Security.

**ACTION:** Request for applications.

**SUMMARY:** The U.S. Coast Guard seeks applications for membership on the Merchant Mariner Medical Advisory Committee. The Committee provides advice and recommendations to the Secretary on matters related to medical certification determinations for issuance of licenses, certificates of registry, and merchant mariners' documents; medical standards and guidelines for the physical qualifications of operators of commercial vessels; medical examiner education; and medical research.

**DATES:** Completed applications should be submitted to the U.S. Coast Guard on or before February 4, 2019.

**ADDRESSES:** Applicants should send a cover letter expressing interest in an appointment to the Merchant Mariner Medical Advisory Committee that

identifies the applicant's preferred membership, along with a resume detailing the applicant's experience by one of the following methods:

- *By Email:* [davis.j.breyer@uscg.mil](mailto:davis.j.breyer@uscg.mil), (preferred) Subject line: The Merchant Mariner Medical Advisory Committee;

- *By Fax:* 202-372-8382 ATTN: Mr. Davis J. Breyer, Alternate Designated Federal Officer; or

- *By Mail:* Mr. Davis J. Breyer, Alternate Designated Federal Officer of the Merchant Mariner Medical Advisory Committee, Commandant, (CG-MMC-2)/MEDMAC, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave SE, Stop 7509, Washington, DC, 20593-7509.

**FOR FURTHER INFORMATION CONTACT:** Mr. Davis J. Breyer, Alternate Designated Federal Officer of the Merchant Mariner Medical Advisory Committee, Commandant, (CG-MMC-2)/MEDMAC, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave SE, Stop 7509, Washington, DC, 20593-7509, telephone 202-372-1445, fax 202-372-8382 or [davis.j.breyer@uscg.mil](mailto:davis.j.breyer@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Merchant Mariner Medical Advisory Committee is a federal advisory committee established in accordance with the provisions of the Federal Advisory Committee Act (Title 5 U.S.C. Appendix) and 46 U.S.C. 7115.

The Committee meets at least twice each year. Its subcommittees and working groups may hold additional meetings as needed to consider specific tasks.

Except for vacancy appointments, Committee members serve a term of office of five years. Members may serve a maximum of two consecutive terms. All members serve at their own expense and receive no salary or other compensation from the Federal Government. Members may be reimbursed for travel and per diem in accordance with Federal Travel Regulations.

We will consider applications for the following six positions that will be vacant on April 18, 2019. Federal employees, in accordance with 46 U.S.C. 7115(b)(1), and registered lobbyists, as described below, are not eligible for these positions.

(1) Professional mariner membership positions. To be eligible, you must have experience as a merchant mariner and have significant knowledge and experience in the duties of the various positions aboard ship and the nature of the environment in which these duties are performed; and

(2) Health-care professionals. To be eligible, you must have particular expertise, knowledge, or experience

regarding the medical examinations of merchant mariners or occupational medicine.

Each member will be appointed and serve as a Special Government Employee as defined in section 202(a) of Title 18, U.S.C. As a candidate for appointment as a Special Government Employee, applicants are required to complete a new entrant Confidential Financial Disclosure Reports (OGE Form 450). The U.S. Coast Guard may not release the reports or the information in them to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Only the Designated U.S. Coast Guard Ethics Official or his or her designee may release a Confidential Financial Disclosure Report. Applicants can obtain this form by going to the website of the Office of Government Ethics ([www.oge.gov](http://www.oge.gov)), or by contacting the individual listed above in **FOR FURTHER INFORMATION CONTACT**. All applications must be accompanied by a completed OGE Form 450.

Registered lobbyists are not eligible to serve on Federal Advisory Committees in an individual capacity. See "Revised Guidance on Appointment of Lobbyist to Federal Advisory Committees, Boards and Commissions" (79 FR 47482, August 13, 2014). The positions we listed above will be someone appointed in their individual capacity and would be designated a Special Government Employee as defined in 202 (a) of Title 18, United States Code. Registered lobbyists are lobbyists as defined in Title 2 U.S.C. 1602 who are required by Title 2 U.S.C. 1603 to register with the Secretary of the Senate and the Clerk of the House of Representatives.

The Department of Homeland Security does not discriminate in selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disabilities and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment actions.

If you are interested in applying to become a member of the Committee, send your cover letter and resume, and be prepared to complete a OGE Form 450, as instructed, to Mr. Davis J. Breyer, Alternate Designated Federal Officer of the Merchant Mariner Medical Advisory Committee via one of the transmittal methods in the **ADDRESSES** section by the deadline in the **DATES** section of this notice.

All email submittals will receive email receipt confirmations.

Dated: November 30, 2018.

**Benjamin J. Hawkins,**  
*Deputy Director of Commercial Regulations and Standards.*

[FR Doc. 2018-26499 Filed 12-4-18; 8:45 am]

**BILLING CODE 9110-04-P**

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## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 10:00 a.m., Thursday, December 13, 2018.

**PLACE:** Three Lafayette Centre, 1155 21st Street NW, Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Examinations matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.cftc.gov>.

**CONTACT PERSON FOR MORE INFORMATION:** Christopher Kirkpatrick, 202-418-5964.

Dated: December 3, 2018.

**Christopher Kirkpatrick,**  
*Secretary of the Commission.*

[FR Doc. 2018-26553 Filed 12-3-18; 4:15 pm]

**BILLING CODE 6351-01-P**

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## DEPARTMENT OF ENERGY

### Bonneville Power Administration

[BPA File No.: TC-20]

#### Proposed Open Access Transmission Tariff; Public Hearing and Opportunities for Public Review and Comment

**AGENCY:** Bonneville Power Administration (Bonneville), Department of Energy (DOE).

**ACTION:** Notice of public hearing and opportunity to review and comment on proposed open access transmission tariff.

**SUMMARY:** Bonneville is holding a proceeding pursuant to the Federal Power Act, to establish a generally applicable open access transmission tariff (OATT). Bonneville has designated this proceeding Docket No. TC-20. The Bonneville Project Act of 1937 and the Pacific Northwest Electric Power Planning and Conservation Act provide the Bonneville Administrator with broad authority to enter into contracts

upon such terms and conditions and in such manner as the Administrator may deem necessary. The Federal Power Act provides procedures the Administrator may use when establishing terms and conditions of general applicability for transmission service across the Federal Columbia River Transmission System (FCRTS). By this notice, Bonneville announces the commencement of a proceeding to establish a generally applicable OATT, which includes the terms and conditions for transmission, ancillary, and generator interconnection services over the FCRTS to be effective on October 1, 2019.

#### DATES:

**Prehearing Conference:** The TC-20 tariff proceeding will begin with a prehearing conference on Friday, December 7, 2018, in the Bonneville Rates Hearing Room, 1201 NE Lloyd Boulevard, Suite 200, Portland, Oregon 97232. The TC-20 prehearing conference will begin immediately following the conclusion of the prehearing conference for Bonneville's BP-20 Power and Transmission Rate Proceeding, which begins at 9:00 a.m.

**Intervention:** Anyone intending to become a party to the TC-20 proceeding must file a petition to intervene on Bonneville's secure website no later than 4:30 p.m. on Tuesday, December 11, 2018. See Part III in **SUPPLEMENTARY INFORMATION** for details on requesting access to the secure website and filing a petition to intervene.

#### ADDRESSES: Participant Comments:

Written comments by non-party participants must be received by December 20, 2018 to be considered in the Hearing Officer's recommended decision and the Administrator's final Record of Decision (ROD). See Part III, in **SUPPLEMENTARY INFORMATION**, for details on submitting participant comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Heidi Helwig, DKE-7, BPA Communications, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208; by phone toll-free at 1-800-622-4519; or by email to [hyhelwig@bpa.gov](mailto:hyhelwig@bpa.gov).

The Hearing Clerk for this proceeding can be reached via email at [TC-20clerk@martenlaw.com](mailto:TC-20clerk@martenlaw.com) or via telephone at (503) 243-2200.

Please direct questions regarding Bonneville's secure site to the TC-20 Rate Hearing Coordinator via email at [TC-20RateHearingCoordinator@bpa.gov](mailto:TC-20RateHearingCoordinator@bpa.gov) or, if the question is time-sensitive, via telephone at (503) 230-3102.

**Responsible Officials:** Rachel Dibble, Manager of Transmission Products and Rates, is the official responsible for the

development of Bonneville's open access transmission tariff.

**SUPPLEMENTARY INFORMATION:**

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Part I. Introduction and Procedural Matters  
 Part II. Scope of TC–20 Terms and Conditions Proceeding  
 Part III. Public Participation in TC–20  
 Part IV. Summary of Open Access Transmission Tariff Proposal  
 Part V. Proposed OATT

**Part I—Introduction and Procedural Matters**

*A. Introduction and Procedural Background*

In this proceeding, Bonneville proposes a generally applicable OATT for transmission, ancillary, and generator interconnection services over the FCRTS to be effective on October 1, 2019. Bonneville's organic statutes authorize the Administrator to enter into contracts and set terms and conditions for transmission services over the FCRTS as the Administrator deems necessary to carry out Bonneville's duties and obligations. See Bonneville Project Act of 1937, the Pacific Northwest Consumer Power Preference Act, the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). Section 212(i)(2)(A) of the Federal Power Act provides procedures the Bonneville Administrator may use when establishing terms and conditions of general applicability for transmission services across the FCRTS. These procedures include publishing notice in the **Federal Register** and conducting a hearing that adheres to the procedural requirements of paragraphs (1) through (3) of Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i) (the same procedural requirements Bonneville uses when setting rates). In accordance with the Section 7(i) procedures, the Hearing Officer conducts one or more hearings to develop a full and complete record, which includes the opportunity for both oral presentation and written submission of views, data, questions, and arguments related to the proposal. Section 212(i)(2)(A) provides that upon conclusion of the hearing, the Hearing Officer shall, unless the Hearing Officer becomes unavailable to Bonneville, make a recommended decision to the Administrator, and the Administrator then makes a separate and final determination (discussed further in Part III, Section C of this notice).

Bonneville has adopted rules of procedure (Rules of Procedure) that

govern its proceedings to establish terms and conditions of transmission service. In a public process that concluded earlier this year, Bonneville updated and revised the version of the rules that had applied in Bonneville proceedings since 1986. The revised rules, which took effect September 12, 2018, will apply to the TC–20 proceeding. Bonneville has published the revised Rules of Procedure in the **Federal Register**, 83 FR 39993 (Aug. 13, 2018), and posted the rules on its website at <https://www.bpa.gov/Finance/RateCases/RulesProcedure/Pages/default.aspx>.

*B. TC–20 Settlement Agreement*

During September and October of 2018, Bonneville engaged its transmission customers with long-term point-to-point and network integration transmission service contracts (“long-term transmission service agreements”) in an attempt to reach settlement of the generally applicable terms and conditions for transmission, ancillary, and generator interconnection services that Bonneville would propose to adopt during the TC–20 proceeding. These discussions have resulted in a settlement proposal that specifies the OATT that Bonneville is proposing to adopt in the TC–20 proceeding. Bonneville and its long-term transmission customers have signed the TC–20 Settlement Agreement or indicated their intent to sign it by November 30, 2018.

Bonneville's agreement to the TC–20 settlement is subject to certain contingencies. First, Bonneville's customers with long-term transmission service agreements must sign the TC–20 Settlement Agreement. Second, the TC–20 settlement is also contingent upon parties to the separate Power and Transmission Rate Adjustment hearing (the BP–20 proceeding) not objecting to a proposed partial settlement with respect to the Transmission, Ancillary, and Control Area Services Rates for the FY 2020–21 BP–20 rate period.

If the TC–20 settlement is successful, Bonneville will file a motion requesting the TC–20 Hearing Officer to enter the TC–20 Settlement Agreement into the TC–20 record and issue a recommended decision to the Administrator which recommends adoption of the TC–20 Settlement Agreement.

If settlement of the OATT proposed in the TC–20 proceeding is unsuccessful, then Bonneville will notify all parties and decide how to proceed.

*C. Proposed Procedural Schedule*

A proposed schedule for the proceeding is provided below and is

based on an outcome in which Bonneville's proposed OATT is settled. A final schedule will be established by the Hearing Officer and may be amended by the Hearing Officer as needed during the proceeding. If settlement of the proposed OATT is unsuccessful, the Hearing Officer will set up a scheduling conference to amend the procedural schedule for the TC–20 proceeding.

Prehearing Conference	December 7, 2018
Bonneville's Initial Proposal Supporting Adoption of the TC–20 Settlement Agreement.	December 7, 2018.
Parties File Petitions to Intervene.	December 11, 2018.

*D. Ex Parte Communications*

Section 1010.5 of the Rules of Procedure prohibits *ex parte* communications. *Ex parte* communications include any oral or written communication (1) relevant to the merits of any issue in the proceeding; (2) that is not on the record; and (3) with respect to which reasonable prior notice has not been given. The *ex parte* rule applies to communications with all Bonneville and DOE employees and contractors, the Hearing Officer, and the Hearing Clerk during the proceeding. Except as provided, any communications with persons covered by the rule regarding the merits of any issue in the proceeding by other Executive Branch agencies, Congress, existing or potential Bonneville customers, nonprofit or public interest groups, or any other non-DOE parties are prohibited. The rule explicitly excludes and does not prohibit communications (1) relating to matters of procedure; (2) otherwise authorized by law or the Rules of Procedure; (3) from or to the Commission; (4) which all litigants agree may be made on an *ex parte* basis; (5) in the ordinary course of business, about information required to be exchanged under contracts, or in information responding to a Freedom of Information Act request; (6) between the Hearing Officer and Hearing Clerk; (7) in meetings for which prior notice has been given; or (8) otherwise specified in Section 1010.5(b) of the Rules of Procedure. The *ex parte* rule remains in effect until the Administrator's Final ROD is issued.

**Part II—Scope of TC–20 Terms and Conditions Proceeding**

This section provides guidance to the Hearing Officer regarding the scope of the TC–20 proceeding and identifies specific issues that are outside the

scope. Bonneville's proposed OATT includes the terms and conditions for transmission, ancillary, and interconnection services over the FCRTS. All terms and conditions of the proposed OATT (discussed in Part V of this notice) are within the scope of the TC-20 proceeding. In addition to the items listed, any other issue that is not a term and condition issue is outside the scope of this proceeding.

#### A. Cost Estimates

Bonneville's projections of its costs are not determined in terms and conditions proceedings. These projections are determined by Bonneville in other forums, such as the Integrated Program Review public process, with input from stakeholders. Bonneville's decisions regarding cost projections are outside the scope of the terms and conditions proceeding. If any re-examination of cost projections is necessary, such re-examination will occur outside the terms and conditions proceeding. Pursuant to Section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that challenges the appropriateness or reasonableness of the Administrator's decisions on costs and spending levels.

#### B. Rates

Bonneville recovers its costs and expenses in rates. Bonneville is holding a separate Power and Transmission Rate Adjustment hearing (the BP-20 proceeding) regarding the proposed fiscal year 2020-2021 power, transmission, ancillary, and control area services rates concurrently with this proceeding. Bonneville is publishing a separate notice in the **Federal Register** regarding the BP-20 proceeding. Bonneville's decisions regarding rates are outside the scope of the terms and conditions proceeding. This exclusion applies to rate designs, rate methodologies, rate forecasts, interest expense and credit, Treasury repayment schedules, non-Federal debt repayment schedules, revenue financing, calculation of depreciation and amortization expense, forecasts of system replacements used in repayment studies, transmission acquisition expenses incurred by Power Services, generation acquisition expenses incurred by Transmission Services, minimum required net revenue, increase in, or the use of, financial reserves, and the costs of risk mitigation actions resulting from the expense and revenue uncertainties included in the risk analysis. Pursuant to Section 1010.4(b)(8) of the Rules of Procedure,

the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence related to rates, or that challenges the appropriateness or reasonableness of the Administrator's decisions on rates or seeks in any way to propose revisions to the rates.

#### C. Bonneville's Tariff, Effective February 2, 2016

Bonneville offers transmission and interconnection service pursuant to an open access tariff with an effective date of February 2, 2016 (2016 Tariff). In this proceeding, Bonneville does not propose to change the 2016 Tariff; Bonneville proposes to establish a separate OATT. The 2016 Tariff is not within the scope of the TC-20 proceeding. Pursuant to Section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence related to the 2016 Tariff, including but not limited to its terms and conditions, the ongoing administration of contracts offered under the 2016 Tariff, and Bonneville's decisions, business practices and procedures, and policies regarding the 2016 Tariff.

#### D. Bonneville's 2018-2023 Strategic Plan and Transmission Business Model

Bonneville's 2018-2023 Strategic Plan and the Transmission Business Model describe Bonneville strategies and policies which guided the development of the proposed tariff; however, these strategies and policies are not within the scope of the TC-20 proceeding. Pursuant to Section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that visits or revisits the appropriateness or reasonableness of the Administrator's strategies and policies in the 2018-2023 Strategic Plan and the Transmission Business Model.

#### E. Business Practices Related to Bonneville's Proposed OATT

Bonneville's business practices provide implementation details for the OATT. These business practices do not significantly affect the terms and conditions in the OATT. The business practices, except as provided within the TC-20 Settlement Agreement, are not within the scope of the TC-20 proceeding. The TC-20 Settlement Agreement includes a Business Practice Process that Bonneville will use to develop its transmission business practices and the Balancing Reserve Capacity Business Practice. Pursuant to Section 1010.4(b)(8) of the Rules of

Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that proposes or challenges Bonneville's current and future business practices, except as provided within the TC-20 Settlement Agreement. If the TC-20 settlement is not successful, the Hearing Officer is directed to exclude from the record all argument, testimony, or other evidence that proposes or challenges the Business Practice Process, or other process Bonneville uses or will use to develop its transmission business practices, and the Balancing Reserve Capacity Business Practice. This exclusion does not apply to arguments, testimony, or other evidence that challenge, visit, or revisit the appropriateness of Bonneville decisions to consider certain requirements or practices as implementation details for business practices or proposals to include such requirements and practices in the OATT.

#### F. Customer-Specific Contracts and Disputes

Contracts and contract disputes between Bonneville and its customers are not within the scope of the TC-20 proceeding. Pursuant to Section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence related to contracts and contract disputes of Bonneville customers.

#### G. Oversupply Management Protocol, Attachment P of Bonneville's OATT

The proposed OATT includes Attachment P, the Oversupply Management Protocol. Attachment P is approved by the Commission under Section 211A of the Federal Power Act and will not be revisited in this proceeding. *Bonneville Power Admin.*, 154 FERC ¶ 61,078 (2016). Pursuant to Section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence related to the Oversupply Management Protocol, including but not limited to: The terms of the Oversupply Management Protocol (Attachment P); whether the Oversupply Management Protocol complies with orders of the Commission; whether Bonneville took all actions to avoid using the Oversupply Management Protocol, including the payment of negative prices to generators outside of Bonneville's balancing authority area; and issues concerning the rates for recovering the costs of the Oversupply Management Protocol.

### H. Regional Transmission Planning

Attachment K to the 2016 OATT addresses certain transmission planning processes, including the coordinated regional transmission planning process that Bonneville has adopted as a member of ColumbiaGrid, a regional transmission planning organization in the Northwest. Representatives from Bonneville and other Northwest transmission entities are engaged in an ongoing effort to scope and form a new regional planning organization (RPO), which, if successful, would result in a new coordinated regional transmission planning process. Because of the ongoing discussions about a new RPO and the uncertainty about the coordinated regional transmission planning process that Bonneville will follow in the future, Attachment K and related topics are not within the scope of the TC-20 proceeding. Pursuant to Section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence related to Attachment K transmission planning, including the formation of or participation in a regional transmission planning organization and a coordinated regional transmission planning process.

### Part III—Public Participation in TC-20

#### A. Distinguishing Between “Participants” and “Parties”

Bonneville distinguishes between “participants in” and “parties to” the hearings. Separate from the formal hearing process, Bonneville will receive written comments, views, opinions, and information from participants, who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties’ witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties. Bonneville customers who will receive transmission or interconnection service under the terms and conditions subject to this proceeding, or their affiliated customer groups, may not submit participant comments. Members or employees of organizations that have intervened in the terms and conditions proceeding may submit participant comments as private individuals (that is, not speaking for their organizations), but may not use the comment procedures to address specific issues raised by their intervenor organizations.

Written comments by participants will be included in the record and

considered by the Hearing Officer and the Administrator if they are received by December 20, 2018. The proposed TC-20 Settlement Agreement and attachments are provided in Section IV of this notice. Participants should submit comments through Bonneville’s website at [www.bpa.gov/comment](http://www.bpa.gov/comment) or in hard copy to: BPA Public Involvement, DKE-7, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208. All comments should contain the designation “TC-20” in the subject line.

#### B. Interventions

Any entity or person intending to become a party in the TC-20 proceeding must file a petition to intervene through Bonneville’s secure website (<https://www.bpa.gov/secure/Ratecase/>). A first-time user of Bonneville’s secure website must create a user account to submit an intervention. Returning users may request access to the TC-20 proceeding through their existing accounts, and may submit interventions once their permissions have been updated. The secure website contains a link to the user guide, which provides step-by-step instructions for creating user accounts, generating filing numbers, submitting filings, and uploading interventions. Please contact the Rate Hearing Coordinator via email at [TC-20RateHearingCoordinator@bpa.gov](mailto:TC-20RateHearingCoordinator@bpa.gov) (or via telephone at (503) 230-3102) with any questions regarding the submission process. Interventions must conform to the format and content requirements set forth in Bonneville’s Rules of Procedure Sections 1010.6 and 1010.11. Interventions must be uploaded to the TC-20 proceeding secure website by the deadline established in the procedural schedule.

A petition to intervene must state the name and address of the entity or person requesting party status and the entity’s or person’s interest in the hearing. Bonneville customers and affiliated customer groups will be granted intervention based on petitions filed in conformance with Rules of Procedure. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether the petitioners have a relevant interest in the hearing. The deadline for opposing a timely intervention is two business days after the deadline for filing petitions to intervene. Bonneville or any party may oppose a petition for intervention. All petitions will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene must be filed

within two business days after service of the petition.

#### C. Developing the Record

The hearing record will include, among other things, the transcripts of the hearing, written evidence and arguments entered into the record by Bonneville and the parties, written comments from participants, and other material accepted into the record by the Hearing Officer. The Hearing Officer will review the record and certify the record to the Administrator for final decision.

The Hearing Officer will develop a recommended decision for the Administrator regarding OATT terms and conditions. The Hearing Officer’s recommended decision must be based on the record and include the Hearing Officer’s findings and conclusions, and the reasons or basis thereof, on all material issues of fact, law, or discretion raised by the parties and Bonneville in their initial briefs.

The Administrator will make a final determination regarding the terms and conditions in Bonneville’s OATT. The Final Record of Decision (ROD) will be made available to all parties.

### Part IV—Summary of Open Access Transmission Tariff Proposal

In this proceeding, Bonneville is proposing to establish an OATT containing the terms and conditions of general applicability for transmission, ancillary, and interconnection service over the FCRTS to be effective on October 1, 2019. These proposed terms and conditions are closely modeled after the Commission’s *pro forma* tariff to the extent possible and include (1) point-to-point transmission service (PTP service); (2) network integration transmission service (NT service); (3) ancillary services; and (4) generator interconnection procedures and requirements. The proposed OATT assumes the TC-20 settlement is successful. In the event the TC-20 settlement is unsuccessful, Bonneville will publish a revised OATT proposal consistent with the procedural schedule established and amended by the Hearing Officer.

### Part V—Proposed OATT and TC-20 Settlement Agreement

Bonneville’s proposed OATT and the TC-20 Settlement Agreement are part of this notice and are available to view and download on Bonneville’s website at [www.bpa.gov/goto/TC20](http://www.bpa.gov/goto/TC20).



Signed on the 21st day of November, 2018.

**Elliot E. Mainzer,**

*Administrator and Chief Executive Officer.*

[FR Doc. 2018–26427 Filed 12–4–18; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Bonneville Power Administration

[BPA File No.: BP–20]

#### Fiscal Year (FY) 2020–2021 Proposed Power and Transmission Rate Adjustments Public Hearing and Opportunities for Public Review and Comment

**AGENCY:** Bonneville Power Administration (Bonneville), Department of Energy (DOE).

**ACTION:** Notice of FY 2020–2021 proposed power and transmission rate adjustments.

**SUMMARY:** Bonneville is holding a proceeding pursuant to Section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) to establish power and transmission rates for FY 2020–2021. Bonneville has designated this proceeding Docket No. BP–20. The Northwest Power Act provides that Bonneville must establish, and periodically review and revise, its power and transmission rates so that they recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including amortization of the Federal investment in the Federal Columbia River Power System (FCRPS) over a reasonable number of years, and Bonneville's other costs and expenses. For transmission rates only, the Northwest Power Act requires that the costs of the Federal transmission system be equitably allocated between Federal and non-Federal power utilizing the system. The Northwest Power Act requires that Bonneville's rates be established based on the record of a formal hearing. By this notice, Bonneville announces the commencement of a power and transmission rate adjustment proceeding for power, transmission, and ancillary and control area services rates to be effective on October 1, 2019.

**DATES:** *Prehearing Conference:* The BP–20 proceeding begins with a prehearing conference at 9:00 a.m. on Friday, December 7, 2018, in the Bonneville Rates Hearing Room, 1201 NE Lloyd Boulevard, Suite 200, Portland, Oregon 97232.

*Intervention:* Anyone intending to become a party to the BP–20 proceeding must file a petition to intervene on Bonneville's secure website no later than 4:30 p.m. on Tuesday, December 11, 2018. See Part III in **SUPPLEMENTARY INFORMATION** for details on requesting access to the secure website and filing a petition to intervene.

**ADDRESSES:** *Participant Comments:* Written comments by non-party participants must be received by March 1, 2019, to be considered in the Administrator's Record of Decision (ROD). See Part III in **SUPPLEMENTARY INFORMATION** for details on submitting participant comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Heidi Helwig, DKE–7, BPA Communications, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208; by phone toll-free at 1–800–622–4519; or by email to [hyhelwig@bpa.gov](mailto:hyhelwig@bpa.gov).

The Hearing Clerk for this proceeding can be reached via email at [BP-20clerk@martenlaw.com](mailto:BP-20clerk@martenlaw.com) or via telephone at (503) 243–2200.

Please direct questions regarding Bonneville's secure website to the BP–20 Rate Hearing Coordinator via email at [BP-20RateHearingCoordinator@bpa.gov](mailto:BP-20RateHearingCoordinator@bpa.gov) or, if the question is time-sensitive, via telephone at (503) 230–3102.

*Responsible Officials:* Mr. Daniel H. Fisher, Power Rates Manager, is the official responsible for the development of Bonneville's power rates, and Ms. Rebecca E. Fredrickson, Transmission Rates Manager, is the official responsible for the development of Bonneville's transmission, ancillary, and control area services rates.

#### **SUPPLEMENTARY INFORMATION:**

##### **Table of Contents**

Part I. Introduction and Procedural Matters  
Part II. Scope of BP–20 Rate Proceeding  
Part III. Public Participation in BP–20  
Part IV. Summary of Rate Proposals  
Part V. Proposed BP–20 Rate Schedules and BP–20 Partial Rates Settlement

#### **Part I—Introduction and Procedural Matters**

##### *A. Introduction and Procedural Matters*

Section 7(i) of the Northwest Power Act requires that Bonneville's rates be established according to certain procedures, including publication in the **Federal Register** of a notice of the proposed rates; one or more hearings conducted as expeditiously as practicable by a Hearing Officer; opportunity for both oral presentation and written submission of views, data, questions, and arguments related to the proposed rates; and a decision by the Administrator based on the record.

Bonneville has revised the Rules of Procedure that govern its rate proceedings. In a public process that concluded earlier this year, Bonneville updated and revised the version of the rules that had applied in Bonneville proceedings since 1986. The revised rules, which took effect September 12, 2018, will apply in the BP–20 proceeding. Bonneville has published the revised Rules of Procedure in the **Federal Register**, 83 FR 39993 (Aug. 13, 2018), and posted the rules on its website at <https://www.bpa.gov/Finance/RateCases/RulesProcedure/Pages/.aspx>.

##### *B. Proposed Settlement of Rates for Transmission, Ancillary, and Control Area Services*

Since early October, Bonneville has engaged customers with long-term transmission service to attempt to reach agreement on the transmission rates, including ancillary and control area services rates, for the FY 2020–2021 rate period. These discussions have resulted in the BP–20 Partial Rates Settlement Agreement that Bonneville is proposing to adopt in the BP–20 proceeding. This Partial Rates Settlement, which includes transmission, ancillary, and control area services rate schedules, is provided in Part V of this notice. The settlement does not address power rates or risk mitigation adjustment mechanisms.

Bonneville's agreement to the BP–20 Partial Rates Settlement is subject to certain contingencies. First, the partial settlement is contingent on customers with long-term transmission service entering into a separate settlement agreement with Bonneville regarding the terms and conditions of transmission service. That settlement agreement will be addressed in a separate proceeding that Bonneville will conduct under section 212(i)(2)(A) of the Federal Power Act ("TC–20 Proceeding"). If the settlement of the TC–20 proceeding does not move forward, the BP–20 Partial Rates Settlement will be void.

Second, the BP–20 Partial Rates Settlement calls for Bonneville to file a motion with the BP–20 Hearing Officer to establish a deadline for parties to either object to the proposed settlement or waive the right to contest the settlement. Bonneville intends to file its motion soon after the BP–20 prehearing conference. If the settlement of the TC–20 proceeding continues to move forward, and no party objects to the BP–20 Partial Rates Settlement, Bonneville staff will recommend that the Administrator adopt the Partial Rates Settlement. Under those circumstances, Bonneville anticipates that the

Administrator would adopt the BP–20 Partial Rates Settlement in either the record of decision issued at the end of the BP–20 proceeding or a separate record of decision issued before that time.

If Bonneville and long-term transmission service customers cannot move forward with settlement of the TC–20 proceeding, then the BP–20 Partial Rates Settlement will be void, and Bonneville will notify all parties and publish alternative transmission, ancillary and control area services, and

power rate schedules that reflect proposed rates without settlement. If the settlement of the TC–20 proceeding goes forward, but a party in the BP–20 proceeding objects to the BP–20 Partial Rates Settlement, Bonneville will notify all parties and decide how to proceed with respect to rates proposed in the initial proposal.

*C. Proposed Procedural Schedule*

A proposed schedule for the BP–20 proceeding is provided below. A final schedule will be established by the

Hearing Officer and may be amended by the Hearing Officer as needed during the proceeding.

The deadline to intervene in BP–20 applies to all potential parties regardless of the proposed settlement under the BP–20 Partial Rates Settlement. If Bonneville and parties move forward with the BP–20 Partial Rates Settlement, the events in the procedural schedule after the deadline to intervene will apply only to issues that have not settled.

Prehearing Conference .....	December 7, 2018.
Deadline for Petitions to Intervene .....	December 11, 2018.
BPA Files Initial Proposal .....	January 14, 2019.
Clarification .....	January 18 & 22, 2019.
Motions to Strike Due .....	January 31, 2019.
Data Request Deadline .....	January 31, 2019.
Answers to Motions to Strike Due .....	February 7, 2019.
Data Response Deadline .....	February 7, 2019.
Parties File Direct Cases .....	February 21, 2019.
Clarification .....	February 28 and March 1, 2019.
Close of Participant Comments .....	March 1, 2019.
Motions to Strike Due .....	March 8, 2019.
Data Request Deadline .....	March 8, 2019.
Answers to Motions to Strike Due .....	March 15, 2019.
Data Response Deadline .....	March 15, 2019.
Litigants File Rebuttal Cases .....	March 28, 2019.
Clarification .....	April 4, 2019.
Motions to Strike Due .....	April 8, 2019.
Data Request Deadline .....	April 8, 2019.
Answers to Motions to Strike Due .....	April 15, 2019.
Data Response Deadline .....	April 15, 2019.
Parties Give Notice of Intent to Cross-Examine .....	April 18, 2019.
Cross-Examination .....	April 22–23, 2019.
Initial Briefs Filed .....	May 6, 2019.
Oral Argument .....	May 13, 2019.
Draft ROD Issued .....	June 13, 2019.
Briefs on Exceptions Filed .....	June 28, 2019.
Final ROD and Final Studies Issued .....	July 25, 2019.

*D. Ex Parte Communications*

Section 1010.5 of the Rules of Procedure prohibits *ex parte* communications. *Ex parte* communications include any oral or written communication (1) relevant to the merits of any issue in the proceeding; (2) that is not on the record; and (3) with respect to which reasonable prior notice has not been given. The *ex parte* rule applies to communications with all Bonneville and DOE employees and contractors, the Hearing Officer, and the Hearing Clerk during the proceeding. Except as provided, any communications with persons covered by the rule regarding the merits of any issue in the proceeding by other executive branch agencies, Congress, existing or potential Bonneville customers, nonprofit or public interest groups, or any other non-DOE parties are prohibited. The rule explicitly excludes and does not prohibit communications (1) relating to matters

of procedure; (2) otherwise authorized by law or the Rules of Procedure; (3) from or to the Federal Energy Regulatory Commission (Commission); (4) that all litigants agree may be made on an *ex parte* basis; (5) in the ordinary course of business, about information required to be exchanged under contracts, or in information responding to a Freedom of Information Act request; (6) between the Hearing Officer and Hearing Clerk; (7) in meetings for which prior notice has been given; or (8) as otherwise specified in Section 1010.5(b). The *ex parte* rule remains in effect until the Administrator’s Final ROD is issued, which is scheduled to occur on or about July 25, 2019.

**Part II—Scope of BP–20 Rate Proceeding**

*A. Joint Rate Proceeding*

The BP–20 proceeding is a joint proceeding for the adoption of both power and transmission rates for FY

2020–2021. The proposal for Bonneville’s power and transmission rates is provided in Part IV of this notice.

*B. 2018 Integrated Program Review*

Bonneville began its 2018 Integrated Program Review (IPR) process in June 2018. The IPR process is designed to allow the public an opportunity to review and comment on Bonneville’s proposed expense and capital spending level estimates before the spending levels are used to set rates. On October 11, 2018, Bonneville issued the Final Close-Out Report for the IPR process, which establishes the expense and capital program level cost estimates that are used in the BP–20 Initial Proposal. At the discretion of the Administrator, Bonneville may hold additional processes to review these estimates outside of this rate proceeding.

### C. Scope of the BP-20 Proceeding

This section provides guidance to the Hearing Officer regarding the scope of the rate proceeding and identifies specific issues that are outside the scope. In addition to the issues specifically listed below, any other issue that is not a ratemaking issue is outside the scope of this proceeding.

Bonneville may revise the scope of the proceeding to include new issues that arise as a result of circumstances or events occurring outside the proceeding that are substantially related to the rates under consideration in the proceeding. See Rules of Procedure, Section 1010.4(b)(8)(iii), (iv). If Bonneville revises the scope of the proceeding to include new issues, Bonneville will provide public notice on its website, present testimony or other information regarding such issues, and provide a reasonable opportunity to intervene and respond to Bonneville's testimony or other information. *Id.*

#### 1. Program Cost Estimates

Bonneville's projections of its program costs and spending levels are not determined in rate proceedings. These projections are determined by Bonneville in other forums, such as the IPR public review process, with input from stakeholders. See Part II.B. of this notice. In addition, Bonneville allocates the capital spending on the Federal power and transmission system over the service life of the system, based on a depreciation study calculated consistent with industry standards. The depreciation study and resulting depreciation rates are not determined in rate proceedings.

Pursuant to Section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that challenges the appropriateness or reasonableness of the Administrator's decisions on cost and spending levels, including decisions on the depreciation rates that are used to calculate depreciation expense. If any re-examination of spending levels is necessary, such re-examination will occur outside of the rate proceeding. Except for any portions of the revenue requirement that are settled in the BP-20 proceeding, the above exclusion does not extend to those portions of the revenue requirement related to the following: (1) Interest rate forecasts, (2) interest expense and credit, (3) Treasury repayment schedules, (4) calculation of depreciation and amortization expense, (5) forecasts of system replacements used in repayment studies, (6) purchased power expenses, (7)

transmission cost incurred by Power Services, (8) generation cost incurred by Transmission Services, (9) minimum required net revenue, and (10) the costs of risk mitigation actions resulting from the expense and revenue uncertainties included in the risk analysis.

#### 2. Federal and Non-Federal Debt Service and Debt Management

During the 2018 IPR process and in other forums, Bonneville provided the public with background information on Bonneville's internal Federal and non-Federal debt management policies and practices. While these policies and practices are not decided in the IPR forum, these discussions were intended to inform interested parties about these matters so the parties would better understand Bonneville's debt structure. Bonneville's debt management policies and practices remain outside the scope of the rate proceeding.

Pursuant to Section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the appropriateness or reasonableness of Bonneville's debt management policies and practices. This exclusion does not encompass how debt management actions are reflected in ratemaking.

#### 3. Financial Reserves Policy and Financial Reserves Policy Phase-In

In the Final ROD in the BP-18 proceeding (BP-18 ROD), Bonneville adopted a financial policy that established lower and upper thresholds for agency and business line financial reserves (Financial Reserves Policy). Challenges to Bonneville's decision to adopt the Financial Reserves Policy are not within the scope of this proceeding.

In the BP-18 ROD, the Administrator committed to hold a follow-on public process to determine and phase in for Power Services the parameters for the rate action to be taken when financial reserves fall below a business line's lower threshold. The Administrator decided the parameters for this rate action in the Financial Reserves Policy Phase-In Implementation Record of Decision, issued in September 2018 (FRP Phase-In ROD). Bonneville's decisions in the FRP Phase-In ROD are not within the scope of this proceeding.

Pursuant to Section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to visit or revisit Bonneville's determinations in the BP-18 ROD regarding the Financial Reserves Policy

or the FRP Phase-In ROD in this rate proceeding.

#### 4. Leverage Policy

In August 2018, Bonneville completed a public process to develop a new financial policy (Leverage Policy) that provides guidance on managing the agency's and business lines' debt-to-asset ratios. The Leverage Policy provides near-term, mid-term, and long-term targets for agency and business line leverage. On September 25, 2018, the Administrator issued a record of decision adopting the Leverage Policy (Leverage Policy ROD).

Pursuant to Section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to visit or revisit Bonneville's determinations in the Leverage Policy or Leverage Policy ROD.

#### 5. Tiered Rate Methodology (TRM)

The TRM restricts Bonneville and its customers with Contract High Water Mark (CHWM) contracts from proposing changes to the TRM's ratemaking guidelines unless certain procedures have been successfully concluded. No proposed changes have been subjected to the required procedures.

Pursuant to Section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to propose revisions to the TRM made by Bonneville, customers with CHWM contracts, or their representatives. This exclusion does not extend to a party or customer that does not have a CHWM contract.

#### 6. Rate Period High Water Mark (RHWM) Process

The RHWM Process preceded the start of the BP-20 proceeding. In that process, as directed by the TRM, Bonneville established FY 2020-2021 RHWMs for Public customers that signed contracts for firm requirements power service providing for tiered rates, referred to as CHWM contracts. Bonneville established the maximum planned amount of power a customer is eligible to purchase at Tier 1 rates during the rate period, the Above-RHWM Loads for each customer, the System Shaped Load for each customer, the Tier 1 System Firm Critical Output, RHWM Augmentation, the Rate Period Tier 1 System Capability (RT1SC), and the monthly/diurnal shape of RT1SC. The RHWM Process provided customers an opportunity to review, comment on,

and challenge Bonneville's RHWM determinations.

Pursuant to Section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to visit or revisit Bonneville's determination of a customer's FY 2020–2021 RHWM or other RHWM Process determinations.

#### 7. 2008 Average System Cost Methodology (2008 ASCM) and Average System Cost Determinations

Section 5(c) of the Northwest Power Act established the Residential Exchange Program, which provides benefits to residential and farm consumers of Pacific Northwest utilities based, in part, on a utility's "average system cost" (ASC) of resources. The 2008 ASCM is not subject to challenge or review in a Section 7(i) proceeding. Determinations of the ASCs of participating utilities are made in separate processes conducted pursuant to the ASCM. Those processes began with ASC filings on June 4, 2018, and are continuing through July 2019.

Pursuant to Section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to visit or revisit the appropriateness or reasonableness of the 2008 ASCM or of any of the ongoing ASC determinations.

#### 8. 2012 Residential Exchange Program Settlement Agreement (2012 REP Settlement)

On July 26, 2011, the Administrator executed the 2012 REP Settlement, which resolved longstanding litigation over Bonneville's implementation of the Residential Exchange Program (REP) under Section 5(c) of the Northwest Power Act, 16 U.S.C. 839c(c). The Administrator's findings regarding the legal, factual, and policy challenges to the 2012 REP Settlement are explained in the REP–12 Record of Decision (REP–12 ROD). The Administrator's decisions regarding the 2012 REP Settlement and REP–12 ROD were upheld by the U.S. Court of Appeals for the Ninth Circuit in *Association of Public Agency Customers v. Bonneville Power Administration*, 733 F.3d 939 (9th Cir. 2013). Challenges to Bonneville's decision to adopt the 2012 REP Settlement and implement its terms in Bonneville's rate proceedings are not within the scope of this proceeding.

Pursuant to Section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony,

or other evidence that seeks in any way to visit or revisit in this rate proceeding Bonneville's determination to adopt the 2012 REP Settlement or its terms.

#### 9. Service to the Direct Service Industries (DSIs)

Pursuant to Section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to revisit the appropriateness or reasonableness of Bonneville's decisions regarding service to the DSIs, including Bonneville's decision to offer contracts to the DSIs and the method, level of service, or other terms embodied in the existing DSI contracts.

#### 10. Operation and Maintenance of the Power and Transmission Systems

Bonneville, in coordination with other Federal entities, operates and maintains the Federal Columbia River power and transmission systems in accordance with good utility practice and with applicable reliability standards and operating requirements. Bonneville's power and transmission systems operation and maintenance practices and protocols, such as dispatcher standing orders, operating instructions, reliability of the system, compliance programs, and other operating requirements, are non-rate matters. Pursuant to Section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address issues regarding operation and maintenance practices and protocols.

#### 11. Terms and Conditions of Transmission Service

Bonneville offers and provides transmission services, including interconnection service, and ancillary and control area services in accordance with terms and conditions specified in its open access transmission tariff (OATT), business practices, and applicable contracts. In addition to and concurrent with this rate proceeding, Bonneville may initiate the TC–20 proceeding to adopt generally applicable terms and conditions of transmission service. The terms and conditions of transmission and ancillary and control area services are non-rate matters that Bonneville will establish and otherwise address in a separate proceeding or other forums.

Pursuant to Section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony,

or other evidence that seeks in any way to address issues regarding terms and conditions of transmission service, including interconnection service, and ancillary and control area services. This includes, but is not limited to, argument, testimony, or other evidence regarding Bonneville's decisions whether to offer particular transmission services, including hourly service, the procedures and standards for modifications to Bonneville's OATT, terms and conditions of existing and future transmission service agreements, and whether to include certain terms and conditions in the OATT or in business practices. This exclusion does not apply to the BP–20 Partial Rates Settlement or testimony supporting the settlement.

#### 12. Oversupply Management Protocol

The proposed OS–20 Oversupply rate is a formula rate designed to recover Bonneville's oversupply costs. Bonneville incurs oversupply costs pursuant to the Oversupply Management Protocol, Attachment P of Bonneville's OATT. Under the proposed formula rate, Bonneville would recover actual costs incurred during the BP–20 rate period rather than forecast costs. Pursuant to Section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the terms of the Oversupply Management Protocol; whether the Oversupply Management Protocol complies with orders of the Commission; and whether Bonneville took all actions to avoid using the Oversupply Management Protocol, including the payment of negative prices to generators outside of Bonneville's balancing authority area. This exclusion does not extend to issues concerning the rates for recovering the costs of the Oversupply Management Protocol.

#### 13. Potential Environmental Impacts, Biological Constraints, and Related Operations

Environmental impacts are addressed in a National Environmental Policy Act (NEPA) process Bonneville conducts concurrently with the rate proceeding. See Part II.D. of this notice. In addition, biological constraints on hydropower operations are determined outside of the rate case through interagency consultation under the Endangered Species Act, 16 U.S.C. 1536(a)(2).

Pursuant to Section 1010.4(b)(8) of the Rules of Procedure, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony,

or other evidence that seeks in any way to address the potential environmental impacts of the rates being developed in this rate proceeding, potential biological effects of operations modeled in the proceeding, or appropriate hydroelectric system operations in response to the constraints defined in these environmental compliance processes.

#### *D. The National Environmental Policy Act*

Bonneville is in the process of assessing the potential environmental effects of its proposed power and transmission rate adjustments, consistent with NEPA. The NEPA process is conducted separately from the rate proceeding. As discussed in Part II.C.13, all evidence and argument addressing potential environmental impacts of the rate adjustments being developed in the BP-20 proceeding are excluded from the rate proceeding record. Instead, comments on environmental effects should be directed to the NEPA process.

Based on its most current assessment of the proposed power and transmission rate adjustments, Bonneville believes this proposal may be the type of action typically excluded from further NEPA review pursuant to U.S. Department of Energy NEPA regulations, which apply to Bonneville. More specifically, the proposal appears to solely involve changes to Bonneville's rates and other cost recovery and management mechanisms to ensure that there are sufficient revenues to meet Bonneville's financial obligations and other costs and expenses, while using existing generation sources operating within normal limits. As such, it appears this rate proposal falls within Categorical Exclusion B4.3, found at 10 CFR part 1021, subpart D, app. B4.3 (2015), which provides for the categorical exclusion from further NEPA review of "[r]ate changes for electric power, power transmission, and other products or services provided by a Power Marketing Administration that are based on a change in revenue requirements if the operations of generation projects would remain within normal operating limits."

Nonetheless, Bonneville is still assessing the proposal, and, depending upon the ongoing environmental review, Bonneville may instead issue another appropriate NEPA document. Comments regarding the potential environmental effects of the proposal may be submitted to Stacy Mason, NEPA Compliance Officer, ECP-4, Bonneville Power Administration, 905 NE 11th Avenue, Portland, Oregon 97232. Any such comments received by

the comment deadline for Participant Comments identified in Part III.A will be considered by Bonneville's NEPA compliance staff in the NEPA process that is being conducted for this proposal.

### **Part III—Public Participation in BP-20**

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#### *B. Interventions*

Any entity or person intending to become a party in the BP-20 proceeding must file a petition to intervene through Bonneville's secure website (<https://www.bpa.gov/secure/Ratecase/>). A first-time user of Bonneville's secure website must create a user account to submit an intervention. Returning users may request access to the BP-20 proceeding through their existing accounts, and may submit interventions once their permissions have been updated. The secure website contains a link to the user guide, which provides step-by-step instructions for creating user accounts, generating filing numbers, submitting filings, and uploading interventions. Please contact the Rate Hearing

Coordinator via email at [BP-20RateHearingCoordinator@bpa.gov](mailto:BP-20RateHearingCoordinator@bpa.gov) (or via telephone at (503) 230-3102) with any questions regarding the submission process. Interventions must conform to the format and content requirements set forth in Bonneville's Rules of Procedure Sections 1010.6 and 1010.11. Interventions must be uploaded to the BP-20 proceeding secure website by the deadline established in the procedural schedule.

A petition to intervene must state the name and address of the entity or person requesting party status and the entity's or person's interest in the hearing. Bonneville customers and affiliated customer groups will be granted intervention based on petitions filed in conformance with the Rules of Procedure. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether the petitioners have a relevant interest in the hearing. The deadline for opposing a timely intervention is two business days after the deadline for filing petitions to intervene. Bonneville or any party may oppose a petition for intervention. All petitions will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene must be filed within two business days after service of the petition.

#### *C. Developing the Record*

The hearing record will include, among other things, the transcripts of the hearing, written evidence and argument entered into the record by Bonneville and the parties, written comments from participants, and other material accepted into the record by the Hearing Officer. The Hearing Officer will review the record and certify the record to the Administrator for final decision.

The Administrator will develop final rates based on the record and such other materials and information as may have been submitted to or developed by the Administrator. The Final ROD will be made available to all parties. Bonneville will file its rates with the Commission for confirmation and approval after issuance of the Final ROD.

### **Part IV—Summary of Rate Proposals**

#### *A. Summary of the Power Rate Proposal*

Bonneville is proposing four primary rates for Federal power sales and services, along with general rate schedule provisions to implement such rates. The rates described in this section assume the BP-20 Partial Rates Settlement goes forward. In the event

this settlement does not go forward, Bonneville will produce revised power rates at the time it publishes its Initial Proposal.

#### 1. Priority Firm Power Rate (PF-20)

The PF rate schedule applies to sales of firm power to public body, cooperative, and Federal agency customers to meet their requirements pursuant to Section 5(b) of the Northwest Power Act. The PF Public rate applies to the sale of Firm Requirements Power under CHWM contracts with customers taking Load Following, Block, or Slice/Block service. Consistent with the TRM, Tier 1 rates include three charges: (1) Customer charges, (2) a demand charge, and (3) a load shaping charge. In addition, a Tier 2 Short-Term rate, corresponding to a contract option, is applied to customers that have elected to purchase power from Bonneville for service to their Above-RHWM Load. Bonneville is proposing to revise the Tier 2 Short-Term rate methodology.

Because very few of Bonneville's customers are subject to exactly the same mix of PF rate components, Bonneville has developed a PF rate measure for an average customer purchasing at PF Tier 1 rates. This quantification, the Tier 1 Average Net Cost, is increasing to \$36.78/MWh for the PF-20 rate, which is an increase of 2.9 percent for the two-year rate period, or 1.4 percent on an average annual basis. The PF-20 rate increase assumes that the proposed financial reserves policy surcharge will be needed and will collect an additional \$30 million per year. See Part IV.C. of this notice for information on the financial reserves policy surcharge.

The Base PF Exchange rate and its associated surcharges apply to sales pursuant to Residential Purchase and Sale Agreements and Residential Exchange Program Settlement Implementation Agreements with regional utilities that participate in the REP established under Section 5(c) of the Northwest Power Act, 16 U.S.C. 839c(c). The Base PF Exchange rate establishes the threshold for participation in the REP; only utilities with ASCs above the appropriate Base PF Exchange rate may receive REP benefits. If a utility meets the threshold, a utility-specific PF Exchange rate will be established in this proceeding for each eligible utility. The utility-specific PF Exchange rate is used in calculating the REP benefits each REP participant will receive during FY 2020-2021.

The proposed PF-20 rate schedule also includes resource support services rates for customers with non-Federal

resources, and a melded PF rate for Public customers that have elected power sales contracts other than CHWM contracts for firm requirements service.

#### 2. New Resource Firm Power Rate (NR-20)

The NR-20 rate applies to firm power sales to investor-owned utilities (IOUs) to meet their net requirements pursuant to Section 5(b) of the Northwest Power Act. The NR-20 rate is also applied to sales of firm power to Public customers when this power is used to serve new large single loads. In addition, the NR rate schedule includes rates for services to support Public customers serving new large single loads with non-Federal resources. In the BP-20 Initial Proposal, Bonneville is forecasting no sales at the NR rate. The average NR-20 rate in the Initial Proposal is \$79.69/MWh, an increase of 0.8 percent from the NR-20 rate. The NR-20 rate increase assumes that the proposed financial reserves policy surcharge will be needed and will collect an additional \$30 million per year. See Part IV.C. of this notice for information on the financial reserve policy surcharge.

#### 3. Industrial Firm Power Rate (IP-20)

The IP rate is applicable to firm power sales to DSI customers authorized by Section 5(d)(1)(A) of the Northwest Power Act, 16 U.S.C. 839c(d)(1)(A). The average IP-20 rate in the Initial Proposal is \$41.84/MWh, a decrease of 4.2 percent compared to the IP-18 rate. The IP-20 rate decrease assumes that the proposed financial reserves policy surcharge will be needed and will collect an additional \$30 million per year. See Part IV.C. of this notice for information on the financial reserve policy surcharge.

#### 4. Firm Power and Surplus Products and Services Rate (FPS-20)

The FPS rate schedule is applicable to sales of various surplus power products and surplus transmission capacity for use inside and outside the Pacific Northwest. The rates for these products are negotiated between Bonneville and the purchasers. The FPS-20 rate schedule also includes rates for customers with non-Federal resources; the Unanticipated Load Service rate; rates for other capacity, energy, and scheduling products and services; and rates for reserve services for use outside the Bonneville balancing authority area.

#### 5. Power General Rate Schedule Provisions (GRSPs)

The Power GRSPs include general rate schedule terms and conditions applicable to Bonneville's power rates.

In addition, the Power GRSPs contain special rate adjustments, charges, credits, and pass-through mechanisms for specific events and customer circumstances. Among other matters covered by the Power GRSPs are provisions related to calculating rates, resource support services, charges associated with transfer service, risk adjustments, Slice True-up, the Residential Exchange Program, conservation, payment options, and other charges. Bonneville is proposing the following changes to the GRSPs:

Customers served by transfer are currently charged for delivery, operating reserves, and regional compliance assessments. Bonneville is proposing a new transfer service charge for regulation and frequency response to replace the billing for this service that is currently done under the FPS rate schedule.

Bonneville is proposing a new Financial Reserves Policy Surcharge (see Part IV.C. of this notice) and a rate for an additional Transmission Scheduling Service option.

Bonneville is proposing to remove the NFB (National Marine Fisheries Service Federal Columbia River Power System Biological Opinion) Mechanisms.

Bonneville is also proposing to eliminate three appendices from the rate schedules and GRSPs: the Residential Exchange Program refunds that end in FY 2019, the Product Conversion Charge, and the Spill Surcharge.

#### *B. Summary of the Proposed BP-20 Partial Rates Settlement*

Bonneville is proposing transmission rates, including all ancillary and control area services rates, consistent with the BP-20 Partial Rates Settlement described above. The transmission rates under the settlement include a weighted average increase of approximately 3.6 percent for the two-year rate period, or 1.8 percent on an average annual basis. In the event the proposed settlement does not go forward, Bonneville will produce revised transmission rates at the time it publishes its Initial Proposal.

The BP-20 Partial Rates Settlement specifically excludes the proposed Transmission Cost Recovery Adjustment Clause, the Transmission Reserves Distribution Clause, and a new Financial Reserves Policy Surcharge (see Part IV.C.). Bonneville is proposing those rate adjustment mechanisms independent of the BP-20 Partial Rates Settlement, and those proposals can be contested in the BP-20 proceeding.

Bonneville divides its transmission system into "segments" for ratemaking purposes and has separate rates for the segments. The rates for the network and

intertie segments are described below, along with other proposed transmission rates and GRSPs under the settlement.

### 1. Network Rates

**Network Integration Transmission Rate (NT-20)**—The NT rate applies to customers taking network integration service and allows customers to flexibly serve their retail load.

**Point-to-Point Rate (PTP-20)**—The PTP-20 rate is a contract demand rate that applies to customers taking Point-to-Point service on Bonneville's network. Point-to-Point service provides customers with service from identified points of receipt to identified points of delivery. There are separate rates for long-term firm service, and various increments of firm and non-firm short-term service.

**Formula Power Transmission Rate (FPT-20)**—The FPT rate is based on the cost of using specific types of facilities, including a distance component for the use of transmission lines, and is charged on a contract demand basis.

### 2. Intertie Rates

The Southern Intertie Rate (IS-20) is a contract demand rate that applies to customers taking Point-to-Point service on the Southern Intertie.

The Montana Intertie Rate (IM-20) applies to customers taking Point-to-Point service on the Eastern Intertie that are not parties to the Montana Intertie Agreement.

The Townsend-Garrison Transmission Rate (TGT-20) is a rate for firm service over Bonneville's section of the Montana Intertie and is available to parties to the Montana Intertie Agreement.

The Eastern Intertie Rate (IE-20) is a rate for non-firm service on the portion of the Eastern Intertie capacity that exceeds Bonneville's firm transmission rights and is available to parties to the Montana Intertie Agreement.

### 3. Other Transmission Rates and Transmission General Rate Schedule Provisions

In addition to the rates for use of the network and interties, the BP-20 Partial Rates Settlement includes Bonneville's other transmission rates, including ancillary and control area services rates:

The Use-of-Facilities Rate (UFT-20), which establishes a formula rate for the use of a specific facility based on the annual cost of that facility.

The Advance Funding Rate (AF-20), which allows Bonneville to collect the capital and related costs of specific facilities through an advance-funding mechanism.

The Regional Compliance Enforcement and Regional Coordinator rate (RC-20), which recovers costs assessed to Bonneville for regional reliability compliance monitoring and enforcement and reliability coordination services.

The Oversupply Rate (OS-20) recovers the costs Bonneville incurs to displace generation under the Oversupply Management Protocol, Attachment P to Bonneville's OATT.

Other proposed rates and charges include: A Delivery Charge for the use of low-voltage delivery substations; a Reservation Fee for customers that postpone their service commencement dates; incremental rates for transmission requests that require new facilities; a penalty charge for failure to comply with dispatch, curtailment, redispatch, or load shedding orders; and an Unauthorized Increase Charge for customers whose use exceeds their contracted amounts.

The BP-20 Partial Rates Settlement also includes rates for the six Ancillary Services and six Control Area Services including rates for balancing services.

### C. Risk Mitigation Tools

Bonneville uses risk mitigation tools to buffer against poor financial performance over the rate period to protect the agency's solvency and strong credit rating. The main financial risk mitigation tool Bonneville relies upon is financial liquidity, which consists of financial reserves and a short-term liquidity facility with the U.S. Treasury. In the BP-18 ROD, the Administrator adopted the Financial Reserves Policy, which establishes lower and upper thresholds for agency and business line financial reserves. In the FRP Phase-In Implementation ROD, the Administrator determined the parameters for the rate action to be taken when financial reserves fall below a business line's lower threshold, including a phase-in for Power Services.

Bonneville proposes to include three rate adjustment mechanisms in the power and transmission rate schedules that may adjust rates in the event the business line's financial reserves fall below or exceed certain thresholds. For each of the three adjustment mechanisms, financial reserves attributed to a business line are measured over the rate period in terms of accumulated net revenue (ANR).

First, the Cost Recovery Adjustment Clause (CRAC) will adjust rates upward to generate additional cash within the rate period if business line ANR fall below a defined lower threshold. When available liquidity, the CRAC, and the Financial Reserves Policy Surcharge are

insufficient to meet the Treasury Payment Probability (TPP) standard of at least 95 percent, Bonneville may include Planned Net Revenues for Risk (PNRR) in rates. The TPP is the probability of Bonneville making all its Treasury payments on time and in full over the two-year rate period. In the Initial Proposal, Bonneville proposes to include no PNRR in power and transmission rates and to cap the maximum revenue recoverable through the Power CRAC at \$300 million per year, and through the Transmission CRAC at \$100 million per year.

Second, Bonneville is proposing a new Financial Reserves Policy Surcharge for both power and transmission rates to adjust rates upward if business line ANR is below its lower threshold (set at the ANR equivalent of 60 days cash on hand). Bonneville does not forecast this surcharge triggering for Transmission Services during the BP-20 rate period. Bonneville is forecasting that the proposed surcharge will trigger for Power Services at \$30 million for each year of the BP-20 rate period. The proposed surcharge would be calculated annually and, if it triggers, would result in a rate adjustment over 10 months (December through September) of each fiscal year of the rate period.

Finally, Bonneville is proposing a Reserves Distribution Clause (RDC), which will trigger if ANR exceeds a business line upper threshold (set at the ANR equivalent of 120 days cash on hand) and the agency upper threshold (set at the ANR equivalent of 90 days cash on hand). Bonneville will consider those financial reserves for investment in high-value business line-specific purposes such as debt retirement or for rate reduction.

### Part V—Proposed BP-20 Rate Schedules and BP-20 Partial Rates Settlement

Bonneville's proposed BP-20 Power Rate Schedules and BP-20 Partial Rates Settlement, which includes Transmission, Ancillary, and Control Area Services Rate Schedules, are a part of this notice and are available for viewing and downloading on Bonneville's website at <http://www.bpa.gov/goto/BP20>.

Signed on the 21st day of November, 2018.

**Elliot E. Mainzer,**

*Administrator and Chief Executive Officer.*

[FR Doc. 2018-26422 Filed 12-4-18; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. CD19–2–000]

**Town of Snowmass Village, Colorado; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene**

On November 14, 2018, the Town of Snowmass Village, Colorado filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act

(FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Snowmass Village PRV Hydro Project would have a total installed capacity up to 22 kilowatts (kW), and would be located on the existing Snowmass Village distribution pipeline. The project would be located near the Town of Snowmass Village in Pitkin County, Colorado.

*Applicant Contact:* Travis Elliott, Town of Snowmass Village, Colorado, P.O. Box 5010, 130 Kearns Road, Snowmass Village, CO 81615, Phone No (970) 922–2275, email: *telliott@tosv.com*.

*FERC Contact:* Robert Bell, Phone No. (202) 502–6062; Email: *robert.bell@ferc.gov*.

*Qualifying Conduit Hydropower Facility Description:* The proposed project would consist of: (1) A 22-kW turbine-generator connected to an existing underground PRV vault on the water distribution pipeline, and (2) appurtenant facilities. The proposed project would have an estimated annual generation of up to 70 megawatt-hours. A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

<i>Statutory provision</i>	<i>Description</i>	<i>Satisfies (Y/N)</i>
FPA 30(a)(3)(A), as amended by HREA.	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA.	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA.	The facility has an installed capacity that does not exceed 5 megawatts.	Y
FPA 30(a)(3)(C)(iii), as amended by HREA.	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

*Preliminary Determination:*

The proposed Snowmass Village PRV Hydro Project will not interfere with the primary purpose of the conduit, which is to transport water for irrigation by filling an equalizing reservoir, which in turn provides pressure for an irrigation zone in its service area. Therefore, based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

*Comments and Motions to Intervene:*

Deadline for filing comments contesting whether the facility meets the qualifying criteria is 30 days from the issuance date of this notice. Deadline for filing motions to intervene is 30 days from the issuance date of this notice. Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

*Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the “COMMENTS CONTESTING QUALIFICATION FOR A

CONDUIT HYDROPOWER FACILITY” or “MOTION TO INTERVENE,” as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission’s regulations.<sup>1</sup> All comments contesting Commission staff’s preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission’s eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto: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. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

*Locations of Notice of Intent:* Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE, Washington, DC 20426. The filing may also be viewed on the web at <http://www.ferc.gov/docs-filing/elibrary.asp> using the “eLibrary” link. Enter the docket number (*i.e.*, CD19–2) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502–8659.

Dated: November 28, 2018.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2018–26349 Filed 12–4–18; 8:45 am]

**BILLING CODE 6717–01–P**

<sup>1</sup> 18 CFR 385.2001–2005 (2018).



**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Combined Notice of Filings #1**

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG19-27-000.

*Applicants:* LUZ Solar Partners VIII, Ltd.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of LUZ Solar Partners VIII, Ltd.

*Filed Date:* 11/29/18.

*Accession Number:* 20181129-5173.

*Comments Due:* 5 p.m. ET 12/20/18.

*Docket Numbers:* EG19-28-000.

*Applicants:* LUZ Solar Partners IX, Ltd.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of LUZ Solar Partners IX, Ltd.

*Filed Date:* 11/29/18.

*Accession Number:* 20181129-5174.

*Comments Due:* 5 p.m. ET 12/20/18.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10-3310-013; ER18-53-001.

*Applicants:* New Harquahala Generating Company, LLC, CXA La Paloma, LLC.

*Description:* Supplement to October 18, 2018 Notice of Non-Material Change in Status of the Beal Entities.

*Filed Date:* 11/28/18.

*Accession Number:* 20181128-5173.

*Comments Due:* 5 p.m. ET 12/19/18.

*Docket Numbers:* ER19-5-001.

*Applicants:* Commonwealth Edison Company, PJM Interconnection, L.L.C.

*Description:* Tariff Amendment: ComEd submits its response to the Commission's 11/21/2018 Deficiency Letter to be effective 10/1/2018.

*Filed Date:* 11/29/18.

*Accession Number:* 20181129-5146.

*Comments Due:* 5 p.m. ET 12/20/18.

*Docket Numbers:* ER19-6-001.

*Applicants:* Delmarva Power & Light Company, PJM Interconnection, L.L.C.

*Description:* Tariff Amendment: Delmarva submits its response to the Commission's 11/21/2018 Deficiency Letter to be effective 10/1/2018.

*Filed Date:* 11/29/18.

*Accession Number:* 20181129-5074.

*Comments Due:* 5 p.m. ET 12/20/18.

*Docket Numbers:* ER19-10-001.

*Applicants:* Potomac Electric Power Company, PJM Interconnection, L.L.C.

*Description:* Tariff Amendment: PEPCO submits response to the

Commission's 11/21/2018 Deficiency Letter to be effective 10/1/2018.

*Filed Date:* 11/29/18.

*Accession Number:* 20181129-5075.

*Comments Due:* 5 p.m. ET 12/20/18.

*Docket Numbers:* ER19-14-001.

*Applicants:* Baltimore Gas and Electric Company, PJM Interconnection, L.L.C.

*Description:* Tariff Amendment: BGE submits its response to the Commission's 11/21/2018 Deficiency Letter to be effective 10/1/2018.

*Filed Date:* 11/29/18.

*Accession Number:* 20181129-5147.

*Comments Due:* 5 p.m. ET 12/20/18.

*Docket Numbers:* ER19-18-001.

*Applicants:* Atlantic City Electric Company, PJM Interconnection, L.L.C.

*Description:* Tariff Amendment: ACE submits its response to the Commission's 11/21/2018 Deficiency Letter to be effective 10/1/2018.

*Filed Date:* 11/29/18.

*Accession Number:* 20181129-5100.

*Comments Due:* 5 p.m. ET 12/20/18.

*Docket Numbers:* ER19-415-000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2018-11-28 SA 3037 Pine River Wind-METC 2nd Revised GIA (J589 J794) to be effective 11/13/2018.

*Filed Date:* 11/28/18.

*Accession Number:* 20181128-5142.

*Comments Due:* 5 p.m. ET 12/19/18.

*Docket Numbers:* ER19-416-000.

*Applicants:* Florida Power & Light Company.

*Description:* § 205(d) Rate Filing: FPL and LCEC Rate Schedule FERC No. 327 to be effective 1/27/2019.

*Filed Date:* 11/28/18.

*Accession Number:* 20181128-5144.

*Comments Due:* 5 p.m. ET 12/19/18.

*Docket Numbers:* ER19-417-000.

*Applicants:* CenterPoint Energy Houston Electric, LLC.

*Description:* § 205(d) Rate Filing: TFO Tariff Interim Rate Revision to Conform with PUCT-Approved Rate to be effective 11/26/2018.

*Filed Date:* 11/28/18.

*Accession Number:* 20181128-5162.

*Comments Due:* 5 p.m. ET 12/19/18.

*Docket Numbers:* ER19-418-000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 1910R13 Southwestern Public Service Company NITSA NOA to be effective 11/1/2018.

*Filed Date:* 11/29/18.

*Accession Number:* 20181129-5043.

*Comments Due:* 5 p.m. ET 12/20/18.

*Docket Numbers:* ER19-419-000.

*Applicants:* Midcontinent Independent System Operator, Inc., ALLETE, Inc.

*Description:* § 205(d) Rate Filing: 2018-11-29 SA 3217 MP-GRE ICA (Verndale) to be effective 11/30/2018.

*Filed Date:* 11/29/18.

*Accession Number:* 20181129-5045.

*Comments Due:* 5 p.m. ET 12/20/18.

*Docket Numbers:* ER19-420-000.

*Applicants:* Mendota Hills, LLC.  
*Description:* Baseline eTariff Filing: Rate Schedule for Reactive Supply and Voltage Control to be effective 2/1/2019.

*Filed Date:* 11/29/18.

*Accession Number:* 20181129-5083.

*Comments Due:* 5 p.m. ET 12/20/18.

*Docket Numbers:* ER19-421-000.

*Applicants:* Southern California Edison Company.

*Description:* § 205(d) Rate Filing: Certificate of Concurrence APS ANPP Hassayampa Switchyard IA to be effective 9/7/2018.

*Filed Date:* 11/29/18.

*Accession Number:* 20181129-5108.

*Comments Due:* 5 p.m. ET 12/20/18.

*Docket Numbers:* ER19-422-000.

*Applicants:* Portal Ridge Solar B, LLC.  
*Description:* § 205(d) Rate Filing: SFA amendment to be effective 11/30/2018.

*Filed Date:* 11/29/18.

*Accession Number:* 20181129-5113.

*Comments Due:* 5 p.m. ET 12/20/18.

*Docket Numbers:* ER19-423-000.

*Applicants:* Portal Ridge Solar C, LLC.  
*Description:* § 205(d) Rate Filing: CTA Amendment to be effective 11/30/2018.

*Filed Date:* 11/29/18.

*Accession Number:* 20181129-5115.

*Comments Due:* 5 p.m. ET 12/20/18.

*Docket Numbers:* ER19-424-000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2018-11-29 SA 3159 Termination of ATC-WEPCO PCA (Berryville) to be effective 11/30/2018.

*Filed Date:* 11/29/18.

*Accession Number:* 20181129-5117.

*Comments Due:* 5 p.m. ET 12/20/18.

*Docket Numbers:* ER19-425-000.

*Applicants:* Portal Ridge Solar A, LLC.  
*Description:* Tariff Cancellation:

Notice of Cancellation of Certificate of Concurrence to Co-Tenancy Agreement to be effective 11/30/2018.

*Filed Date:* 11/29/18.

*Accession Number:* 20181129-5124.

*Comments Due:* 5 p.m. ET 12/20/18.

*Docket Numbers:* ER19-426-000.

*Applicants:* LUZ Solar Partners VIII, Ltd.

*Description:* Baseline eTariff Filing: MBR Application to be effective 1/29/2019.

*Filed Date:* 11/29/18.

*Accession Number:* 20181129-5125.

*Comments Due:* 5 p.m. ET 12/20/18.

*Docket Numbers:* ER19-427-000.

*Applicants:* LUZ Solar Partners IX, Ltd.

*Description:* Baseline eTariff Filing; MBR Application to be effective 1/29/2019.

*Filed Date:* 11/29/18.

*Accession Number:* 20181129–5145.

*Comments Due:* 5 p.m. ET 12/20/18.

*Docket Numbers:* ER19–428–000.

*Applicants:* Southwestern Electric Power Company.

*Description:* § 205(d) Rate Filing; Revised and Restated Minden PSA to be effective 1/1/2018.

*Filed Date:* 11/29/18.

*Accession Number:* 20181129–5148.

*Comments Due:* 5 p.m. ET 12/20/18.

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: November 29, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018–26489 Filed 12–4–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

#### Filings Instituting Proceedings

*Docket Numbers:* RP19–318–000.

*Applicants:* Southern Natural Gas Company, L.L.C.

*Description:* § 4(d) Rate Filing; SCRM Filing Nov 2018 to be effective 1/1/2019.

*Filed Date:* 11/28/18.

*Accession Number:* 20181128–5018.

*Comments Due:* 5 p.m. ET 12/10/18.

*Docket Numbers:* RP19–319–000.

*Applicants:* Cameron Interstate Pipeline, LLC.

*Description:* Compliance filing Cameron Interstate Pipeline Annual Adjustment of Fuel Retainage Percentage to be effective 1/1/2019.

*Filed Date:* 11/28/18.

*Accession Number:* 20181128–5080.

*Comments Due:* 5 p.m. ET 12/10/18.

*Docket Numbers:* RP19–320–000.

*Applicants:* Algonquin Gas Transmission, LLC.

*Description:* § 4(d) Rate Filing; Negotiated Rate—Boston Gas 510807 release to SFE Energy 798234 to be effective 12/1/2018.

*Filed Date:* 11/28/18.

*Accession Number:* 20181128–5081.

*Comments Due:* 5 p.m. ET 12/10/18.

*Docket Numbers:* RP19–321–000.

*Applicants:* Algonquin Gas Transmission, LLC.

*Description:* § 4(d) Rate Filing; Negotiated Rate—Boston Gas 510798 releases eff 12–1–18 to be effective 12/1/2018.

*Filed Date:* 11/28/18.

*Accession Number:* 20181128–5098.

*Comments Due:* 5 p.m. ET 12/10/18.

*Docket Numbers:* RP19–322–000.

*Applicants:* Southeast Supply Header, LLC.

*Description:* § 4(d) Rate Filing; Termination of Contract 840005 to be effective 1/1/2019.

*Filed Date:* 11/28/18.

*Accession Number:* 20181128–5112.

*Comments Due:* 5 p.m. ET 12/10/18.

*Docket Numbers:* RP19–323–000.

*Applicants:* El Paso Natural Gas Company, L.L.C.

*Description:* § 4(d) Rate Filing; Non-Conforming Negotiated Rate Agreement Update (SoCal Redes Dec18) to be effective 12/1/2018.

*Filed Date:* 11/28/18.

*Accession Number:* 20181128–5124.

*Comments Due:* 5 p.m. ET 12/10/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For

other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 29, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018–26488 Filed 12–4–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 13511–003]

#### Igiugig Village Council; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions, and Waiving the Timing Requirement for Filing Competing Development Applications

November 29, 2018.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original License for a Hydrokinetic Pilot Project.

b. *Project No.:* 13511–003.

c. *Date filed:* November 15, 2018.

d. *Applicant:* Igiugig Village Council.

e. *Name of Project:* Igiugig Hydrokinetic Project.

f. *Location:* On the Kvichak River in the Lake and Peninsula Borough, near the town of Igiugig, Alaska.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Nathan Johnson, Ocean Renewable Power Company, 254 Commercial Street, Suite 119B, Portland, Maine 04101; (207) 772–7707.

i. *FERC Contact:* Ryan Hansen, telephone (202) 502–8074, and email [ryan.hansen@ferc.gov](mailto:ryan.hansen@ferc.gov).

j. Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions: 30 days from the issuance date of this notice; reply comments are due 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, terms and conditions, and fishway prescriptions using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the

eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto: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-13511-003.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The proposed Igiugig Hydrokinetic Project would consist of: (1) An in-stream 35-kilowatt (kW), 52-foot-long, 12-foot-high, 47-foot-wide pontoon-mounted RivGen Power System Turbine Generator Unit (TGU) in Phase 1; (2) an additional in-stream 35-kW pontoon-mounted TGU in Phase 2; (3) two anchoring systems each consisting of a 6,600-pound anchor, chain, shackles, and 200 feet of mooring; (4) a 375-foot-long, coated and weighted combined power, data, and environmental monitoring cable from the TGU for Phase 1; and a 675-foot-long cable from the TGU for Phase 2; (5) an existing 10-foot-long by 8-foot-wide shore station for housing project electronics and controls; and (6) appurtenant facilities. The project is estimated to have an annual generation of 404,000 megawatt-hours per year.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects.

For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or " FISHWAY PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. Procedural Schedule:

The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	December 31, 2018.
Filing of response comments	January 29, 2019.
Commission issues EA .....	February 27, 2019.
Comments on EA or EIS .....	March 29, 2019.

p. Waiver of deadline to file competing applications filed pursuant to a notice of intent (NOI):

Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application or an NOI to file such an application. Section 4.36(b)(2) of the Commission's regulations, which allows 120 days from the specified intervention deadline date for interested parties to file competing development applications in which timely NOIs have been submitted, is hereby waived. Due to the expedited nature of the pilot project licensing procedures, the submission of a timely NOI will instead allow an interested person to file the competing development application no later than 30 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

An NOI must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. An NOI must be served on the applicant named in this public notice.

Dated: November 29, 2018.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2018-26457 Filed 12-4-18; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Project No. 6951-018]

**Tallassee Shoals, LLC; Notice Approving Use of the Traditional Licensing Process**

a. *Type of Filing:* Notice Approving the Use of the Traditional Licensing Process.

b. *Project No.:* 6951-018.

c. *Date Filed:* September 28, 2018.

d. *Submitted By:* Tallassee Shoals, LLC.

e. *Name of Project:* Tallassee Shoals Project.

f. *Location:* On the Middle Oconee River near the city of Athens, in Clarke, and Jackson Counties, Georgia. The project does not occupy federal lands.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Applicant Contact:* Mr. Walt Puryear, Tallassee Shoals, LLC, 2399 Tallassee Road, Athens, GA 30607, (706) 540-7621.

i. *FERC Contact*: Michael Spencer at (202) 502-6093 or email at [michael.spencer@ferc.gov](mailto:michael.spencer@ferc.gov).

j. In a letter dated November 29, 2018, the Director of the Division of Hydropower Licensing approved Tallassee Shoals, LLC's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Georgia State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Tallassee Shoals LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (<http://www.ferc.gov>), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at [FERCONlineSupport@ferc.gov](mailto:FERCONlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

n. The licensee states its unequivocal intent to submit an application for a new license for Project No. 3102. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by September 30, 2021.

o. Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: November 29, 2018.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2018-26456 Filed 12-4-18; 8:45 am]

**BILLING CODE 6717-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9987-44-Region 10]

### Clean Air Act Operating Permit Program; Petition for Objection To State Operating Permit for the U.S. Department of Energy-Hanford Operations, Benton County, Washington

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final Order on Petition for objection to Clean Air Act title V operating permit.

**SUMMARY:** The Environmental Protection Agency (EPA) Administrator signed an Order, dated October 15, 2018, granting a petition dated September 1, 2016, filed by Bill Green of Richland, Washington. The Petition requested that the EPA object to a Clean Air Act (CAA) title V operating permit (Permit No. 00-05-006, Renewal 2, Revision B) issued by the Washington State Department of Ecology (Ecology) to the U.S. Department of Energy-Hanford Operations (DOE) for the Hanford site located in Benton County, Washington.

**ADDRESSES:** The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final Order, the Petition, and other supporting information. You may view hard copies of these documents Monday through Friday, from 9 a.m. to 3 p.m., excluding federal holidays, at EPA Region 10, 1200 Sixth Avenue, Seattle, Washington. If you wish to examine these documents, you should make an appointment at least 24 hours before the visiting day. Additionally, the final Order and Petition are available electronically at: <http://www.epa.gov/title-v-operating-permits/title-v-petition-database>.

**FOR FURTHER INFORMATION CONTACT:** Kelly McFadden, EPA Region 10, (206) 553-1679, [McFadden.Kelly@epa.gov](mailto:McFadden.Kelly@epa.gov).

**SUPPLEMENTARY INFORMATION:** The CAA affords the EPA a 45-day period to review and object to, as appropriate, a title V operating permit proposed by a state permitting authority under title V of the CAA. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day

review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issue arose after this period.

The EPA received the Petition from Bill Green of Richland, Washington, dated September 1, 2016, requesting that the EPA object to the issuance of title V operating permit no. 00-05-006, Renewal 2, Revision B, issued by Ecology to DOE for the Hanford site in Benton County, Washington.

The Petition claims that Ecology did not, as required by 40 CFR 70.7(h)(2), make available during the public comment process all of the information that the permitting authority had deemed to be relevant by using it in the permitting process.

On October 15, 2018, the EPA Administrator issued an Order granting the Petition. The Order explains the basis for EPA's decision.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may ask for judicial review of those portions of an order that deny issues raised in a petition. Any petition for review shall be filed in the United States Court of Appeals for the appropriate circuit no later than February 4, 2019.

Dated: November 21, 2018.

**Michelle L. Pirzadeh,**

*Acting Regional Administrator, EPA Region 10.*

[FR Doc. 2018-26482 Filed 12-4-18; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9987-53-OAR]

### Allocations of Cross-State Air Pollution Rule Allowances From New Unit Set-Asides for 2018 Control Periods

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of data availability (NODA).

**SUMMARY:** The Environmental Protection Agency (EPA) is providing notice of the availability of preliminary lists of units eligible for second-round allocations of emission allowances for the 2018 control periods from the new unit set-asides (NUSAs) established under the Cross-State Air Pollution Rule (CSAPR)

trading programs. EPA has posted spreadsheets containing the lists on EPA's website. EPA will consider timely objections to the lists before determining the amounts of the second-round allocations.

**DATES:** Objections to the information referenced in this notice must be received on or before January 4, 2019.

**ADDRESSES:** Submit your objections via email to [CSAPR\\_NUSA@epa.gov](mailto:CSAPR_NUSA@epa.gov). Include "2018 NUSA allocations" in the email subject line and include your name, title, affiliation, address, phone number, and email address in the body of the email.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning this action should be addressed to Kenon Smith at (202) 343-9164 or [smith.kenon@epa.gov](mailto:smith.kenon@epa.gov) or Jason Kuhns at (202) 564-3236 or [kuhns.jason@epa.gov](mailto:kuhns.jason@epa.gov).

**SUPPLEMENTARY INFORMATION:** Under each CSAPR trading program where EPA is responsible for determining emission allowance allocations, a portion of each state's emissions budget for the program for each control period is reserved in a NUSA (and in an additional Indian country NUSA in the case of states with Indian country within their borders) for allocation to certain units that would not otherwise receive allowance allocations. The procedures for identifying the eligible units for each control period and for allocating allowances from the NUSAs and Indian country NUSAs to these units are set forth in the CSAPR trading program regulations at 40 CFR 97.411(b) and 97.412 (NO<sub>x</sub> Annual), 97.511(b) and 97.512 (NO<sub>x</sub> Ozone Season Group 1), 97.611(b) and 97.612 (SO<sub>2</sub> Group 1), 97.711(b) and 97.712 (SO<sub>2</sub> Group 2), and 97.811(b) and 97.812 (NO<sub>x</sub> Ozone Season Group 2). Each NUSA allowance allocation process involves up to two rounds of allocations to eligible units, termed "new" units, followed by the allocation to "existing" units of any allowances not allocated to new units.

This notice concerns EPA's preliminary identification of units eligible to receive allowances in the second round of NUSA allocations for the 2018 control periods. The units eligible for second-round allocations for a given control period are CSAPR-affected units that commenced commercial operation between January 1 of the year before that control period and November 30 of the year of that control period. In the case of the 2018 control periods, an eligible unit therefore must have commenced commercial operation between January 1, 2017 and November 30, 2018 (inclusive). Generally, where a unit is

eligible to receive a second-round NUSA allocation under a given CSAPR trading program for a given control period, the unit's maximum potential second-round allocation equals the positive difference (if any) between the unit's emissions during the control period as reported under 40 CFR part 75 and any first-round NUSA allocation the unit received. If the total of such maximum potential allocations to all eligible units would exceed the total allowances remaining in the NUSA, the allocations are reduced on a pro-rata basis. EPA notes that under 40 CFR 97.406(c)(3), 97.506(c)(3), 97.606(c)(3), 97.706(c)(3), and 97.806(c)(3), a unit's emissions occurring before its monitor certification deadline are not considered to have occurred during a control period and consequently are not included in the emission amounts used to determine NUSA allocations.

The preliminary lists of eligible units are set forth in Excel spreadsheets titled "CSAPR\_NUSA\_2018\_NO<sub>x</sub>\_Annual\_2nd\_Round\_Prelim\_Data," "CSAPR\_NUSA\_2018\_NO<sub>x</sub>\_Ozone\_Season\_2nd\_Round\_Prelim\_Data," and "CSAPR\_NUSA\_2018\_SO<sub>2</sub>\_2nd\_Round\_Prelim\_Data" available on EPA's website at <https://www.epa.gov/csapr/csapr-compliance-year-2018-nusa-nodas>. Each spreadsheet contains a separate worksheet for each state covered by that program showing each unit preliminarily identified as eligible for a second-round NUSA allocation. Each state worksheet also contains a summary showing (1) the quantity of allowances initially available in that state's 2018 NUSA, (2) the sum of the 2018 NUSA allowance allocations that were made in the first round to new units in that state, if any, and (3) the quantity of allowances in the 2018 NUSA available for second-round allocations to new units (or ultimately for allocations to existing units), if any.

Objections should be strictly limited to whether EPA has correctly identified the units eligible for second-round 2018 NUSA allocations according to the criteria established in the regulations and should be emailed to the address identified in **ADDRESSES**. Objections must include: (1) Precise identification of the specific data the commenter believes are inaccurate, (2) new proposed data upon which the commenter believes EPA should rely instead, and (3) the reasons why EPA should rely on the commenter's proposed data and not the data referenced in this notice.

EPA notes that an allocation or lack of allocation of allowances to a given unit does not constitute a determination that CSAPR does or does not apply to

the unit. EPA also notes that under 40 CFR 97.411(c), 97.511(c), 97.611(c), 97.711(c), and 97.811(c), allocations are subject to potential correction if a unit to which NUSA allowances have been allocated for a given control period is not actually an affected unit as of the start of that control period.

(Authority: 40 CFR 97.411(b), 97.511(b), 97.611(b), 97.711(b), and 97.811(b).)

Dated: November 1, 2018.

**Reid P. Harvey,**

*Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 2018-26481 Filed 12-4-18; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL 9987-33-Region 8]

### Settlement Agreement for Recovery of Past Response Costs: ACM Smelter and Refinery Site, Great Falls, Cascade County, Montana

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed agreement; request for public comment.

**SUMMARY:** In accordance with the requirements of section 122(h)(1) of the Comprehensive Environmental Response Compensation, and Liability Act of 1980, as amended ("CERCLA") notice is hereby given of the proposed settlement under section 122 (h)(1) of CERCLA, between the U.S. Environmental Protection Agency (EPA), Atlantic Richfield Company and ARCO Environmental Remediation, LLC (Settling Parties). The proposed Settlement Agreement requires the Settling Parties to reimburse the EPA for past response costs. The Settling Parties will pay (\$851,393.17) within 30 days after the effective date of the Proposed Agreement to the EPA. The Settling Parties consent to and will not contest the authority of the United States to enter into the Agreement or to implement or enforce its terms. The Settling Parties recognize that the Agreement has been negotiated in good faith and that the Agreement is entered into without the admission or adjudication of any issue of fact or law.

**DATES:** Comments must be submitted on or before January 4, 2019. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the agreement. The Agency will consider all comments received and may modify or

withdraw its consent to the agreement if comments received disclose facts or considerations that indicate that the agreement is inappropriate, improper, or inadequate.

**ADDRESSES:** The proposed agreement and additional background information relating to the agreement, as well as the Agency's response to any comments are or will be available for public inspection at the EPA Superfund Record Center, 1595 Wynkoop Street, Denver, Colorado, by appointment. Comments and requests for a copy of the proposed agreement should be addressed to Maureen O'Reilly, Senior Enforcement Specialist, Environmental Protection Agency-Region 8, Mail Code 8ENF-RC, 1595 Wynkoop Street, Denver, Colorado 80202, and should reference the ACM Smelter and Refinery Superfund Site, EPA Docket No. CERCLA-08-2019-0001.

**FOR FURTHER INFORMATION CONTACT:** Douglas Naftz, Enforcement Attorney, Legal Enforcement Program, Environmental Protection Agency-Region 8, Mail Code 8ENF-L, 1595 Wynkoop Street, Denver, Colorado 80202, (303) 312-6942.

Dated: November 16, 2018.

**Suzanne Bohan,**

*Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region VIII.*

[FR Doc. 2018-26484 Filed 12-4-18; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-XXXX]

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;

the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before February 4, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicole Ongele, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Nicole.ongele@fcc.gov](mailto:Nicole.ongele@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Ongele, (202) 418-2991.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-XXXX.

*Title:* Creation of Interstitial 12.5

Kilohertz Channels in the 800 MHz Band Between 809-817/854-862 MHz.

*Form Number:* N/A.

*Type of Review:* New information collection.

*Respondents:* Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

*Number of Respondents and Responses:* 700 respondents, 350 responses.

*Estimated Time per Response:* 2 hours.

*Frequency of Response:* One-time reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this collection is contained in 47 U.S.C. 151, 154, 301, 303, and 332 of the Communications Act of 1934.

*Total Annual Burden:* 700 hours.

*Total Annual Cost:* No Cost.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for applicants filing applications to license channels in the 809-817/854-862 MHz band segment (800 MHz Mid-Band) to include

confidential information with their application. Nonetheless, there is a need for confidentiality with respect to all applications filed with the Commission through its Universal Licensing System (ULS). Although ULS stores all information pertaining to the individual license via an FCC Registration Number (FRN), confidential information is accessible only by persons or entities that hold the password for each account, and the Commission's licensing staff. Information on private land mobile radio licensees is maintained in the Commission's system of records, FCC/WTB-1, "Wireless Services Licensing Records." The licensee records will be publicly available and routinely used in accordance with subsection (b) of the Privacy Act. TIN Numbers and material which is afforded confidential treatment pursuant to a request made under 47 CFR 0.459 will not be available for Public inspection. Any personally identifiable information (PII) that individual applicants provide is covered by a system of records, FCC/WTB-1, "Wireless Services Licensing Records," and these and all other records may be disclosed pursuant to the Routine Uses as stated in this system of records notice.

*Needs and Uses:* This collection will be submitted as a new collection after this 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance. Section 90.621(d)(4) adopted in the Commission's Report and Order FCC 18-143 requires an applicant to include a letter of concurrence from an incumbent licensee if the applicant files an application which causes contour overlap under a forward analysis or receives contour overlap under a reciprocal analysis when the applicant seeks to license channels in the 800 MHz Mid-Band. In the case of the forward analysis, the incumbent licensee must agree in its concurrence letter to accept any interference that occurs as a result of the contour overlap. In the case of the reciprocal analysis, the incumbent licensee must state in its concurrence letter that it does not object to the applicant receiving contour overlap from the incumbent's facility. The purpose of requiring applicants to obtain letters of concurrence if their application causes contour overlap under a forward analysis or receives contour overlap under a reciprocal analysis is to ensure incumbents in the 800 MHz Mid-Band are aware of the contour overlap before an application is granted.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer, Office of the Secretary.*

[FR Doc. 2018–26412 Filed 12–4–18; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0392]

### Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before January 4, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via email [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov); and

to Nicole Ongele, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Nicole.Ongele@fcc.gov](mailto:Nicole.Ongele@fcc.gov). Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

**OMB Control Number:** 3060–0392.

**Title:** 47 CFR 1 Subpart J—Pole Attachment Complaint Procedures.

**Form Number:** N/A.

**Type of Review:** Revision of a currently-approved collection.

**Respondents:** Business or other for-profit.

**Number of Respondents and Responses:** 1,775 respondents; 1,791 responses.

**Estimated Time per Response:** 10–14 hours.

**Frequency of Response:** On occasion reporting and third-party disclosure requirements.

**Obligation to Respond:** Required to obtain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Section 224.

**Total Annual Burden:** 3,149 hours.

**Total Annual Cost:** \$486,000.

**Privacy Act Impact Assessment:** No impact(s).

**Nature and Extent of Confidentiality:** No questions of a confidential nature are asked. However, respondents may request that materials or information submitted to the Commission in a complaint proceeding be withheld from public inspection under 47 CFR 0.459.

**Needs and Uses:** The Commission is requesting OMB approval for a revision to an existing information collection. Currently, OMB Collection No. 3060–0392, among other things, tracks the burdens associated with utilities defending against complaints brought by incumbent local exchange carriers (ILECs) related to unreasonable rates, terms, and conditions for pole attachments. In *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17–84, WT Docket No. 17–70, Third Report and Order and Declaratory Ruling, FCC 18–111 (2018), the Commission, among other things, revised section 1.1413 of its rules to establish a presumption that an ILEC is similarly situated to an attachers that is a telecommunications carrier or a cable television system providing telecommunications services for purposes of obtaining comparable pole attachment rates, terms, or conditions. The Commission also established a presumption that an incumbent LEC may be charged no higher than the Commission-defined pole attachment rate for telecommunications carriers, as determined in accordance with section 1.1406(d)(2). To rebut these presumptions, the utility must demonstrate by clear and convincing evidence that the incumbent LEC receives benefits under its pole attachment agreement with a utility that materially advantages the incumbent LEC over other telecommunications carriers or cable television systems providing telecommunications services on the same poles. As a result, now there is an incremental paperwork burden on utilities should they elect to challenge the presumption that incumbent LECs are entitled to rates, terms, and conditions of similarly-situated telecommunications attachers. None of the other paperwork burdens as

set forth in the 2018 renewal of OMB Collection No. 3060–0392 will change. The Commission will use the information collected under this revision to 47 CFR 1.1413 to hear and resolve pole access complaints brought by ILECs and to determine the merits of the complaints.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer, Office of the Secretary.*

[FR Doc. 2018–26411 Filed 12–4–18; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION NOTICE OF PREVIOUS ANNOUNCEMENT:** 83 FR 62320. **PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** Wednesday, December 5, 2018 at 2:00 p.m. and continued on Thursday, December 6, 2018 after the open meeting.

**CHANGES IN THE MEETING:** The meeting will only take place on Thursday, December 6, 2018 following the open meeting.

\* \* \* \* \*

**CONTACT FOR MORE INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Laura E. Sinram,**

*Deputy Secretary of the Commission.*

[FR Doc. 2018–26580 Filed 12–3–18; 4:15 pm]

**BILLING CODE 6715–01–P**

## GENERAL SERVICES ADMINISTRATION

[Notice–MA–2018–11; Docket No. 2018–0002; Sequence 34]

### Rescission of FMR Bulletin

**AGENCY:** Office of Government-wide Policy (OGP); General Services Administration, (GSA).

**ACTION:** Notice of Rescission of GSA Bulletin Federal Management Regulation (FMR) D–1, Transportation Management.

**SUMMARY:** GSA has determined the guidance for requesting a delegation of authority for the procurement of transportation (freight and cargo, including household goods) and traffic management services from the Administrator of General Services to be administratively burdensome and ineffective. Therefore, GSA is officially rescinding GSA Bulletin FMR D–1, Transportation Management. Agencies

that seek to request a transportation delegation of authority in the future must contact GSA–OGP Office of Asset and Transportation Management for instructions on how to make this request.

**DATES:** December 5, 2018.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content or information regarding a request for a delegation of authority, please contact Mr. Ron Siegel, Office of Government-wide Policy, Office of Asset and Transportation Management, at 202–702–0840, or by email at [gsa-ogp-transportationpolicy@gsa.gov](mailto:gsa-ogp-transportationpolicy@gsa.gov). Please cite Notice for Rescission of FMR Bulletin D–1 in the subject line.

**SUPPLEMENTARY INFORMATION:** Executive Order 13777, Enforcing the Regulatory Reform Agenda, Section 3, paragraph (d)(ii), states in part, the Regulatory Reform Task Force shall attempt to identify regulations that are outdated, unnecessary, or ineffective. Upon review, GSA has identified GSA Bulletin FMR D–1, Transportation Management, as unduly prescriptive and ineffective. Furthermore, the bulletin potentially impacts the category management strategy for procurement.

Dated: November 29, 2018.

**Jessica Salmoiraghi,**

*Associate Administrator, Office of Government-wide Policy.*

[FR Doc. 2018–26409 Filed 12–4–18; 8:45 am]

**BILLING CODE 6820–14–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60Day–19–19BG; Docket No. CDC–2018–0102]

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project

titled “Web-based approaches to reach black or African American and Hispanic/Latino MSM for HIV Testing and Prevention Services.”

**DATES:** CDC must receive written comments on or before February 4, 2019.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2018–0102 by any of the following methods:

- **Federal eRulemaking Portal:** [Regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

- **Mail:** Jeffrey M. Zirger, Ph.D., Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

**Instructions:** All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to [Regulations.gov](https://www.regulations.gov).

**Please note:** Submit all comments through the Federal eRulemaking portal ([regulations.gov](https://www.regulations.gov)) or by U.S. mail to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: [omb@cdc.gov](mailto:omb@cdc.gov).

### SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;



2. Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.
5. Assess information collection costs.

**Proposed Project**

Web-based approaches to reach black or African American and Hispanic/Latino MSM for HIV Testing and Prevention Services—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The goal of this study is to evaluate the effectiveness of mailing out rapid HIV home-testing kits and additional testing promotion components to increase HIV testing among black/African-American or Hispanic/Latino MSM. The findings from this research will assist local and state health departments, and community based organizations in making decisions on how to improve HIV testing and linkage to HIV prevention services for black/

African American and Hispanic/Latino men who have sex with men.

The research study is a randomized control trial and all survey data will be collected over the internet. There will not be any in-person surveys. We will advertise the study on internet websites frequented by black and Hispanic MSM. People will click on a banner ad and will be taken to a study website that provides a brief overview of the study. Those who are interested in participating will complete a brief survey to determine their eligibility. Men who are eligible will complete registration information and then download a study phone app onto their smartphone. The app will allow them to complete a baseline survey. After completing the baseline survey, they will be randomized into one of three conditions.

All participants will be sent a rapid HIV test kit and they will report their results to the study. Men assigned to all study arms will use the study app to complete study activities. All participants will have access to web-based HIV counseling upon request. Participants who report a positive HIV test result will be offered web-based HIV counseling if they have not previously requested counseling. Men assigned to the control arm will only have access to the study app and web-based counseling. Men assigned to one intervention arm will also be able to access another smartphone app (HealthMindr) that will allow them to engage in additional study activities. Men assigned to the second intervention arm will have access to a web-based forum (HealthEmpowerment) covering

HIV prevention and not the HealthMindr app. At four months after enrollment, all participants will complete an online survey and will be offered additional HIV testing materials to complete.

The subpopulation are individuals who: (1) Identify as African-American/black or Hispanic/Latino; (2) report their HIV status as negative or report being unaware of their HIV status; (3) are not currently using PrEP or participating in other HIV testing prevention studies; (4) have had anal intercourse with another man in the past 12 months; (5) reside in one of the study states; (6) Are 18 years or older; (7) born male; and (8) identify as male. We will evaluate the comparative effectiveness of the HIV home-testing kits and additional testing promotion components with respect to linkage of participants to appropriate services (HIV treatment, PrEP, STI testing, additional prevention and social services). These analyses will determine whether any such differences are significant within and across study arms, and by race/ethnicity.

Depending on the study arm to which participants are assigned, filling out data collection forms, engaging with testing promotion components, and completing and submitting at-home HIV testing will require between 2 hours 53 minutes and 4 hours and 13 minutes of a participant’s time over the course of the entire study period.

The participation of respondents is voluntary. There is no cost to the respondents other than their time. The total estimated annual burden hours for the proposed project are 7,011 hours.

**ESTIMATED ANNUALIZED BURDEN HOURS**

Type of respondent	Form name	Number of respondents	Number of responses per respondent per year	Average burden per response (in Hrs)	Total Response Burden (in Hrs)
Potential participant .....	Eligibility Consent .....	10,000	18	10/60	1667
Potential participant .....	Eligibility Screener .....	10,000	1	3/60	500
Potential participant .....	Study Consent .....	4,000	1	10/60	667
Potential participant .....	Registration contact information .....	3,800	7	5/60	317
Enrolled participant .....	Baseline Survey .....	3,600	110	30/60	1,800
Enrolled participant .....	HIV Test Result Survey .....	3,000	10	5/60	250
Enrolled participant .....	Follow-up Survey .....	3,000	120	30/60	1,500
Enrolled participant .....	HIV Test Result Survey (completion).	3,000	10	5/60	250
Enrolled participant .....	Product ordering .....	1,200	2	3/60	60
<b>Total .....</b>	.....	.....	.....	.....	<b>7,011</b>

**Jeffrey M. Zirger,**

Acting Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2018-26350 Filed 12-4-18; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60Day-19-0853; Docket No. CDC-2018-0105]

#### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled “Asthma Information Reporting System (AIRS)” (OMB Control No. 0920-0853, expiration date 6/30/2019). The purpose of AIRS to collect performance measure and surveillance data spreadsheets designed to increase the efficiency and effectiveness of state asthma programs and to monitor the impact of the state and national programs.

**DATES:** CDC must receive written comments on or before February 4, 2019.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC-2018-0105 by any of the following methods:

- *Federal eRulemaking Portal:* Regulations.gov. Follow the instructions for submitting comments.

- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to Regulations.gov.

*Please note:* Submit all comments through the Federal eRulemaking portal

(regulations.gov) or by U.S. mail to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329; phone: 404-639-7570; Email: omb@cdc.gov.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
  2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
  3. Enhance the quality, utility, and clarity of the information to be collected; and
  4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.
5. Assess information collection costs.

#### Proposed Project

Asthma Information and Reporting System (AIRS)—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

In 1999, the CDC began its National Asthma Control Program (NACP), a

public health approach to address the burden of asthma. The program supports the goals and objectives of “Healthy People 2020” for asthma, and is based on the public health principles of surveillance, partnerships, interventions, and evaluation. The CDC requests a 12-month approval to revise the “Asthma Information Reporting System (AIRS)” (OMB Control No. 0920-0853; expiration date 6/30/2019). Specifically, CDC seeks to make the following changes:

- Increase the number of awardees from 23 to 25.
- Increase the requested burden hours from 82 to 89.
- Increase the number of optional performance measures (PMs) and decrease the number of required PMs, while still maintaining a total of 18 PMs.
- Update the instructions for the data collection instruments to reflect the optional status of 5 of the 18 PMs and to clarify instructions that were commonly misinterpreted.
- Update the Emergency Department Data and Hospital Discharge Data reporting forms to include example data submission templates for each awardee. Add a tab labeled “Technical Notes” within the Excel reporting form to collect clarifying information about the data from each awardee.
- Add examples of Emergency Department Data and Hospital Discharge Data reporting forms to provide clarity on how data should be reported within the forms.
- Update respondent costs to reflect current wage data from 2017.

The 12-month approval will allow CDC to continue to monitor states' program planning and delivery of public health activities and the programs' collaboration with health care systems for the remainder of the fifth and final year of cooperative agreement EH14-1404 (program period: September 2014–August 2019), and the third and final year of cooperative agreement EH16-1606 (program period: September 2016–August 2019).

The goal of this data collection is to provide NCEH with routine information about the activities and performance of the state and territorial awardees funded under the NACP through an annual reporting system. NACP requires awardees to report activities related to partnerships, infrastructure, evaluation and interventions to monitor the state programs' performance in reducing the burden of asthma. AIRS also includes two forms to collect aggregate ED and HD data from awardees.

AIRS was first approved by OMB in 2010 to collect data in a web-based

system to monitor and guide participating state health departments. Since implementation in 2010, AIRS and the technical assistance provided by CDC staff have provided states with uniform data reporting methods and linkages to other states' asthma program information and resources. Thus, AIRS has saved state resources and staff time when asthma programs embark on asthma activities similar to those done elsewhere.

In the past three years, AIRS data were used to:

- Serve as a resource to NCEH when addressing congressional, departmental and institutional inquiries.
- Help the branch align its current interventions with CDC goals and allowed the monitoring of progress toward these goals.
- Allow the NACP and the state asthma programs to make more informed decisions about activities to achieve objectives.
- Facilitate communication about interventions across states, and enable inquiries regarding interventions by populations with a disproportionate

burden, age groups, geographic areas and other variables of interest.

- Provide feedback to the grantees about their performance relative to others through the distribution of two written reports and several presentations (webinar and in-person) summarizing the results.
- Customize and provide technical assistance and support materials to address implementation challenges.

There will be no cost to respondents other than their time to complete the three AIRS spreadsheets annually. The estimated annualized burden hours are 89.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State Asthma Program Awardees ....	AIRS Performance Measures Reporting Spreadsheets.	25	1	150/60	63
	AIRS Emergency Department Visits Reporting Form.	25	1	30/60	13
	AIRS Hospital Discharge Reporting Forms.	25	1	30/60	13
Total .....	.....	.....	.....	.....	89

**Jeffrey M. Zirger,**

Acting Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2018-26352 Filed 12-4-18; 8:45 am]

BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[60Day-19-19DO; Docket No. CDC-2018-0108]

**Proposed Data Collection Submitted for Public Comment and Recommendations**

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a

proposed information collection project titled *National Surveillance of Community Water Systems and Corresponding Populations with the Recommended Fluoridation Level*. This surveillance collects the fluoridation status of the nation's approximately 52,000 community water systems (CWS) which serve the 50 states and the District of Columbia. It also collects fluoride level testing data for those CWS which adjust naturally occurring fluoride levels. The data are analyzed and published to inform the public and to support state and local governments' efforts to monitor community water fluoridation levels relative to the US Public Health Service recommended level to prevent tooth decay.

**DATES:** CDC must receive written comments on or before February 4, 2019.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC-2018-0108 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Acting Lead, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and

Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

*Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.*

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329; phone: 404-639-7570; Email: [omb@cdc.gov](mailto:omb@cdc.gov).

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are

publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.
5. Assess information collection costs.

**Proposed Project**

National Surveillance of Community Water Systems and Corresponding Populations with the Recommended Fluoridation Level—Existing Collection in use without an OMB Control Number—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Dental caries is one of the most common chronic diseases throughout the lifespan in the United States, and disproportionately affects populations with low socioeconomic status, and racial and ethnic minority populations. Dental caries can lead to infection and diminished quality of life, and cause substantial societal cost due to absence from school and work, as well as expensive treatments.

Naturally occurring fluoride is found in all surface and ground water sources,

but typically is lower than the recommended concentration needed to prevent dental caries (tooth decay). Community water fluoridation is the process of adjusting the fluoride concentration of a community water system (CWS) to the level beneficial for prevention of dental caries as recommended by the US Public Health Service (PHS). CDC monitors CWS fluoride levels relative to the PHS recommended level under the Public Health Service Act. In 2000, CDC launched a Web-based data management tool—Water Fluoridation Reporting Systems (WFRS) in collaboration with the Association of State and Territorial Dental Directors. States may report their information to CDC using WFRS or via email.

Respondents to the information collection are state fluoridation managers or other state government officials designated by the state dental director or drinking water administrator. State participation in the data collection is voluntary. Respondents are asked to update fluoridation status of, and counties and populations served by, each CWS in their state annually. All 50 states respond to this portion of the collection. Washington DC is not included in the data collection because water is supplied by a CWS from Virginia and therefore Virginia will collect data. Historically collected natural fluoride concentrations are available in WFRS for all CWS; once collected, they rarely change over time. Respondents also are asked to enter the high, low, and average fluoride testing level data annually for each month for their fluoride-adjusted CWS. Currently, two-thirds of the states respond to this portion of the collection.

CDC analyzes and publishes results through interactive, public-facing web pages: (1) Biennial surveillance reports documenting the percentage of the population with fluoridated water at national, state, and local levels; and (2) My Water's Fluoride, which publishes the fluoridation status of individual

CWS and some fluoride level data for states which choose to display it. CDC uses the information collection to (1) provide national fluoridation surveillance reports; (2) assist states manage their fluoride level data and monitor and improve quality of community water fluoridation programs; (3) measure national performance toward the fluoridation Healthy People objective; (4) evaluate outcomes of CDC's cooperative agreements with states; (5) facilitate creation of state-specific reports for states' programmatic and policy use. The information collection is also used to inform health care providers to determine targeted delivery of preventive care, for example, determining use of fluoride supplements for children living in fluoride-deficient areas.

CDC's collection of CWS data is not duplicative of any other federal collection, including the US Environmental Protection Agency's (EPA) Safe Drinking Water Information System (SDWIS), as SDWIS receives state reports of CWS fluoride levels that exceed 4 mg/L but not those near the beneficial level of 0.7 mg/L recommended for dental caries prevention by the PHS. Thus, CDC's system is required to assess the degree to which the nation is reaching this PHS-recommended level.

The total estimated annualized burden hours are 2,824, including (1) 1,900 hours for the validation or update of CWS fluoridation status and population served from 50 respondents, with estimated average burden hours of 38 per respondent; and (2) 924 hours for the annual entry of fluoride testing level data for fluoride-adjusted CWS conducted by 33 respondents with an estimated average burden of 28 hours per respondent. WFRS will be hosted and maintained by CDC. There are no maintenance costs to respondents, and there are no costs to respondents other than their time.

**ESTIMATED ANNUALIZED BURDEN HOURS**

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State Official .....	Fluoridation status and population ...	50	1	38	1,900
State Official .....	Fluoride testing data .....	33	1	28	924
Total .....	.....	.....	.....	.....	2,824

Jeffrey M. Zirger,

Acting Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention (CDC).

[FR Doc. 2018-26351 Filed 12-4-18; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### Notice of Hearing: Reconsideration of Disapproval Washington Medicaid State Plan Amendment (SPA) 17-0002

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of hearing; reconsideration of disapproval.

**SUMMARY:** This notice announces an administrative hearing to be held on January 15, 2019, at the Department of Health and Human Services, Centers for Medicare & Medicaid Services, Division of Medicaid and Children's Health, Seattle Regional Office, 701 Fifth Avenue, Suite 1600, Seattle, WA 98104 to reconsider CMS' decision to disapprove Washington's Medicaid SPA 17-0002.

**DATES:** Requests to participate in the hearing as a party must be received by the presiding officer by December 20, 2018.

**FOR FURTHER INFORMATION CONTACT:** Benjamin R. Cohen, Presiding Officer, CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244, Telephone: (410) 786-3169.

**SUPPLEMENTARY INFORMATION:** This notice announces an administrative hearing to reconsider CMS' decision to disapprove Washington's Medicaid state plan amendment (SPA) 17-0002, which was submitted to the Centers for Medicare & Medicaid Services (CMS) on June 26, 2017 and disapproved on September 10, 2018. This SPA requested CMS approval to: Bring Washington into compliance with the pharmacy reimbursement requirements in the Covered Outpatient Drugs final rule with comment period (CMS-2345-FC) (Final Rule). Specifically, SPA 17-0002 proposed to revise the current pharmacy reimbursement methodology from reimbursing for ingredient costs based on Estimated Acquisition Cost (EAC), plus a tiered dispensing fee (High-volume pharmacies \$4.24/Rx, Mid-volume pharmacies \$4.56/Rx, Low-volume pharmacies \$5.25/Rx, and Unit Does System \$5.25/Rx), to reimbursing for ingredient cost based on Actual

Acquisition Cost (AAC), using the National Average Drug Acquisition Cost (NADAC) without a change in the new requirements for a professional dispensing fee. In addition, SPA 17-0002 included proposed changes to reimbursement for 340B drugs, physician-administered drugs, clotting factor, federal supply schedule, and drugs purchased at nominal price.

The issues to be considered at the hearing are whether Washington SPA 17-0002 is inconsistent with the requirements of:

- Section 1902(a)(30)(A) of the Social Security Act (the Act) which requires, in part, that states have a state plan that provides such methods and procedures to assure that payment rates are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area.

- Federal regulations at 42 CFR 447.502, 447.512 and 447.518 which provide that payments for drugs are to be based on the ingredient cost of the drug based on AAC and a Professional Dispensing Fee (PDF).

Section 1116 of the Act and federal regulations at 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. CMS is required to publish in the **Federal Register** a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the state Medicaid agency of additional issues that will be considered at the hearing, we will also publish that notice in the **Federal Register**.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Washington announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. MaryAnne Lindeblad

Director  
State of Washington, Health Care Authority  
626 8th Avenue PO Box 45502  
Olympia, WA 98504-5050

Dear Ms. Lindeblad:

I am responding to your November 5, 2018 request for reconsideration of the decision to disapprove Washington's State Plan amendment (SPA) 17-0002. Washington SPA 17-0002 was submitted to the Centers for Medicare & Medicaid Services (CMS) on June 26, 2017, and disapproved on September 10, 2018. I am scheduling a hearing on your request for reconsideration to be held on January 15, 2019, at the Department of Health and Human Services, Centers for Medicare & Medicaid Services, Division of Medicaid and Children's Health, Seattle Regional Office, 701 Fifth Avenue, Suite 1600, Seattle, WA 98104.

I am designating Mr. Benjamin R. Cohen as the presiding officer. If these arrangements present any problems, please contact Mr. Cohen at (410) 786-3169. In order to facilitate any communication that may be necessary between the parties prior to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. If the hearing date is not acceptable, Mr. Cohen can set another date mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by federal regulations at 42 CFR part 430.

This SPA requested CMS approval to bring Washington into compliance with the pharmacy reimbursement requirements in the Covered Outpatient Drugs final rule with comment period (CMS-2345-FC) (Final Rule). Specifically, SPA 17-0002 proposed to revise the current pharmacy reimbursement methodology from reimbursing for ingredient costs based on Estimated Acquisition Cost (EAC), plus a tiered dispensing fee (High-volume pharmacies \$4.24/Rx, Mid-volume pharmacies \$4.56/Rx, Low-volume pharmacies \$5.25/Rx, and Unit Does System \$5.25/Rx), to reimbursing for ingredient cost based on Actual Acquisition Cost (AAC), using the National Average Drug Acquisition Cost (NADAC) without a change in the new requirements for a professional dispensing fee. In addition, SPA 17-0002 included proposed changes to reimbursement for 340B drugs, physician-administered drugs, clotting factor, federal supply schedule, and drugs purchased at nominal price.

The issues to be considered at the hearing are whether Washington SPA 17-0027 is inconsistent with the requirements of:

- Section 1902(a)(30)(A) of the Social Security Act (the Act) which requires, in part, that states have a state plan that provides such methods and procedures to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area.
- Federal regulations at 42 CFR 447.502, 447.512 and 447.518 which provide that payments for drugs are to be based on the ingredient cost of the drug based on AAC and a Professional Dispensing Fee (PDF).

In the event that CMS and the State come to agreement on resolution of the issues which formed the basis for disapproval, this SPA may be moved to approval prior to the scheduled hearing. Sincerely,

Seema Verma  
Administrator  
cc: Benjamin R. Cohen

Section 1116 of the Social Security Act (42 U.S.C. 1316; 42 CFR 430.18) (Catalog of Federal Domestic Assistance program No. 13.714. Medicaid Assistance Program.)

Dated: November 30, 2018.

**Seema Verma,**  
*Administrator, Centers for Medicare & Medicaid Services.*  
[FR Doc. 2018-26495 Filed 12-4-18; 8:45 am]  
**BILLING CODE 4120-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Submission for OMB Review; Comment Request**

*Title:* Plan for Foster Care and Adoption Assistance: Title IV-E of the Social Security Act.

*OMB No.:* 0970-0433.

*Description:* A title IV-E plan is required by section 471, part IV-E of the

Social Security Act (the Act) for each public child welfare agency requesting Federal funding for foster care, adoption assistance and guardianship assistance under the Act. Section 479B of the Act provides for an Indian tribe, tribal organization or tribal consortium (Tribe) to operate a title IV-E program in the same manner as a State with minimal exceptions. The Tribe must have an approved title IV-E Plan. The title IV-E plan provides assurances the programs will be administered in conformity with the specific requirements stipulated in title IV-E. The plan must include all applicable State or Tribal statutory, regulatory, or policy references and citations for each requirement as well as supporting documentation. A title IV-E agency may use the pre-print format prepared by the Children’s Bureau of the Administration for Children and Families or a different format, on the condition that the format used includes all of the title IV-E plan requirements of the law.

*Respondents:* Title IV-E agencies administering or supervising the administration of the title IV-E programs.

**ANNUAL BURDEN ESTIMATES**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Title IV-E Plan .....	17	1	16	272

*Estimated Total Annual Burden Hours:* 272.

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. *Email address:* [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov).

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office

of Management and Budget, Paperwork Reduction Project, *Email:* [OIRA\\_SUBMISSION@OMB.EOP.GOV](mailto:OIRA_SUBMISSION@OMB.EOP.GOV), Attn: Desk Officer for the Administration for Children and Families.

**Robert Sargis,**  
*Reports Clearance Officer.*  
[FR Doc. 2018-26416 Filed 12-4-18; 8:45 am]  
**BILLING CODE 4184-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Submission for OMB Review; Comment Request**

*Title:* OCSE-157 Child Support Enforcement Program Annual Data Report

*OMB No.:* 0970-0177.

*Description:* The information obtained from this form will be used to: (1) Report Child Support Enforcement activities to the Congress as required by law; (2) calculate incentive measures performance and performance indicators utilized in the program; and (3) assist the Office of Child Support Enforcement (OCSE) in monitoring and evaluating State Child Support programs.

OCSE is proposing updates to the OCSE-157 report instructions to update and clarify reporting requirements. Respondents are encouraged to contact the agency to obtain a copy of the revised instructions for review and comment.

*Respondents:* State, Local or Tribal Government.

## ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE-157 .....	54	1	7	378

*Estimated Total Annual Burden Hours: 378.*

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov).

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: [OIRA\\_SUBMISSION@OMB.EOP.GOV](mailto:OIRA_SUBMISSION@OMB.EOP.GOV), Attn: Desk Officer for the Administration for Children and Families.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2018-26508 Filed 12-4-18; 8:45 am]

BILLING CODE 4184-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### Proposed Information Collection Activity; Strengthening Relationship Education and Marriage Services (STREAMS) Evaluation (OMB#0970-0481)

**AGENCY:** Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

**ACTION:** Request for Public Comment.

**SUMMARY:** The Office of Family Assistance (OFA) within the Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services has issued grants to organizations to provide healthy marriage and relationship education (HMRE) services. Under a previously approved data collection activity (OMB#0970-0481), the Office of Planning, Research, and Evaluation (OPRE) within ACF is conducting the Strengthening Relationship Education and Marriage Services (STREAMS) evaluation with five HMRE grantees. The purpose of STREAMS is to measure the effectiveness and quality of HMRE programs designed to strengthen intimate relationships. This data collection request is for an extension of previously approved data collection instruments and for two additional data collection instruments.

**DATES:** *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

**ADDRESSES:** Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. Email address: [OPREinfocollection@acf.hhs.gov](mailto:OPREinfocollection@acf.hhs.gov). All requests should be identified by the title of the information collection.

**SUPPLEMENTARY INFORMATION:**

*Description:* The STREAMS evaluation includes two components, an impact study and a process study. The evaluation will examine HMRE programs for youth in high school, adult couples, and adult individuals.

1. Impact Study. The goal of the impact study is to provide rigorous estimates of the effectiveness of program services and interventions to improve program implementation. The impact study uses an experimental design. Eligible program applicants are randomly assigned to either a program group that is offered program services or a control group that is not. STREAMS collects baseline information from eligible program applicants prior to random assignment and administers a follow-up survey to participants 12 months after random assignment.

2. Process study. The goal of the process study is to support the interpretation of impact findings and document program operations to support future replication. STREAMS conducts semi-structured interviews with program staff and selected community stakeholders, conducts focus groups with program participants, administers a survey to program staff, and collects data on adherence to program curricula through an add on to an existing program MIS (nFORM, OMB no. 0970-0460).

This data collection request is for an extension of previously approved data collection instruments for the impact study and for two additional data collection instruments associated with the impact study. The two additional instruments will allow for longer-term follow-up in two of the five evaluation sites. (1) The second follow-up survey for youth will be administered approximately 24 to 36 months after random assignment to study participants in the STREAMS site serving youth. (2) The second follow-up survey for adults will be administered approximately 30 months after random assignment to study participants in one of the STREAMS evaluation sites serving adults.

*Respondents:* Study participants.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Previously Approved Burden that Remains					
Introductory script, grantee staff .....	8	8	25	0.08	16
Introductory script, program applicants .....	600	200	1	0.08	16
Add-on to nFORM to conduct random assignment .....	8	8	25	0.08	16
Follow-up survey for youth .....	690	230	1	0.5	115
Baseline survey for adults .....	600	200	1	0.5	100
Follow-up survey for adults .....	2,300	767	1	0.75	575
Current Request for Approval					
Second follow-up survey for youth .....	1,500	500	1	0.5	250
Second follow-up survey for adults .....	800	267	1	0.75	200
Estimated Total Annual Burden Hours: .....					1,288

*Comments:* The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Authority:** 42 U.S.C. 603; Sec. 811 (b) Healthy Marriage Promotion and Promoting Responsible Fatherhood Grants of the Claims Resolution Act of 2010, Pub. L. No. 111–291, 124 Stat. 3064

**Mary B. Jones,**  
*ACF/OPRE Certifying Officer.*  
 [FR Doc. 2018–26450 Filed 12–4–18; 8:45 am]  
**BILLING CODE 4184–73–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA–2014–D–1814]

**Bacterial Risk Control Strategies for Blood Collection Establishments and Transfusion Services To Enhance the Safety and Availability of Platelets for Transfusion; Draft Guidance for Industry; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft document entitled “Bacterial Risk Control Strategies for Blood Collection Establishments and Transfusion Services to Enhance the Safety and Availability of Platelets for Transfusion; Draft Guidance for Industry.” The draft guidance document provides blood collection establishments and transfusion services with recommendations to control the risk of bacterial contamination of room temperature stored platelets intended for transfusion. The guidance provides recommendations for all platelet products, including platelets manufactured by automated methods (apheresis platelets), whole blood derived (WBD) platelets, pooled platelets (pre-storage and post-storage) and platelets stored in additive solutions. The draft guidance replaces the draft guidance of the same title dated March 2016.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by February 4, 2019. Submit either electronic or written comments on the draft guidance by February 4, 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–2014–D–1814 for “Bacterial Risk Control Strategies for Blood Collection



Establishments and Transfusion Services to Enhance the Safety and Availability of Platelets for Transfusion; Draft Guidance for Industry.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send

one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 240-402-8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Jonathan McKnight, Center for Biologics Evaluation and Research, Food and Drug Administration, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

FDA is announcing the availability of a draft document entitled “Bacterial Risk Control Strategies for Blood Collection Establishments and Transfusion Services to Enhance the Safety and Availability of Platelets for Transfusion; Draft Guidance for Industry.” The draft guidance provides blood collection establishments and transfusion services with recommendations to control the risk of bacterial contamination of room temperature stored platelets intended for transfusion. The draft guidance provides recommendations for all platelet products, including platelets manufactured by automated methods (apheresis platelets), WBD platelets, pooled platelets (pre-storage and post-storage) and platelets stored in additive solutions. Additionally, this guidance provides licensed blood establishments with recommendations on how to report implementation of manufacturing and labeling changes under 21 CFR 601.12.

The draft guidance replaces the draft guidance of the same title dated March 2016 (81 FR 13798; March 15, 2016).

Most recently, FDA convened a Blood Products Advisory Committee (BPAC) meeting in July 2018 to discuss bacterial contamination of platelets and strategies to control the risk. At this meeting, BPAC considered the scientific evidence and operational considerations of all available strategies to control the risk of bacterial contamination of platelets with 5-day and 7-day dating, including bacterial testing strategies using culture-based devices, rapid bacterial detection devices, and the implementation of pathogen reduction technology. The data presented and BPAC’s discussion at the July 2018 meeting provided the foundation for the recommendations in this guidance.

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 bacterial risk control strategies for blood collection establishments and transfusion services to enhance the safety and availability of platelets for transfusion. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

**II. Paperwork Reduction Act of 1995**

This draft guidance refers to previously approved collections of information found in FDA regulations. 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 21 CFR part 601 have been approved under OMB control number 0910-0338; the collections of information in 21 CFR part 606 have been approved under OMB control number 0910-0116; and the collections of information in 21 CFR part 607 have been approved under OMB control number 0910-0052.

**III. Electronic Access**

Persons with access to the internet may obtain the draft guidance at either <https://www.fda.gov/Biologics/BloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> or <https://www.regulations.gov>.

Dated: November 29, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018-26477 Filed 12-4-18; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**Solicitation of Nominations for Membership To Serve on the Advisory Committee on Heritable Disorders in Newborns and Children**

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Request for nominations.

**SUMMARY:** HRSA is seeking nominations of qualified candidates to be considered for appointment as members of the Advisory Committee on Heritable

Disorders in Newborns and Children (Committee). The Committee provides advice, recommendations, and technical information about aspects of heritable disorders and newborn and childhood screening to the Secretary of HHS (Secretary). HRSA is seeking nominations of qualified candidates to fill up to five positions on the Committee.

**DATES:** Written nominations for membership on the Committee must be received on or before January 4, 2019.

**ADDRESSES:** Nomination packages must be submitted electronically as email attachments to Andrea Matthews, Genetic Services Branch, Maternal and Child Health Bureau, HRSA, at [AMatthews@hrsa.gov](mailto:AMatthews@hrsa.gov).

**FOR FURTHER INFORMATION CONTACT:** Andrea Matthews, MCHB, HRSA 5600 Fishers Lane, Room 18–N–34D, Rockville, MD 20857; 301–945–3062; or [AMatthews@hrsa.gov](mailto:AMatthews@hrsa.gov). A copy of the Committee charter and list of the current membership may be obtained by accessing the Committee website at <https://www.hrsa.gov/advisory-committees/heritable-disorders/about/index.html>.

**SUPPLEMENTARY INFORMATION:** The Committee was established in 2003 to advise the Secretary regarding newborn screening tests, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. In addition, the Committee provides advice and recommendations to the Secretary concerning the grants and projects authorized under section 1109 of the PHS Act and technical information to develop policies and priorities for grants, including those that will enhance the ability of the state and local health agencies to provide for newborn and child screening, counseling, and health care services for newborns and children having, or at risk for, heritable disorders. The Committee meets four times each calendar year, or at the discretion of the Designated Federal Officer in consultation with the Chair.

The Committee reviews and reports regularly on newborn and childhood screening practices for heritable disorders, recommends improvements in the national newborn and childhood heritable screening programs, and recommends conditions for inclusion in the Recommended Uniform Screening Panel (RUSP). The Committee's recommendations regarding additional conditions/inherited disorders for screening that have been adopted by the Secretary are included in the RUSP and

constitute part of the comprehensive guidelines supported by HRSA pursuant to section 2713 of the PHS Act, codified at 42 U.S.C. 300gg–13. Under this provision, non-grandfathered health plans and group and individual health insurance issuers are required to cover screenings included in the HRSA-supported comprehensive guidelines without charging a co-payment, co-insurance, or deductible for plan years (*i.e.*, in the individual market, policy years) beginning on or after the date that is 1 year from the Secretary's adoption of the condition for screening.

**Nominations:** HRSA is requesting nominations for voting members to serve on the Committee to fill one position in 2019 and up to four positions in 2020. The Secretary appoints Committee members with the expertise needed to fulfill the duties of the Advisory Committee. The membership requirements are set forth at 42 U.S.C. 300b–10(c)(2). Nominees sought are medical, technical, or scientific professionals with special expertise in the field of heritable disorders or in providing screening, counseling, testing, or specialty services for newborns and children with, or at risk for having, heritable disorders; individuals who have expertise in ethics (*e.g.*, bioethics) and infectious diseases and who have worked and published material in the area of newborn screening; members of the public having special expertise about, or concern with, heritable disorders; and/or representatives from such federal agencies, public health constituencies, and medical professional societies. Interested applicants may self-nominate or be nominated by another individual or organization. Nominees must reside in the United States and cannot be funded for international travel.

Individuals selected for appointment to the Committee will be invited to serve for up to 4 years. Members who are not federal officers or permanent federal employees are appointed as special government employees and receive a stipend and reimbursement for per diem and travel expenses incurred for attending Committee meetings and/or conducting other business on behalf of the Committee, as authorized by 5 U.S.C. 5703 of the FACA for persons employed intermittently in government service. Members who are already officers or employees of the United States Government shall not receive additional compensation for service on the Committee, but receive per diem and travel expenses incurred for attending Committee meetings and/or conducting other business on behalf of the Committee.

The following information must be included in the package of materials submitted for each individual being nominated for consideration: (1) A statement that includes the name and affiliation of the nominee and a clear statement regarding the basis for the nomination, including the area(s) of expertise that may support eligibility of a nominee for service on the Committee, as described above; (2) confirmation the nominee is willing to serve as a member of the Committee; (3) the nominee's contact information (please include home address, work address, daytime telephone number, and an email address); and (4) a current copy of the nominee's curriculum vitae. Nomination packages may be submitted directly by the individual being nominated or by the person/organization recommending the candidate.

HHS will endeavor to ensure that the membership of the Committee is fairly balanced in terms of points of view represented and that individuals from a broad representation of geographic areas, gender, ethnic and minority groups, as well as individuals with disabilities, are considered for membership. Appointments shall be made without discrimination on the basis of age, ethnicity, gender, sexual orientation, and cultural, religious, or socioeconomic status.

Individuals who are selected to be considered for appointment will be required to provide detailed information regarding their financial holdings, consultancies, and research grants or contracts. Disclosure of this information is required in order for HRSA to determine if the selected candidate is involved in any activity that may pose a potential conflict with the official duties to be performed as a member of the Committee and to identify any required remedial action needed to address the potential conflict.

**Authority:** Section 1111 of the Public Health Service (PHS) Act, as amended by the Newborn Screening Saves Lives Reauthorization Act of 2014 (42 U.S.C. 300b–10). The Committee is governed by the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.), and 41 CFR part 102–3, which set forth standards for the formation and use of advisory committees.

**Amy McNulty,**

*Acting Director, Division of the Executive Secretariat.*

[FR Doc. 2018–26518 Filed 12–5–18; 8:45 am]

**BILLING CODE 4165–15–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Office of the Secretary****Findings of Research Misconduct****AGENCY:** Office of the Secretary, HHS.**ACTION:** Notice.

**SUMMARY:** Findings of research misconduct have been made on the part of Rajendra Kadam, former Ph.D. student in pharmaceutical sciences, University of Colorado, Denver (UCD) (Respondent). Mr. Kadam engaged in research misconduct in research supported by National Eye Institute (NEI), National Institutes of Health (NIH), grants R01 EY018940, R01 EY017533, R24 EY017045, and RC1 EY020361. The administrative actions, including debarment for a period of three (3) years, were implemented beginning on November 13, 2018, and are detailed below.

**FOR FURTHER INFORMATION CONTACT:** Wanda K. Jones, Dr.P.H., Interim Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453-8200.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

*Rajendra Kadam, University of Colorado, Denver:* Based on an investigation conducted by UCD, the Respondent's admission, and analysis conducted by ORI in its oversight review, ORI found that Mr. Rajendra Kadam, former Ph.D. student in pharmaceutical sciences, UCD, engaged in research misconduct in research supported by NEI, NIH, grants R01 EY018940, R01 EY017533, R24 EY017045, and RC1 EY020361.

ORI found that Respondent engaged in research misconduct by knowingly and intentionally falsifying and/or fabricating data by manipulating LC-MS/MS peak area data to reduce variability and/or alter statistical significance for twenty-six (26) figures and five (5) tables in his Ph.D. thesis and in the following nine (9) published papers:

- *Drug Metab. Dispos.* 41:466-474, 2013 (hereafter referred to as "*Drug Metab. Dispos.* 2013"). Retracted in: *Drug Metab. Dispos.* 43(2):234, 2015 Feb.
- *Mol. Pharm.* 10:2350-2361, 2013 (hereafter referred to as "*Mol. Pharm.* 2013"). Retracted in: *Mol. Pharm.* 12(7):2559, 2015 July 6.
- *Invest. Ophthalmol. Vis. Sci.* 52(8):5387-99, 2011 (hereafter referred to as "*IOVS 2011*"). Retracted in: *Invest.*

*Ophthalmol. Vis. Sci.* 56(3):1678, 2015 Mar 9.

- *J. Control. Release* 172(3):1151-60, 2013 (hereafter referred to as "*J. Control. Release 2013*"). Retracted in: *J. Control. Release* 237:186, 2016 Sep 10.

- *Int. J. Pharm.* 434: 140-147, 2012 (hereafter referred to as "*Int. J. Pharm.* 2012"). Retracted (no date provided by the journal for the retraction notice).

- *Mol. Pharm.* 9:605-614, 2012 (hereafter referred to as "*Mol. Pharm.* 2012"). Retracted in: *Mol. Pharm.* 12(7): 2558, 2015 July 6.

- *J. Pharmacol. Exp. Ther.* 332:1107-1120, 2010 (hereafter referred to as "*J. Pharmacol. Exp. Ther.* 2010"). Retracted in: *J. Pharmacol. Exp. Ther.* 352(2):326, 2015 Feb.

- *Mol. Vis.* 19:1198-1210, 2013 (hereafter referred to as "*Mol. Vis.* 2013").

- *Curr. Pharm. Biotechnol.* 12(2):285-292, 2011 (hereafter referred to as "*Curr. Pharm. Biotechnol.* 2011"). Erratum in: *Curr. Pharm. Biotechnol.* 17(9):846, 2016 Jun 6.<sup>1</sup>

Specifically, Respondent falsified data included in:

- Figures 3.10 and 3.11 of respondent's thesis (also included as Figures 10 and 11 in *Drug Metab. Dispos.* 2013).
- Figures 5.2-5.7 of respondent's thesis.
- Figures 4.4-4.7 of respondent's thesis (also included as Figures 4-7 of *Mol. Pharm.* 2013).
- Figures 7.4, 7.5, and 7.7 of respondent's thesis (also included as Figures 1-5, 7, and 8 and summarized in Tables 2 and 3 of *IOVS* 2011).
- Figure 6 of *J. Control. Release* 2013.
- Figures 6-7 of *Mol. Vis.* 2013.
- Figure 3 in *Int. J. Pharm.* 2012.
- Figures 3 and 5-7 in *Mol. Pharm.* 2012.

- Figure 6C in *Curr. Pharm. Biotechnol.* 2011.

- Tables 3-5 and Figures 1-5 in *J. Pharmacol. Exp. Ther.* 2010.

Mr. Kadam entered into a Voluntary Exclusion Agreement (Agreement) and voluntarily agreed:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for or involvement in nonprocurement programs of the United States Government referred to as "covered transactions" pursuant to HHS' Implementation (2 CFR part 376) of OMB Guidelines to Agencies on Governmentwide Debarment and

Suspension, 2 CFR part 180 (collectively the "Debarment Regulations") for a period of three (3) years beginning on November 13, 2018;

(2) to exclude himself from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three (3) years beginning on November 13, 2018; and

(3) as a condition of the Agreement, to request that the following paper be retracted:

- *Mol. Vis.* 19:1198-1210, 2013.

**Wanda K. Jones,***Interim Director, Office of Research Integrity.*

[FR Doc. 2018-26379 Filed 12-4-18; 8:45 am]

**BILLING CODE 4150-31-P****DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, 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, 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 Child Health and Human Development Initial Review Group Biobehavioral and Behavioral Sciences Subcommittee.

*Date:* February 11-12, 2019.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Bradley Monroe Cooke, 6710 B Rockledge Drive, Bethesda, Maryland 20892, 703.292.8460, [brad.cooke@nih.gov](mailto:brad.cooke@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

<sup>1</sup> While this publication does not cite U.S. Public Health Service (PHS) funding in its acknowledgements, Mr. Kadam was funded through his advisor's NIH funding while performing these experiments.

Dated: November 29, 2018.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018-26385 Filed 12-4-18; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Diabetes and Digestive and Kidney Diseases; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, December 6, 2018, 6:00 p.m. to December 7, 2018, 5:00 p.m., Residence Inn Arlington Pentagon City, 550 Army Navy Drive, Arlington, VA, 22202 which was published in the **Federal Register** on October 26, 2018, FR Doc. 23393.

This meeting has been cancelled and will be rescheduled.

Dated: November 29, 2018.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018-26386 Filed 12-4-18; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2018-0876]

#### Merchant Marine Personnel Advisory Committee; Vacancies

**AGENCY:** U.S. Coast Guard, Department of Homeland Security.

**ACTION:** Request for applications.

**SUMMARY:** The U.S. Coast Guard seeks applications for membership on the Merchant Marine Personnel Advisory Committee. This Committee acts solely in an advisory capacity to the Secretary of the Department of Homeland Security through the Commandant of the U.S. Coast Guard on matters relating to personnel in the United States merchant marine, including training, qualifications, certification, documentation, and fitness standards and other matters as assigned by the Commandant. The Committee advises, consults with, and makes recommendations reflecting its independent judgment to the Secretary and may make available to Congress

recommendations that the Committee makes to the Secretary. In addition, the committee may be given special assignments by the Secretary and may conduct studies, inquiries, workshops, and fact finding in consultation with individuals and groups in the private sector and with State or local governments.

**DATES:** Completed applications should be submitted to the U.S. Coast Guard on or before February 4, 2019.

**ADDRESSES:** Applicants should send a cover letter expressing interest in an appointment to the Merchant Marine Personnel Advisory Committee that identifies the applicant's preferred membership category along with a resume detailing the applicant's experience by one of the following methods:

- *By Email:* [davis.j.breyer@uscg.mil](mailto:davis.j.breyer@uscg.mil), (preferred) Subjectline: The Merchant Marine Personnel Advisory Committee;

- *By Fax:* 202-372-8382 ATTN: Mr. Davis J. Breyer, Alternate Designated Federal Officer; or

- *By Mail:* Mr. Davis J. Breyer, Alternate Designated Federal Officer of the Merchant Marine Personnel Advisory Committee, Commandant (CG-MMC-1)/MERPAC, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave SE, Stop 7509, Washington, DC 20593-7509.

**FOR FURTHER INFORMATION CONTACT:** Mr. Davis J. Breyer, Alternate Designated Federal Officer of the Merchant Marine Personnel Advisory Committee, Commandant, (CG-MMC-1)/MERPAC, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave SE, Stop 7509, Washington, DC 20593-7509, telephone 202-372-1445, fax 202-372-8382 or [davis.j.breyer@uscg.mil](mailto:davis.j.breyer@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Merchant Marine Personnel Advisory Committee is a federal advisory committee established in accordance with the provisions of the Federal Advisory Committee Act (Title 5 U.S.C. Appendix) and 46 U.S.C. 8108.

The Committee meets at least twice each year. Its subcommittees and working groups may hold additional meetings as needed to consider specific tasks.

Each Committee member serves a term of office of up to three years. Members may serve a maximum of two consecutive terms. All members serve at their own expense and receive no salary or other compensation from the Federal Government. Members may be reimbursed for travel and per diem in accordance with Federal Travel Regulations.

We will consider applications for the following four positions that will be vacant on June 1, 2019. To be eligible, you must have the experience listed for the applicable membership position:

(1) One position for a member who serves as a representative of merchant marine engineering officers. To be eligible, you must be licensed as either a limited chief engineer or a designated duty engineer;

(2) One position for a member who serves as a representative of qualified members of the engine department. To be eligible, you must hold a current merchant mariner credential with an engineering rating endorsement;

(3) One position for a member who serves as a representative of shipping companies employed in ship operation management. To be eligible, you must show that you have significant knowledge and experience of shipping companies and ship operation management; and

(4) One position for a member who serves as a representative of the state maritime academies, as identified in 46 CFR 310 subpart A. To be eligible, you must be jointly recommended by such state maritime academies.

Each member will be appointed as Representative, and are not appointed in their individual capacity.

The Department of Homeland Security does not discriminate in the selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disabilities and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment actions.

If you are interested in applying to become a member of the Committee, send your cover letter and resume to Mr. Davis J. Breyer, Alternate Designated Federal Officer of the Merchant Marine Personnel Advisory Committee via one of the transmittal methods in the **ADDRESSES** section by the deadline in the **DATES** section of this notice. All email submittals will receive email receipt confirmations.

Dated: November 29, 2018.

**Jeffrey G. Lantz,**

*Director of Commercial Regulations and Standards.*

[FR Doc. 2018-26420 Filed 12-4-18; 8:45 am]

**BILLING CODE 9110-04-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 March 7, 2019 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](mailto:patrick.sacbibit@fema.dhs.gov); or visit the FEMA Map Information eXchange (FMIX) online at [https://www.floodmaps.fema.gov/fhm/fmx\\_main.html](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.*

**MISSOULA COUNTY, MONTANA AND INCORPORATED AREAS DOCKET NO.: FEMA-B-1753**

Community	Community map repository address
Unincorporated Areas of Missoula County.	Missoula County Community and Planning Services Department, 323 West Alder Street, Missoula, MT 59802.

[FR Doc. 2018-26381 Filed 12-4-18; 8:45 am]

**BILLING CODE 9110-12-P****DEPARTMENT OF HOMELAND SECURITY****Transportation Security Administration**

**Extension of Agency Information Collection Activity Under OMB Review: Aviation Security Customer Satisfaction Performance Measurement Passenger Survey**

**AGENCY:** Transportation Security Administration, DHS.**ACTION:** 30-day notice.

**SUMMARY:** This notice announces that the Transportation Security

Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0013, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. This collection involves surveying travelers to measure customer satisfaction with aviation security in an effort to more efficiently manage TSA's security screening performance at airports.

**DATES:** Send your comments by January 4, 2019. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to [dhsdeskofficer@omb.eop.gov](mailto:dhsdeskofficer@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:**

Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011; telephone (571) 227-2062; email [TSAPRA@tsa.dhs.gov](mailto:TSAPRA@tsa.dhs.gov).

**SUPPLEMENTARY INFORMATION:** TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on July 6, 2018, 83 FR 31561.

**Comments Invited**

In accordance with the Paperwork Reduction Act of 1995 (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 valid OMB control number. The ICR documentation will be available at <http://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

- (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

**Information Collection Requirement**

*Title:* Aviation Security Customer Satisfaction Performance Measurement.

*Type of Request:* Extension of a currently approved collection.

*OMB Control Number:* 1652-0013.

*Form(s):* Survey.

*Affected Public:* Traveling public.

*Abstract:* TSA conducts passenger surveys at airports nationwide.

Passengers are invited, though not required, to complete and return surveys by: (1) Using a web-based portal on their own electronic devices, (2) responding to TSA personnel capturing verbal responses, or (3) responding in writing to the survey questions on a customer satisfaction card and depositing the card in a drop-box at the airport. Each survey includes 10 to 15 questions pulled from a list of 82 questions. Each question promotes a quality response so that TSA can identify areas in need of improvement. All questions concern aspects of the passenger's security screening experience.

*Number of Respondents:* 9,600.

*Estimated Annual Burden Hours:* An estimated 800 hours annually.

Dated: November 28, 2018.

**Christina A. Walsh,**

*TSA Paperwork Reduction Act Officer, Office of Information Technology.*

[FR Doc. 2018-26369 Filed 12-4-18; 8:45 am]

**BILLING CODE 9110-05-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Transportation Security Administration**

**Intent To Request Revision From OMB of One Current Public Collection of Information: Law Enforcement/Federal Air Marshal Service Physical and Mental Health Certification**

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 60-day notice.

**SUMMARY:** The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0043, abstracted below that we will submit to OMB for a revision in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves a certification form that applicants for the Law Enforcement/Federal Air Marshal Service are required to complete regarding their mental health history.

**DATES:** Send your comments by February 4, 2019.

**ADDRESSES:** Comments may be emailed to [TSAPRA@tsa.dhs.gov](mailto:TSAPRA@tsa.dhs.gov) or delivered to the TSA PRA Officer, Information Technology (IT), TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011.

**FOR FURTHER INFORMATION CONTACT:**

Christina A. Walsh at the above address, or by telephone (571) 227-2062.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

In accordance with the Paperwork Reduction Act of 1995 (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 valid OMB control number. The ICR documentation will be available at <http://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could

be modified to reduce the burden on respondents.

**Information Collection Requirement**

*OMB Control Number 1652-0043; Law Enforcement/Federal Air Marshal Service Physical and Mental Health Certification.* Pursuant to 49 U.S.C. 44917, TSA has authority to provide for deployment of Federal Air Marshals (FAMs) on passenger flights and provide for appropriate training, equipping, and supervision of FAMs. Pursuant to this authority, TSA requires that applicants for the Law Enforcement/Federal Air Marshal Service positions meet certain medical and mental health standards.

TSA uses a Mental Health Certification form to facilitate the determination of applicants' and incumbents' ability to meet established medical standards and safely and effectively perform the essential functions of the public safety law enforcement position. TSA is revising the collection to include additional forms to assist in the determination. These forms include a Practical Exercise Performance Requirements (PEPR) form, and a Treating Physician Status Report (TPSR) form, in conjunction with further evaluation requests as needed. TSA is also revising the name of the collection from "Office of Law Enforcement/Federal Air Marshal Service Mental Health Certification" to "Law Enforcement/Federal Air Marshal Service Physical and Mental Health Certification."

The Law Enforcement/Federal Air Marshal Service (LE/FAMS) has established medical guidelines designed to ensure FAMs can safely and effectively perform the tasks essential to the arduous, rigorous, and hazardous functions of the FAM position. The medical guidelines ensure a level of health status and physical and psychological fitness for this public safety law enforcement position which requires a high degree of responsibility. Medical guidelines are based on cognitive, physical, psychomotor, and psychological abilities related to the essential job functions of a FAM. Medical examinations include, but are not limited to, cardiac, pulmonary, audiometric, and visual acuity testing. Incumbent FAMs undergo medical examinations every other year until the age of 45, and annually thereafter, while in a FAM position. Based on conditions identified during the pre-employment or recurrent periodic examination, the applicant/employee may be required to provide a completed PEPR form, or TPSR form, signed by his/her physician in order to determine if the FAM is medically qualified.

As part of the psychological assessment, applicants are required to complete a Mental Health Certification form related to their mental health history. Applicants are asked questions that may be indicative of mental health conditions that may impact the ability to safely and effectively perform the essential functions of the position. All forms submitted by applicants and incumbents are sent directly to the FAMS Medical Programs Section for initial screening via fax, mail, or in person. Individual responses may require further medical evaluation.

TSA estimates that there will be 600 respondents annually. It will take each respondent approximately one hour to complete the Mental Health Certification form, and 15 minutes per respondent for their doctor to complete two additional forms (the Practical Exercise Performance form and the Treating Physician Status Report form), for a total annual hour burden of 900 hours.

Dated: November 28, 2018.

**Christina A. Walsh,**

*TSA Paperwork Reduction Act Officer,  
Information Technology.*

[FR Doc. 2018-26370 Filed 12-4-18; 8:45 am]

BILLING CODE 9110-05-P

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

#### Intent To Request Revision From OMB of One Current Public Collection of Information: Transportation Security Officer Medical Questionnaire

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 60-day notice.

**SUMMARY:** The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0032, abstracted below that we will submit to OMB for a revision in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves using a questionnaire to collect medical information from candidates for the job of Transportation Security Officer (TSO) to ensure applicants are qualified to perform TSO duties pursuant to 49 U.S.C 44935.

**DATES:** Send your comments by February 4, 2019.

**ADDRESSES:** Comments may be emailed to [TSAPRA@tsa.dhs.gov](mailto:TSAPRA@tsa.dhs.gov) or delivered to the TSA PRA Officer, Information Technology (IT), TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011.

**FOR FURTHER INFORMATION CONTACT:** Christina A. Walsh at the above address, or by telephone (571) 227-2062.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (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 valid OMB control number. The ICR documentation will be available at <http://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

#### Information Collection Requirement

*OMB Number 1652-0032; Security Officer Medical Questionnaire.* TSA collects relevant medical information from TSO candidates who have successfully completed certain prior steps in the hiring process. This information is used to assess whether the TSO candidates meet the medical qualification standards the agency has established pursuant to 49 U.S.C. 44935. TSA currently collects this information through a medical questionnaire completed by TSO candidates and, in certain cases, supplemental forms

completed by TSO candidates' health care providers. The medical questionnaire and supplemental forms are used in concert with information collected during a physical medical exam to evaluate a candidate's physical and medical qualifications to be a TSO, including visual and aural acuity, and physical coordination and motor skills. Candidates who disclose certain medical conditions on the medical questionnaire were previously asked to provide additional information via supplemental forms.

TSA is revising the information collection and will no longer require candidates to complete supplemental forms. TSA will continue to use the medical questionnaire form. TSA is also transitioning from the paper version of the form to an electronic version.

Historical data indicates that on average 22,500 candidates for TSO positions annually complete medical exams. The medical questionnaire takes approximately 45 minutes (0.75 hours) for the candidates to complete, resulting in an estimated burden of 16,875 hours. Also, TSA estimates the average round-trip travel time to a TSA-contracted physician's office to be 54 minutes (0.9 hours), for an estimated hour burden of 20,250 hours (22,500 × 54 minutes). The estimated total burden time for the completion of the medical questionnaire is 37,125 (16,875 + 20,250) annual hours.

Dated: November 28, 2018.

**Christina A. Walsh,**

*TSA Paperwork Reduction Act Officer,  
Information Technology.*

[FR Doc. 2018-26371 Filed 12-4-18; 8:45 am]

BILLING CODE 9110-05-P

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

#### Intent To Request Extension From OMB of One Current Public Collection of Information: Federal Flight Deck Officer Program

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 60-day notice.

**SUMMARY:** The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0011, abstracted below that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of

the information collection and its expected burden. The collection requires interested volunteers to fill out an application to determine their qualification for participating in the Federal Flight Deck Officer (FFDO) Program.

**DATES:** Send your comments by February 4, 2019.

**ADDRESSES:** Comments may be emailed to [TSAPRA@tsa.dhs.gov](mailto:TSAPRA@tsa.dhs.gov) or delivered to the TSA PRA Officer, Information Technology (IT), TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011.

**FOR FURTHER INFORMATION CONTACT:** Christina A. Walsh at the above address, or by telephone (571) 227-2062.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

In accordance with the Paperwork Reduction Act of 1995 (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 valid OMB control number. The ICR documentation will be available at <http://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

**Information Collection Requirement**

OMB Control Number 1652-0011; Federal Flight Deck Officer Program. The Transportation Security Administration (TSA) initially required this information collection under the

authority of the Arming Pilots Against Terrorism Act (APATA), Title XIV of the Homeland Security Act (Nov. 25, 2002), sec. 1402(a), as amended by Title VI of the Vision 100—Century of Aviation Reauthorization Act (Vision 100) (Dec. 12, 2003), sec. 609(b). Public Law 107-296, 116 Stat. 2300, as codified at 49 U.S.C. 44921, as amended by Public Law 108-176, 117 Stat. 2570. TSA is seeking to renew this information collection in order to continue collecting the information described in this notice to comply with its statutory mission. The APATA required TSA to establish a program to deputize volunteer pilots of passenger air carriers as Federal law enforcement officers to defend the flight deck of their aircraft against acts of criminal violence or air piracy. With the enactment of Vision 100, eligibility to participate in the FFDO program expanded to include pilots of all-cargo aircraft, as well as flight engineers and navigators on both passenger and cargo aircraft.

In order to screen volunteers for entry into the FFDO program, TSA collects from applicants information, including name, address, prior address information, personal references, criminal history, limited medical information, financial information, and employment information, through comprehensive applications they submit to TSA. In addition, TSA conducts an interview with each applicant. Based on the average number of new applicants to the FFDO program, TSA estimates a total of 3,000 respondents annually. TSA estimates that the online application will take one hour for each applicant to complete, for a total burden of 3,000 hours.

Dated: November 28, 2018.

**Christina A. Walsh,**

*TSA Paperwork Reduction Act Officer,  
Information Technology.*

[FR Doc. 2018-26372 Filed 12-4-18; 8:45 am]

**BILLING CODE 9110-05-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Transportation Security Administration**

**[Docket No. TSA-2007-28572]**

**Intent To Request Extension From the Office of Management and Budget of One Current Public Collection of Information: Secure Flight Program**

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 60-day notice.

**SUMMARY:** The Transportation Security Administration (TSA) invites public

comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0046, abstracted below, that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The information collection involves passenger information that certain U.S. aircraft operators and foreign air carriers (collectively referred to in this document as “covered aircraft operators”) submit to Secure Flight for the purposes of identifying and protecting against potential and actual threats to transportation security. The information collection also involves low risk lists identifying those individuals who are a lower risk to transportation security and therefore may be eligible for expedited screening.

**DATES:** Send your comments by February 4, 2019.

**ADDRESSES:** Comments may be emailed to [TSAPRA@tsa.dhs.gov](mailto:TSAPRA@tsa.dhs.gov) or delivered to the TSA PRA Officer, Information Technology (IT), TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011.

**FOR FURTHER INFORMATION, CONTACT:** Christina A. Walsh at the above address, or by telephone (571) 227-2062.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

In accordance with the Paperwork Reduction Act of 1995 (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 valid OMB control number. The ICR documentation will be available at <http://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to:

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological



collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

#### Information Collection Requirement

OMB Control Number 1652-0046; Secure Flight Program, 49 CFR part 1560. Under the Secure Flight Program, the Transportation Security Administration collects information from covered aircraft operators, including foreign air carriers and U.S. airports in order to prescreen passengers and individuals seeking access to the sterile area of the airport. Specifically, the information collected is used for watchlist matching, for matching against lists of Known Travelers, and to assess passenger risk (e.g., to identify passengers who present lower risk and may be eligible for expedited screening). The collection covers the following:

(1) Secure Flight Passenger Data (SFPD) for passengers of covered domestic and international flights within, to, from, or over the continental United States, as well as flights between two foreign locations when operated by a covered U.S. aircraft operator.

(2) SFPD for passengers of charter operators and lessors of aircraft with a maximum takeoff weight of over 12,500 pounds.

(3) Certain identifying information for non-traveling individuals that airport operators or airport operator points of contact seek to authorize to enter a sterile area at a U.S. airport (e.g., to patronize a restaurant, to escort a minor or a passenger with disabilities, or for another approved purpose).

(4) Registration information critical to deployment of Secure Flight, such as contact information, data format, or the mechanism the covered aircraft operators use to transmit SFPD and other data.

(5) Lists of low-risk individuals who are eligible for expedited screening provided by Federal and non-federal entities. In support of TSA Pre✓®, TSA implemented expedited screening of known or low-risk travelers. Federal and non-federal list entities provide TSA with a list of eligible low-risk individuals to be used as part of Secure Flight processes. Secure Flight identifies individuals who should receive low risk screening and transmits the appropriate boarding pass printing result to the aircraft operators.

TSA estimates there are 4,660,363 respondents with an estimated annual reporting burden of 67,147 hours.

Dated: November 28, 2018.

**Christina A. Walsh,**  
TSA Paperwork Reduction Act Officer,  
Information Technology.

[FR Doc. 2018-26368 Filed 12-4-18; 8:45 am]

**BILLING CODE 9110-05-P**

#### DEPARTMENT OF THE INTERIOR

##### U.S. Geological Survey

[GX18.WB12.C25A1; OMB Control Number 1028-0116]

##### Agency Information Collection Activities; Alaska Beak Deformity Observations

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before February 4, 2019.

**ADDRESSES:** Send your comments on the information collection request (ICR) by mail to the U.S. Geological Survey, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to [gs-info\\_collections@usgs.gov](mailto:gs-info_collections@usgs.gov). Please reference OMB Control Number 1028-0116 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Colleen Handel by email at [cmhandel@usgs.gov](mailto:cmhandel@usgs.gov), or by telephone at 907-786-7181.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following

issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Abstract:** As part of the USGS Ecosystems mission to assess the status and trends of the Nation's biological resources, the Alaska Science Center Landbird Program conducts research on avian populations within Alaska. Beginning in the late 1990s, an outbreak of beak deformities in Black-capped Chickadees emerged in southcentral Alaska. USGS scientists launched a study to understand the scope of this problem and its effect on wild birds. Since that time, researchers have gathered important information about the deformities and have identified a new virus as the potential cause. The collection of PII is requested as part of this ongoing research in resident Alaskan birds. Members of the public provide observation reports of birds with deformities from around Alaska and other regions of North America. These reports are very important in that they allow researchers to determine the geographical distribution and species affected. Data collection over such a large and remote area would not be possible without the public's assistance. As part of the online reporting system, an individual's phone number, email address, and mailing address are requested. This information allows researchers to request additional details or verify reports if necessary but is not required for submission. PII is used only for contact purposes, is stored in a separate table that is encrypted, and is not shared in any way with other individuals, groups, or organizations.

*Title of Collection:* Alaska Beak Deformity Observations.  
*OMB Control Number:* 1028–0116.  
*Form Number:* NA.

*Type of Review:* “Extension of a currently approved collection”.

*Respondents/Affected Public:* Individuals/households.

*Total Estimated Number of Annual Respondents:* 150.

*Total Estimated Number of Annual Responses:* 175.

*Estimated Completion Time per Response:* Approximately 5 minutes.

*Total Estimated Number of Annual Burden Hours:* 15 hours.

*Respondent’s Obligation:* Voluntary.

*Frequency of Collection:* One time.

*Total Estimated Annual Non-Hour Burden Cost:* None.

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 authorities for this action are the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

**Christian Zimmerman,**

*Center Director Supervisory Biologist.*

[FR Doc. 2018–26461 Filed 12–4–18; 8:45 am]

**BILLING CODE 4338–11–P**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

[GX19LC00BM6BB00; OMB Control Number 1028–0082]

#### Agency Information Collection Activities; Bird Banding and Band Recovery Reports

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before February 4, 2019.

**ADDRESSES:** Send your comments on the information collection request (ICR) by mail to the U.S. Geological Survey, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to [gs-info\\_collections@usgs.gov](mailto:gs-info_collections@usgs.gov). Please reference OMB Control Number 1028–0082 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about

this ICR, contact Bruce Peterjohn, Patuxent Wildlife Research Center by email at [bpeterjohn@usgs.gov](mailto:bpeterjohn@usgs.gov), or by telephone at 301–497–5646.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public’s reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Abstract:** The Bird Banding Program is the responsibility of the U.S. Geological Survey (USGS) Bird Banding Laboratory (BBL). The BBL has a critical role in storing and maintaining data on banded and marked birds, particularly to facilitate coordination between banders and people who later encounter the marked birds, and to ensure the data are available for later analyses.

To achieve these goals, the BBL collects information using three forms: (1) The Application for Federal Bird Banding or Marking Permit, (2) The Federal Bird Banding or Marking Permit Renewal Form, and (3) The Bird Banding Recovery Report.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, “Data and information to be made available to the public or for limited inspection.” Responses are voluntary. No questions of a “sensitive” nature are asked.

*Title of Collection:* Bird Banding and Band Recovery Reports.

*OMB Control Number:* 1028–0082.

*Form Number:* NA.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* General Public.

*Total Estimated Number of Annual Respondents:* 74,000.

*Total Estimated Number of Annual Responses:* 74,620.

*Estimated Completion Time per Response:* 3 to 30 minutes, depending on form used. The band recovery form receives approximately 74,100 responses annually. The permit application form receives approximately 80 and the permit renewal form receives approximately 440.

*Total Estimated Number of Annual Burden Hours:* 4000.

*Respondent’s Obligation:* None. Participation is voluntary.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Non-hour Burden Cost:* We have not identified any “non-hour cost” burdens associated with this collection of information.

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 authorities for this action are the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

**John French,**

*Center Director, Patuxent Wildlife Research Center.*

[FR Doc. 2018–26392 Filed 12–4–18; 8:45 am]

**BILLING CODE 4338–11–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

[190D0102DM/DS6460000/  
 DLSN00000.000000/DX.64601]

#### Notice of Senior Executive Service Performance Review Board Appointments

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of Appointments.

**SUMMARY:** This notice provides the names of individuals who have been

appointed to serve as members of the Department of the Interior Senior Executive Service (SES) Performance Review Board.

**DATES:** These appointments take effect upon publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this notice, contact Raymond Limon, Deputy Assistant Secretary—Human Capital and Diversity/Chief Human Capital Officer, by email at [Raymond.Limon@ios.doi.gov](mailto:Raymond.Limon@ios.doi.gov), or by telephone at (202) 208-5310.

**SUPPLEMENTARY INFORMATION:** The members of the Department of the Interior SES Performance Review Board are as follows:

ADDINGTON, CHARLES E.  
 ANDERSON, JAMES G.  
 ANDERTON, JAMES B.  
 ANGELLE, SCOTT A.  
 APPLGATE, JAMES D. R.  
 ARGO, MICHAEL P.  
 ARROYO, BRYAN  
 AUSTIN, STANLEY J.  
 BAGLEY, TAMMY L.  
 BAIL, KRISTIN MARA  
 BATHRICK, MARK L.  
 BEALL, JAMES W.  
 BEARPAW, GEORGE WATIE  
 BEARQUIVER, KEVIN T.  
 BENEDETTO, KATHLEEN M. F.  
 BENGE, SHAWN T.  
 BERRY, DAVID A.  
 BLACK, MICHAEL S.  
 BLANCHARD, MARY JOSIE  
 BOCKMIER, JOHN M.  
 BOWKER, BRYAN L.  
 BOWRON, JESSICA L.  
 BRANUM, LISA A.  
 BROWN, LAURA B.  
 BROWN, WILLIAM Y.  
 BUCKNER, SHAWN M.  
 BURDEN, JOHN W.  
 BURKE, MARCELLA COLBERT  
 CAMERON, SCOTT J.  
 CANTOR, HOWARD M.  
 CARDINALE, RICHARD T.  
 CARL, LEON M.  
 CARLSON, JEFFREY O.  
 CASH, CASSIUS M.  
 CASON, JAMES E.  
 CELATA, MICHAEL A.  
 CLAYBORNE, ALFRED L.  
 CLINE, DONALD WALTER  
 COMBS, SUSAN  
 COMPTON, JEFFREY S.  
 CONNELL, JAMIE E.  
 CORDOVA-HARRISON, ELIZABETH  
 CRAFF, ROBERT C.  
 CRIBLEY, BUD C.  
 CRUICKSHANK, WALTER D.  
 CRUZ, MARK A.  
 CRUZAN, DARREN A.  
 DAVIS, KIMBRA G.  
 DAVIS, ROSE MARIE  
 DE LA VEGA, SCOTT ANTHONY  
 DEARMAN, TONY L.  
 DEVARIS, AIMEE MARIE  
 DOWNS, BRUCE M.  
 DUMONTIER, DEBRA L.  
 DUTSCHKE, AMY L.  
 EDSALL, DONNA LYNN  
 FERRERO, RICHARD C.  
 FLANAGAN, DENISE A.  
 FORD, JEROME E.  
 FRAZER, GARY D.  
 FREEMAN, SHAREE M.  
 FREIHAGE, JASON E.  
 FROST, HERBERT C.  
 FULP, TERRANCE J.  
 GALLAGHER, KEVIN T.  
 GIDNER, JEROLD L.  
 GLENN, DOUGLAS A.  
 GLOMB, STEPHEN J.  
 GOESSLING, SHANNON LEE  
 GOKLANY, INDUR M.  
 GONZALES-SCHREINER, ROSEANN C.  
 GONZALEZ, MARIA E.  
 GORDON, ROBERT E. JR.  
 GOULD, GREGORY J.  
 GRAY, LORRI J.  
 GUERTIN, STEPHEN D.  
 HAMBLETON, RYAN M.  
 HAMLEY, JEFFREY L.  
 HAMMOND, CASEY B.  
 HANNA, JEANETTE D.  
 HART, PAULA L.  
 HAWBECKER, KAREN S.  
 HERBST, LARS T.  
 HILDEBRANDT, BETSY J.  
 HILL, JASON ALAN  
 HOLMES, TROY EDWARD  
 HOMMEL, SCOTT C.  
 HOSKINS, DAVID WILLIAM  
 HUMBERT, HARRY L.  
 HUNTER, TERESA R.  
 JAMES, JAMES D. JR.  
 JORJANI, DANIEL H.  
 JOSS, LAURA  
 KEABLE, EDWARD T.  
 KENDALL, JAMES J. JR.  
 KINDRED, JOSHUA MICHAEL  
 KINSINGER, ANNE E.  
 KNIGHT, KAREN A.  
 KURTH, JAMES W.  
 LA COUNTE, DARYL D. II  
 LAIRD, JOSHUA RADBILL  
 LAPOINTE, TIMOTHY L.  
 LAROCHE, DARRELL WILLIAM  
 LAWKOWSKI, GARY MICHAEL  
 LEHNERTZ, CHRISTINE S.  
 LILLIE, JULIETTE ANNE FALKNER  
 LIMON, RAYMOND A.  
 LODGE, CYNTHIA LOUISE  
 LORDS, DOUGLAS A.  
 LOUDERMILK, WELDON B.  
 LUEBKE, THOMAS A.  
 LUEDEERS, AMY L.  
 MABRY, SCOTT L.  
 MACGREGOR, KATHARINE S.  
 MARTINEZ, CYNTHIA T.  
 MASHBURN, LORI K.  
 MAY, RICK A.  
 MAYTUBBY, BRUCE W.  
 MCALEAR, CHRISTOPHER J.  
 MCDOWALL, LENA E.  
 MCKEOWN, MATTHEW J.  
 MEHLHOFF, JOHN J.  
 MERCIER, BRYAN K.  
 MIDDLETON, BRANDON MURRAY  
 MIKKELSEN, ALAN WAYNE  
 MORRIS, DOUGLAS W.  
 MOSS, ADRIANNE L.  
 MOURITSEN, KAREN E.  
 MURILLO, DAVID G.  
 NEDD, MICHAEL D.  
 NGUYEN, NHIEU TONY  
 NOBLE, MICHAELA E.  
 NOWAKOWSKI, JUDY JENNIFER  
 OBERNESSER, RICHARD  
 OLSEN, MEGAN C.  
 ONEILL, KEITH JAMES  
 ORR, L. RENEE  
 ORTIZ, HANKIE P.  
 OWENS, GLENDA HUDSON  
 PALUMBO, DAVID M.  
 PAYNE, GRAYFORD F.  
 PELTOLA, EUGENE R. JR.  
 PEREZ, JEROME E.  
 PETERSON, PENNY LYNN  
 PFEIFFER, TAMARAH  
 PIERRE-LOUIS, ALESIA J.  
 PINTO, SHARON ANN  
 PULA, NIKOLAO IULI  
 QUINLAN, MARTIN J.  
 RAMOS, PEDRO M.  
 RAUCH, PAUL A.  
 RENKES, GREGG D.  
 REYNOLDS, MICHAEL T.  
 REYNOLDS, THOMAS G.  
 RHEES, BRENT B.  
 RIDEOUT, STERLING J. JR.  
 RIGGS, HELEN  
 ROBERSON, EDWIN L.  
 ROMANIK, PEG A.  
 ROSS, JOHN W.  
 RUGWELL, MARY J.  
 RUHS, JOHN F.  
 RUPERT, JEFFERY R.  
 RYAN, MICHAEL J.  
 SALOTTI, CHRISTOPHER P.  
 SAUVAJOT, RAYMOND MARC  
 SCHERER, KYLE E.  
 SCHNEIDER, MARGARET N.  
 SCHOCK, JAMES H.  
 SHEEHAN, DENISE E.  
 SHEPARD, ERIC N.  
 SHOLLY, CAMERON H.  
 SHOPE, THOMAS D.  
 SIEKANIEC, GREGORY EUGENE  
 SIMMONS, SHAYLA F.  
 SINGER, MICHELE F.  
 SKIPWITH, AURELIA  
 SMILEY, KARLA J.  
 SMITH, MARC ALAN  
 SMITH, PAUL DANIEL  
 SOGGE, MARK K.  
 SOUZA, PAUL  
 STEED, BRIAN C.  
 STEIGER, JOHN W.  
 STEVENS, BARTHOLOMEW S.  
 STEWARD, JAMES D.  
 STREATER, EDDIE R.  
 SUAZO, RAYMOND  
 SULLINS, TONY A.  
 TAHSUDA, JOHN III  
 TANNER, JOHN R.  
 THORSON, ROBYN  
 TODD, RAYMOND K.  
 TRAVNICEK, ANDREA J.  
 TUCKER, KAPRICE LYNCH  
 TUGGLE, BENJAMIN N.  
 TUPPER, MICHAEL H.  
 VELA, RAYMOND DAVID  
 VELASCO, JANINE M.  
 VIETZKE, GAY E.  
 VOGEL, ROBERT A.  
 WAINMAN, BARBARA W.  
 WALSH, NOREEN E.  
 WAYSON, THOMAS C.  
 WEBER, WENDI  
 WELCH, RUTH L.

WENGER, LANCE C.  
 WERKHEISER, WILLIAM H.  
 WEYERS, HOLLY S.  
 WHITE, JOHN ETHAN  
 WILLENS, TODD D.  
 WILLIAMS, LC  
 WILLIAMS, MARGARET C.  
 WOLF, ROBERT W.  
 WOODY, WILLIAM C.  
 WORONKA, THEODORE  
 WYNN, TODD M.  
 YOUNGER, CALLY A.

**Authority:** Title 5, U.S. Code, 4314(c)(4).

**Raymond Limon,**

*Deputy Assistant Secretary—Human Capital and Diversity, Chief Human Capital Officer.*

[FR Doc. 2018–26376 Filed 12–4–18; 8:45 am]

**BILLING CODE 4334–63–P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[LLMT926000–XXX–L71300000.BK0000–LVTSE1808000; MO#4500130031]

**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. The surveys, which were executed at the request of the BLM, are necessary for the management of these lands.

**DATES:** A person or party who wishes to protest this decision must file a notice of protest in time for it to be received in the BLM Montana State Office no later than 30 days after the date of this publication.

**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.

**FOR FURTHER INFORMATION CONTACT:** Josh Alexander, BLM Chief Cadastral Surveyor for Montana; telephone: (406) 896–5123; email: [jalexand@blm.gov](mailto: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 lands surveyed are:

**Principal Meridian, Montana**

T. 18 N., R. 56 E.  
 secs. 25 and 36.

A person or party who wishes to protest an official filing of a plat of survey identified above must file a written notice of protest with the BLM Chief Cadastral Surveyor for Montana at the address listed in the **ADDRESSES** section of this notice. 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. 2018–26483 Filed 12–4–18; 8:45 am]

**BILLING CODE 4310–DN–P**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

[NPS–WASO–NAGPRA–NPS0026955; PPWOCRADNO–PCU00RP14.R50000]

**Notice of Inventory Completion: Wisconsin Historical Society, Madison, WI**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Wisconsin Historical Society has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Wisconsin Historical Society. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Wisconsin Historical Society at the address in this notice by January 4, 2019.

**ADDRESSES:** Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264–6434, email [Jennifer.Kolb@wisconsinhistory.org](mailto:Jennifer.Kolb@wisconsinhistory.org).

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Wisconsin Historical Society, Madison, WI. The human remains and associated funerary objects were removed from the Earl II Site, Vernon County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum,

institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

### Consultation

A detailed assessment of the human remains was made by the Wisconsin Historical Society professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; and the Upper Sioux Community, Minnesota, hereafter referred to as "The Consulted Tribes."

### History and Description of the Remains

In 1960, human remains representing, at minimum, one individual were removed from the Earll II Site (47-VE-0050) in Vernon County, WI. The site was investigated by the Wisconsin Historical Society (WHS) in 1960, as part of the LaFarge Dam Project. During this project, the WHS excavated two of three mounds found at the site—the linear mound (Mound 2) and one of the oval mounds (Mound 1)—that were slated for destruction to make way for the relocation of State Highway 131. In Mound 2, WHS archeologists found a subfloor burial pit that contained human remains that were later determined to belong to a Native American adult of indeterminate sex. No known individuals were identified. The seven associated funerary objects are one group of stone flakes, one chert flake, one chert projectile point, one biface fragment, one chert projectile point fragment, one faunal tooth, and one ceramic sherd.

### Determinations Made by the Wisconsin Historical Society

Officials of the Wisconsin Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on Wisconsin Historical Society records, burial location, archeological context, oral histories, and skeletal analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the seven objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or

later as part of the death rite or ceremony.

- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains associated funerary objects and any present-day Indian Tribe.

- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.

- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Ho-Chunk Nation of Wisconsin; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota); Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota, hereafter referred to as "The Aboriginal Land Tribes."

- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Aboriginal Land Tribes.

### Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264-6434, email [Jennifer.Kolb@wisconsinhistory.org](mailto:Jennifer.Kolb@wisconsinhistory.org), by January 4, 2019. After that date, if no additional requestors have come forward, transfer

of control of the human remains and associated funerary objects to The Aboriginal Land Tribes may proceed.

The Wisconsin Historical Society is responsible for notifying The Aboriginal Land Tribes and The Consulted Tribes that this notice has been published.

Dated: November 7, 2018.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2018-26440 Filed 12-4-18; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-WASO-NAGPRA-NPS0026946; PPWOCRADNO-PCU00RP14.R50000]

### Notice of Inventory Completion: Office of the State Archaeologist, University of Iowa, Iowa City, IA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The University of Iowa, Office of the State Archaeologist Bioarchaeology Program (OSA) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the OSA. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the OSA at the address in this notice by January 4, 2019.

**ADDRESSES:** Dr. Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 S Clinton Street, Iowa City, IA 52242, telephone (319) 384-0740, email [lara-noldner@uiowa.edu](mailto:lara-noldner@uiowa.edu).

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of Iowa, Office of the State Archaeologist Bioarchaeology Program, Iowa City, IA. The human remains and associated funerary objects were removed from the Blood Run site (13LO2), Lyon County, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

#### Consultation

A detailed assessment of the human remains was made by the OSA professional staff in consultation with representatives of the Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; and the Winnebago Tribe of Nebraska, hereafter referred to as "The Tribes."

#### History and Description of the Remains

In 1964, human remains representing, at minimum, six individuals were removed from the Blood Run site (13LO2) in Lyon County, IA. The human remains were removed during an archeological excavation conducted by Dale Henning, and were stored at the University of Wisconsin. At an unknown date, these human remains were transferred to the University of Tennessee, Knoxville. In July 2018, the human remains were transferred to the Iowa Office of the State Archaeologist Bioarchaeology Program (OSA-BP). The human remains belong to two young subadults both between 2.5 and 3.5 years old; one young adult male; one middle adult male; one middle to old adult male; and one probable adult of unknown sex, who is represented by a single tooth (Burial Project 3335). No known individuals were identified. The two associated funerary objects are the tooth of a canine and a faunal long bone fragment.

During the second half of the 20th century, human remains representing, at minimum, one individual were removed from the Blood Run Site (13LO2) in

Lyon County, IA. An incomplete mandible was recovered from the ground surface of the site by a private collector. In May 2017, the human remains were transferred to the OSA-BP. An adolescent aged 13.5 to 19.5 years is represented by the human remains (Burial Project 3198). No known individuals were identified. No associated funerary objects are present.

In 1886, human remains representing, at minimum, three individuals, were removed from the Blood Run Site (13LO2) in Lyon County, IA. The human remains were excavated under the direction of J. White and Frederick Starr. At an unknown date, likely before the turn of the 20th century, some of the human remains from this excavation were donated to the museum at Coe College (Accession #2101). In 2018, Coe College transferred the skeletal remains from 13LO2 to the OSA-BP. Two adults of indeterminate age and sex and one adolescent, 17 to 22 years old, are represented by the human remains (Burial Project 1934). No known individuals were identified. The one associated funerary object is an atlas from a canid, possibly a wolf.

The Blood Run site (13LO2) is a large Oneota tradition village located in Iowa and South Dakota, and straddling the Big Sioux River southeast of Sioux Falls, SD. Archeological evidence, including radiocarbon dates and trade artifacts, suggests that the site was occupied from A.D. 1500 to 1700. Tribal histories, supported by French historical maps and documents, suggest that the Omaha, Ponca, Iowa, and Oto tribes were present in the area at that time, and were the probable residents of the site. The Ho-Chunk and Winnebago are also ethno-historically linked to these tribes. Based on this contextual information, it has been determined that there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and The Tribes.

#### Determinations Made by the Office of the State Archaeologist Bioarchaeology Program

Officials of the Office of the State Archaeologist Bioarchaeology Program have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 10 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the three objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Tribes.

#### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 S Clinton Street, Iowa City, IA 52242, telephone (319) 384-0740, email [lara-noldner@uiowa.edu](mailto:lara-noldner@uiowa.edu), by January 4, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The University of Iowa, Office of the State Archaeologist Bioarchaeology Program is responsible for notifying The Tribes that this notice has been published.

Dated: November 7, 2018.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2018-26437 Filed 12-4-18; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-WASO-NAGPRA-NPS0026952; PPWOCRADN0-PCU00RP14.R50000]

### Notice of Inventory Completion: Wisconsin Historical Society, Madison, WI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Wisconsin Historical Society has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Wisconsin Historical Society. If no additional requestors

come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Wisconsin Historical Society at the address in this notice by January 4, 2019.

**ADDRESSES:** Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264-6434, email [Jennifer.Kolb@wisconsinhistory.org](mailto:Jennifer.Kolb@wisconsinhistory.org).

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Wisconsin Historical Society, Madison, WI. The human remains and associated funerary objects were removed from seven sites in Crawford County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

#### Consultation

A detailed assessment of the human remains was made by the Wisconsin Historical Society professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; and the Upper Sioux Community, Minnesota, hereafter referred to as "The Consulted Tribes."

#### History and Description of the Remains

In 1987, human remains representing, at minimum two individuals were removed from the Karnopp-Eggleston Mound Group (47-CR-0005) in Crawford County, WI. The human remains were transferred to the Wisconsin Historical Society's Burial Sites Preservation Office (BSPO) from

the Office of the Iowa State Archaeologist. While skeletal analysis completed in 1987 determined that the human remains represent a single juvenile additional analysis in 2015 determined the presence of a second individual, a newborn. The Iowa State Archaeologist did not have any documentation as to how these human remains were excavated or disturbed. No known individuals were identified. No associated funerary objects are present.

In 1992, human remains representing, at minimum, two individuals were removed from the Ferryville Implement Company I site (47-CR-0123) in Crawford County, WI. Situated on a terrace over the Mississippi River, the site is a multicomponent habitation area used as a village or campsite from the Late Archaic to the Oneota periods (3000 B.C. to ca. A.D. 1650). Human remains representing one adult and one juvenile of indeterminate sex were excavated by the Mississippi Valley Archaeology Center; the exact location of the trenches is unknown. The BSPO accepted the remains in 1992. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, one individual were removed from Pintz I Site (47-CR-0138) in Crawford County, WI. These human remains, representing one individual of indeterminate sex and age, were discovered when a conical mound was disturbed by a combination of looters, rodent holes, and erosion. The human remains were reported by James Theler of the Mississippi Valley Archaeology Center in 1989 and sent to the BSPO that same year. No known individuals were identified. No associated funerary objects are present.

At an unknown date in the 1930s, human remains representing, at minimum, two individuals were removed from Fort Shelby (47-CR-0249) in Crawford County, WI. The human remains were recovered by Leland Cooper of Hamline University and donated by Hamline University in Minnesota to the Wisconsin Historical Society in the 1930s. The human remains were determined to belong to a juvenile of indeterminate sex and an adult male. No known individuals were identified. No associated funerary objects are present.

In 1988, human remains representing, at minimum, 16 individuals were removed from the Tarbox (47-CR-0441) site in Crawford County, WI. The human remains were encountered during a septic system construction project on the property of Mr. and Mrs. Tarbox. Because the project endangered

the preservation of the human remains, the Tarbox opted to have them removed by the Burial Sites Preservation Office. The human remains belong to two adult males, six probable adult females, two adults of indeterminate sex, and six juveniles of indeterminate sex. No known individuals were identified. The five associated funerary objects are two groups of ceramic sherds, one copper bead, one quartzite projectile point, and one copper awl.

In 1988, human remains representing, at minimum, one individual was removed from the Schmitz Burial site (47-CR-0442) in Crawford County, WI. A portion of the burial was disturbed during a septic system construction project on the property of Mr. Ron Schmitz, and because the remainder of the burial was in jeopardy of being destroyed, Mr. Schmitz opted to have it removed by the Burial Sites Preservation Office. The human remains belong to one adult male. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, one individual were removed from the Charm Burial site (47-CR-0592) in Crawford County, WI. The human remains were collected by an unknown individual from an unknown location along Highway 35, near the city of Charme, and were donated by an unknown individual to the Wisconsin Historical Society in 1934. They were determined to belong to a juvenile of indeterminate sex. Copper staining is present on several of the bone fragments. No known individuals were identified. No associated funerary objects are present.

#### Determinations Made by the Wisconsin Historical Society

Officials of the Wisconsin Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on Wisconsin Historical Society records, burial location, archeological context, oral histories, and skeletal analysis.

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 25 individuals of Native American ancestry.

- Pursuant to 25 U.S.C. 3001(3)(A), the five objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity

cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.

- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.

- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of the Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Ho-Chunk Nation of Wisconsin; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of the Lake Superior Chippewa Indians, Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Ottawa Tribe of Oklahoma; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Winnebago Tribe of Nebraska, hereafter referred to as "The Aboriginal Land Tribes."

- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to The Aboriginal Land Tribes.

#### **Additional Requestors and Disposition**

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Jennifer Kolb, Wisconsin Historical Society, 816 State St.,

Madison, WI 53706, telephone (608) 264-6434, email [Jennifer.Kolb@wisconsinhistory.org](mailto:Jennifer.Kolb@wisconsinhistory.org), by January 4,

2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Aboriginal Land Tribes may proceed.

The Wisconsin Historical Society is responsible for notifying The Aboriginal Land Tribes and The Consulted Tribes that this notice has been published.

Dated: November 7, 2018.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2018-26439 Filed 12-4-18; 8:45 am]

**BILLING CODE 4312-52-P**

## **DEPARTMENT OF THE INTERIOR**

### **National Park Service**

**[NPS-WASO-NAGPRA-NPS0026958; PPWOCRADNO-PCU00RP14.R50000]**

#### **Notice of Inventory Completion: Wisconsin Historical Society, Madison, WI**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Wisconsin Historical Society has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Wisconsin Historical Society. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Wisconsin Historical Society at the address in this notice by January 4, 2019.

**ADDRESSES:** Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608)

264-6434, email [Jennifer.Kolb@wisconsinhistory.org](mailto:Jennifer.Kolb@wisconsinhistory.org).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Wisconsin Historical Society, Madison, WI. The human remains and associated funerary objects were removed from two sites in Sauk County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

#### **Consultation**

A detailed assessment of the human remains was made by the Wisconsin Historical Society professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; and the Upper Sioux Community, Minnesota, hereafter referred to as "The Consulted Tribes."

#### **History and Description of the Remains**

In 1954 and 1955, human remains representing, at minimum, two individuals were removed from Durst Rockshelter (47-SK-0002) in Sauk County, WI. The site was investigated by archeologist Warren Wittry of the Wisconsin Historical Society in 1954 and 1955 as a research project targeted at obtaining diagnostic chronological information of Wisconsin's prehistory. During excavations, Wittry discovered human remains representing one adult female and one individual of indeterminate age and sex. The adult female, found in a primary burial, had been interred in a flexed position in a prepared burial pit. The individual of indeterminate age and sex is represented by only a few skeletal elements that were found intermingled within occupation debris. Wittry could not determine whether the second set of human remains represented an intentional burial or had been displaced due to natural erosion or other causes. No known individuals were identified.



No associated funerary objects are present.

In 1959, human remains representing, at minimum, one individual were removed from Clement Thering Mound (47-SK-0282) in Sauk County, WI. The mound was first investigated by the landowner, Clement Thering, in 1959. Upon discovery of human remains in a subfloor pit, Thering contacted Warren Wittry of the Wisconsin Historical Society. Wittry visited the site within a few days of being contacted, and excavated the human remains. Skeletal analysis conducted in 2003 determined that the remains represent a single adult male between the ages of 15 and 18. No known individuals were identified. The six associated funerary objects are one group of shell ornaments, one group of charcoal and wood fragments, one group of raven remains, one group of chert flakes, one group of projectile points, and one probable deer toe bone.

#### Determinations Made by the Wisconsin Historical Society

Officials of the Wisconsin Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on Wisconsin Historical Society records, burial location, archeological context, oral histories, and skeletal analysis.

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.

- Pursuant to 25 U.S.C. 3001(3)(A), the six objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains associated funerary objects and any present-day Indian Tribe.

- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.

- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.

- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to

the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.

#### Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264-6434, email [Jennifer.Kolb@wisconsinhistory.org](mailto:Jennifer.Kolb@wisconsinhistory.org), by January 4, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska may proceed.

The Wisconsin Historical Society is responsible for notifying The Consulted Tribes, the Ho-Chunk Nation of Wisconsin, and the Winnebago Tribe of Nebraska that this notice has been published.

Dated: November 7, 2018.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2018-26442 Filed 12-4-18; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-WASO-NAGPRA-NPS0026942; PPWOCRADNO-PCU00RP14.R50000]

#### Notice of Inventory Completion: Department of Anthropology Museum at the University of California, Davis, Davis, CA; Correction

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; correction.

**SUMMARY:** The University of California, Davis (UC Davis) has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on August 13, 2008. This notice corrects the minimum number of individuals and number of associated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to UC Davis. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal

descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to UC Davis at the address in this notice by January 4, 2019.

**ADDRESSES:** Megon Noble, NAGPRA Project Manager, University of California, Davis, 433 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752-8501, email [m Noble@ucdavis.edu](mailto:m Noble@ucdavis.edu).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the University of California, Davis, Davis, CA. The human remains and associated funerary objects were removed from CA-YOL-17 in Yolo County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals and number of associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (73 FR 47228-47229, August 13, 2008). Additional human remains were newly identified after review of faunal collections. In addition, human remains from this site previously identified as culturally unidentifiable were re-evaluated in consultation and determined to be culturally affiliated. Based on consultation and review of the original field records, associated funerary objects were added. Transfer of control of the items in this correction notice has not occurred.

#### Correction

In the **Federal Register** (73 FR 47229, August 13, 2008), column one, paragraph one, sentence one is corrected by substituting the following sentence:

In 1967, human remains representing a minimum of four individuals were removed from CA-YOL-17 in Yolo County, CA, by the

University of California, Davis archeological field school (Accession 33).

In the **Federal Register** (73 FR 47229, August 13, 2008), column one, paragraph one, sentence three is corrected by substituting the following sentence:

The 43 associated funerary objects are two Olivella shell beads, six lots of non-human bone, one lot of ochre, one bone tube, one charcoal sample, one pine hull fragment, one shell bead, one charmstone, 21 *Haliotis* sp. Shell beads, two shells, two clam shell disk beads, two steatite beads, and two miscellaneous worked bone fragments.

In the **Federal Register** (73 FR 47229, August 13, 2008), column 1, paragraph 3, sentence one is corrected by substituting the following sentence:

Officials of the Department of Anthropology Museum at the University of California, Davis have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 11 individuals of Native American ancestry.

In the **Federal Register** (73 FR 47229, August 13, 2008), column 1, paragraph 3, sentence two is corrected by substituting the following sentence:

Officials of the Department of Anthropology Museum at the University of California, Davis also have determined that, pursuant to 25 U.S.C. 3001 (3) (A), the 6,935 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

#### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Megon Noble, NAGPRA Project Manager, University of California, Davis, 433 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530)752–8501, email [mnoble@ucdavis.edu](mailto:mnoble@ucdavis.edu), by January 4, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Kletsel Dehe Band of Wintun Indians (previously listed as the Cortina Indian Rancheria and the Cortina Indian Rancheria of Wintun Indians of California); and the Yocha Dehe Wintun Nation, California (previously listed as the Rumsey Indian Rancheria of Wintun Indians of

California), hereafter referred to as “The Tribes” may proceed.

The University of California, Davis is responsible for notifying The Tribes that this notice has been published.

Dated: November 7, 2018.

**Melanie O’Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2018–26444 Filed 12–4–18; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0026951; PPWOCRADN0–PCU00RP14.R50000]**

#### Notice of Inventory Completion: Wisconsin Historical Society, Madison, WI

**AGENCY:** National Park Service, Interior.  
**ACTION:** Notice.

**SUMMARY:** The Wisconsin Historical Society has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Wisconsin Historical Society. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Wisconsin Historical Society at the address in this notice by January 4, 2019.

**ADDRESSES:** Jennifer Kolb, Wisconsin Historical Society, 816 State St, Madison, WI 53706, telephone (608) 264–6434, email [Jennifer.Kolb@wisconsinhistory.org](mailto:Jennifer.Kolb@wisconsinhistory.org).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory

of human remains and associated funerary objects under the control of the Wisconsin Historical Society, Madison, WI. The human remains and associated funerary objects were removed from the Bluff Siding site, Buffalo County, WI and the Britt-Decora site, Trempealeau County, WI.

This notice is published as part of the National Park Service’s administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

#### Consultation

A detailed assessment of the human remains was made by the Wisconsin Historical Society professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; and the Upper Sioux Community, Minnesota, hereafter referred to as “The Consulted Tribes.”

#### History and Description of the Remains

In 1979, human remains representing, at minimum, one individual were removed from the Bluff Siding site (47–BF–0045) in Buffalo County, WI, during an extensive excavation conducted by the Wisconsin Historical Society (WHS) for a Department of Transportation project expanding State Highway 35. The archeologists recovered fragmentary human remains representing an adult individual of indeterminate sex. The human remains were found in two distinct locations, both of which were located in the eastern half of the site. A burial context was recognized at one of these locations that had been disturbed by rodent and root activity. Three clam shells found with these human remains were classified by the excavating archeologists as associated funerary objects, but are not in WHS collections. The human remains found in the second location were scattered among numerous clam shells and faunal remains, but were not identified until formal analysis of materials in the laboratory occurred. No known individuals were identified. The one associated funerary object is a soil sample containing clamshell fragments.

In 1927, human remains representing, at minimum, one individual were

removed from the Britt-Decora site (47–TR–0002) in Trempealeau County, WI. Archeologist Leland Cooper, who was associated with Hamline University in Minnesota at the time, excavated the site in 1927, and recovered the partially cremated remains of a single adult from one of the site’s 25 conical mounds. The human remains were transferred from Hamline University to the Wisconsin Historical Society in 1978. Neither field notes nor reports from Cooper’s investigations were among the transferred materials. No known individuals were identified. No associated funerary objects are present.

#### Determinations Made by the Wisconsin Historical Society

Officials of the Wisconsin Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on Wisconsin Historical Society records, burial location, archeological context, oral histories, and skeletal analysis.

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.

- Pursuant to 25 U.S.C. 3001(3)(A), the one object described in this notice is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains associated funerary objects and any present-day Indian Tribe.

- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota); Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-

Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; and the Yankton Sioux Tribe of South Dakota, hereafter referred to as “The Aboriginal Land Tribes.”

- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to The Aboriginal Land Tribes.

#### Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Jennifer Kolb, Wisconsin Historical Society, 816 State St, Madison, WI 53706, telephone (608) 264–6434, email [Jennifer.Kolb@wisconsinhistory.org](mailto:Jennifer.Kolb@wisconsinhistory.org), by January 4, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Aboriginal Land Tribes may proceed.

The Wisconsin Historical Society is responsible for notifying The Aboriginal Land Tribes and The Consulted Tribes that this notice has been published.

Dated: November 7, 2018.

**Melanie O’Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2018–26438 Filed 12–4–18; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0026950; PPWOCRADN0–PCU00RP14.R50000]**

#### Notice of Intent To Repatriate Cultural Items: Oakland Museum of California, Oakland, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Oakland Museum of California, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects or objects of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Oakland Museum of California. If no

additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Oakland Museum of California at the address in this notice by January 4, 2019.

**ADDRESSES:** Violetta Wolf, Oakland Museum of California, 1000 Oak Street, Oakland, CA 94607, telephone (510) 318–8489, email [vwolf@museumca.org](mailto:vwolf@museumca.org).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Oakland Museum of California, Oakland, CA, that meet the definition of unassociated funerary objects or objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service’s administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

#### History and Description of the Cultural Items

In the 19th or 20th century, one cultural item was removed by an unknown party from an unknown location in California. Sometime in the 20th century, the object came into the possession of the father of Mr. William H. Bird, Sr. of Oakland, CA. The circumstances under which Bird’s father acquired the cultural item are unclear. Bird gifted the cultural item to the Oakland Museum of California on September 26, 1974, when he distributed his father’s collection of Native American cultural items to the Oakland Museum of California, Merritt College, the Lowie Museum of Anthropology (now known as the Phoebe A. Hearst Museum of Anthropology), and the Oakland Museum Women’s Board White Elephant Sale. The one object of cultural patrimony is a xaa-ts’a’ (mush bowl). The mush bowl (catalog number H74.285.6) was accessioned by the Oakland Museum of California in 1974. The mush bowl is woven from twined

bear grass with a diamond pattern. It is approximately four inches tall and eight inches in diameter. The mush bowl was used by family groups.

The cultural item has been identified as Tolowa in archival documents and the original gift documentation. Consultations from the Tolowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California) and the Yurok Tribe of the Yurok Reservation, California have both confirmed the Tolowa affiliation of this cultural item.

In the 19th or 20th century, one cultural item was removed from the mouth of Smith River in Del Norte County, CA. On November 1, 1949, Mr. M. W. Dadey of Oakland, California, donated the item to the Oakland Public Museum. The circumstances under which the cultural item came into the possession of Mr. Dadey are unknown. In 1965, the collection of the Oakland Public Museum was merged with the collections of two other institutions to create the collection of the Oakland Museum of California. The one unassociated funerary object is a stone maul. The stone maul (catalog number H16.4389) is made from basalt or another igneous rock, is six inches long, and was made by pecking and grinding.

The Tolowa Dee-ni' (previously listed as the Smith River Rancheria, California) are culturally affiliated with the area from which the cultural item was removed. This is supported by archival records and reports, museum records, Department of the Interior sources, academic sources, and correspondence with Tolowa Dee-ni' representatives. Additional archival sources and correspondence with the Tolowa Dee-ni' (previously listed as the Smith River Rancheria, California) describe this cultural item as being consistent with the known burial practices of the Tolowa.

#### Determinations Made by the Oakland Museum of California

Officials of the Oakland Museum of California have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the one cultural item identified as catalog number H16.4389 and described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

- Pursuant to 25 U.S.C. 3001(3)(D), the one cultural item identified as catalog number H74.285.6 and described above has ongoing historical, traditional, or cultural importance

central to the Native American group or culture itself, rather than property owned by an individual.

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the two cultural items described above and the Tolowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California).

#### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Violetta Wolf, Oakland Museum of California, 1000 Oak Street, Oakland, CA 94607, telephone (510) 318-8489, email [vwolf@museumca.org](mailto:vwolf@museumca.org), by January 4, 2019. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary object and the object of cultural patrimony to the Tolowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California) may proceed.

The Oakland Museum of California is responsible for notifying the Tolowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California) that this notice has been published.

Dated: November 7, 2018.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2018-26446 Filed 12-4-18; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS-WASO-NAGPRA-NPS0026943; PPWOCRADN0-PCU00RP14.R50000]**

#### Notice of Inventory Completion: University of California, Davis, Davis, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The University of California, Davis (UC Davis), has completed an inventory of human remains housed in the UC Davis Department of Anthropology Museum, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control

of these human remains should submit a written request to UC Davis. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to UC Davis at the address in this notice by January 4, 2019.

**ADDRESSES:** Megon Noble, NAGPRA Project Manager, University of California, Davis, 433 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752-8501, email [mnnoble@ucdavis.edu](mailto:mnnoble@ucdavis.edu).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the University of California, Davis, Davis, CA. The human remains were removed from Lake County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

#### Consultation

A detailed assessment of the human remains was made by UC Davis professional staff in consultation with the Koi Nation of Northern California (previously listed as the Lower Lake Rancheria, California). The Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; Cloverdale Rancheria of Pomo Indians of California; Coyote Valley Band of Pomo Indians of California; Dry Creek Rancheria of Pomo Indians, California (previously listed as the Dry Creek Rancheria of Pomo Indians of California); Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Federated Indians of Graton Rancheria, California; Guidiville Rancheria of California; Habematolel Pomo of Upper Lake, California; Hopland Band of Pomo Indians, California (formerly Hopland Band of Pomo Indians of the Hopland Rancheria, California); Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Lytton Rancheria

of California; Manchester Band of Pomo Indians of the Manchester Rancheria, California (previously listed as the Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California); Middletown Rancheria of Pomo Indians of California; Pinoleville Pomo Nation, California (previously listed as the Pinoleville Rancheria of Pomo Indians of California); Potter Valley Tribe, California; Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California (previously listed as the Redwood Valley Rancheria of Pomo Indians of California); Robinson Rancheria (previously listed as the Robinson Rancheria Band of Pomo Indians, California and the Robinson Rancheria of Pomo Indians of California); Round Valley Indian Tribes, Round Valley Reservation, California (previously listed as the Round Valley Indian Tribes of the Round Valley Reservation, California); Scotts Valley Band of Pomo Indians of California; and the Sherwood Valley Rancheria of Pomo Indians of California, hereafter referred to as "The Tribes Invited to Consult," were invited to consult on the NAGPRA Inventory and either deferred or did not respond.

#### History and Description of the Remains

In 1977, human remains representing, at minimum, two individuals were removed from CA-LAK-471 on the southeastern shore of Clear Lake, adjacent to Anderson Marsh in Lake County, CA. The site was disturbed during installation of a sewage treatment system. The State Water Resources Control Board, Division of Water Quality contracted Ann Peak and Associates to perform a test excavation of the site. Human remains were identified and reinterred at the time of the excavation in cooperation with the Elem Indian Colony. In 1981-1982, the collection was transferred to the UC Davis Department of Anthropology Museum. In 2016, human remains were newly identified within faunal collections from the site. No known individuals were identified. No associated funerary objects are present.

The human remains have been determined to be Native American based on the archeological context of the site. Cultural material from the site includes projectile points, bifaces, flakes, fauna, and groundstone. One radiocarbon date indicate occupation of the site approximately 3,500 to 2,100 years ago. Projectile points indicates a broad temporal range, from 10,000 years ago to the late prehistoric period. Geographic, anthropological, archeological, historical, linguistic, and

traditional sources provide evidence of cultural affiliation between the human remains and contemporary Pomo people. Anthropological sources designate Clear Lake as the aboriginal territory of Pomo and Lake Miwok groups. The Southern Clear Lake/Lower Lake area is attributed to the Southeastern Pomo (Kroeber 1925, McCarthy 1985, McLendon and Lowy 1978, McLendon and Oswalt 1978; Swanton 1952; White et al. 2002). Linguistic evidence suggests that Clear Lake is the proto-Pomo homeland (Golla 2007, Oswalt 1964, Whistler 1984). Information provided by the Koi Nation indicates that this area is the center of Koi ancestral lands and the tribe's pre-contact political, cultural, and spiritual center. Pomo are represented today by the Big Valley Band of Pomo Indians of the Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; Cloverdale Rancheria of Pomo Indians of California; Coyote Valley Band of Pomo Indians of California; Dry Creek Rancheria of Pomo Indians, California (previously listed as the Dry Creek Rancheria of Pomo Indians of California); Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Federated Indians of Graton Rancheria, California; Guidiville Rancheria of California; Habematolel Pomo of Upper Lake, California; Hopland Band of Pomo Indians, California (formerly Hopland Band of Pomo Indians of the Hopland Rancheria, California); Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Koi Nation of Northern California (previously listed as the Lower Lake Rancheria, California), The Consulted Tribe; Lytton Rancheria of California; Manchester Band of Pomo Indians of the Manchester Rancheria, California (previously listed as the Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California); Middletown Rancheria of Pomo Indians of California; Pinoleville Pomo Nation, California (previously listed as the Pinoleville Rancheria of Pomo Indians of California); Potter Valley Tribe, California; Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California (previously listed as the Redwood Valley Rancheria of Pomo Indians of California); Robinson Rancheria (previously listed as the Robinson Rancheria Band of Pomo Indians, California and the Robinson Rancheria of Pomo Indians of California); Round Valley Indian Tribes, Round Valley Reservation, California (previously listed as the Round Valley Indian Tribes of the Round Valley

Reservation, California); Scotts Valley Band of Pomo Indians of California; and the Sherwood Valley Rancheria of Pomo Indians of California; hereafter referred to as "The Affiliated Tribes." The closest affiliation of CA-LAK-471 is to the Southeastern Pomo represented by the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California and the Koi Nation of Northern California (previously listed as the Lower Lake Rancheria, California).

#### Determinations Made by the University of California, Davis

Officials of the University of California, Davis have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Affiliated Tribes.

#### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Megan Noble, NAGPRA Project Manager, University of California, Davis, 433 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530)752-8501 email [mnoble@ucdavis.edu](mailto:mnoble@ucdavis.edu), by January 4, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Affiliated Tribes may proceed.

UC Davis is responsible for notifying The Tribes Invited to Consult and The Affiliated Tribes that this notice has been published.

Dated: November 7, 2018.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2018-26445 Filed 12-4-18; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-WASO-NAGPRA-NPS0026945; PPWOCRADN0-PCU00RP14.R50000]

**Notice of Inventory Completion:  
Department of Anthropology, Southern  
Methodist University, Dallas, TX**

**AGENCY:** National Park Service, Interior.  
**ACTION:** Notice.

**SUMMARY:** The Department of Anthropology, Southern Methodist University has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Department of Anthropology, Southern Methodist University. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Department of Anthropology, Southern Methodist University at the address in this notice by January 4, 2019.

**ADDRESSES:** B. Sunday Eiselt, Department of Anthropology, Southern Methodist University, 3225 Daniel Avenue, Heroy Hall #450, Dallas, TX 75205, telephone (214) 768-2915, email [seiselt@smu.edu](mailto:seiselt@smu.edu).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Department of Anthropology, Southern Methodist University, Dallas, TX. The human remains were removed from the R.A. Watts site, Camp County, TX; the Whiterock Spillway site, Dallas County, TX; and the Lower Rockwall site, Rockwall County, TX.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

#### Consultation

A detailed assessment of the human remains was made by the Department of Anthropology, Southern Methodist

University professional staff in consultation with representatives of the Caddo Nation of Oklahoma, and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma.

#### History and Description of the Remains

Sometime in the 1960s, human remains representing, at minimum, one individual were removed from the R.A. Watts site (41CP14) in Camp County, Texas. The individual was excavated by R. L. Turner, an amateur archeologist and private collector. Subsequently (possibly during the 1960s or 1970s when the Department of Anthropology, Southern Methodist University was conducting investigations for the Titus County Fresh Water Supply District No. 1 in Camp County, TX), Turner transferred these human remains to the Department of Anthropology, Southern Methodist University. The burial is labeled Feature 3, Area B. No other information is known about this individual. No known individuals were identified. No associated funerary objects are present.

Archeologists Timothy L. Sullivan, S. Alan Skinner, and Beverly A. Mitchum have dated the major occupation of the R.A. Watts site to the Titus Focus of the Late Caddo Period (A.D. 1400-1600). The final, published report affiliates this site with the ancestral Caddo. The Caddo Nation of Oklahoma claims Camp County, TX as an area of interest.

In December 1940, human remains representing, at minimum, four individuals were removed from the Whiterock Spillway site (41DL83; also known as 18D7-1 and 27A5-19D5) in Dallas County, TX. The site was excavated by two avocational archeologists, Forrest Kirkland and R. King Harris of the Dallas Archeological Society. R. King Harris worked in the Department of Anthropology, Southern Methodist University and, upon his retirement in 1974, he transferred the remains of these individuals to the Department of Anthropology, Southern Methodist University. Burial 1 contained an adult male, 30-40 years old, with possible healed mandibular infarctions. Burial 4 contained an adult of unknown sex, 18-25+ years old, with no skeletal pathology. Burial 5 contained an adult male, 40+ years old, with no skeletal pathology. This individual has dental caries, and has completely lost the cusps of the premolars and molars. Burial 7 contained an adult male, 25+ years old, with no skeletal pathology. This individual has one dental cavity, and has completely lost the cusps of the premolars and molars. No known

individuals were identified. No associated funerary objects are present.

Archeologists Mark E. Huff, Jr. and Norman Briggs have dated the Whiterock Spillway site to the Wylie Focus of the Middle to Late Caddo Periods (A.D. 1200-1680). The final, published report affiliates this site with the ancestral Caddo. The Caddo Nation of Oklahoma claims Dallas County, TX, as an area of interest.

In 1965, human remains representing, at minimum, three individuals were removed from the Lower Rockwall Site (41RW1; also known as 27B1-2, RW2) in Rockwall County, TX. The site was excavated by the Department of Anthropology, Southern Methodist University under contract to the National Park Service. The human remains from Burial 1 consist solely of the cranium of a middle-aged female. This grave had been dug into the side of the inward slope of the north rim of a large pit. The skull was found lying on its right side, with the top of the head to the north and the face to the west. Burial 2 contained an adult female, 35-45 years old. This individual lay in a flexed position on the left side, with the head to the west. The head was bent downward with the chin resting on the chest and facing toward the east. The right hand rested on the top of the head, and the left arm was bent across the chest. No description is given for the third individual. No known individuals were identified. No associated funerary objects are present.

Archeologists Dessamae Lorrain and Norma Hoffrichter date the occupation of the Lower Rockwall site between 1000 B.C. and A.D. 1300, *i.e.* from the Middle/Late Archaic to the Wylie Focus. The final, published report affiliates this site with the ancestral Caddo. The Caddo Nation of Oklahoma claims Rockwall County, TX as an area of interest.

#### Determinations Made by the Department of Anthropology, Southern Methodist University

Officials of the Department of Anthropology, Southern Methodist University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of eight individuals of Native American ancestry.

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Caddo Nation of Oklahoma.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to B. Sunday Eiselt, Department of Anthropology, Southern Methodist University, 3225 Daniel Avenue, Heroy Hall #450, Dallas, TX 75205, telephone (214) 768-2915, email [seiselt@smu.edu](mailto:seiselt@smu.edu), by January 4, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Caddo Nation of Oklahoma may proceed.

The Department of Anthropology, Southern Methodist University is responsible for notifying the Caddo Nation of Oklahoma, and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma that this notice has been published.

Dated: November 7, 2018.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2018-26436 Filed 12-4-18; 8:45 am]

**BILLING CODE 4312-52-P**

**DEPARTMENT OF THE INTERIOR****National Park Service**

[NPS-WASO-NAGPRA-NPS0026957; PPWOCRADNO-PCU00RP14.R50000]

**Notice of Inventory Completion: Wisconsin Historical Society, Madison, WI**

**AGENCY:** National Park Service, Interior.  
**ACTION:** Notice.

**SUMMARY:** The Wisconsin Historical Society has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Wisconsin Historical Society. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to

request transfer of control of these human remains should submit a written request with information in support of the request to the Wisconsin Historical Society at the address in this notice by January 4, 2019.

**ADDRESSES:** Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264-6434, email [Jennifer.Kolb@wisconsinhistory.org](mailto:Jennifer.Kolb@wisconsinhistory.org).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Wisconsin Historical Society, Madison, WI. The human remains were removed from the Northwestern Military and Naval Academy Mounds, Walworth County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by the Wisconsin Historical Society professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; and the Upper Sioux Community, Minnesota, hereafter referred to as "The Consulting Tribes."

**History and Description of the Remains**

In 1927, human remains representing, at minimum, two individuals were removed from the Northwestern Military and Naval Academy Mounds (47-WL-0061) in Walworth County, WI. The Northwestern Military and Naval Academy Mounds site is comprised of five conical mounds and a habitation site. Charles E. Brown and members of the Geneva Lake Archeological Survey excavated Mounds 1 and 2 in 1927. A single burial feature was excavated near the center of Mound 2 just beneath the surface of the ground upon which the mound was constructed. Skeletal analysis completed by Wisconsin Historical Society staff determined that the human remains represent one adult

male between the ages of 30 and 50, and one individual of indeterminate age and sex. The Geneva Lake Archeological Survey donated the human remains to the Wisconsin Historical Society in 1928. No known individuals were identified. No associated funerary objects are present.

**Determinations Made by the Wisconsin Historical Society**

Officials of the Wisconsin Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on Wisconsin Historical Society records, burial location, archeological context, oral histories, and skeletal analysis.

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.

- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.

- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Match-e-be-nash-she-wish Band of Potawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; and the Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas), hereafter referred to as "The Aboriginal Land Tribes."

- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior

Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior  
Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior  
Chippewa Indians of Michigan; Matche-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Pottawatomi, Michigan (previously listed as the Huron Pottawatomi, Inc.); Ottawa Tribe of Oklahoma; Pokagon Band of Pottawatomi Indians, Michigan and Indiana; Prairie Band Pottawatomi Nation (previously listed as the Prairie Band of Pottawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota, hereafter referred to as "The Tribes."

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Aboriginal Land Tribes and The Tribes.

#### Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264-6434, email [Jennifer.Kolb@wisconsinhistory.org](mailto:Jennifer.Kolb@wisconsinhistory.org), by January 4, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Aboriginal Land Tribes and The Tribes may proceed.

The Wisconsin Historical Society is responsible for notifying The Aboriginal Land Tribes, The Tribes, and The Consulted Tribes that this notice has been published.

Dated: November 7, 2018.

#### Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018-26441 Filed 12-4-18; 8:45 am]

BILLING CODE 4312-52-P

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-WASO-NAGPRA-NPS0026959; PPWOCRADNO-PCU00RP14.R50000]

#### Notice of Inventory Completion: Wisconsin Historical Society, Madison, WI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Wisconsin Historical Society has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Wisconsin Historical Society. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Wisconsin Historical Society at the address in this notice by January 4, 2019.

**ADDRESSES:** Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264-6434, email [Jennifer.Kolb@wisconsinhistory.org](mailto:Jennifer.Kolb@wisconsinhistory.org).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Wisconsin Historical Society, Madison, WI. The human remains and associated funerary objects were removed from the Wakanda Park Mound Group, Dunn County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are

the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

#### Consultation

A detailed assessment of the human remains was made by the Wisconsin Historical Society professional staff in consultation with representatives of the Forest County Pottawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; and the Upper Sioux Community, Minnesota, hereafter referred to as "The Consulted Tribes."

#### History and Description of the Remains

In 1957, human remains representing, at minimum, 24 individuals were removed from the Wakanda Park Mound Group (47-DN-0001) in Dunn County, WI. The site was investigated in 1957 by Warren Wittry of the Wisconsin Historical Society, and shortly thereafter, it was inundated by the construction of a dam. Wittry and his team conducted excavations in seven of the mounds, and recovered human remains representing one adult male, eleven adults of indeterminate sex, seven subadults, and five individuals of indeterminate age and sex. Burial practices included both sub-floor pits and cremation. The human remains were recovered from eleven of the fifteen mounds investigated (Mounds 1, 3, 6-8, 10-14, 16). No known individuals were identified. The seven associated funerary objects include one clay mask in fragments, one partial ceramic vessel, one quartzite flake, one copper bead necklace, one quartzite biface, and two groups of charred wood fragments.

#### Determinations Made by the Wisconsin Historical Society

Officials of the Wisconsin Historical Society have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on Wisconsin Historical Society records, burial location, archeological context, oral histories, and skeletal analysis.

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 24 individuals of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(3)(A), the seven objects described in this



notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains associated funerary objects and any present-day Indian Tribe.

- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota); Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Saginaw Chippewa Indian Tribe of Michigan; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians Michigan; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake

Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota; Upper Sioux Community, Minnesota; and the Yankton Sioux Tribe of South Dakota, hereafter referred to as "The Aboriginal Land Tribes."

- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to The Aboriginal Land Tribes.

#### Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264-6434, email [Jennifer.Kolb@wisconsinhistory.org](mailto:Jennifer.Kolb@wisconsinhistory.org), by January 4, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Aboriginal Land Tribes may proceed.

The Wisconsin Historical Society is responsible for notifying The Aboriginal Land Tribes and The Consulted Tribes that this notice has been published.

Dated: November 7, 2018.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2018-26443 Filed 12-4-18; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

**[S1D1S SS08011000 SX064A000 190S180110; S2D2S SS08011000 SX064A000 19XS501520; OMB Control Number 1029-0115]**

#### Agency Information Collection Activities: Requirements for Permits and Permit Processing

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing our intention to request renewed approval for the collection of information for permits and permit processing. This information collection

also authorizes the collection of permit processing fees approved under OSMRE regulations.

**DATES:** Interested persons are invited to submit comments on or before January 4, 2019.

**ADDRESSES:** Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov); or via facsimile to (202) 395-5806. Please provide a copy of your comments to Harry Payne, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Mail Stop 4557, Washington, DC 20240; or by email to [HPayne@osmre.gov](mailto:HPayne@osmre.gov). Please reference OMB Control Number 1029-0115 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Harry Payne by email at [HPayne@osmre.gov](mailto:HPayne@osmre.gov), or by telephone at (202) 208-2895. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provides the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 5, 2018 (83 FR 45140). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of OSMRE; (2) is the estimate of burden accurate; (3) how might OSMRE enhance the quality, utility, and clarity of the information to be collected; and (4) how might OSMRE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you

should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Title of Collection:* 30 CFR Part 773—Requirements for Permits and Permit Processing.

*OMB Control Number:* 1029–0115.

*Abstract:* This collection of information is authorized by part 773 which addresses general and specific requirements for applicants to provide information in the permitting process, and for regulatory authorities to review permit applications, determine permit eligibility, and ascribe permit conditions. Part 773 also contains provisions governing provisionally issued permits, improvidently issued permits, and challenges of ownership or control listings and findings. This information collection also authorizes the collection of permit processing fees approved under OSMRE regulations.

*Form Number:* None.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Coal mine operators and State regulatory authorities.

*Total Estimated Number of Annual Respondents:* 927 Coal mine operators and 24 State regulatory authorities.

*Total Estimated Number of Annual Responses:* 941 Coal mine operator responses and 4,080 State regulatory authority responses.

*Estimated Completion Time per Response:* Varies from 1 to 6 hours per response from Coal mine operators, and 1 to 32 hours for State regulatory authorities, depending on collection activity.

*Total Estimated Number of Annual Burden Hours:* 56,078 hours.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* Once.

*Total Estimated Annual Nonhour Burden Cost:* \$99,000.

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.

**Authority:** The authorities for this action are the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1201 *et seq.*), and the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**John A. Trelease,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 2018–26424 Filed 12–4–18; 8:45 am]

**BILLING CODE 4310–05–P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

**[S1D1S SS08011000 SX064A000 190S180110; S2D2S SS08011000 SX064A000 19XS501520; OMB Control Number 1029–0089]**

#### Agency Information Collection Activities: Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing our intention to request renewed approval for the collection of information which implements the requirement in Section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This grants an exemption from the requirements of SMCRA to operators extracting not more than 16 <sup>2</sup>/<sub>3</sub> percentage tonnage of coal incidental to the extraction of other minerals. This information will be used by the regulatory authorities to make that determination.

**DATES:** Interested persons are invited to submit comments on or before January 4, 2019.

**ADDRESSES:** Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov); or via facsimile to (202) 395–5806. Please provide a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Mail Stop 4559, Washington, DC 20240; or by email to [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov). Please reference OMB Control Number 1029–0089 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact John Trelease by email at [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov), or by telephone at (202) 208–2783. You may also view

the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provides the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 5, 2018 (83 FR 45139). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of OSMRE; (2) is the estimate of burden accurate; (3) how might OSMRE enhance the quality, utility, and clarity of the information to be collected; and (4) how might OSMRE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Title of Collection:* 30 CFR part 702—Exemption for Coal Extraction Incidental to the Extraction of Other Minerals.

*OMB Control Number:* 1029–0089.

*Abstract:* This Part implements the requirement in Section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which grants an exemption from the requirements of SMCRA to operators extracting not more than 16 <sup>2</sup>/<sub>3</sub> percentage tonnage of coal incidental to the extraction of other minerals. This information will be used by the regulatory authorities to make that determination.

*Form Number:* None.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Coal mine operators and State regulatory authorities.

*Total Estimated Number of Annual Respondents:* 43 Coal mine operators and 24 State regulatory authorities.

*Total Estimated Number of Annual Responses:* 86 Coal mine operator responses and 126 State regulatory authority responses.

*Estimated Completion Time per Response:* Varies from 1 to 28 hours per response from Coal mine operators, and 1 to 30 hours for State regulatory authorities, depending on collection activity.

*Total Estimated Number of Annual Burden Hours:* 703 hours.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* Once and annually.

*Total Estimated Annual Nonhour Burden Cost:* \$600.

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.

**Authority:** The authorities for this action are the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1201 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**John A. Trelease,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 2018-26425 Filed 12-4-18; 8:45 am]

**BILLING CODE 4310-05-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 190S180110; S2D2S SS08011000 SX064A000 19XS501520; OMB Control Number 1029-0120]

#### Agency Information Collection Activities: Nomination and Request for Payment Form for OSMRE's National Technical Training Courses

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE)

are announcing our intention to request renewed approval for the collection of information which is used to identify and evaluate the training courses requested by students to enhance their job performance, to calculate the number of classes and instructors needed to complete OSMRE's technical training mission, and to estimate costs to the training program.

**DATES:** Interested persons are invited to submit comments on or before January 4, 2019.

**ADDRESSES:** Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov); or via facsimile to (202) 395-5806. Please provide a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Mail Stop 4559, Washington, DC 20240; or by email to [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov). Please reference OMB Control Number 1029-0120 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact John Trelease by email at [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov), or by telephone at (202) 208-2783. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provides the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on July 12, 2018 (83 FR 32328). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of OSMRE; (2) is the estimate of burden accurate; (3) how might OSMRE enhance the quality, utility, and clarity of the information to be collected; and (4) how might OSMRE minimize the burden of this collection on the

respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Title of Collection:* Nomination and Request for Payment Form for OSMRE's National Technical Training Courses.

*OMB Control Number:* 1029-0120.

*Abstract:* The form is used to identify and evaluate the training courses requested by students to enhance their job performance, to calculate the number of classes and instructors needed to complete OSMRE's technical training mission, and to estimate costs to the training program.

*Form Number:* OSM-105.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* State and Tribal regulatory and reclamation employees.

*Total Estimated Number of Annual Respondents:* 970 respondents.

*Total Estimated Number of Annual Responses:* 970 responses.

*Estimated Completion Time per Response:* 5 minutes.

*Total Estimated Number of Annual Burden Hours:* 81 hours.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* Once.

*Total Estimated Annual Nonhour Burden Cost:* \$0.

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.

**Authority:** The authorities for this action are the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1201 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**John A. Trelease,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 2018-26426 Filed 12-4-18; 8:45 am]

**BILLING CODE 4310-05-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-672-673 (Fourth Review)]

### Silicomanganese From China and Ukraine; Determinations

On the basis of the record<sup>1</sup> developed in the subject five-year reviews, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that revocation of the antidumping duty orders on silicomanganese from China and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>2</sup>

#### Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted these reviews on October 2, 2017 (82 FR 45892) and determined on January 5, 2018 that it would conduct full reviews (83 FR 3025, January 22, 2018). Notice of the scheduling of the Commission’s reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on May 25, 2018 (83 FR 24346). The hearing was held in Washington, DC, on September 25, 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 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on November 30, 2018. The views of the Commission are contained in USITC Publication 4845 (November 2018), entitled *Silicomanganese from China and Ukraine: Investigation Nos. 731-TA-672-673 (Fourth Review)*.

By order of the Commission.

Issued: November 30, 2018.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2018-26500 Filed 12-4-18; 8:45 am]

**BILLING CODE 7020-02-P**

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup> Commissioner Meredith M. Broadbent dissenting with respect to the determination regarding silicomanganese from China.

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1121]

### Certain Earpiece Devices and Components Thereof; Notice of Correction Concerning Commission Determination Not To Review an Initial Determination Granting a Motion for Leave To Amend the Complaint and Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Correction of Notice.

**SUMMARY:** Correction is made to notice 83 FR 61168–6169, which was published on November 28, 2018, to replace all instances of “Ontario, Canada” with “Ontario, California.”

By order of the Commission.

Issued: November 30, 2018.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2018-26467 Filed 12-4-18; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Armaments Consortium

Notice is hereby given that, on November 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”), National Armaments Consortium (“NAC”) 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, Adranos, Inc., West Lafayette, IN; Aeryon Defense USA, Inc., Denver, CO; Applied Technology, Inc., King George, VA; Aquabotix Technology Corporation, Fall River, MA; Archarithms, Inc., Huntsville, AL; ASRC Federal Astronautics, LLC, Huntsville, AL; Aviation & Missile Solutions, LLC, Huntsville, AL; Bally Ribbon Mills, Bally, PA; Barrett Firearms Manufacturing, Inc., Christina, TN; California State University, Long Beach Research Foundation, Long Beach, CA; CKS Technologies, Huntsville, AL; Defense Makers Incorporated,

Huntsville, AL; Elta North America, Annapolis Junction, MD; Fairwinds Technologies, Inc., Annapolis, MD; Fraen Corporation, Reading, MA; Fulcrum Concepts LLC, Mattaponi, VA; Future Skies, Inc., Wall Township, NJ; Geocent, LLC, Metairie, LA; Invisible Interdiction, Inc., Vero Beach, FL; L3 Technologies, Communication Systems West, Salt Lake City, UT; LaserMax, Inc. dba LaserMaxDefense (LMD), Rochester, NY; Liteye Systems, Inc., Centennial, CO; Mad Minute, LLC, Detroit, MI; McConnell Jones Lanier & Murphy LLP d.b.a. MJLM Engineering & Technical Services, Huntsville, AL; Megaray LLC, New York, NY; Microwave Innovations, Inc., Furlong, PA; Millennium Corporation, Arlington, VA; N2 Imaging Systems, LLC, Irvine, CA; Pacific Antenna Systems LLC, Camarillo, CA; Point Blank Enterprises, Inc., Pompano Beach, FL; Production Systems Automation, LLC, Duryea, PA; Quantum Information Extraction, Inc. (QIE, Inc.), Huntsville, AL; Research Innovations, Inc., Alexandria, VA; Rochester Institute of Technology, Rochester, NY; Spectral Sciences, Inc., Burlington MA; Steiner eOptics, Inc., Miamisburg, OH; System Studies & Simulation, Inc. (S3), Huntsville, AL; Systematic Inc., Centerville, VA; T.E.A.M., Inc., Woonsocket, RI; Tech62, Inc., Fairfax, VA; TELEGRID Technologies, Inc., Florham, NJ; TeraSys Technologies, El Dorado Hills, CA; Troy Industries, Inc., West Springfield, MA; Tungsten Heavy Powder, Inc., San Diego, CA; Ultimate Training Munitions, Inc., North Branch, NJ; Vista Outdoor Sales, LLC, Anoka, MN; Wichita State University, Wichita, KS; and Willbrook Solutions, Inc., Huntsville, AL, have been added as parties to this venture.

Also, Advanced Materials & Manufacturing Technologies, LLC, Granite Bay, CA; Andrews Space, Tukwila, WA; ATS Armor, LLC, Scottsdale, AZ; Bruker Detection Corporation, Billerica, MA; C6I Services Corporation, Chesterfield, NJ; Digital Fusion Solutions, Inc., a wholly-owned subsidiary of Kratos Defense & Security Solutions, Inc., Huntsville, AL; Drexel University, Philadelphia, PA; Earthly Dynamics LLC, Atlanta, GA; Fibertek, Inc., Herndon, VA; Fraser Optics LLC, Feasterville-Trevoze, PA; Group W, Fairfax, VA; HBM nCode Federal, LLC, Southfield, MI; Honeybee Robotics, Ltd., Brooklyn, NY; Joint Research and Development, Inc., Belcamp, MD; K2 Solutions, Inc., Southern Pines, PA; L-3 Applied Technologies, Inc., San Leandro, CA; Missouri University of Science and Technology, Rolla, MO; Novotech, Inc., Acton, MA; Shell Shock

Technologies, LLC, Westport, CT; Shonborn-Becker Systems, Inc., Eatontown, NJ; Streamline Numerics, Inc., Gainesville, FL; Tanenhaus and Associates, Inc., Annapolis, VA; Tethers Unlimited, Inc., Bothell, WA; and Thermacore Materials Technology Division, Lancaster, PA, have withdrawn as parties 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 NAC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NAC 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 June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on July 20, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 6, 2018 (83 FR 38323).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics Unit, Antitrust Division.*

[FR Doc. 2018-26394 Filed 12-4-18; 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—Countering Weapons of Mass Destruction

Notice is hereby given that, on October 29, 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”), Countering Weapons of Mass Destruction (“CWMD”) 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, Artis LLC, Herndon, VA; ATCC, Manassas, VA; BaySpec, Inc., San Jose, CA; CAM2 Technologies, LLC dba Czitek, Danbury, CT; Government Scientific Source (GSS), Reston, VA; IMSAR LLC, Springville, UT; K2 Group, Inc., Vienna, VA; Kitware, Inc., Clifton Park, NY; Kopis Mobile LLC, Flowood, MS; L3 Sonoma E.O., Santa Rosa, CA; Liteye Systems, Inc., Centennial, CO; Manufacturing Techniques (MTEQ),

Lorton, VA; MKS Technology, Inc., Laramie, WY; Mountain Horse Solutions, Colorado Springs, CO; N5 Sensors, Rockville, MD; Phoenix, LLC, Madison, WI; PROENGIN, Inc., Plantation, FL; Protection Engineering Consultants, Austin, TX; Rock West Composites, Inc., San Diego, CA; Rocky Mountain Scientific Lab, Littleton, CO; Strategic Alliances Group, Inc., Havre de Grace, MD; and Virginia Tech Applied Research Corporation, Arlington, VA, have been added as parties to this venture.

Also, MaXentric Technologies, LLC, Fort Lee, NJ; Star Cases, LLC dba Zero Manufacturing, North Salt Lake, UT; North Carolina A & T (NC A&T), Greensboro, NC; GeoVax, Inc., Smyrna, GA; and InnovaPrep, LLC, Drexel, MO, have withdrawn as parties 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 CWMD intends to file additional written notifications disclosing all changes in membership.

On January 31, 2018, CWMD 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 March 12, 2018 (83 FR 10750).

The last notification was filed with the Department on August 6, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 4, 2018 (83 FR 44904).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics Unit, Antitrust Division.*

[FR Doc. 2018-26395 Filed 12-4-18; 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—Cooperative Research Group on ROS-Industrial Consortium Americas

Notice is hereby given that, on November 8, 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”), Southwest Research Institute—Cooperative Research Group on ROS-Industrial Consortium-Americas (“RIC-Americas”) 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, IDEXX Laboratories, Westbrook, ME, 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 RIC-Americas intends to file additional written notifications disclosing all changes in membership.

On April 30, 2014, RIC-Americas 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 June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on September 28, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 2, 2018 (83 FR 55204).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics Unit, Antitrust Division.*

[FR Doc. 2018-26391 Filed 12-4-18; 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—Space Enterprise Consortium

Notice is hereby given that, on November 8, 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”), Space Enterprise Consortium (“SpEC”) 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, Benchmark Space Systems, Inc., South Burlington, VT; Teledyne Scientific & Imaging LLC, Thousand Oaks, CA; Mimyr, LLC, Torrance, CA; R2 Space, Inc., Fairfax, VA; Sechan Electronics, Inc., Lititz, PA; Arkham Technology, Limited, Irvine, CA; Aegis Technologies Group, Inc., Huntsville,

AL; Rockwell Collins, Inc., Cedar Rapids, IA; Toyon Research Corporation, Goleta, CA; ELCOMM, LLC, Acworth, GA; Business Integra Technology Solutions, Inc., Bethesda, MD; Astra Space, Inc., Alameda, CA; Disruptive Technology Associates, Ltd., Phoenix, AZ; SpaceNav, LLC, Boulder, CO; Oceaneering International, Inc., Houston, TX; Torch Technologies, Inc., Huntsville, AL; KinetX, Inc., Tempe, AZ; IAI, LLC, Chantilly, VA; CACI NSS, Inc., Colorado Springs, CO; Teledyne Brown Engineering, Inc., Huntsville, AL; Airbus OneWeb Satellites LLC, Cocoa, FL; Knight Sky, LLC, Frederick, MD; Interstate Electronics Corporation, Anaheim, CA; Crean & Associates, Lakeway, TX; AS and D, Inc., Beltsville, MD; ISYS Incorporated, Littleton, CO; Peraton Incorporated, Herndon, VA; Slingshot Aerospace, Inc., El Segundo, CA; Millennium Engineering and Integration Company, Arlington, VA; Vulcan Wireless, Inc., Carlsbad, CA; Delta Solutions & Strategies, LLC, Colorado Springs, CO; Oewaves, Inc., Pasadena, CA; T2S, LLC, Belcamp, MD; Lucid Circuit, Inc., Santa Monica, CA; Arete Associates, Northridge, CA; Bluestaq, Colorado Springs, CO; DRS

Networking & Imaging Systems, LLC, Dallas, TX; LeoLabs, Inc., Menlo Park, CA; Microwave Photonics Systems, Inc., West Chester, PA; Astrapi Corporation, Dallas, TX; and SA Photonics, Los Gatos, CA, have been added as parties to this venture.

Also, Blacknight Cybersecurity International, Inc., Redmond, VA; CMA Technologies, Orlando, FL; and ATSMER, LLC, Tuscon, AZ have withdrawn as parties 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 SpEC intends to file additional written notifications disclosing all changes in membership.

On August 23, 2018, SpEC 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 October 2, 2018 (83 FR 49576).

**Suzanne Morris**,  
*Chief, Premerger and Division Statistics Unit, Antitrust Division.*

[FR Doc. 2018-26398 Filed 12-4-18; 8:45 am]

**BILLING CODE 4410-11-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

[Docket No. DEA-392]

**Bulk Manufacturer of Controlled Substances Registration**

**ACTION:** Notice of registration.

**SUMMARY:** The registrant listed below has applied for and been granted a registration by the Drug Enforcement Administration (DEA) as a bulk manufacturer of a schedule I controlled substance.

**SUPPLEMENTARY INFORMATION:** The company listed below applied to be registered as a bulk manufacturer of a controlled substance. Information on the previously published notice is listed in the table below. No comments or objections were submitted for this notice.

Company	FR Docket	Published
Absolute Standards, Inc .....	83 FR 48868 .....	September 27, 2018.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of this registrant to manufacture the applicable basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the DEA has granted a registration as a bulk manufacturer to the above listed company.

Dated: November 30, 2018.

**John J. Martin**,

*Assistant Administrator.*

[FR Doc. 2018-26509 Filed 12-4-18; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

[Docket No. 18-21]

**Decision and Order: Zelideh I. Cordova-Velazco, M.D.**

On February 27, 2018, the Acting Assistant Administrator, Diversion Control Division, issued an Order to Show Cause to Zelideh I. Cordova-Velazco, M.D. (Respondent), of Puerto Rico. The Show Cause Order proposed the denial of the Respondent's application for a DEA Certificate of Registration in Puerto Rico as a practitioner, Control No. W16052461C, on the grounds that Respondent materially falsified that application. Order to Show Cause, at 1 (citing 21 U.S.C. 824(a)(1)).

With respect to the Agency's jurisdiction, the Show Cause Order alleged that on June 16, 2016, Respondent applied for a DEA Registration as a practitioner in schedules II through V at the proposed business address of Hacienda Del Dorado, K1 Calle Delonix, Toa Alta, Puerto Rico. *Id.* The Order also alleged

that DEA assigned Control No. W16052461C to the application. *Id.*

As to the substantive grounds for the proceeding, the Show Cause Order alleged that Respondent previously held DEA Certificate of Registration No. BC4141139 in Michigan. *Id.* at 2. In addition, the Order alleged that Respondent "voluntarily surrendered for cause" that Registration "on or about January 17, 2014." *Id.* The Order further alleged that Respondent materially falsified her application for a new DEA Registration in Puerto Rico on June 16, 2016 with respect to two liability questions on the application. *Id.* The Order alleged that the first material falsification was that the Respondent answered "N" when asked: "Has the applicant ever surrendered (for cause) or had a federal controlled substance registration, revoked, suspended, restricted or denied, or is any such action pending?" *Id.* The Order alleged that the second material falsification was that Respondent answered "N" when asked: "Has the applicant ever surrendered (for cause) or had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed

on probation, or is any such action pending?" *Id.* The Order asserted that these alleged material falsifications "warrant the denial of your application for registration." *Id.* (citing 21 U.S.C § 824(a)(1)).

The Show Cause Order notified Respondent of her right to request a hearing on the allegations or to submit a written statement while waiving her right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2–3 (citing 21 CFR 1301.43). The Order also notified Respondent of the opportunity to submit a corrective action plan. *Id.* at 3 (citing 21 U.S.C. § 824(c)(2)(C)).

After being served with the Order, Respondent filed a timely "Request for Hearing" on March 26, 2018 requesting a hearing on the allegations. Request for Hearing (dated March 22, 2018) (hereinafter Hearing Request). In her Hearing Request, Respondent states that she "d[id] not recall that I indicate [sic] 'no' to the questions" in the application and that she "was helped by a friend in filling out the application and probably by mistake and/or ignorance in understanding the questions I answered 'no.'" *Id.* at 2. Respondent also states that she surrendered her Michigan medical license and "accept[ed] a six months and one day suspension, for being negligent, in not securing my prescription pad" and then "voluntarily surrender[ed her] DEA license to prescribe[] control[led] substance[s]." *Id.* She also asserts that "[i]f I would have known the consequences of accepting the suspension, I would have litigated the case in Michigan, because I did nothing wrong. There is no practical reason not to inform the suspension of Michigan. The suspension appears online in the medical board data bank." *Id.* She also "request[ed] discovery in the present matter, including [a] copy of the record and/or file with DEA." *Id.*

The matter was placed on the docket of the Office of Administrative Law Judges and assigned to Administrative Law Judge Charles Wm. Dorman (ALJ). Thereafter, on March 26, 2018, the ALJ entered an Order for Prehearing Statements, directing the Government to file its Prehearing Statement on April 10, 2018, and the Respondent to file hers on April 24, 2018. Order for Prehearing Statements, at 1. The Order also directed the parties to participate in a telephonic prehearing conference on April 25, 2018. *Id.* at 2. The Government filed its Prehearing Statement on April 10, 2018, and Respondent filed, through counsel, her Prehearing Statement on April 20, 2018.

In Respondent's Prehearing Statement, Respondent stipulated that she voluntarily surrendered her Michigan medical license after being informed of an investigation for improperly prescribing medication. Respondent's Prehearing Statement, at 2. In addition, Respondent stipulated that she was previously registered with DEA pursuant to DEA Certificate of Registration No. BC4141139, and that she voluntarily surrendered for cause that registration. *Id.* at 3.

On April 20, 2018, the Government filed a Motion for Summary Disposition based upon the Respondent's material falsification of her application for a DEA Registration in Puerto Rico on June 16, 2016. Specifically, the Government alleged that there was no dispute of material fact that Respondent materially falsified her application for a DEA Registration when she answered "N" to the following liability questions on the application: (1) "Has the applicant ever surrendered (for cause) or had a federal controlled substance registration, revoked, suspended, restricted or denied, or is any such action pending?"; and (2) "Has the applicant ever surrendered (for cause) or had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation, or is any such action pending?" Government's Motion for Summary Disposition (hereinafter "Government's Motion" or "Govt. Mot."), at 2.

On April 25, 2018, the ALJ held a telephonic prehearing conference pursuant to 21 CFR 1316.55. The ALJ entered a Prehearing Ruling (PHR) on April 26, 2018, reflecting that the parties had agreed to a series of factual stipulations, including the fact that (1) on April 19, 2013, the Michigan Board of Medicine suspended Respondent's Michigan medical license for a minimum period of six months and one day; (2) in January 2014, Respondent "voluntarily surrendered for cause" a DEA Registration that Respondent had previously held in Michigan; (3) Respondent answered "N" when asked: "Has the applicant ever surrendered (for cause) or had a federal controlled substance registration revoked, suspended, restricted or denied, or is any such action pending?" and (4) Respondent answered "N" when asked: "Has the applicant ever surrendered (for cause) or had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation, or is any such action pending?" PHR, at 1–2.

In his Prehearing Ruling, the ALJ also ordered Respondent to file a response to

the Government's Motion by May 4, 2018, and directed the parties to attempt to draft additional "mutually agreeable joint stipulations" by May 30, 2018. *Id.* at 2. On May 3, 2018, Respondent filed her response to the Government's Motion and asserted that the Government had failed to "establish bad faith, negligence or intentionally trying to mislead," and failed to prove that she "is unfit to practice medicine, and therefore, unfit to prescribe medication." "Respondent's Response to Government's Motion for Summary Disposition and Respondant's [sic] 'Motion for Summary Disposition'" (Resp. Reply), at 4. In addition, Respondent attached a certificate of good standing for her Puerto Rico medical license and a copy of her license. *Id.*, Attachment (Att.) 1–2. Additionally, she attached her own sworn statement, in which she asserts that she "misunderstood the questions." *Id.*, Att. 3, at 2. She also argued that approving her application was warranted because she holds an active medical license in good standing and has never been sued for malpractice. *Id.* at 3–4.

On May 8, 2018, after considering these pleadings, the ALJ entered an Order recommending that I find that Respondent had failed to raise a triable issue of material fact as to whether she had materially falsified her application. Order Granting Government's Motion for Summary Disposition and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision (Recommended Decision or R.D.), at 8–9. As a result, the ALJ granted the Government's Motion and recommended that I deny Respondent's DEA application Control No. W1602461C. *Id.* at 12.

On May 17, 2018, Respondent filed her "Request for Reconsideration" of the ALJ's Recommended Decision,<sup>1</sup> and on the same day the ALJ entered an Order Directing Government to Respond to Respondent's Request for Reconsideration. In that Order, the ALJ noted that there is no provision in DEA's regulations for either party to request reconsideration of an ALJ's recommended decision, and thus the ALJ would treat the request as Exceptions to the Recommended Decision. Order Directing Government

<sup>1</sup> On May 11, 2018, Respondent also filed a "Supplemental Motion Submitting Document" enclosing "a certified translation of Resolution Num. 2017–118, issued by the Health Department Board of Licensing and Medical Discipline of Puerto Rico, in the case of In Re: Sr. Zelideh Cordova Velazco (Lic. #4865), Case No. Q–JDLM–2013–41." Supplemental Motion Submitting Document, at 1.

to Respond to Respondent's Request for Reconsideration, at 1. The Order directed the Government to file any response to Respondent's Exceptions by May 22, 2018. According to the record, the Government filed no Exceptions of its own nor any response to Respondent's Exceptions. On June 4, 2018, the record was forwarded to my Office for Final Agency Action.<sup>2</sup>

<sup>2</sup> Respondent submitted two post-certification filings. On June 12, 2018, Respondent filed her Request to Grant Motion for Reconsideration As Unopposed, and on August 17, 2018, Respondent filed her Second Request to Grant Motion for Reconsideration As Unopposed. On June 12, 2018 and on August 20, 2018, respectively, the ALJ issued Orders forwarding Respondent's post-certification filings to my Office and noted that his "jurisdiction over the case terminated upon transmittal of the record to the Acting Administrator." Order Forwarding Respondent's Motion to Acting Administrator, at 1; Second Order Forwarding Respondent's Motion to Acting Administrator, at 1. I find that the ALJ properly forwarded Respondent's post-certification filings for my consideration because, as the ALJ correctly notes, his jurisdiction over this matter terminated when he certified and transmitted the record to my Office.

Regarding the timing of Respondent's filings, neither the Controlled Substances Act nor DEA's implementing regulations provide for a supplemental filing by a party after the ALJ has certified the record. However, the Agency has, on occasion, exercised its discretion to consider such filings (however styled) after the ALJ has certified and transmitted the administrative record to my Office. *E.g., Joe W. Morgan, D.O.*, 78 FR 61961, 61961 (2013) (allowing Respondent's post-certification filing and "treat[ing] it as a motion for reconsideration"); *Wesley G. Harline, M.D.*, 64 FR 72678, 72684–85 (1999) (allowing Respondent's post-certification filing and treating it as a motion to reopen the record); *Robert M. Golden, M.D.*, 61 FR 24808, 24808 (1996) (same). Indeed, the Agency has even exercised its discretion to consider motions for reconsideration after the Agency has issued its final decision and order. *E.g., Lyle E. Craker, Ph.D.*, 76 FR 51403, 51405 (2011).

To justify consideration of her filings at this stage of the case, Respondent must show that there has been an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice. *E.g., Foster v. Sedgwick Claims Mgmt. Services*, 842 F.3d 721, 735 (D.C. Cir. 2016) ("A motion for reconsideration is discretionary and need not be granted unless the district court finds that there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.") (citations and internal quotation marks omitted); *Virgin Atl. Airways v. Nat'l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir.) (same), *cert. denied*, 506 U.S. 820 (1992).

Here, Respondent claims in both filings that her Exceptions should be deemed "unopposed" because the Government chose not to respond to her Exceptions. Respondent failed to offer any other basis in fact that her Exceptions were "unopposed" by the Government. I am aware of no DEA regulation or Agency precedent compelling a finding that a party who does not respond to an opposing party's Exceptions to an ALJ's Recommended Decision is deemed to have taken a position of "unopposed" to the opposing party's Exceptions. Moreover, Respondent's claim is not the type of intervening change in controlling law, newly available evidence, or clear error that would justify consideration of her post-certification filings

Having considered the entire record, including the ALJ's Recommended Decision, I find that Respondent materially falsified her application for DEA registration with respect to Liability Questions 2 and 3 on her 2016 application. I therefore adopt the ALJ's recommendation that I deny Respondent's DEA Registration application. I make the following factual findings.

### Findings of Fact

Respondent is a physician who previously held an active medical license, No. 43–01063034, in the State of Michigan. Ex. 4 to Govt. Mot. On April 19, 2013, Respondent entered into a Consent Order with the Michigan Board of Medicine in which she agreed to the suspension of her medical license for a minimum period of six months and one day based on her improper prescribing of controlled substances to home health patients. *See id.*; *see also R.D.*, at 10. Specifically, the Michigan administrative complaint against Respondent alleged, among other things, that she prescribed controlled substances, primarily oxycodone, Xanax, and Phenergan with codeine, to 26 patients despite: "failing to document medical indication or necessity for these controlled substances"; failing to document "any physical examination or clinical findings to justify the combination of" controlled drugs prescribed; failing to document an appropriate medical history; failing to make "any findings pertaining to pain assessment, level of dysfunction from pain, treatment plan or diagnostic testing"; failing to obtain "a report from the Michigan Automated Prescription System"; failing to conduct a toxicology screen; failing to monitor the "patients' use of the controlled substances for drug dependency or diversion"; failing to counsel the patients regarding the risks associated with controlled substances; and consistently prescribing the maximum dose of Xanax "without documenting prior medication use or use of Xanax." Ex. 4 to Govt. Mot., at 9–11.<sup>3</sup>

Respondent also previously held DEA Certificate of Registration No. BC4141139. Ex. 3 to Govt. Mot. In January 2014, Respondent voluntarily surrendered this registration for cause. Exs. 3, 5 to Govt. Mot.

under Agency precedent at this stage of the case. For all these reasons, I do not consider Respondent's post-certification filings.

<sup>3</sup> The Consent Order recited that Respondent "does not contest the allegations of fact and law" in the state administrative complaint against her. *Id.* at 3.

On June 15, 2016, Respondent applied for a practitioner's registration seeking authority to dispense controlled substances in schedules II through V with a proposed business address of Hacienda Del Dorado, K1 Calle Delonix, Toa Alta, Puerto Rico. Exhibits (Exs.) 1, 2 to Govt. Mot. DEA assigned Respondent's DEA registration application Control No. W16052461C.<sup>4</sup> DEA's Application for Registration includes liability questions which an applicant must answer either affirmatively ("Y") or negatively ("N"). Exs. 1–3 to Govt. Mot. Liability Question 2 on the DEA Application for Registration filed by Respondent asks: "Has the applicant ever surrendered (for cause) or had a federal controlled substance registration revoked, suspended, restricted or denied, or is any such action pending?" Exs. 1–2 to Govt. Mot. Respondent answered this question: "N" for no. *Id.* I find that this answer was false.

Liability Question 3 on the DEA Application for Registration filed by Respondent asks: "Has the applicant ever surrendered (for cause) or had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation, or is any such action pending?" *Id.* Respondent answered this question: "N" for no. I find that this answer was also false.

### Discussion

#### A. Standard for Denial of an Application for Registration

Section 303(f) of the Controlled Substances Act provides that an application for a practitioner's registration may be denied upon a determination "that the issuance of such registration would be inconsistent with the public interest." 21 U.S.C. 823(f). In making the public interest determination, the CSA requires the consideration of the following factors:

- (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
- (2) The applicant's experience in dispensing . . . controlled substances.
- (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

<sup>4</sup> The ALJ recommended that I make this fact finding based on the parties' stipulation that DEA assigned Control No. W16052461C to Respondent's DEA application. R.D., at 3 (citing PHR, 1–2). In addition, the record includes a notarized sworn statement by Respondent that DEA assigned Control No. W16052461C to her. Att. 3 to Resp. Reply, at 1.



(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. *Id.* “These factors are . . . considered in the disjunctive.” *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). DEA precedent provides that I “may rely on any one or a combination of factors, and may give each factor the weight I deem appropriate in determining whether . . . an application for registration should be denied.” *Richard D. Vitalis*, 79 FR 68701, 68708 (2014) (citing *Robert A. Leslie, M.D.*, *supra*). Moreover, it is well established that I am “not required to make findings as to all of the factors.” *Hoxie v. DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *see also Kevin Dennis, M.D.*, 78 FR 52787, 52974 (2013); *MacKay v. DEA*, 664 F.3d 808, 816 (10th Cir. 2011).

“The provision of truthful information on applications is absolutely essential” to a determination of whether granting an application is in the public interest. *Peter H. Ahles, M.D.*, 71 FR 50097, 50098 (2006). “Since DEA must rely on the truthfulness of information supplied by applicants in registering them to handle controlled substances, falsification cannot be tolerated.” *Bobby Watts, M.D.*, 58 FR 46995, 46995 (1993). Accordingly, “materially falsifying an application . . . provides an independent and adequate ground for denying an application.” *The Lawsons, Inc.*, 72 FR 74334, 74338 (2007); *see also Richard A. Herbert, M.D.*, 76 FR 53942, 53945 (2011) (“Under the CSA, material falsification provides a separate and independent ground for denying an application.”)<sup>5</sup> One materially false statement is enough to justify revocation or denial. *Harold Edward Smith, M.D.*, 76 FR 53961, 53964 (2011). The Government bears the burden of proof in showing that the issuance of a registration is inconsistent with the public interest. 21 CFR 1301.44(d).

<sup>5</sup> Under Section 304(a)(1) of the Controlled Substances Act (CSA), a registration may be revoked or suspended “upon a finding that the registrant \* \* \* has materially falsified any application filed pursuant to or required by this subchapter.” 21 U.S.C. 824(a)(1). “DEA has long held that the various grounds for revocation or suspension of an existing registration that Congress enumerated in section 304(a), 21 U.S.C. 824(a), are also properly considered in deciding whether to grant or deny an application under section 303.” *Richard D. Vitalis, D.O.*, 79 FR 68701, 68708 (2014) (citing *Anthony D. Funches*, 64 FR 14267, 14268 (1999); *Alan R. Schankman*, 63 FR 45260 (1998); *Kuen H. Chen*, 58 FR 65401, 65402 (1993)). Thus, the allegation that Respondent materially falsified his application is properly considered in this proceeding. *Vitalis*, 79 FR at 68708 (citing *Samuel S. Jackson*, 72 FR 23848, 23852 (2007)).

Having considered the record, including the ALJ’s Recommended Decision and Respondent’s Exceptions, I conclude that the Government was entitled to summary disposition on the grounds that Respondent materially falsified her application for a DEA Certificate of Registration.

#### B. Material Falsification

Here, as I have already noted, Respondent made two false statements when she submitted her DEA Application for Registration in 2016 in Puerto Rico. First, Respondent falsely stated in her response to Liability Question 2 on her DEA Application for Registration that she had never surrendered a DEA registration for cause when, in fact, she had surrendered DEA Certificate of Registration No. BC4141139 in Michigan for cause in January 2014. Second, Respondent falsely stated in her response to Liability Question 3 on her DEA Application that she has not had her state professional license revoked, even though in 2013 she had entered into a Consent Order with the Michigan Board of Medicine agreeing to the suspension of her Michigan medical license.

Turning to whether these false statements were material, Agency precedent establishes that “[a] false statement is material if it ‘has a natural tendency to influence, or was capable of influencing the decision of the decision[-]making body to which it was addressed.’” *Gilbert Eugene Johnson, M.D.*, 75 FR 65663, 65665 (2010) (quoting *Kungys v. United States*, 485 U.S. 759, 770 (1998)). The false statement need only have the capacity to influence the decision-making body; it does not need to have exerted any actual influence. *Alvin Darby, M.D.*, 75 FR 26993, 26998 (2010) (citing *United States v. Alemany Rivera*, 781 F.2d 229, 234 (1st Cir. 1985)). The Government must prove that the false information is material by “clear, unequivocal, and convincing” evidence. *Hoi Y. Kam, M.D.*, 78 FR 62694, 62696 (2013) (quoting *Kungys*, 485 U.S. at 772). Whether a falsification is material is a question of law. *Harold Edward Smith, M.D.*, 76 FR 53961, 53964 (2011) (citing *Kungys*, 485 U.S. at 772).

As stated below, I find that the Respondent’s answers to both Liability Question 2 and Liability Question 3 were material. As far as Liability Question 3 is concerned, DEA precedent holds that the failure to disclose a prior suspension relating to the prescribing of controlled substances is material, even where the suspension was no longer effective at the time of the application: “[E]ven where an applicant currently

holds unrestricted state authority to dispense controlled substances, the failure to disclose state action against his medical license may be material if the action was based on conduct (or on the status arising from such conduct, *i.e.*, a conviction for a controlled substance offense or mandatory exclusion from federal health care programs) which is actionable under either the public interest factors or the grounds for denial, suspension, and revocation set forth in section 824.” *Richard D. Vitalis*, 79 FR at 681708 (2014).

Here, the Government has provided evidence demonstrating that the underlying state investigation which prompted the suspension of Respondent’s Michigan medical license and the surrender of her DEA registration concerned unlawful prescribing of controlled substances. *See Ex. 4 to Govt. Mot.* Given that the allegations concern the unlawful prescribing of controlled substances, I find that they are material because they are “capable of influencing” the DEA’s decision.<sup>6</sup> *Kungys*, 485 U.S. at 770; *Jose G. Zavaleta, M.D.*, 78 FR 27431, 27435 (2013); *Smith*, 76 FR at 53964. Likewise, Respondent’s failure to disclose her surrender for cause of her prior DEA registration in Michigan in response to Liability Question 2 was also material according to DEA precedent. *Zavaleta*, 78 FR at 27435 (failure to disclose voluntary surrender of DEA registration following an investigation into unlawful prescribing was “clearly capable of influencing” the DEA’s decision and was thus material); *Smith*, 76 FR at 53964 (failure to disclose fact that the applicant had “been accused of writing unlawful prescriptions . . . [was] material to the [DEA’s] investigation and assessment of [the applicant’s] experience in dispensing controlled substances and his compliance with applicable laws related to” controlled substances).

In addition, the Government must show that Respondent “knew or should have known that [her] response[s] given to the liability question[s] [were] false.” *Samuel S. Jackson, D.D.S.*, 72 FR 23848, 23852 (2007) (quoting *Samuel Arnold, D.D.S.*, 63 FR 8687, 8688 (1998)); *Merlin E. Shuck, D.V.M.*, 69 FR 22566, 22568 (2004). “Under DEA precedent, the Government is not required to show that the falsification was intentional but only that the applicant ‘knew or should have known that the response given to the

<sup>6</sup> The Consent Order recited that Respondent “does not contest the allegations of fact and law” in the state administrative complaint against her. *Id.* at 3.

liability question was false.” *Alvin Darby, M.D.*, 75 FR 26993, 26999 (2010) (quoting *The Lawsons, Inc.*, 72 FR 74334, 74339 (2007)).

In *Richard Jay Blackburn, D.O.*, the Acting Administrator determined that a copy of the state administrative complaint, the respondent’s letter to the state board “surrendering his state license,” the state board’s acceptance of the surrender, and a printout displaying the status of respondent’s state license were sufficient to demonstrate that respondent “knowingly falsified his application.” 82 FR 18669, 18673 (2017). The DEA has found that material falsifications are committed knowingly even where, as here, a respondent claims that he or she misunderstood the questions. *Darby*, 75 FR at 26999.

Here, the Government attached a copy of the Respondent’s 2016 application, a copy of the administrative complaint and Consent Order issued by the Michigan Department of Licensing and Regulatory Affairs against Respondent, and a copy of the form which Respondent signed surrendering her Michigan DEA registration. *See* Exs. 1, 4–5 to Govt. Mot. Additionally, the Government attached two notarized documents signed by the Chief of DEA’s Registration and Program Support Section verifying the Respondent’s DEA registration history and her responses on her 2016 application. Exs. 2–3 to Govt. Mot. The Government’s evidence is the same type of evidence as that submitted in *Blackburn* and therefore is sufficient to show that Respondent either knew or should have known that her application was materially false. 82 FR at 18673. As a result, even if Respondent’s statements that she misunderstood the questions were true, I find that she should have known under the facts in this case that her responses to the liability questions in this case were false. *See Darby*, 75 FR at 26999.

Thus, I find that the Government has offered sufficient evidence to show that the Respondent materially falsified her 2016 application for a DEA registration in Puerto Rico.

### C. Sanction

Once the Government makes a *prima facie* case for material falsification, the next question “becomes whether revocation [or denial] is the appropriate sanction in light of the facts.” *Arnold*, 63 FR at 8688. Although the Respondent acknowledges that the answers she provided in response to Liability Questions 2 and 3 on her 2016 application were false, she explains that she did not intend to provide false statements, but instead misunderstood

the questions. Resp. Reply, at 4–5; App. 3, at 2, para. 7.

Respondent’s insistence that her undisputed false statements should be excused because she “misunderstood” the liability questions is misplaced. In her Request for Hearing, the Respondent merely stated the following concerning her alleged misunderstanding of the questions: “I was helped by a friend in filling out the application and probably by mistake and/or ignorance in understanding the questions I answered ‘no.’” Resp. Request for Hearing, at 2. Later, in her Response to Government’s Motion for Summary Disposition, she further specified that she “misunderstood” Liability Questions 2 and 3, but her purported explanation disregards the actual wording of the questions. Att. 3 to Resp. Reply, at 2. For example, as to Liability Question 2, Respondent claims she misunderstood that question because her registration was surrendered voluntarily, and was not revoked, suspended or denied. *Id.* However, Liability Question 2 not only asked whether the applicant ever had a registration “revoked, suspended, restricted or denied,” but also expressly asked whether any registration had ever been surrendered for cause. Ex. 1 to Govt. Mot. Moreover, Respondent stipulated that her prior registration was surrendered for cause, so her negative answer was clearly false, and her claimed “misunderstanding” of Liability Question 2 rings hollow. *See Shannon L. Gallentine, D.P.M.*, 76 FR 45864, 45866 (2011).

Similarly, Respondent’s claim that she misunderstood Liability Question 3 also ignores the question itself. Respondent explained her “misunderstanding” as to Liability Question 3 as follows: “As to question #3, again Ms. Cordova[’s] Registration was not revoked, suspended, denied, restricted, or placed on probation, nor is [sic] any such action was pending when she voluntarily surrender [sic] her Registration.” Att. 3 to Resp. Reply, at 2. However, Liability Question 3 actually inquires: “Has the applicant ever surrendered (for cause) or had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation, or is any such action pending?” Ex. 1 to Govt. Mot. (emphasis added). It is undisputed that Respondent’s state professional license for Michigan was suspended, and she clearly knew it was suspended, because she is the one who agreed to that suspension in writing when she entered into a Consent Order with the State of Michigan Board of Medicine. Thus, Respondent’s claimed

misunderstanding of Liability Question 3 is untenable on its face.

Moreover, applicants for DEA registrations bear “the responsibility to carefully read the question and to honestly answer all parts of the question.” *Arnold*, 63 FR at 8688 (quoting *Martha Hernandez, M.D.*, 62 FR 61145, 61147 (1997)). Allegedly misunderstanding or misinterpreting liability questions does not relieve the applicant of this responsibility. *Hernandez*, 62 FR at 61147–48 (concluding applicant committed material falsification despite misinterpreting one question); *see also Gallentine*, 76 FR at 45866. Additionally, inadvertence is legally irrelevant in resolving a material falsification case because the Government only needs to prove that Respondent “knew or should have known” that the answers were false. *Richard A. Herbert, M.D.*, 76 FR 53942, 53956 (2011) (quoting *The Lawsons, Inc.*, 72 FR 74334, 74338 (2007)) (emphasis added). *See, e.g., Zavaleta*, 78 FR at 27436, 27438–39 (ruling respondent materially falsified his application even where respondent testified that he made mistakes in filling out the application and “should have give[n] [his applications] more careful review”). Thus, Respondent’s defense of inadvertence, even if it were true, is legally inconsequential in deciding whether she materially falsified her 2016 application.

Furthermore, the evidence that Respondent now holds a valid medical license in good standing in Puerto Rico is simply not relevant in terms of resolving the allegation that she materially falsified her application. Resp. Reply, at 3; Att. 1–2 to Resp. Reply; *Hernandez*, 62 FR at 61147. The same holds true of the evidence that Respondent has never been sued for malpractice or been the subject of a professional complaint, except for the Michigan action, in her 19–20 year career. Resp. Reply at Att. 3, para. 8, 10. With respect to Liability Questions 2 and 3 of Respondent’s DEA Application, a material false statement is a material false statement regardless of her professional credentials.

Although lack of intent to deceive and history of licensure are relevant in assessing the appropriate sanction, what is most dispositive is the fact that Respondent has not accepted responsibility for her materially false statements. *See Lon F. Alexander, M.D.*, 82 FR 49704, 49728 (2017); *Arthur H. Bell*, 80 FR 50035, 50041 (2015) (finding that applicant’s failure to accept responsibility for materially falsifying application was “reason alone to

conclude that he cannot be entrusted with a new registration”). I have considered the fact that Respondent currently holds a medical license in good standing in Puerto Rico, and her sworn statement that she has never been sued for malpractice and received only one professional complaint in her 19–20 year career. Att. 1–2 to Resp. Reply; Att. 3 to Resp. Reply, at 2–4. None of these facts outweighs Respondent’s materially false application, especially given her failure to disclose extensive and serious allegations against her involving the unlawful prescribing of controlled substances. *See William M. Knarr, D.O.*, 51 FR 2772, 2773 (1986). Thus, I find that this mitigating evidence fails to diminish the gravity of her failure to reveal the alleged misconduct in her state of prior registration.

Accordingly, based upon the foregoing, I conclude that the Government was entitled to summary disposition on the allegation that Respondent materially falsified her application for a new DEA registration.

**Order**

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 28 CFR 0.100(b), I order that the application of Zelidah H. Cordova-Velazco, M.D., for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This Order is effective immediately.

Dated: November 20, 2018.

**Uttam Dhillon,**

*Acting Administrator.*

[FR Doc. 2018–26485 Filed 12–4–18; 8:45 am]

**BILLING CODE 4410–09–P**

**DEPARTMENT OF JUSTICE**

**Foreign Claims Settlement Commission**

**[F.C.S.C. Meeting and Hearing Notice No. 11–18]**

**Sunshine Act Meeting**

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

*Thursday, December 13, 2018: 11:00 a.m.*—Issuance of Proposed Decisions in claims against Iraq.

*11:30 a.m.*—Issuance of Proposed Decisions under the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114–328.

*Status: Open.*

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street NW, Suite 10300, Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 601 D Street NW, Suite 10300, Washington, DC 20579. Telephone: (202) 616–6975.

**Brian Simkin,**

*Chief Counsel.*

[FR Doc. 2018–26576 Filed 12–3–18; 4:15 pm]

**BILLING CODE 4410–BA–P**

**DEPARTMENT OF JUSTICE**

**Notice of Filing of Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act**

On November 21, 2018, a Notice of Settlement Agreement was filed in the Superior Court for the State of New

Hampshire, Merrimack County in the proceeding entitled *In the Matter of the Liquidation of The Home Insurance Company*, Docket No. 217–2003–EQ–00106. The Notice informs the Court that at the conclusion of a public comment period, John R. Elias, Insurance Commissioner of the State of New Hampshire, in his capacity as Liquidator (the “Liquidator”) of the Home Insurance Company (“Home”) may seek court approval of a Settlement Agreement between the Liquidator, and the United States of America on behalf of the U.S. Environmental Protection Agency (“EPA”), the U.S. Department of the Navy, U.S. Department of the Interior (“DOI”), and the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce (“NOAA”) (collectively referred to as “the Federal Claimants”), acting by and through the United States Department of Justice (“DOJ”).

The Settlement Agreement would resolve seven proofs of claim the Federal Claimants’ have filed. The seven proofs of claim assert claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. 9607, against insured parties in connection with six Superfund Sites: The Sharon Steel Corporation (Farrell Works Disposal Area) Superfund Site in Hermitage, PA; the Lower Duwamish Waterway Superfund Site in Seattle, WA; the San Gabriel Valley Area 2 Site in Los Angeles, CA; the U.S. Oil Recovery Site in Pasadena, TX; the Lee’s Lane Landfill Superfund Site in Louisville, KY; and the Petroleum Products Superfund Site in Pembroke Park, FL.

Under the Settlement Agreement, the United States will have an allowed Class II priority claim in the amount of \$27,044,146 allocated to the six Superfund Sites as follows:

Amount	Site	Home insured
\$16,000,000	Sharon Steel Corporation (Farrell Works Disposal Area) Superfund Site	Sharon Steel Corporation.
6,298,630	Lower Duwamish Waterway Superfund Site	Manson Construction and Engineering Company.
2,200,000	Lower Duwamish Waterway Superfund Site	Duwamish Shipyard, Inc.
2,224,999	San Gabriel Valley Area 2 Site	Azusa Pipe & Tube Bending, Corp.
300,000	U.S. Oil Recovery Site	Explorer Pipeline Company.
19,609	Lee’s Lane Landfill Superfund Site	Louisville Varnish Company, Inc.
908	Petroleum Products Superfund Site	Shaw Trucking.

For each Class II priority distribution that Home makes, Home shall use the above amounts to determine the appropriate distribution for each of the six Superfund Sites. In consideration of payments made on the allowed Class II

Priority Claim, upon approval of the Settlement Agreement the Federal Claimants provide a covenant not to sue to Home and the Liquidator as described in the Agreement under CERCLA under the policies that are identified in the

Settlement Agreement and in the proofs of claim.

The publication of this notice opens a period for public comment on the Settlement Agreement. Comments should be addressed to the Assistant

Attorney General, Environment and Natural Resources Division, and should refer to *In the Matter of the Liquidation of The Home Insurance Company*, Docket No. 217–2003–EQ–00106, D.J. Ref. No. 90–11–3–08308. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email .....	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Settlement Agreement may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Settlement Agreement upon written request and payment of reproduction costs. Please mail your request and payment to: U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$3.50 (25 cents per page reproduction costs) payable to the United State Treasury.

**Robert Maher,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2018–26417 Filed 12–4–18; 8:45 am]

**BILLING CODE 4410–15–P**

**LIBRARY OF CONGRESS**

**Copyright Royalty Board**

[Docket Nos. 2012–6 CRB CD 2004–2009 (Phase II) and 2012–7 CRB SD 1999–2009 (Phase II)]

**Distribution of Cable and Satellite Royalty Funds**

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Final distribution determination.

**SUMMARY:** The Copyright Royalty Judges (Judges) announce the final distribution of satellite royalty funds for the year 2000. The distribution determination results from a contested motion by the Settling Devotional Claimants (SDC) requesting that the Judges order a final distribution to the SDC of 100% of the Devotional Claimants’ share of the 2000 satellite royalties.

**DATES:** *Applicable date:* December 5, 2018.

**ADDRESSES:** The final distribution order is also published in eCRB at <https://app.crb.gov/>. Docket: For access to the docket to read submitted background documents, go to eCRB, the Copyright Royalty Board’s electronic filing and case management system, at <https://app.crb.gov/> and search for docket number 2012–6 CRB CD 2004–2009.

**FOR FURTHER INFORMATION CONTACT:** Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at [crb@loc.gov](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:**

On October 1, 2018, the Judges issued an initial determination relating to the requested distribution. The Register of Copyrights concluded her statutory review and issued no opinion. The Order is now before the Librarian of Congress for final review and publication. The essence of the initial determination follows.

On November 21, 2017, the Settling Devotional Claimants (SDC) filed a motion seeking final distribution of the 2000 satellite royalty fund in the Devotional category (Motion). In the Motion, the SDC contended that there is no controversy with respect to the subject satellite royalties. The SDC argued that the direct cases filed by the SDC and Independent Producers Group (IPG) in this consolidated proceeding confirm that both parties agree to the allocation of 100% of the 2000 satellite royalties to the SDC. As a result, the SDC asked the Copyright Royalty Judges (Judges) to order a final distribution to SDC in an amount equal to the Devotional Claimants’ share of the 2000 satellite royalty fund. Motion at 1–2.

On December 1, 2017, IPG filed an opposition to the SDC’s motion (IPG Opposition). IPG conceded that the written testimony of both IPG and the SDC conclude that “subject to the current rulings of the Judges,” IPG has no valid claim to satellite royalties for the year 2000. *See* IPG Opposition at 1. Nevertheless, IPG noted that it disputes and will appeal the Judges’ claims rulings. *Id.* at 2. IPG continued:

[I]f appellate review of the Judges’ dismissal of 51 claims held by IPG–represented claimants is reversed as an excessive discovery sanction, as IPG contends, then the relative value of the previously-dismissed claims will require reconsideration for any award to IPG of 2000 satellite royalties. Under such circumstance, IPG will likely be awarded a substantial portion of the 2000 satellite royalties, and final distribution of 2000 satellite royalties will necessarily require repayment from the SDC of royalties with an attributed interest rate. *Id.* at 3.

In light of the value IPG projected for its dismissed claims should they be reinstated, IPG maintained that distribution to SDC would be “imprudent.” *Id.* at 3–4.

In their response (Response), the SDC noted that the Judges have twice rejected IPG’s requests for rehearing of the order in which the Judges dismissed IPG’s claims to 2000 satellite royalties. Response at 2. In the SDC’s estimation, IPG has had full and fair opportunities to state its case to the Judges, and an appeal to the Court of Appeals is unlikely to succeed. *Id.*

Moreover, the SDC noted that the Judges addressed the identical situation with respect to the 2008 satellite royalties, and the Judges ordered a final distribution of the Devotional Claimants’ share to the SDC. *Id.*, citing *Order Granting Final Distribution of 2008 Satellite Royalties for the Devotional Category*, Dkt. No. 2012–7 CRB SD 1999–2009 (Phase II) (Dec. 22, 2015). In response to IPG’s concerns regarding the SDC’s repayment of royalties should IPG prevail on appeal, the SDC noted that they have executed the royalty repayment agreement required by the Library of Congress prior to any partial distribution of royalty funds. Response at 3. The SDC added:

All devotional ministries that are members of the SDC in the relevant period are bound by that obligation. How the remission might be accomplished is the responsibility of the SDC, which are among the largest religious ministries in the United States. Collectively, they would be fully capable of meeting any obligation to the Library . . . . To suggest otherwise is without foundation.

Response at 3.

Section 801(b)(3)(A) of the Copyright Act states that the Judges may authorize distribution of royalty fees deposited pursuant to Section 119 of the Copyright Act if they find that the distribution is not subject to controversy. 17 U.S.C. 801(b)(3)(A). In the current proceeding, the parties agree that the Judges have dismissed all claims that IPG–represented claimants had to satellite royalties for 2000 in the Devotional category. As a result, the SDC are the only claimants in the proceeding with valid claims to satellite royalties for 2000 in the Devotional category. Therefore, in the current circumstances, satellite royalties for 2000 in the Devotional category are no longer in controversy.

In November 2008, the parties to this proceeding filed a motion seeking partial distribution of 98% of the satellite royalty funds deposited for royalty years 1999 through 2003. In that motion, the parties designated specific

amounts of the proposed two percent reserve to be allocated among Program Suppliers claimants, Sports claimants, and Devotional claimants. In their motion, the moving parties represented that they had reached a settlement with regard to royalty category allocation. The moving parties maintained that the allocation settlement was non-precedential and confidential. Because the moving parties maintain the confidentiality of the allocation shares, however, the Judges have no way to allocate the reserved funds among the categories with continuing controversies.

By Order dated December 8, 2008, the Judges ordered distribution of 90% of the satellite royalty funds deposited for royalty years 1999 through 2003. While the Judges ordered ten percent of the royalty funds to be held in reserve, they did not allocate the reserve among the categories with remaining distribution controversies. *See Order Granting in Part . . . Partial Distribution . . .*, Dkt. Nos. 2008–5 CRB SD 1999–2000, 2005–2 CRB SD 2001–03 at 2–3 (Dec. 8, 2008) (*Phase I Order*). To direct execution of this final determination, therefore, the Judges must first know the exact dollar amount they should order disbursed to the SDC to complete the distribution.

The Judges therefore *Grant* the Motion as to the percentage of distribution.<sup>1</sup>

The Judges *Further Order* that this final distribution determination is without prejudice to the parties' right to appeal the Judges' interlocutory ruling in this consolidated proceeding with regard to both cable and satellite claims issues.

The Judges *Further Order* the Phase I Claimants jointly to notify the Judges and the Licensing Division no later than seven days after the date of publication of this Determination of the percentage of 2000 satellite royalty funds that was allocable to the SDC as of December 8, 2008.

The Judges *Further Order* the Licensing Division of the Copyright Office, based upon the percentage allocable to the SDC provided by the Phase I Claimants, to calculate the dollar amount that is available to be distributed from 2000 satellite royalty funds to the SDC by taking the principal balance as of December 8, 2008, as reported jointly by the remaining categories of claimants to 2000 satellite

royalty funds, adjusting that balance for a proportional deduction of administrative fees, and adding the interest accrued on the Devotional category balance from and after December 8, 2008. The Licensing Division shall provide the result of its calculation to the Judges and to the Phase I Claimants. The SDC may then request that the Judges distribute those funds to complete the final distribution.

The Register of Copyrights ("Register") has concluded her statutory review. The Librarian of Congress shall review and cause this final determination, and any correction thereto by the Register, to be published in the **Federal Register**.

October 1, 2018.

*So Ordered.*

Suzanne M. Barnett, *Chief United States Copyright Royalty Judge.*

David R. Strickler, *United States Copyright Royalty Judge.*

Jesse M. Feder, *United States Copyright Royalty Judge.*

Dated: November 7, 2018.

**Suzanne M. Barnett,**  
*Chief United States Copyright Royalty Judge.*

Approved by:

**Carla B. Hayden,**  
*Librarian of Congress.*

[FR Doc. 2018–26494 Filed 12–4–18; 8:45 am]

**BILLING CODE 1410–72–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit applications received.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 4, 2019. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

**FOR FURTHER INFORMATION CONTACT:** Nature McGinn, ACA Permit Officer, at the above address, 703–292–8030, or [ACApermits@nsf.gov](mailto:ACApermits@nsf.gov).

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

### Application Details

1. *Applicant* Permit Application: 2019–016

Ashley Perrin, Antarctic Ice Pilot, for SY Destination, 14 Washington Ave., San Rafael, CA 94903.

*Activity for Which Permit Is Requested*

Waste Management. The applicant is requesting a permit for waste management activities associated with operating the yacht, SY Destination, in the Antarctic Treaty area for three weeks in January 2019. The cruise program would consist of a one-time voyage to Antarctica with operations in the Southern Ocean, Antarctic Peninsula region, and the South Shetland Islands. The applicant expects there to be a total of thirteen people total aboard the vessel during the voyage. Activities would include sightseeing, small boat cruising, brief shore excursions, polar plunging, snorkeling/diving, and operation of a remotely piloted aircraft system (RPAS) as a navigational and safety aid. The RPAS would consist of a small, camera-equipped quadcopter, operated by an experienced pilot, within visual line of sight, under fair weather conditions, and according to best operating practices. The yacht has an onboard sewage treatment plant that meets MARPOL standards. All food waste and garbage would be collected, maintained onboard the vessel, and properly disposed of outside the Treaty area. Best practices would be employed to mitigate the risk of accidental releases to the environment.

### Location

Southern Ocean, Antarctic Peninsula region, South Shetland Islands.

<sup>1</sup> This finding is based on IPG's lack of compensable claims and not on expert valuation of the relative value of SDC's and IPG's respective claims to 2000 satellite royalties. *See Order Granting Final Distribution of 2008 Satellite Royalties for the Devotional Category*, Docket No. 2012–7 CRB SD 1999–2009 (Phase II) (Dec. 22, 2015).

*Dates of Permitted Activities*

January 3–24, 2019.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2018–26383 Filed 12–4–18; 8:45 am]

**BILLING CODE 7555–01–P**

## NEIGHBORHOOD REINVESTMENT CORPORATION

### Sunshine Act Meetings; Regular Board of Directors Meeting

**TIME AND DATE:** 12:00 p.m., Wednesday, December 19, 2018.

**PLACE:** NeighborWorks America—Gramlich Boardroom, 999 North Capitol Street NE, Washington DC 20002.

**STATUS:** Open (with the exception of Executive Session).

**MATTERS TO BE CONSIDERED:** The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552 (b)(2) and (4) permit closure of the following portion(s) of this meeting:

- Report from CEO
- Internal Audit Report

#### Agenda

- I. Call to Order
- II. Approval of Minutes
- III. Executive Session: Report from CEO
- IV. Action Item Client Management System (CMS)
- V. Action Item LIFT 6.0
- VI. Discussion Item Delegation of Authority
- VII. Management Program Background and Updates
- VIII. Adjournment

**CONTACT PERSON FOR MORE INFORMATION:** Rutledge Simmons, EVP & General Counsel/Secretary, (202) 760–4105; [Rsimmmons@nw.org](mailto:Rsimmmons@nw.org).

**Rutledge Simmons,**

*EVP & General Counsel/Corporate Secretary.*

[FR Doc. 2018–26585 Filed 12–3–18; 4:15 pm]

**BILLING CODE 7570–02–P**

## POSTAL REGULATORY COMMISSION

[Docket No. CP2019–37]

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing,

invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 7, 2018.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

#### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

#### I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.<sup>1</sup>

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory

requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

#### II. Docketed Proceeding(s)

1. *Docket No(s):* CP2019–37; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Plus 4 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* November 29, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 7, 2018.

This Notice will be published in the **Federal Register**.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2018–26415 Filed 12–4–18; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* December 6, 2018.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 30, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 486 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2019–37, CP2019–39.

**Elizabeth Reed,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2018–26452 Filed 12–4–18; 8:45 am]

**BILLING CODE 7710–12–P**

<sup>1</sup> See Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

**POSTAL SERVICE****Product Change—Priority Mail Negotiated Service Agreement**

AGENCY: Postal Service™.

ACTION: Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* December 5, 2018.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 30, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 485 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2019–36, CP2019–38.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–26451 Filed 12–4–18; 8:45 am]

BILLING CODE 7710–12–P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–84695; File No. SR–CboeBZX–2018–084]

**Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 19.8, Long-Term Options Contracts**

November 30, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on November 23, 2018, Cboe BZX Exchange, Inc. (“Exchange” or “BZX Options”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> 15 U.S.C. 78s(b)(1).<sup>2</sup> 17 CFR 240.19b–4.**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX Options”) proposes to amend Rule 19.8, Long-Term Options Contracts. The text of the proposed rule change is provided below.

(additions are *italicized*; deletions are [bracketed])

\* \* \* \* \*

Rules of Cboe BZX Exchange, Inc.

\* \* \* \* \*

**Rule 19.8. Long-Term Options Contracts**

[(a)] Notwithstanding conflicting language in Rule 19.6 (Series of Options Contracts Open for Trading), the Exchange may list long-term options contracts that expire from twelve (12) to thirty-nine (39) months from the time they are listed. There may be up to *ten (10) additional expiration months for options on SPY and up to six (6) additional expiration months for all other option classes*. Strike price interval, bid/ask differential and continuity rules shall not apply to such options series until the time to expiration is less than nine (9) months.

\* \* \* \* \*

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change****1. Purpose**

The Exchange proposes to amend Rule 19.8, Long-Term Option Contracts, to permit the listing and trading of up to ten (10) long-term expiration months

for long-term options on the SPDR® S&P 500® exchange-traded fund (“SPY”) in response to customer demand.<sup>3</sup> Rule 19.8 currently provides that the Exchange may list long-term option contracts that expire from twelve (12) to thirty-nine (39) months from the time they are listed (“long-term expiration months”). There may be up to six (6) long-term expiration months per option class.<sup>4</sup> The proposal will add liquidity to the SPY options market by allowing market participants to hedge risks relating to SPY positions over a longer period with a known and limited cost.

The SPY options market today is characterized by its tremendous daily and annual liquidity. As a consequence, the Exchange believes that the listing of additional SPY long-term expiration months would be well received by investors. This proposal to expand the number of permitted SPY long-term expiration months would not apply to long-term expiration months on any other class of options.<sup>5</sup>

The Exchange proposes to implement the proposed rule change on the date of this rule filing.

**2. Statutory Basis**

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in

<sup>3</sup> The proposed rule change also deletes the paragraph letter (a) in Rule 19.8, as there is only one paragraph in the Rule, making a paragraph letter unnecessary. In contrast to Rule 19.8, Rule 29.11(b)(1)(A) (which applies to index options) permits the Exchange to list long-term index options series based on either the full or reduced value of the underlying index, adding up to ten (10) expiration months. The Exchange seeks to list ten (10) long-term expiration months on SPY, just as it now may list ten (10) expiration months on long-term index option series, in order to provide investors with a wider choice of investments.

<sup>4</sup> Pursuant to rule 19.8, strike price interval, bid/ask differential, and continuity rules do not apply to such options series until the time to expiration is less than nine (9) months.

<sup>5</sup> Historically, SPY is the largest and most actively traded ETF in the United States as measured by its assets under management and the value of shares traded.

<sup>6</sup> 15 U.S.C. 78f(b).<sup>7</sup> 15 U.S.C. 78f(b)(5).

securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change offers market participants additional long-term expiration months on SPY options for their investment and risk management purposes. The proposal is intended simply to provide additional trading opportunities which have been requested by customers, thereby facilitating transactions in options and contributing to the protection of investors and the maintenance of fair and orderly markets. The proposed rule change responds to the continuing needs of market participants, particularly portfolio managers and other institutional customers, by providing protection from long-term market moves and by offering an alternative to hedging portfolios with future positions or off-exchange customized derivative instruments.

Rule 19.8 has permitted up to six (6) long-term expiration months in option classes since the launch of BZX Options in 2010. Other exchanges, such as Nasdaq PHLX LLC (“Phlx”), have permitted up to six “LEAPS” since 1991, when it increased the number of permissible expiration months from four to six. As noted by Phlx (in its recent proposal to permit up to ten LEAPS expiration months for options on SPY), when the Securities and Exchange Commission (the “Commission”) approved the increase to six expiration months, the Commission stated that it did not believe that increasing the number of expiration months to six would cause, by itself, a proliferation of expiration months. The Commission also required that Phlx monitor the volume of additional options series listed as a result of the rule change, and the effect on Phlx’s system capacity and quotation dissemination displays.<sup>9</sup>

The Exchange believes that the addition today of four (4) additional long-term expiration months on SPY options likewise does not represent a proliferation of expiration months, but is instead a very modest expansion of

long-term options in response to stated customer demand. Significantly, the proposal would feature new long-term expiration months in only a single class of options that are very liquid and heavily traded, as discussed above. Additionally, the Exchange notes by way of precedent, that ten (10) expiration months are already permitted for long-term index options series. Further, the Exchange has the necessary systems capacity to support the new SPY long-term expiration months.

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal merely provides investors additional investment and risk management opportunities by providing flexibility to the Exchange to list additional long-term options expiration series, expanding the number of SPY long-term expiration months offered on the Exchange from six (6) long-term expiration months to ten (10) long-term expiration months. Other options exchanges currently permit the listing of ten (10) long-term expiration months for SPY.<sup>10</sup>

#### *C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

<sup>10</sup> See, e.g., Phlx Rule 1012(a)(i)(D); Miami International Securities Exchange, LLC (“MIAX”) Rule 406(a); and NYSE Arca, Inc. (“Arca”) Rule 6.4-O(d)(i).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement in this case.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>14</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange’s proposal would conform the Exchange’s rules relating to the permitted number of long term expiration months for long-term options on SPY to those of other exchanges.<sup>15</sup> Accordingly, the Commission believes that the proposal raises no new or novel regulatory issues, and waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore waives the 30-day operative delay and designates the proposal operative upon filing.<sup>16</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2018-084 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-CboeBZX-2018-084. This file number should be included on the

<sup>13</sup> *Id.*

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> See *supra* note 10.

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> *Id.*

<sup>9</sup> See Securities Exchange Act Release No. 84449 (October 18, 2018), 83 FR 53699 (October 24, 2018)(SR-Phlx-2018-64); see also Securities Exchange Act Release No. 29103 (April 18, 1991), 56 FR 19132 (April 25, 1991) (approving SR-Phlx-91-18).



subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2018-084, and should be submitted on or before December 27, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2018-26513 Filed 12-4-18; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84699; File No. SR-CboeEDGX-2018-056]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 19.8, Long-Term Options Contracts

November 30, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 23, 2018, Cboe EDGX Exchange, Inc. ("Exchange" or "EDGX Options") filed

with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX Options") proposes to amend Rule 19.8, Long-Term Options Contracts. The text of the proposed rule change is provided below.

(additions are *italicized*; deletions are [bracketed])

\* \* \* \* \*

Rules of Cboe EDGX Exchange, Inc.

\* \* \* \* \*

#### Rule 19.8. Long-Term Options Contracts

[(a)] Notwithstanding conflicting language in Rule 19.6 (Series of Options Contracts Open for Trading), the Exchange may list long-term options contracts that expire from twelve (12) to thirty-nine (39) months from the time they are listed. There may be up to *ten (10) additional expiration months for options on SPY and up to six (6) additional expiration months for all other option classes*. Strike price interval, bid/ask differential and continuity rules shall not apply to such options series until the time to expiration is less than nine (9) months.

\* \* \* \* \*

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend Rule 19.8, Long-Term Option Contracts, to permit the listing and trading of up to ten (10) long-term expiration months for long-term options on the SPDR® S&P 500® exchange-traded fund ("SPY") in response to customer demand.<sup>3</sup> Rule 19.8 currently provides that the Exchange may list long-term option contracts that expire from twelve (12) to thirty-nine (39) months from the time they are listed ("long-term expiration months"). There may be up to six (6) long-term expiration months per option class.<sup>4</sup> The proposal will add liquidity to the SPY options market by allowing market participants to hedge risks relating to SPY positions over a longer period with a known and limited cost.

The SPY options market today is characterized by its tremendous daily and annual liquidity. As a consequence, the Exchange believes that the listing of additional SPY long-term expiration months would be well received by investors. This proposal to expand the number of permitted SPY long-term expiration months would not apply to long-term expiration months on any other class of options.<sup>5</sup>

The Exchange proposes to implement the proposed rule change on the date of this rule filing.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section

<sup>3</sup> The proposed rule change also deletes the paragraph letter (a) in Rule 19.8, as there is only one paragraph in the Rule, making a paragraph letter unnecessary. In contrast to Rule 19.8, Rule 29.11(b)(1)(A) (which applies to index options) permits the Exchange to list long-term index options series based on either the full or reduced value of the underlying index, adding up to ten (10) expiration months. The Exchange seeks to list ten (10) long-term expiration months on SPY, just as it now may list ten (10) expiration months on long-term index option series, in order to provide investors with a wider choice of investments.

<sup>4</sup> Pursuant to rule 19.8, strike price interval, bid/ask differential, and continuity rules do not apply to such options series until the time to expiration is less than nine (9) months.

<sup>5</sup> Historically, SPY is the largest and most actively traded ETF in the United States as measured by its assets under management and the value of shares traded.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

6(b)(5)<sup>7</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change offers market participants additional long-term expiration months on SPY options for their investment and risk management purposes. The proposal is intended simply to provide additional trading opportunities which have been requested by customers, thereby facilitating transactions in options and contributing to the protection of investors and the maintenance of fair and orderly markets. The proposed rule change responds to the continuing needs of market participants, particularly portfolio managers and other institutional customers, by providing protection from long-term market moves and by offering an alternative to hedging portfolios with future positions or off-exchange customized derivative instruments.

Rule 19.8 has permitted up to six (6) long-term expiration months in option classes since the launch of EDGX Options in 2015. Other exchanges, such as Nasdaq PHLX LLC (“Phlx”), have permitted up to six “LEAPS” since 1991, when it increased the number of permissible expiration months from four to six. As noted by Phlx (in its recent proposal to permit up to ten LEAPS expiration months for options on SPY), when the Securities and Exchange Commission (the “Commission”) approved the increase to six expiration months, the Commission stated that it did not believe that increasing the number of expiration months to six would cause, by itself, a proliferation of expiration months. The Commission also required that Phlx monitor the volume of additional options series listed as a result of the rule change, and

the effect on Phlx’s system capacity and quotation dissemination displays.<sup>9</sup>

The Exchange believes that the addition today of four (4) additional long-term expiration months on SPY options likewise does not represent a proliferation of expiration months, but is instead a very modest expansion of long-term options in response to stated customer demand. Significantly, the proposal would feature new long-term expiration months in only a single class of options that are very liquid and heavily traded, as discussed above. Additionally, the Exchange notes by way of precedent, that ten (10) expiration months are already permitted for long-term index options series. Further, the Exchange has the necessary systems capacity to support the new SPY long-term expiration months.

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal merely provides investors additional investment and risk management opportunities by providing flexibility to the Exchange to list additional long-term options expiration series, expanding the number of SPY long-term expiration months offered on the Exchange from six (6) long-term expiration months to ten (10) long-term expiration months. Other options exchanges currently permit the listing of ten (10) long-term expiration months for SPY.<sup>10</sup>

#### *C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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

<sup>9</sup> See Securities Exchange Act Release No. 84449 (October 18, 2018), 83 FR 53699 (October 24, 2018)(SR-Phlx-2018-64); see also Securities Exchange Act Release No. 29103 (April 18, 1991), 56 FR 19132 (April 25, 1991) (approving SR-Phlx-91-18).

<sup>10</sup> See, e.g., Phlx Rule 1012(a)(i)(D); Miami International Securities Exchange, LLC (“MIAX”) Rule 406(a); and NYSE Arca, Inc. (“Arca”) Rule 6.4-O(d)(i).

which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>14</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange’s proposal would conform the Exchange’s rules relating to the permitted number of long term expiration months for long-term options on SPY to those of other exchanges.<sup>15</sup> Accordingly, the Commission believes that the proposal raises no new or novel regulatory issues, and waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore waives the 30-day operative delay and designates the proposal operative upon filing.<sup>16</sup>

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:

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement in this case.

<sup>13</sup> *Id.*

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> See *supra* note 10.

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> *Id.*

*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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGX-2018-056 on the subject line.

*Paper comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGX-2018-056. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2018-056, and should be submitted on or before December 27, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018-26516 Filed 12-4-18; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-84696; File No. SR-NYSEArca-2018-82]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Regarding Certain Changes Relating to Investments of the PGIM Active High Yield Bond ETF**

November 30, 2018.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 16, 2018, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes certain changes regarding investments of the PGIM Active High Yield Bond ETF (the "Fund"), a series of PGIM ETF Trust (the "Trust"). Shares of the Fund currently are listed and traded on the Exchange under NYSE Arca Rule 8.600-E ("Managed Fund Shares"). The proposed change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes certain changes, described below under "Application of Generic Listing Requirements", regarding investments of the Fund. The shares ("Shares") of the Fund are currently listed and traded on the Exchange under Commentary .01 to NYSE Arca Rule 8.600-E,<sup>4</sup> which provides generic criteria applicable to the listing and trading of Managed Fund Shares.<sup>5</sup> PGIM Investments LLC (the "Adviser") is the investment adviser for the Fund. PGIM Fixed Income (the "Subadviser"), a unit of PGIM, Inc., is the subadviser to the Fund. PIMS, the Adviser and the Subadviser are indirect wholly-owned subsidiaries of Prudential Financial, Inc. Brown Brothers Harriman & Co., which is unaffiliated with PIMS, the Adviser and the Subadviser, serves as the custodian, administrator, and transfer agent ("Transfer Agent") for the Fund.<sup>6</sup> Prudential Investment Management Services LLC ("PIMS"), a registered broker-dealer, acts as the distributor (the "Distributor") for the Fund's Shares.

Commentary .06 to Rule 8.600-E provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a "fire wall" between the investment adviser and the

<sup>4</sup> Shares of the Fund commenced trading on the Exchange on April 10, 2018 pursuant to Commentary .01 to NYSE Arca Rule 8.600-E.

<sup>5</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (the "1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2-E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>6</sup> The Trust is registered under the 1940 Act. On June 28, 2018, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act"), and under the 1940 Act relating to the Fund (File Nos. 333-222469 and 811-23324) ("Registration Statement"). The Trust will file an amendment to the Registration Statement as necessary to conform to the representations in this filing. The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 31095 (June 24, 2014) (File No. 812-14267).

<sup>17</sup> 17 CFR 200.30-3(a)(12).

broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Commentary .06 to Rule 8.600-E is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2-E(j)(3); however, Commentary .06 in connection with the establishment and maintenance of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds.

The Adviser and the Subadviser are not registered as broker-dealers but are affiliated with PIMS, a broker-dealer, and have implemented and will maintain a "fire wall" with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. In the event (a) the Adviser or the Subadviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a "fire wall" with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures, each designed to prevent the use and dissemination of material non-public information regarding such portfolio.

#### PGIM Active High Yield Bond ETF

##### Principal Investments

According to the Registration Statement, the investment objective of the Fund seeks to provide total return through a combination of current income and capital appreciation. The Fund seeks to achieve its investment objective by investing primarily in a portfolio of high yield bonds of companies and governments. Under normal market conditions,<sup>7</sup> the Fund

<sup>7</sup> The term "normal market conditions" is defined in NYSE Arca Rule 8.600-E(c)(5). In response to adverse market, economic or political conditions, the Fund may take a temporary defensive position and invest up to 100% of its assets in cash and money market instruments, which include shares of "Money Market Funds" (defined below); shares of affiliated short-term bond funds; short-term obligations of, or securities guaranteed by, the U.S. Government, its agencies or instrumentalities; high-

will invest at least 80% of its net assets in a diversified portfolio of high yield bonds and other investments consisting of (i) the Principal Investment Instruments (defined below) and (ii) derivatives<sup>8</sup> that (A) provide exposure to such Principal Investment Instruments, or (B) are used to enhance returns, manage portfolio duration, or manage the risk of securities price fluctuations, as further described below (together, the "Principal Investments").

The Fund may invest in "Principal Investment Instruments" consisting of the following fixed income instruments (each of which shall be denominated in U.S. dollars):

- fixed income instruments issued by the US Government, its agencies and instrumentalities;
- commercial paper;
- asset-backed securities;
- mortgage-backed securities,
- variable and floating rate instruments;
- bills, notes and other obligations issued by banks, corporations and other companies (including trust structures);
- convertible and non-convertible fixed income securities
- loan participations and assignments;
- obligations issued by non-U.S. banks, companies or non-U.S. governments;
- municipal bonds and notes;
- shares of "Money Market Funds";<sup>9</sup> and
- shares of the Prudential Core Ultra Short Bond Fund<sup>10</sup> or, if the Prudential

quality obligations of U.S. or foreign banks and corporations; or any other securities or instruments.

<sup>8</sup> The Fund's investments in derivatives will include investments in both listed derivatives and over-the-counter ("OTC") derivatives, as those terms are defined in Commentary .01(d) and (e) to NYSE Arca Rule 8.600-E.

<sup>9</sup> "Money Market Funds" include money market funds registered under the 1940 Act and money market funds that are not registered under the 1940 Act but that comply with Rule 2a-7 under the 1940 Act.

<sup>10</sup> The Prudential Core Ultra Short Bond Fund is a series of Prudential Investment Portfolios 2, which is an open-end investment company registered under the 1940 Act. Shares of the Prudential Core Ultra Short Bond Fund are available for purchase only by certain affiliated investment companies managed and certain other institutional investors. The Fund's Subadviser is also the subadviser to the Affiliated Short Term Bond Fund. The investment objective of the Prudential Core Ultra Short Bond Fund is to seek current income consistent with the preservation of capital and the maintenance of liquidity. Like Rule 2a-7 money market funds that are defined as cash equivalents pursuant to Commentary .01(c) to Rule 8.600-E, the Prudential Core Ultra Short Bond Fund invests primarily in money market obligations as defined by Rule 2a-7. Rule 2a-7 defines money market obligations as obligations that mature in 397 days or less. Additionally, the Prudential Core Ultra Short Bond Fund seeks investments that are expected to experience minimal fluctuations in

Core Ultra Short Bond Fund is no longer offered with the same investment objective, shares of any successor fund or other affiliated open-end investment company registered under the 1940 Act with a substantially similar investment objective (the "Affiliated Short Term Bond Fund").<sup>11</sup>

The Fund may hold cash and cash equivalents.<sup>12</sup>

The Fund may, without limitation, enter into dollar rolls and short sales of Principal Investment Instruments. The Fund may also purchase securities and other instruments under when-issued, delayed delivery, to be announced or forward commitment transactions. The Fund will "set aside" liquid assets or engage in other measures to "cover" open positions held in connection with the foregoing types of transactions, as well as derivative transactions.

The Fund may invest in derivatives to (i) provide exposure to the Principal Investment Instruments and (ii) enhance returns, manage portfolio duration, or (iii) manage the risk of securities price fluctuations. Derivatives that the Fund may enter into include only: OTC deliverable and non-deliverable foreign exchange forward contracts; listed futures contracts on one or more Principal Investment Instruments securities (including Treasury Securities and foreign government securities), indices relating to one or more Principal Investment Instruments, interest rates, financial rates and currencies; listed or OTC options (including puts or calls) or swaptions (*i.e.*, options to enter into a swap) on one or more Principal Investment Instruments, indices relating to one or more Principal Investment Instruments, interest rates, financial rates, currencies and futures contracts on one or more Principal Investment Instruments; and listed or OTC swaps (including total return swaps) on securities, indices relating to one or more Principal Investment Instruments, interest rates, financial rates, currencies and debt and credit default swaps on single names, baskets and indices on one or more Principal Investment

value. See the registration statement for the Prudential Core Ultra Short Bond Fund on Form N-1A, dated March 29, 2018 (File No. 811-09999), available at <https://www.sec.gov/Archives/edgar/data/1099692/000006759018000388/pip2posami.htm>.

<sup>11</sup> The Fund's investment in the Affiliated Short Term Bond Fund is described further in "Application of Generic Listing Requirements," *infra*.

<sup>12</sup> For purposes of this filing, the term "cash equivalents" includes the short-term instruments enumerated in Commentary .01(c) to NYSE Arca Rule 8.600-E. Under normal market conditions, the Fund may invest a significant portion of its assets in cash and cash equivalents.

Instruments (both as protection seller and as protection buyer).

#### Other Investments

While the Fund, under normal market conditions, invests at least 80% of its investable assets in the Principal Investments described above, the Fund may invest its remaining assets in the following “Non-Principal Investments”.

The Fund may hold exchange-traded funds (“ETFs”) that provide exposure to Principal Investment Instruments.<sup>13</sup>

The Fund may hold convertible and non-convertible securities preferred stocks traded in the OTC market or listed on an exchange.

The Fund may hold warrants traded in the OTC market or listed on an exchange.

The Fund may hold “Work Out Securities,”<sup>14</sup> which may be acquired by the Fund incidental to the purchase or ownership of the Fund’s Principal Investments or in connection with a reorganization of an issuer.

The Fund may invest in securities and other instruments that would otherwise qualify as Principal Investment Instruments but for being denominated in non-U.S. currency.

#### Investment Restrictions

In addition to shares of the Affiliated Short Term Bond Fund or Money Market Funds referenced above in “Principal Investments”, the Fund may invest up to 10% of the total assets of the Fund in shares of other non-exchange-traded open-end management investment company securities, including investment company securities for which the Adviser and/or its affiliates may serve as investment adviser or administrator.

Not more than 10% of the Fund’s assets in the aggregate will be held in convertible and non-convertible preferred stocks, warrants and Work Out Securities.

#### Use of Derivatives by the Fund

The Fund may invest in the types of derivatives described in the “Principal Investments” section above to (i)

provide exposure to the Principal Investment Instruments,<sup>15</sup> (ii) enhance returns and manage portfolio duration, or (iii) manage the risk of securities price fluctuations. Investments in derivative instruments will be consistent with the Fund’s investment objective and policies.

To limit the potential risk associated with such transactions, the Fund may enter into offsetting transactions or segregate or “ earmark ” assets determined to be liquid by the Adviser in accordance with procedures established by the Trust’s Board of Trustees (the “Board”). In addition, the Fund has included appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund’s use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.

#### Impact on Arbitrage Mechanism

The Adviser and the Subadviser believe there will be minimal, if any, impact to the arbitrage mechanism as a result of the Fund’s use of derivatives. The Adviser and the Subadviser understand that market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser and the Subadviser believe that the price at which Shares of the Fund trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem Shares of the Fund at their NAV, which should ensure that Shares of the Fund will not trade at a material discount or premium in relation to their NAV.

#### Creation and Redemption of Shares

The Fund issues and sells Shares only in aggregations of at least 25,000 Shares (each aggregation is called a “Creation Unit”) on a continuous basis through PIMS at the NAV next determined after receipt of an order in proper form on any Business Day.<sup>16</sup>

The consideration for a purchase of Creation Units generally will consist of a cash deposit but may include the in-kind deposit of a portfolio of securities and other investments (the “Deposit Instruments”) included in the Fund and

an amount of cash computed as described below (the “Cash Amount”). The Cash Amount together with the Deposit Instruments, as applicable, are referred to as the “Portfolio Deposit,” which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

The Cash Amount would be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the “Deposit Amount,” which is an amount equal to the aggregate market value of the Deposit Instruments, and serves to compensate for any differences between the NAV per Creation Unit and the Deposit Amount.

The Transfer Agent, through the National Securities Clearing Corporation (“NSCC”), makes available on each Business Day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m. E.T.), the list of the names and the required number of securities for each Deposit Instrument to be included in the current Portfolio Deposit (based on information at the end of the previous Business Day), as well as information regarding the Cash Amount for the Fund. Such Portfolio Deposit is applicable, subject to any adjustments as described below, in order to effect creations of Creation Units of the Fund until such time as the next-announced Portfolio Deposit composition is made available.

All orders to create Creation Units generally must be received by the Distributor no later than the closing time of the regular trading session on the Exchange (“Closing Time”) (ordinarily 4:00 p.m. E.T.) on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of the Fund as determined on such date.

In addition, the Trust reserves the right to accept a basket of securities or cash that differs from Deposit Instruments or to permit the substitution of an amount of cash (*i.e.*, a “cash in lieu” amount) to be added to the Cash Amount to replace any Deposit Instrument which may, among other reasons, not be available in sufficient quantity for delivery, not be permitted to be re-registered in the name of the Trust as a result of an in-kind creation order pursuant to local law or market convention or which may not be eligible for transfer through the Clearing Process (defined below), or which may not be eligible for trading by a Participating Party (defined below).

To be eligible to place orders with the Distributor to create Creation Units of the Fund, an entity or person either must be (1) a “Participating Party,” *i.e.*, a broker-dealer or other participant in

<sup>13</sup> For purposes of this filing, ETFs include Investment Company Units (as described in NYSE Arca Rule 5.2(j)(3)–E), Portfolio Depository Receipts (as described in NYSE Arca Rule 8.100–E), and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E). All ETFs in which the Fund invests will be listed and traded on national securities exchanges.

<sup>14</sup> For purposes of this filing, Work Out Securities include U.S. or foreign equity securities of any type acquired in connection with restructurings or incidental to the purchase or ownership related to issuers of Principal Investment Instruments held by the Fund. Work Out Securities are generally traded OTC, but may be traded on a U.S. or foreign exchange.

<sup>15</sup> Because the markets for the Principal Investment Instruments, or the Principal Investment Instruments themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure to Principal Investment Instruments.

<sup>16</sup> A “Business Day” with respect to the Fund is any day on which the Exchange is open for business.

the clearing process through the Continuous Net Settlement System of the NSCC (the "Clearing Process"); or (2) a DTC Participant; which, in either case, must have executed an agreement with the Distributor (as it may be amended from time to time in accordance with its terms) ("Participant Agreement"). A Participating Party and DTC Participant are collectively referred to as an "Authorized Participant."

A standard creation transaction fee is imposed to offset the transfer and other transaction costs associated with the issuance of Creation Units.

#### Redemption of Creation Units

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by PIMS, only on a Business Day and only through a Participating Party or DTC Participant who has executed a Participant Agreement. The Trust will not redeem Shares in amounts less than Creation Units. Beneficial owners also may sell Shares in the secondary market, but must accumulate enough Shares to constitute a Creation Unit in order to have such Shares redeemed by the Trust.

The Transfer Agent, through NSCC, makes available immediately prior to the opening of business on the Exchange on each Business Day, the identity of the Fund's securities and/or an amount of cash that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. The Fund's securities received on redemption ("Redemption Instruments") may not be identical to Deposit Instruments that are applicable to creations of Creation Units. Unless cash redemptions are permitted or required for the Fund, the redemption proceeds for a Creation Unit generally consist of Redemption Instruments as announced by the Transfer Agent on the Business Day of the request for redemption, plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Redemption Instruments, less the fixed transaction fee and any variable transaction fees.

In order to redeem Creation Units of the Fund, an Authorized Participant must submit an order to redeem for one or more Creation Units. An order to redeem Creation Units of a Fund using the Clearing Process generally must be submitted to the Distributor not later than 4:00 p.m. E.T. on the Business Day of the request for redemption in order for such order to be effected based on

the NAV of the Fund as next determined. An order to redeem Creation Units of the Fund using the NSCC Clearing Process made in proper form but received by the Fund after 4:00 p.m. E.T. will be deemed received on the next Business Day immediately following the day on which such order request is transmitted.

#### Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the changes described below would result in the portfolio for the Fund not meeting all of the "generic" listing requirements of Commentary .01 to NYSE Arca Rule 8.600-E applicable to the listing of Managed Fund Shares. The Fund's portfolio would meet all such requirements except for those set forth in Commentary .01(a)(1), Commentary .01(b)(4) and Commentary .01(b)(5).<sup>17</sup> Specifically, the Fund:

- Will not comply with the requirement in Commentary .01(b)(5) that investments in non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed securities (*i.e.*, Private ABS/MBS) not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio. Instead, Private ABS/MBS will, in the aggregate, not exceed more than 20% of the total assets of the Fund.
- will not comply with the requirement that securities that in aggregate account for at least 90% of the fixed income weight of the portfolio meet one of the criteria in Commentary .01(b)(4).<sup>18</sup> Instead, fixed income securities that do not meet any of the criteria in Commentary .01(b)(4) will not exceed 10% of the total assets of the Fund.
- may invest in shares of affiliated short-term bond funds, which are equity

<sup>17</sup> Commentary .01(b)(5) to NYSE Arca Rule 8.600-E provides that non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed securities components of a portfolio may not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio.

<sup>18</sup> Commentary .01(b)(4) provides that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

securities. Therefore, to the extent the Fund invests in shares of affiliated short-term bond funds or other non-exchange-traded open-end management investment company securities, the Fund will not comply with the requirements of Commentary .01(a)(1) to NYSE Arca Rule 8.600-E (U.S. Component Stocks) with respect to its equity securities holdings. Instead, such securities would not be required to meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600-E.<sup>19</sup>

- may invest in convertible and non-convertible preferred stocks, warrants, and Work Out Securities, which are equity securities. To the extent the Fund invests in such securities, the Fund will not comply with the requirements of Commentary .01(a)(1) to NYSE Arca Rule 8.600-E (U.S. Component Stocks) and/or Commentary .01(a)(2) to NYSE Arca Rule 8.600-E (Non-U.S. Component Stocks) with respect to its equity securities holdings.<sup>20</sup> Instead, the

<sup>19</sup> Commentary .01(a) to Rule 8.600-E specifies the equity securities accommodated by the generic criteria in Commentary .01(a), namely, U.S. Component Stocks (as described in Rule 5.2-E(j)(3)) and Non-U.S. Component Stocks (as described in Rule 5.2-E(j)(3)). Commentary .01(a)(1) to Rule 8.600-E (U.S. Component Stocks) provides that the component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis: (A) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum market value of at least \$75 million; (B) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months; (C) The most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 65% of the equity weight of the portfolio; (D) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; and (E) Except as provided herein, equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934.

<sup>20</sup> Commentary .01(a)(2) to Rule 8.600-E (Non-U.S. Component Stocks) provides that the

Exchange proposes that not more than 10% of the Fund's assets in the aggregate will be held in convertible and non-convertible preferred stocks, warrants and Work Out Securities.

Deviations from the generic requirements are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in manner that is consistent with the principles of Section 6(b)(5) of the Act. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

As noted above, the Fund will not comply with the requirement in Commentary .01(b)(5) that investments in non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed securities (*i.e.*, Private ABS/MBS) not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio. Instead, Private ABS/MBS will, in the aggregate, not exceed more than 20% of the total assets of the Fund.

This alternative requirement is appropriate because the Fund's investment in Private ABS/MBS is expected to provide the Fund with benefits associated with increased diversification, as Private ABS/MBS investments tend to be less correlated to interest rates than many other fixed income securities. The Fund's investment in Private ABS/MBS will be subject to the Fund's liquidity procedures as adopted by the Board,

component stocks of the equity portion of a portfolio that are Non-U.S. Component Stocks shall meet the following criteria initially and on a continuing basis: (A) Non-U.S. Component Stocks each shall have a minimum market value of at least \$100 million; (B) Non-U.S. Component Stocks each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months; (C) The most heavily weighted Non-U.S. Component stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio; (D) Where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; and (E) Each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting.

and the Adviser does not expect that investments in Private ABS/MBS of up to 20% of the total assets of the Fund will have any material impact on the liquidity of the Fund's investments. The Exchange notes that the Commission has previously approved the listing of actively managed ETFs that can invest 20% of their total assets in non-U.S. Government, non-agency, non-GSE and other privately issued ABS and MBS (*i.e.*, Private ABS/MBS).<sup>21</sup> Thus, it is appropriate to expand the limit on the Fund's investments in Private ABS/MBS set forth in Commentary .01(b)(5) of the generic listing standards.

The Fund will not comply with the requirement that securities that in aggregate account for at least 90% of the fixed income weight of the portfolio meet one of the criteria in Commentary .01(b)(4).<sup>19</sup> Instead, fixed income securities that do not meet any of the criteria in Commentary .01(b)(4) will not exceed 10% of the total assets of the Fund. The Exchange notes that the Commission has previously approved the listing of Managed Fund Shares with similar investment objectives and strategies without imposing requirements that a certain percentage of such funds' securities meet one of the criteria set forth in Commentary .01(b)(4).<sup>22</sup> Thus, it is appropriate to expand the limit on investments in fixed income securities that do not satisfy the criteria in Commentary .01(b)(4) of the generic listing standards, as described above.

The Fund may invest in shares of the Affiliated Short Term Bond Fund, which are equity securities. Therefore,

<sup>21</sup> See, e.g., Securities Exchange Act Release Nos. 80946 (June 15, 2017) 82 FR 28126 (June 20, 2017) (SR-NASDAQ-2017-039) (permitting the Guggenheim Limited Duration ETF to invest up to 20% of its total assets in privately-issued, non-agency and non-GSE ABS and MBS); 76412 (November 10, 2015), 80 FR 71880 (November 17, 2015) (SR-NYSEArca-2015-111) (permitting the RiverFront Strategic Income Fund to invest up to 20% of its assets in privately-issued, non-agency and non-GSE ABS and MBS); 74814 (April 27, 2015), 80 FR 24986 (May 1, 2015) (SR-NYSEArca-2014-017) (permitting the Guggenheim Enhanced Short Duration ETF to invest up to 20% of its assets in privately-issued, non-agency and non-GSE ABS and MBS); 74109 (January 21, 2015), 80 FR 4327 (January 27, 2015) (SR-NYSEArca-2014-134) (permitting the IQ Wilshire Alternative Strategies ETF to invest up to 20% of its total assets in MSB and other ABS, without any limit on the type of such MBS and ABS).

<sup>22</sup> See, e.g., Securities Exchange Act Release Nos. 67894 (September 20, 2012) 77 FR 59227 (September 26, 2012) (SR-BATS-2012-033) (order approving the listing and trading of shares of the iShares Short Maturity Bond Fund); 70342 (September 6, 2013), 78 FR 56256 (September 12, 2013) (SR-NYSEArca-2013-71) (order approving the listing and trading of shares of the SPDR SSGA Ultra Short Term Bond ETF, SPDR SSGA Conservative Ultra Short Term Bond ETF and SPDR SSGA Aggressive Ultra Short Term Bond ETF).

to the extent the Fund invests in shares of the Affiliated Short Term Bond Fund or other non-exchange-traded open-end management investment company securities, the Fund will not comply with the requirements of Commentary .01(a)(1) to NYSE Arca Rule 8.600-E (U.S. Component Stocks) with respect to its equity securities holdings. However, it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in such securities would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600-E.<sup>23</sup> Investments in shares of the Affiliated Short Term Bond Fund will not exceed 25% of the total assets of the Fund. Investments in other non-exchange-traded open-end management investment company securities will not exceed 10% of the total assets of the Fund. The Fund's investment in shares of the Affiliated Short Term Bond Fund will be utilized in order to obtain income on short-term cash balances while awaiting attractive investment opportunities, to provide liquidity in preparation for anticipated redemptions or for defensive purposes, which will allow the Fund to obtain the benefits of a more diversified portfolio available in the Affiliated Short Term Bond Fund than might otherwise be available through direct investments in Money Market Funds.<sup>24</sup> Moreover, such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term. The Fund will invest in such securities only to the extent that those investments would be consistent with the requirements of Section 12(d)(1) of the 1940 Act and the rules thereunder.<sup>25</sup> Because such

<sup>23</sup> See note 19, *supra*.

<sup>24</sup> For purposes of this section of the filing, non-exchange-traded securities of other registered investment companies do not include money market funds, which are cash equivalents under Commentary .01(c) to Rule 8.600-E and for which there is no limitation in the percentage of the portfolio invested in such securities. In addition, the Commission has issued orders granting exemptive relief under the 1940 Act that apply to the Trust. See Investment Company Act Release No. 24179 (December 1, 1999) (File No. 812-11354) with respect to investments by a fund in money market or ultra-short bond funds for cash management purposes) and Investment Company Act Release No. 30200 (September 11, 2012) (File No. 812-13993) with respect to investments by a fund in other registered investment companies.

<sup>25</sup> The Commission has previously approved proposed rule changes under Section 19(b) of the Act for series of Managed Fund Shares that may invest in non-exchange traded investment company securities to the extent permitted by Section 12(d)(1) of the 1940 Act and the rules thereunder.

securities must satisfy applicable 1940 Act diversification requirements, and have a net asset value based on the value of securities and financial assets the investment company holds, it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).

The Exchange notes that Commentary .01(a)(1)(A) through (D) to Rule 8.600–E exclude certain “Derivative Securities Products” that are exchange-traded investment company securities, including Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E)) and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E)).<sup>26</sup> In its 2008 Approval Order approving amendments to Commentary .01(a) to Rule 5.2(j)(3) to exclude Derivative Securities Products from certain provisions of Commentary .01(a) (which exclusions are similar to those in Commentary .01(a)(1) to Rule 8.600–E), the Commission stated that “based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations.” The Exchange notes that it would be difficult or impossible to

*See, e.g.*, Securities Exchange Act Release No. 78414 (July 26, 2016), 81 FR 50576 (August 1, 2016) (SR–NYSEArca–2016–79) (order approving listing and trading of shares of the Virtus Japan Alpha ETF under NYSE Arca Rule 8.600–E).

<sup>26</sup> The Commission initially approved the Exchange’s proposed rule change to exclude “Derivative Securities Products” (*i.e.*, Investment Company Units and securities described in Section 2 of Rule 8) and “Index-Linked Securities (as described in Rule 5.2–E(j)(6)) from Commentary .01(a)(A) (1) through (4) to Rule 5.2–E(j)(3) in Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR–NYSEArca–2008–29) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units) (“2008 Approval Order”). *See also* Securities Exchange Act Release No. 57561 (March 26, 2008), 73 FR 17390 (April 1, 2008) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units). The Commission subsequently approved generic criteria applicable to listing and trading of Managed Fund Shares, including exclusions for Derivative Securities Products and Index-Linked Securities in Commentary .01(a)(1)(A) through (D), in Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 7 Thereto, Amending NYSE Arca Rule 8.600–E To Adopt Generic Listing Standards for Managed Fund Shares). *See also* Amendment No. 7 to SR–NYSEArca–2015–110, available at <https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-9.pdf>.

apply to mutual fund shares certain of the generic quantitative criteria (*e.g.*, market capitalization, trading volume, or portfolio criteria) in Commentary .01(A) through (D) applicable to U.S. Component Stocks. For example, the requirements for U.S. Component Stocks in Commentary .01(a)(1)(B) that there be minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months are tailored to exchange-traded securities (*i.e.*, U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market and for which no such volume information is reported. In addition, Commentary .01(a)(1)(A) relating to minimum market value of portfolio component stocks, Commentary .01(a)(1)(C) relating to weighting of portfolio component stocks, and Commentary .01(a)(1)(D) relating to minimum number of portfolio components are not appropriately applied to open-end management investment company securities; open-end investment companies hold multiple individual securities as disclosed publicly in accordance with the 1940 Act, and application of Commentary .01(a)(1)(A) through (D) would not serve the purposes served with respect to U.S. Component Stocks, namely, to establish minimum liquidity and diversification criteria for U.S. Component Stocks held by series of Managed Fund Shares.

The Exchange notes that the Commission has previously approved the listing of Managed Fund Shares with similar investment objectives and strategies where such funds were permitted to invest in the shares of other registered investment companies that are not ETFs or money market funds.<sup>27</sup> Thus, it is appropriate to permit the Fund to invest up to 25% of its total assets in shares of the Affiliated Short Term Bond Fund and 10% of its total assets in other non-exchange-traded open-end management investment company securities.

To the extent the Fund invests in convertible and non-convertible preferred stocks, warrants and Work Out

<sup>27</sup> *See, e.g.*, Securities Exchange Act Release Nos. 79053 (October 5, 2016), 81 FR 70468 (October 12, 2016) (SR–BatsBZX–2016–35) (permitting the JPMorgan Global Bond Opportunities ETF to invest in “investment company securities that are not ETFs”); 74297 (February 18, 2015), 80 FR 9788 (February 24, 2015) (SR–BATS–2014–056) (permitting the U.S. Fixed Income Balanced Risk ETF to invest in “exchange traded and non-exchange traded investment companies (including investment companies advised by the Adviser or its affiliates) that invest in such Fixed Income Securities”).

Securities, the Fund will not comply with the requirements of Commentary .01(a)(1) to NYSE Arca Rule 8.600–E (U.S. Component Stocks) and/or Commentary .01(a)(2) to NYSE Arca Rule 8.600–E (Non-U.S. Component Stocks) with respect to its equity securities holdings. The Exchange believes this is appropriate in that the Adviser represents that the Fund will not actively invest in such securities but may, at times, receive a distribution of such securities in connection with the Fund’s holdings in certain Principal Investment Instruments. Therefore, the Fund’s holdings in such securities would not be utilized to further the Fund’s investment objective and generally would not be acquired as the result of the Fund’s voluntary investment decisions. In addition, the Exchange proposes that not more than 10% of the Fund’s assets in the aggregate will be held in convertible and non-convertible preferred stocks, warrants and Work Out Securities.

The Exchange accordingly believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1), (a)(2), (b)(4) and (b)(5) to Rule 8.600–E. The Exchange notes that, other than Commentary .01(a)(1), (a)(2), (b)(4) and (b)(5) to Rule 8.600–E, the Fund’s portfolio will meet all other requirements of Rule 8.600–E.

#### Availability of Information

The Fund’s website ([www.pgiminvestments.com](http://www.pgiminvestments.com)) will include the prospectus for the Fund that may be downloaded. The Fund’s website will include additional quantitative information updated on a daily basis including, for the Fund, (1) daily trading volume, the prior Business Day’s reported closing price, NAV and midpoint of the bid/ask spread at the time of calculation of such NAV (the “Bid/Ask Price”),<sup>28</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each Business Day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund discloses on its

<sup>28</sup> The Bid/Ask Price of the Fund’s Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund’s NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.



website the Disclosed Portfolio as defined in NYSE Arca Rule 8.600–E(c)(2) that forms the basis for the Fund’s calculation of NAV at the end of the Business Day.<sup>29</sup>

On a daily basis, the Fund discloses the information required under NYSE Arca Rule 8.600–E(c)(2) to the extent applicable. The website information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for the Fund’s Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of the Fund. Authorized Participants may refer to the basket composition file for information regarding Principal Investment Instruments, and any other instrument that may comprise the Fund’s basket on a given day.

Investors can also obtain the Trust’s Statement of Additional Information (“SAI”), the Fund’s Shareholder Reports, and the Fund’s Forms N–CSR and Forms N–SAR, filed twice a year. The Fund’s SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR, Form N–PX and Form N–SAR may be viewed on-screen or downloaded from the Commission’s website at [www.sec.gov](http://www.sec.gov).

Intra-day and closing price information regarding exchange-traded options will be available from the exchange on which such instruments are traded. Intra-day and closing price information regarding the Principal Investment Instruments also will be available from major market data vendors. Price information relating to OTC options and swaps will be available from major market data vendors. Intra-day price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. For exchange-listed securities (including ETFs), intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable). Intraday and other price information for the fixed income securities in which the Fund invests will be available through subscription services, such as Bloomberg, Markit and Thomson

Reuters, which can be accessed by Authorized Participants and other market participants. Additionally, the Trade Reporting and Compliance Engine (“TRACE”) of the Financial Industry Regulatory Authority (“FINRA”) will be a source of price information for corporate bonds, privately-issued securities, MBS and ABS, to the extent transactions in such securities are reported to TRACE.<sup>30</sup> Money market funds and affiliated short-term bond funds are typically priced once each Business Day and their prices will be available through the applicable fund’s website or from major market data vendors. Electronic Municipal Market Access (“EMMA”) will be a source of price information for municipal bonds. Price information regarding U.S. government securities, repurchase agreements, reverse repurchase agreements and cash equivalents generally may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (“CTA”) high-speed line. Exchange-traded options quotation and last sale information for options cleared via the Options Clearing Corporation are available via the Options Price Reporting Authority. In addition, the Portfolio Indicative Value (“PIV”), as defined in NYSE Arca Rule 8.600–E(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.

Price information for instruments that would otherwise qualify as Principal Investment Instruments but for being denominated in non-U.S. currency is

available from major market data vendors.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Rule 8.600–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Rule 7.34–E (Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (“MPV”) for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

With the exception of the requirements of Commentary .01(a)(1), Commentary .01(b)(4) and Commentary .01(b)(5) as described above under “Application of Generic Listing Requirements,” the Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600–E. The Exchange represents that for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Act, as provided by NYSE Arca Rule 5.3–E. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange has obtained a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and

<sup>29</sup> Under accounting procedures followed by the Fund, trades made on the prior Business Day (“T”) will be booked and reflected in NAV on the current Business Day (“T+1”). Accordingly, the Fund will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

<sup>30</sup> Broker-dealers that are FINRA member firms have an obligation to report transactions in specified debt securities to TRACE to the extent required under applicable FINRA rules. Generally, such debt securities will have at issuance a maturity that exceeds one calendar year. For fixed income securities that are not reported to TRACE, (i) intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable) and (ii) price information will be available from feeds from market data vendors, published or other public sources, or online information services, as described above.

the Disclosed Portfolio will be made available to all market participants at the same time.

#### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, ETFs, certain exchange-traded options and certain futures with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, ETFs, certain exchange-traded options and certain futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETFs, certain exchange-traded options and certain futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (“CSSA”). The Exchange is able to access from FINRA, as needed, trade information for certain fixed income securities held by the Fund reported to TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board (“MSRB”) relating to certain municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5(m)–E.

#### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.600–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Adviser and Subadviser are not registered as broker-dealers, but the Adviser and Subadviser are affiliated with a broker-dealer and have implemented and will maintain a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-traded options and certain futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, certain exchange-traded options and certain futures from

such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, certain exchange-traded options and certain futures with other markets and other entities that are members of the ISG, or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange is able to access from FINRA, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA’s TRACE. FINRA also can access data obtained from the MSRB relating to certain municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The website for the Fund includes a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Rule 8.600–E(d)(2)(D), which sets forth circumstances under which trading in the Shares of the Fund may be halted. In addition, as noted above, investors have ready access to information regarding the Fund’s holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares. In the aggregate, at least 90% of the weight of the Fund’s holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information from other members or affiliates of the ISG or for which the principal market is a market with which the Exchange has a CSSA. For purposes of calculating this limitation, a portfolio’s investment in listed derivatives will be calculated as the aggregate gross notional value of the listed derivatives.

As described above, deviations from the generic requirements of Commentary .01(a) are necessary for the

Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in manner that is consistent with the principles of Section 6(b)(5) of the Act. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

As discussed above, the Fund will not comply with the requirement in Commentary .01(b)(5) that investments in non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed securities (*i.e.*, Private ABS/MBS) not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio. Instead, Private ABS/MBS will, in the aggregate, not exceed more than 20% of the total assets of the Fund.

This alternative requirement is appropriate because the Fund's investment in Private ABS/MBS is expected to provide the Fund with benefits associated with increased diversification, as Private ABS/MBS investments tend to be less correlated to interest rates than many other fixed income securities. The Fund's investment in Private ABS/MBS will be subject to the Fund's liquidity procedures as adopted by the Board, and the Adviser does not expect that investments in Private ABS/MBS of up to 20% of the total assets of the Fund will have any material impact on the liquidity of the Fund's investments. The Exchange notes that the Commission has previously approved the listing of actively managed ETFs that can invest 20% of their total assets in non-U.S. Government, non-agency, non-GSE and other privately issued ABS and MBS (*i.e.*, Private ABS/MBS).<sup>31</sup> Thus, it is appropriate to expand the limit on the Fund's investments in Private ABS/MBS set forth in Commentary .01(b)(5) of the generic listing standards.

The Fund will not comply with the requirement that securities that in aggregate account for at least 90% of the fixed income weight of the portfolio meet one of the criteria in Commentary .01(b)(4). Instead, fixed income securities that do not meet any of the criteria in Commentary .01(b)(4) will not exceed 10% of the total assets of the Fund. The Exchange notes that the Commission has previously approved the listing of Managed Fund Shares with similar investment objectives and

strategies without imposing requirements that a certain percentage of such funds' securities meet one of the criteria set forth in Commentary .01(b)(4). Thus, it is appropriate to expand the limit on investments in fixed income securities that do not satisfy the criteria in Commentary .01(b)(4) of the generic listing standards, as described above.

The Fund may invest in shares of affiliated short-term bond funds, which are equity securities. Therefore, to the extent the Fund invests in shares of affiliated short-term bond funds or other non-exchange-traded open-end management investment company securities, the Fund will not comply with the requirements of Commentary .01(a)(1) to NYSE Arca Rule 8.600–E (U.S. Component Stocks) with respect to its equity securities holdings. It is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in such securities would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E. The Fund's investment in the Affiliated Short Term Bond Fund will not exceed 25% of the total assets of the Fund. Investments in other non-exchange-traded open-end management investment company securities will not exceed 10% of the total assets of the Fund. The Fund's investment in shares of affiliated short-term bond funds will be utilized in order to obtain income on short-term cash balances while awaiting attractive investment opportunities, to provide liquidity in preparation for anticipated redemptions or for defensive purposes, which will allow the Fund to obtain the benefits of a more diversified portfolio available in the shares of affiliated short-term bond funds than might otherwise be available through direct investments in Money Market Funds. Moreover, such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term. The Fund will invest in such securities only to the extent that those investments would be consistent with the requirements of Section 12(d)(1) of the 1940 Act and the rules thereunder. Because such securities must satisfy applicable 1940 Act diversification requirements, and have a net asset value based on the value of securities and financial assets the investment company holds, it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).

The Exchange notes that it would be difficult or impossible to apply to mutual fund shares certain of the generic quantitative criteria (*e.g.*, market capitalization, trading volume, or portfolio criteria) in Commentary .01 (A) through (D) applicable to U.S. Component Stocks. For example, the requirements for U.S. Component Stocks in Commentary .01(a)(1)(B) that there be minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months are tailored to exchange-traded securities (*i.e.*, U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market and for which no such volume information is reported. In addition, Commentary .01(a)(1)(A) relating to minimum market value of portfolio component stocks, Commentary .01(a)(1)(C) relating to weighting of portfolio component stocks, and Commentary .01(a)(1)(D) relating to minimum number of portfolio components are not appropriately applied to open-end management investment company securities; open-end investment companies hold multiple individual securities as disclosed publicly in accordance with the 1940 Act, and application of Commentary .01(a)(1)(A) through (D) would not serve the purposes served with respect to U.S. Component Stocks, namely, to establish minimum liquidity and diversification criteria for U.S. Component Stocks held by series of Managed Fund Shares.

To the extent the Fund invests in convertible and non-convertible preferred stocks, warrants and Work Out Securities, the Fund will not comply with the requirements of Commentary .01(a)(1) to NYSE Arca Rule 8.600–E (U.S. Component Stocks) and/or Commentary .01(a)(2) to NYSE Arca Rule 8.600–E (Non-U.S. Component Stocks) with respect to its equity securities holdings. The Exchange believes this is appropriate in that the Adviser represents that the Fund will not actively invest in such securities but may, at times, receive a distribution of such securities in connection with the Fund's holdings in certain Principal Investment Instruments. Therefore, the Fund's holdings in such securities would not be utilized to further the Fund's investment objective and generally would not be acquired as the result of the Fund's voluntary investment decisions. In addition, the Exchange proposes that not more than 10% of the Fund's assets in the aggregate will be held in convertible and

<sup>31</sup>See note 21, *supra*.

non-convertible preferred stocks, warrants and Work Out Securities.

The Exchange accordingly believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1), (a)(2), (b)(4) and (b)(5) to Rule 8.600–E. The Exchange notes that, other than Commentary .01(a)(1), (a)(2), (b)(4) and (b)(5) to Rule 8.600–E, the Fund’s portfolio will meet all other requirements of Rule 8.600–E.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively managed ETF that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA. In addition, as noted above, investors have ready access to information regarding the Fund’s holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively managed ETF that principally holds fixed income securities and that will enhance competition among market participants, to the benefit of investors and the marketplace.

#### *C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its

reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR–NYSEArca–2018–82 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–NYSEArca–2018–82. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

Number SR–NYSEArca–2018–82, and should be submitted on or before December 27, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

[FR Doc. 2018–26514 Filed 12–4–18; 8:45 am]

**BILLING CODE 8011–01–P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 33309; File No. 812–14822]**

### **American Fidelity Assurance Company, et al.**

November 29, 2018.

**AGENCY:** Securities and Exchange Commission (“Commission”).

**ACTION:** Notice.

Notice of application for an order approving the substitution of certain securities pursuant to section 26(c) of the Investment Company Act of 1940, as amended (the “1940 Act”).

**APPLICANTS:** American Fidelity Assurance Company (the “Insurance Company”), American Fidelity Separate Account B and American Fidelity Separate Account C (each, a “Separate Account” and together, the “Separate Accounts”). Together, the Insurance Company and the Separate Accounts are referred to as the “Applicants.”

**SUMMARY OF APPLICATION:** Applicants seek an order pursuant to section 26(c) of the 1940 Act approving the substitution of shares of American Funds IS Blue Chip Income and Growth Fund (the “American Funds Blue Chip Fund”) and Dreyfus VIF Opportunistic Small Cap Portfolio (the “Dreyfus Small Cap Fund,” and together with the American Funds Blue Chip Fund, the “Replacement Funds”), respectively, for shares of BlackRock Basic Value V.I. Fund (the “BlackRock Basic Value Fund”), and BlackRock Advantage U.S. Total Market V.I. Fund (the “BlackRock Total Market Fund,” and together with the BlackRock Basic Value Fund, the “Existing Funds”), respectively, held by the Separate Accounts (the “Substitution”), to support the Separate Accounts’ variable annuity contracts (each, a “Contract” and collectively, the “Contracts”) that are issued by the Insurance Company.

**FILING DATES:** The application was filed on September 26, 2017, and amended

<sup>32</sup> 17 CFR 200.30–3(a)(12).

on January 31, 2018, March 8, 2018, August 10, 2018 and November 7, 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 Secretary of the Commission 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 December 24, 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 1940 Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: Christopher T. Kenney, General Counsel, American Fidelity Assurance Company, P.O. Box 73125, Oklahoma City, OK 73125–0523.

**FOR FURTHER INFORMATION CONTACT:** Asen Parachkevov, Senior Counsel, or Andrea Ottomaneli Magovern, Branch Chief, at (202) 551–6821 (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 an Applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551–8090.

### Applicants' Representations

1. The Insurance Company is a stock life insurance company incorporated under the laws of Oklahoma. The Insurance Company is a wholly-owned subsidiary of American Fidelity Corporation, which is a Nevada corporation that is controlled by a family investment partnership. The Insurance Company is the depositor of the Separate Accounts.

2. Each of the Separate Accounts is a segregated asset account of the Insurance Company, and each Separate Account is registered with the Commission under the 1940 Act as a unit investment trust. The Separate Accounts are used by the Insurance Company to issue the Contracts. The Separate Accounts meet the definition

of "separate account" contained in Section 2(a)(37) of the 1940 Act. The assets of the Separate Accounts are held in the Insurance Company's name on behalf of the Separate Accounts and legally belong to the Insurance Company.

3. The Insurance Company established Separate Account B to hold the assets that underlie the AFAdvantage® Variable Annuity contracts, and established Separate Account C to hold the assets that underlie the AFMaxx® 457(b) Group Variable Annuity contracts. Separate Account B offers individual contracts, and Separate Account C offers group contracts. Separate Accounts B and C are divided into 12 sub-accounts, and each sub-account invests in the securities of a single underlying mutual fund.

4. Interests under the Contracts are registered under the Securities Act of 1933 (the "1933 Act"). The prospectus for each of the Contracts contains a provision reserving the Insurance Company's right to substitute another eligible investment option for any one of the portfolios available under the Contract.<sup>1</sup> Each Contract permits each contract owner or participant in a group account (each, a "Contract Owner") to transfer Contract value from one subaccount to another subaccount available under the Contract at any time, subject to certain restrictions and charges described in the prospectuses for the Contracts. None of the Contract restrictions, limitations or transfer fees will apply in connection with the Substitution. The application sets forth the registration statement file numbers for the Contracts and the Separate Accounts.

5. The Applicants propose to substitute shares of each of the Replacement Funds for shares of the corresponding Existing Fund held by the Separate Accounts. The investment adviser for the American Funds Blue Chip Fund is Capital Research and Management Company. The investment adviser for the Dreyfus VIF Small Cap Fund is the Dreyfus Corporation. The Replacement Funds are advised by registered investment advisers that are not affiliates of the Applicants. Comparisons of the investment objectives, investment strategies, principal risks and past performance of

<sup>1</sup> The Replacement Funds were not investment options in the Separate Accounts as of the date of the original application; however, the Insurance Company added the Dreyfus Small Cap Fund as an investment option in each Separate Account on July 31, 2017 and added the American Funds Blue Chip Fund as an investment option in each Separate Account as of May 1, 2018.

the Existing Funds and Replacement Funds are included in the application.

6. Applicants state that they are seeking the Substitution because the BlackRock Total Market Fund (f/k/a BlackRock Value Opportunities V.I. Fund (the "BlackRock Value Opportunities Fund")) made material changes to its investment objectives and policies effective in June 2017. Due to the changes to its investment objectives, the fund is no longer categorized as a small cap fund. Additionally, the fund's entire portfolio management team was replaced with a new team that has a new investment process. As a result of these changes, Separate Account investors who originally invested in the BlackRock Value Opportunities Fund are now invested in a fund with new investment objectives, a new management team and new investment processes. The Applicants are seeking the Substitution in order to replace BlackRock Total Market Fund with a fund that more closely resembles the original BlackRock Value Opportunities Fund in which the Separate Account participants originally chose to invest.

7. The Applicants also are seeking the Substitution to replace shares of the BlackRock Basic Value Fund with shares of the American Funds Blue Chip Fund. Applicants have an ongoing relationship with American Funds, and the Separate Accounts currently offer another American Funds product in their portfolio line-up. Applicants prefer to build on their existing relationship with American Funds by adding the American Funds Blue Chip Fund as the large cap investment option offered under the Contracts in place of the BlackRock Basic Value Fund.

8. The Applicants have analyzed the proposed Substitution and have determined that the objectives and strategies of each of the Replacement Funds are substantially similar to the objectives and strategies of the corresponding Existing Fund, such that the essential objectives and risk expectations of those Contract Owners with interests in sub-accounts of the Existing Funds will continue to be met after the Substitution. Additionally, the total annual expenses of the American Funds Blue Chip Fund (0.41%) are less than those of the corresponding Existing Fund (0.84%); and the total annual expenses of the Dreyfus Small Cap Fund (0.86%) are less than those of the corresponding Existing Fund (1.01%). The Substitution of the American Funds Blue Chip Fund (0.41%) in place of the BlackRock Basic Value Fund (0.73%) will also result in a decreased net expense ratio. Due to expense waivers by the BlackRock Total Market Fund,

however, the Substitution of the Dreyfus Small Cap Fund (0.86%) in place of the BlackRock Total Market Fund (0.55% after June 12, 2017; 0.92% before June 12, 2017) will not result in decreased net expense ratios. The application sets forth the fees and expenses of each Existing Fund and its corresponding Replacement Fund in greater detail.

9. Applicants represent that as of the Substitution Date (defined below), the Separate Accounts will redeem shares of the Existing Portfolios for cash. Redemption requests and purchase orders will be placed simultaneously so that Contract values will remain fully invested at all times.

10. Each Substitution will take place at the relative net asset values of the respective shares (in accordance with section 22(c) of the 1940 Act and rule 22c-1 thereunder) without the imposition of any transfer or similar charges by Applicants. The Substitution will be effected with no change in the amount or value of any Contract held by Contract Owners whose assets are allocated to the Replacement Funds as part of the Substitution (the "Affected Contract Owners").<sup>2</sup>

11. The Substitution is designed to provide Contract Owners with the ability to continue their investment in a similar investment option without interruption and at no additional cost to them. In this regard, the Insurance Company has agreed to bear all expenses incurred in connection with the Substitution and related filings and notices, including legal, accounting, brokerage, and other fees and expenses. The Contract values of the Contract Owners impacted by the Substitution will not change on the date of the Substitution as a result of the Replacement Funds replacing the Existing Funds.

12. The proposed Substitution will not cause the Contract fees and charges currently being paid by Contract Owners to be greater after the proposed Substitution than before the proposed Substitution. No brokerage commissions, fees or other remuneration will be paid by either the

Existing Funds or the Replacement Funds or by Contract Owners in connection with the Substitution. The terms of the benefits available under the Contracts will not change as a result of the proposed Substitutions. The Substitution will not result in adverse tax consequences to Affected Contract Owners and will not alter any tax benefits associated with the Contracts and no tax liability will arise for the Affected Contract Owners as a result of the Substitution.

13. At least 30 days prior to the Substitution Date, Contract Owners will be notified, via prospectus supplements, that Applicants received or expect to receive Commission approval of the proposed Substitution and of the anticipated date of implementation of the proposed Substitution (the "Substitution Date", and such supplements, the "Pre-Substitution Notice"). Pre-Substitution Notices sent to Contract Owners will be filed with the Commission pursuant to rule 497(e) under the 1933 Act. The Pre-Substitution Notice will advise Contract Owners that, for at least 30 days before the Substitution Date through at least 30 days after the Substitution Date, (i) Affected Contract Owners may make at least one transfer of Contract value from the subaccount investing in the respective Existing Fund (before the Substitution Date) or the corresponding Replacement Fund (after the Substitution Date) to any other available investment option under the Contract without charge, and (ii) that, except with respect to market timing/short-term trading, the Applicants will not exercise any right they may have under the Contracts to impose restrictions on transfers between subaccounts under the Contract. In addition, Affected Contract Owners will receive a prospectus for the applicable Replacement Fund at least 30 days before the Substitution Date.

14. In addition to the Pre-Substitution Notices distributed to the Contract Owners, within five business days of the Substitution Date, Affected Contract Owners will be sent a written confirmation that will include: (1) A confirmation that the Substitution was carried out as previously notified, (2) a notice reiterating the information set forth in the Pre-Substitution Notice, and (3) the values of the Contract Owner's positions in the Existing Fund before the Substitution and the Replacement Fund after the Substitution.

#### Legal Analysis

1. Applicants request that the Commission issue an order pursuant to section 26(c) of the 1940 Act approving

the proposed Substitution. Section 26(c) of the 1940 Act prohibits any depositor or trustee of a registered unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(c) provides that such approval shall be granted by order from the Commission if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the 1940 Act.

2. Applicants submit that the Substitution meets the standards set forth in section 26(c) and that, if implemented, the Substitution would not raise any of the concerns that Congress intended to address when the 1940 Act was amended to include this provision. Applicants state Substitution of the American Funds Blue Chip Fund in place of the BlackRock Basic Value Fund will result in decreased net expense ratios for investors in the BlackRock Basic Value Fund. Thus, the Substitution protects the Contract Owners who are invested in the BlackRock Basic Value Fund by providing a replacement fund that (1) is substantially similar to the Existing Fund, and (2) reduces net operating expenses.

3. Applicants submit that, although the Substitution of the Dreyfus Small Cap Fund in place of the BlackRock Total Market Fund will not result in decreased net expense ratios because of expense waivers by the BlackRock Total Market Fund that were implemented as of June 12, 2017 when the fund changed its investment strategy from a small cap strategy to an all cap strategy, the proposed Substitution will result in Contract Owners holding shares of a fund that has investment objectives and policies that are substantially similar to the corresponding Existing Fund, prior to the investment strategy changes. Therefore, the Substitution of the Dreyfus Small Cap Fund in place of the BlackRock Total Market Fund is consistent with the protection of Contract Owners and the purposes fairly intended by the policy and provisions of the 1940 Act and, thus, meets the standards necessary to support an order pursuant to Section 26(c) of the 1940 Act.

4. The Insurance Company has reserved the right under the each of the Separate Account's Contracts to substitute shares of another underlying mutual fund for one of the current underlying mutual funds offered as an investment option under the Contracts. The Contract prospectuses disclose this right.

<sup>2</sup> Applicants state that, because the Substitution will occur at relative net asset value, and the fees and charges under the Contracts will not change as a result of the Substitution, the benefits offered by the guarantees under the Contracts will be the same immediately before and after the Substitution. Applicants also state that what effect the Substitution may have on the value of the benefits offered by the Contract guarantees would depend, among other things, on the relative future performance of the Existing Funds and Replacement Funds, which Applicants cannot predict. Nevertheless, Applicants note that at the time of the Substitution, the Contracts will offer a comparable variety of investment options with as broad a range of risk/return characteristics.

5. Applicants submit that the Substitution will provide Contract Owners with a comparable investment vehicle which will not circumvent Contract Owner-initiated decisions and the Insurance Company's obligations under the Contracts, and will enable Contract Owners to continue to use the full range of applicable Contract features as they currently use them. The Substitution will have no impact on the Contract Owners' rights or privileges under the Contracts.

6. Applicants submit that the proposed Substitution is not the type of costly forced redemption that section 26 was designed to prevent. The Contracts provide Contract Owners with investment discretion to allocate and reallocate their Contract values among the available sub-accounts that invest in the underlying mutual fund investment options. Applicants submit that, after the proposed Substitution, ten investment options will be offered under the Separate Account Contracts, and as such, the likelihood of a Contract Owner being invested in an undesired underlying mutual fund is minimized because the Contract Owners are able to select from ten investment options that have a full range of investment objectives, investment strategies and managers. Applicants further state that the proposed Substitution is designed to provide Contract Owners with the foregoing benefits while enabling them to continue their investment in a similar investment option without interruption and at no additional cost to them.

7. The proposed transactions will take place at relative net asset value in conformity with the requirements of section 22(c) of the 1940 Act and rule 22c-1 thereunder without the imposition of any transfer or similar charges by the Applicants. The Substitution will be effected without change in the amount or value of any Contract held by the Affected Contract Owners. The Substitution will in no way alter the tax treatment of Affected Contract Owners in connection with their Contracts, and no tax liability will arise for Affected Contract Owners as a result of the Substitution. The Substitution will not result in an increase in Contract fees and expenses, including mortality and expense risk fees and administration and distribution fees charged by the Separate Accounts.

#### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Substitution will not be effected unless the Insurance Company determines that: (a) The Contracts allow

the substitution of shares of registered open-end investment companies in the manner contemplated by the application; (b) the Substitution can be consummated as described in the application under applicable insurance laws; and (c) any regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the Substitution.

2. The Insurance Company or its affiliates will pay all expenses and transaction costs of the Substitution, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses. No fees or charges will be assessed to the Affected Contract Owners to effect the Substitution. The proposed Substitution will not cause the Contract fees and charges currently being paid by Contract Owners to be greater after the proposed Substitution than before the proposed Substitution.

3. The Substitution will be effected at the relative net asset values of the respective shares of the Replacement Funds in conformity with section 22(c) of the 1940 Act and rule 22c-1 thereunder without the imposition of any transfer or similar charges by Applicants. The Substitution will be effected without change in the amount or value of any Contracts held by Affected Contract Owners.

4. The Substitution will in no way alter the tax treatment of Affected Contract Owners in connection with their Contracts, and no tax liability will arise for Affected Contract Owners as a result of the Substitution.

5. The obligations of the Applicants and the rights of the Affected Contract Owners under the Contracts will not be altered in any way. The Substitution will not adversely affect any riders under the Contracts.

6. Affected Contract Owners will be permitted to make at least one transfer of Contract value from the subaccount investing in the respective Existing Fund (before the Substitution Date) or the corresponding Replacement Fund (after the Substitution Date) to any other available investment option under the Contract without charge for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date. Except as described in any market timing/short-term trading provisions of the relevant prospectus, the Applicants will not exercise any right they may have under the Contracts to impose restrictions on transfers between the subaccounts under the Contracts, including limitations on the future number of transfers, for a period

beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date.

7. All Affected Contract Owners will be notified at least 30 days before the Substitution Date about: (a) The intended substitution of the Existing Funds with the Replacement Funds; (b) the intended Substitution Date; and (c) information with respect to transfers as set forth in Condition 6 above. In addition, the Applicants will deliver to all Affected Contract Owners, at least thirty (30) days before the Substitution Date, a prospectus for the applicable Replacement Fund.

8. The Applicants will deliver to each Affected Contract Owner within five (5) business days of the Substitution Date a written confirmation which will include: (a) A confirmation that the Substitution was carried out as previously notified; (b) a restatement of the information set forth in the Pre-Substitution Notice; and (c) the values of the Contract Owners' positions in the Existing Funds before the Substitution and the Replacement Funds after the Substitution.

9. Applicants and their affiliates will not receive, for three years from the Substitution Date, any direct or indirect benefits from the Replacement Funds, their investment advisers or underwriters (or their affiliates), in connection with assets attributable to Contracts affected by the Substitution, at a higher rate than they had received from the Existing Funds, their investment advisers or underwriters (or their affiliates), including without limitation 12b-1 fees, shareholder service, administrative or other service fees, revenue sharing, or other arrangements.

10. Applicants agree that for those Contracts with assets allocated to the BlackRock Total Market Fund on the Substitution Date, for a period of one year following the Substitution Date, the Insurance Company or an affiliate thereof will reimburse, at least as frequently as the last business day of each fiscal quarter, the Contract Owners whose subaccounts invest in the Dreyfus Small Cap Fund to the extent that the Dreyfus Small Cap Fund's net annual operating expenses (taking into account fee waivers and expense reimbursements) for such period exceed, on an annualized basis, the net annual operating expenses of the BlackRock Total Market Fund for the most recent fiscal year preceding the date of the most recently filed application. The Insurance Company will not increase the Contract fees and charges that would otherwise be assessed under the terms of the

Contracts for a period of at least one year following the Substitution Date.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2018-26384 Filed 12-4-18; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84697; File No. SR-CboeEDGX-2018-057]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Directed Market Makers and Primary Market Makers

November 30, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 27, 2018, Cboe EDGX Exchange, Inc. (“Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to Directed Market Makers and Primary Market Makers.

The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend its rules related to Directed Market Makers and Primary Market Makers. Particularly, the Exchange proposes to (1) rename “Directed Market Makers” and “Primary Market Makers”, (2) clarify the applicable participation entitlements when a market participation is both a Directed Market Maker and Primary Market Maker, and (3) amend the definition of small size orders.

The Exchange first proposes to update the names of “Directed Market Makers” and “Primary Market Makers”. Specifically, the Exchange proposes to replace all references to “Directed Market Makers” to “Preferred Market Makers” (or “PMMs”) and make a corresponding change to replace references to “Directed Orders” to “Preferred Orders.” The Exchange also proposes to replace all references to “Primary Market Makers” to “Designated Primary Market Makers” (or “DPMs”). The Exchange notes the proposed name changes conforms its terminology with respect to these types of Market Makers to the terminology used by its affiliated exchange, Cboe Options, for similar market participants.<sup>3</sup> The Exchange notes that Directed Market Makers and Primary Market Makers will be referred to herein as “PMMs” and “DPMs”, respectively.

Next, the Exchange proposes to provide in the rules which participation entitlement applies in the event an order is preferred to a DPM (*i.e.*, the DPM is also the PMM) and both PMM and DPM participation entitlements are in effect. Although not explicitly specified in the rules, currently, if a DPM is also the PMM, the PMM entitlements apply. The Exchange proposes to expressly provide under Rule 21.18(h)(1) that, going forward, if the DPM is also a PMM with respect to an incoming order, that PMM/DPM will be treated as a DPM and the DPM participation entitlements under paragraph (g) of Rule 21.8 will apply to that order. The Exchange believes that the proposed rule change is appropriate given a DPM’s heightened quoting

obligations.<sup>4</sup> Put another way, the Exchange believes that a DPM that is preferred on an order should not be subject to a potentially lesser entitlement just because that DPM happened to also be preferred.<sup>5</sup> Moreover, the Exchange believes that it is appropriate to provide the DPM entitlements when the DPM is also designated as a PMM as the obligations that the DPM has to the market are not diminished when it receives a Preferred Order.

The Exchange lastly proposes to amend the definition of a small size order. More specifically, Rule 21.8(g)(2) provides that small size orders are allocated in full to the DPM if the DPM has a priority quote at the NBBO. The rule also provides that small size orders are defined as five (5) or fewer contracts. The Exchange proposes to provide that in order to qualify as a small size order, the incoming order must be a size of five or fewer contracts (*i.e.*, the size of the original order determines whether the definition is met, not the number of contracts remaining after customer orders have been satisfied). The Exchange notes that a similar preference is given for small orders on Cboe Options as well as other exchanges and that such preference is based on the original size of the order.<sup>6</sup>

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to,

<sup>4</sup> See EDGX Options Rule 22.2.

<sup>5</sup> For example, if a DPM is preferred on a small size order (*i.e.*, 5 or less contracts), that DPM should receive the small size order entitlement, which is a 100% allocation, notwithstanding the fact that DPM was also preferred on that order (*i.e.*, it would otherwise receive 60% or 40% allocation under Rule 21.8(f)(1)). The Exchange notes that its affiliate exchange, Cboe Options, as well as other exchanges similarly apply the small order preference allocation where a DPM is also preferred on an order. See Cboe Options Regulatory Circular RG15-011. See also, Nasdaq ISE Rule 713, Supplementary Material to Rule 713.03(c)(iii).

<sup>6</sup> See Cboe Options Rule 6.45(a)(ii)(C). See also, NYSE Arca Rule 6.76A-O(a)(B).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See *e.g.*, Cboe Exchange, Inc.’s (“Cboe Options”) Rules 8.13 and 8.80.



and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First, the Exchange believes its proposal to rename Directed Market Makers and Primary Market Makers standardizes the naming conventions used for similar market participants (*i.e.*, Market Makers) across affiliated exchanges (*i.e.*, Cboe Options and EDGX), thereby making the rules easier to read and reducing potential confusion. Similarly, the Exchange believes explicitly stating in the rules which participation entitlements a Market Maker will receive when it's both a DPM and PMM with respect to a particular order alleviates confusion and provides clarity in the rules. Providing clarity and reducing confusion in the rules removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

The Exchange also believes the proposal to apply the DPM participation entitlements to an order that is preferred to a DPM is appropriate given DPMs' heightened quoting obligations.<sup>10</sup> The regular allocation entitlements for DPMs, including the small size order entitlement, are designed to balance the obligations that the DPM has to the market with corresponding benefits. The Exchange believes that it is appropriate to provide DPM entitlements when the DPM is also a PMM as the obligations that the DPM has to the market are not diminished when it receives a Preferred Order. The proposed rule change also applies equally to similarly situated market participants. Moreover, the proposed change is consistent with other Exchanges' rules, including the Exchange's affiliate, Cboe Options.<sup>11</sup>

The Exchange lastly believes the proposal to use the size of the original order to determine whether an order meets the small size order definition for purposes of the small size order entitlement is reasonable as it better achieves the purpose of the

participation entitlement, which is to provide a benefit to DPMs when an order involves a small number of contracts in exchange for their heightened quoting obligations. The Exchange does not believe the DPM should receive that same benefit where the order involves a small number of contracts only as a result of prior executions. For example, without the proposed rule change, a DPM may receive full allocation on an order that was originally 1,000 contracts because 995 contracts were first executed by Customers. The Exchange no longer wishes to allow such orders to qualify for the small size order entitlement. The Exchange notes the proposed rule change applies to all DPMs uniformly. As noted above, the proposed change also conforms to how small orders are determined on its affiliated exchange, Cboe Options and other Exchanges (*i.e.*, determined by the size of the original order).<sup>12</sup>

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the Exchange notes that the proposed changes apply equally to similarly situated market participants. Moreover, the proposed changes provide greater clarity in the rules and greater harmonization between the Exchange and its affiliated exchange, Cboe Options. Moreover, the proposed changes only apply to EDGX. To the extent that the proposed changes may make the Exchange a more attractive trading venue for market participants on other exchanges, such market participants may elect to become Exchange market participants.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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 Act<sup>13</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>14</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>15</sup> normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)<sup>16</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that the proposed changes relating to (i) which participation entitlement applies when a DPM is also a PMM and (ii) determining whether an order qualifies for a small order size entitlement based on original order size will be available for implementation starting November 29, 2018. The Exchange states that the waiver of the operative delay would allow the proposed changes to be implemented as soon as it's available. The Exchange further states that the implementation of conforming and clarifying changes would also immediately reduce confusion and provide further harmonization across affiliated exchanges. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change as operative upon filing.<sup>17</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> *Id.*

<sup>10</sup> See EDGX Options Rule 22.2.

<sup>11</sup> See Cboe Options Regulatory Circular RG15-011. See also, Nasdaq ISE Rule 713, Supplementary Material to Rule 713.03(c)(iii).

<sup>12</sup> See Cboe Options Rule 6.45(a)(ii)(C). See also, NYSE Arca Rule 6.76A-O(a)(B).

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-CboeEDGX-2018-057 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGX-2018-057. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2018-057 and should be submitted on or before December 27, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

Eduardo A. Aleman, Assistant Secretary.

[FR Doc. 2018-26512 Filed 12-4-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934; Release No. 84689/November 29, 2018]

Order Regarding Alternative Net Capital Computation for BofAML Securities, Inc.

BofAML Securities, Inc. (“BofAMLS”), a broker-dealer registered with the Securities and Exchange Commission (“Commission”), has submitted an application to the Commission for authorization to use the market risk standards of Appendix E of Rule 15c3-1 to the Securities Exchange Act of 1934 (“Exchange Act”).<sup>1</sup>

Based on a review of the application that BofAMLS submitted, including an assessment of the firm’s financial position, the adequacy of the firm’s internal risk management controls, and the statistical models the firm will use for internal risk management and regulatory capital purposes, the Commission has determined that the application meets the requirements of paragraphs (a), (b), (d)(1)(i)–(iv), and (d)(2) of Appendix E.<sup>2</sup> The Commission also has determined that Bank of America Corporation, BofAMLS’s ultimate holding company, is in compliance with the terms of its undertakings, as provided to the Commission under Appendix E.

Using the market-risk standards of Appendix E of Rule 15c3-1 should help BofAMLS align its supervisory risk management practices and regulatory capital requirements more closely, and would adequately capture the material risks. As a result, this also should help to ensure that integrity of the risk measurement, monitoring and management process. The Commission, therefore, finds that approval of the application is necessary or appropriate in the public interest or for the protection of investors.

Accordingly, IT IS ORDERED, under paragraph (a)(7) of Rule 15c3-1<sup>3</sup> to the Exchange Act, that BofAMLS may calculate net capital using the market risk standards of Appendix E to

<sup>1</sup> See 17 CFR 240.15c3-1e.

<sup>2</sup> See 17 CFR 240.15c3-1e(a); 17 CFR 240.15c3-1e(b); 17 CFR 240.15c3-1e(d)(i)–(iv); 17 CFR 240.15c3-1e(d)(2).

<sup>3</sup> See 17 CFR 240.15c3-1(a)(7).

compute a deduction for market risk on some or all its positions instead of the provisions of paragraphs (c)(2)(vi) and (c)(2)(vii) of Rule 15c3-1.<sup>4</sup>

By the Commission.

Eduardo A. Aleman, Assistant Secretary.

[FR Doc. 2018-26404 Filed 12-4-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84698; File No. SR-CBOE-2018-073]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 5.8, Long-Term Equity Options Series (LEAPS)

November 30, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 23, 2018, Cboe Exchange, Inc. (“Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend Rule 5.8, Long-Term Equity Options Series (LEAPS). The text of the proposed rule change is provided below.

(additions are italicized; deletions are [bracketed])

\* \* \* \* \*

Rules of Cboe Exchange, Inc.

\* \* \* \* \*

Rule 5.8. Long-Term Equity Option Series (LEAPS)

(a) Notwithstanding conflicting language in Exchange Rule 5.5, the Exchange may list long-term equity option series (LEAPS) that expire from 12 to 180 months from the time they are listed. There may be up to ten additional expiration months for

<sup>4</sup> See 17 CFR 240.15c3-1(c)(2)(vi); 17 CFR 240.15c3-1(c)(2)(vii).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>18</sup> 17 CFR 200.30-3(a)(12).

options on SPY and up to six additional expiration months for all other option classes.

\* \* \* \* \*

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange proposes to amend Rule 5.8, Long-Term Equity Option Series (LEAPS), to permit the listing and trading of up to ten long-term expiration months for long-term options on the SPDR® S&P 500® exchange-traded fund ("SPY") in response to customer demand.<sup>3</sup> Rule 5.8 currently provides that the Exchange may list long-term option contracts that expire from 12 to 180 months from the time they are listed (LEAPS). There may be up to six long-term expiration months per option class. The proposal will add liquidity to the SPY options market by allowing market participants to hedge risks relating to SPY positions over a longer period with a known and limited cost.

The SPY options market today is characterized by its tremendous daily and annual liquidity. As a consequence, the Exchange believes that the listing of additional SPY long-term expiration months would be well received by

<sup>3</sup> In contrast to Rule 5.8, Rule 24.9(b)(1)(B) (which applies to index options) permits the Exchange to list long-term index options series based on either the full or reduced value of the underlying index, adding up to ten (10) expiration months. The Exchange seeks to list ten (10) long-term expiration months on SPY, just as it now may list ten (10) expiration months on long-term index option series, in order to provide investors with a wider choice of investments.

investors. This proposal to expand the number of permitted SPY long-term expiration months would not apply to long-term expiration months on any other class of options.<sup>4</sup>

The Exchange proposes to implement the proposed rule change on the date of this rule filing.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change offers market participants additional long-term expiration months on SPY options for their investment and risk management purposes. The proposal is intended simply to provide additional trading opportunities which have been requested by customers, thereby facilitating transactions in options and contributing to the protection of investors and the maintenance of fair and orderly markets. The proposed rule change responds to the continuing needs of market participants, particularly portfolio managers and other institutional customers, by providing protection from long-term market moves and by offering an alternative to hedging portfolios with future positions or off-exchange customized derivative instruments.

Rule 5.8 has permitted up to six (6) long-term expiration months in option

<sup>4</sup> Historically, SPY is the largest and most actively traded ETF in the United States as measured by its assets under management and the value of shares traded.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> *Id.*

classes since 1991, when it increased the number of permissible expiration months from four to six.<sup>8</sup> Other exchanges, such as Nasdaq PHLX LLC ("Phlx"), have similarly permitted up to six "LEAPS" since 1991.<sup>9</sup> When the Securities and Exchange Commission (the "Commission") approved the increase to six expiration months, the Commission stated that it did not believe that increasing the number of expiration months to six would cause, by itself, a proliferation of expiration months. The Commission also required that the Exchange monitor the volume of additional options series listed as a result of the rule change, and the effect on the Exchange's system capacity and quotation dissemination displays.<sup>10</sup>

The Exchange believes that the addition today of four (4) additional long-term expiration months on SPY options likewise does not represent a proliferation of expiration months, but is instead a very modest expansion of long-term options in response to stated customer demand. Significantly, the proposal would feature new long-term expiration months in only a single class of options that are very liquid and heavily traded, as discussed above. Additionally, the Exchange notes by way of precedent, that ten (10) expiration months are already permitted for long-term index options series. Further, the Exchange has the necessary systems capacity to support the new SPY long-term expiration months.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal merely provides investors additional investment and risk management opportunities by providing flexibility to the Exchange to list additional long-term options expiration series, expanding the number of SPY long-term expiration months offered on the Exchange from six (6) long-term expiration months to ten (10) long-term expiration months. Other options exchanges currently permit the listing of

<sup>8</sup> See Securities Exchange Act Release No. 28890 (February 15, 1991), 56 FR 7439 (February 22, 1991) (approving SR-CBOE-90-32).

<sup>9</sup> See Securities Exchange Act Release No. 84449 (October 18, 2018), 83 FR 53699 (October 24, 2018) (SR-Phlx-2018-64); see also Securities Exchange Act Release No. 29103 (April 18, 1991), 56 FR 19132 (April 25, 1991) (approving SR-Phlx-91-18).

<sup>10</sup> See Securities Exchange Act Release No. 28890 (February 15, 1991), 56 FR 7439 (February 22, 1991) (approving SR-CBOE-90-32).

ten (10) long-term expiration months for SPY.<sup>11</sup>

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>15</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange's proposal would conform the Exchange's rules relating to the permitted number of long term expiration months for long-term options on SPY to those of other exchanges.<sup>16</sup> Accordingly, the Commission believes that the proposal raises no new or novel regulatory issues, and waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore waives the 30-day operative delay and designates the proposal operative upon filing.<sup>17</sup>

<sup>11</sup> See, e.g., Phlx Rule 1012(a)(i)(D); Miami International Securities Exchange, LLC ("MIAX") Rule 406(a); and NYSE Arca, Inc. ("Arca") Rule 6.4-O(d)(i).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement in this case.

<sup>14</sup> *Id.*

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</sup> See *supra* note 11.

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on

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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2018-073 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2018-073. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from

efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2018-073, and should be submitted on or before December 27, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018-26515 Filed 12-4-18; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Investment Company Act Release No. 33310]

**Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940**

November 30, 2018.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of November 2018. A copy of each 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. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 26, 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:** The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

**FOR FURTHER INFORMATION CONTACT:** Shawn Davis, Branch Chief, at (202) 551-6413 or Chief Counsel's Office at

<sup>18</sup> 17 CFR 200.30-3(a)(12).

(202) 551-6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549-8010.

**Active Assets Prime Trust [File No. 811-09713]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On January 31, 2018, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of \$13,717 incurred in connection with the liquidation were paid by the applicant.

*Filing Date:* The application was filed on October 29, 2018.

*Applicant's Address:* c/o Morgan Stanley Investment Management Inc., 522 Fifth Avenue, New York, New York 10036.

**TCW Alternative Funds [File No. 811-23025]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On October 5, 2018, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of \$45,000 incurred in connection with the liquidation were paid by the applicant's investment adviser.

*Filing Dates:* The application was filed on October 30, 2018, and amended on November 20, 2018.

*Applicant's Address:* 865 South Figueroa Street, Suite 1800, Los Angeles, California 90017.

**Thai Fund, Inc. [File No. 811-05348]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On January 26, 2018, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of \$55,300 incurred in connection with the liquidation were paid by the applicant.

*Filing Dates:* The application was filed on October 29, 2018, and amended on November 20, 2018.

*Applicant's Address:* c/o Morgan Stanley Investment Management Inc., 522 Fifth Avenue, New York, New York 10036.

**Turkish Investment Fund, Inc. [File No. 811-05921]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 29, 2017, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of \$93,000 incurred in connection with the liquidation were paid by the applicant.

*Filing Date:* The application was filed on October 29, 2018.

*Applicant's Address:* c/o Morgan Stanley Investment Management Inc., 522 Fifth Avenue, New York, New York 10036.

**Van Eck Emerging Markets Multi-Asset Income Fund [File No. 811-22854]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

*Filing Dates:* The application was filed on October 26, 2018, and amended on November 19, 2018.

*Applicant's Address:* 666 Third Avenue, 9th Floor, New York, New York 10017.

**Van Eck Coastland Online Consumer Finance Fund [File No. 811-23224]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

*Filing Dates:* The application was filed on November 1, 2018, and amended on November 19, 2018.

*Applicant's Address:* 666 Third Avenue, 9th Floor, New York, New York 10017.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018-26487 Filed 12-4-18; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-84683; File No. SR-CboeEDGA-2018-019]

**Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Eliminate the Liquidity Swap Component of the Discretionary Range Instruction**

November 29, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

notice is hereby given that on November 23, 2018, Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Cboe EDGA Exchange, Inc. ("EDGA" or the "Exchange") is filing with the Securities and Exchange Commission (the "Commission") a proposed rule change to eliminate the liquidity swap component of the Discretionary Range instruction in connection with the recent introduction of a "high inverted" fee model.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The purpose of the proposed rule change is to eliminate the liquidity swap component of the Discretionary Range instruction in connection with the introduction of a "high inverted" fee model, as discussed in more detail

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

below.<sup>5</sup> All other functionality offered by the Discretionary Range instruction would remain unchanged.

Discretionary Range is an instruction the User<sup>6</sup> may attach to an order to buy (sell) a stated amount of a security at a specified, displayed or non-displayed ranked price with discretion to execute up (down) to another specified, non-displayed price.<sup>7</sup> Because the Discretionary Range instruction indicates a willingness by the entering User to trade at prices more aggressive than the order's ranked price, orders entered with this instruction also liquidity swap with certain incoming orders. Specifically, Rule 11.6(d) provides that a resting order with a Discretionary Range instruction would remove liquidity against: (1) An incoming Post Only order at its displayed or non-displayed ranked price that does not remove liquidity on entry pursuant to Rule 11.6(n)(4), and (2) an incoming order with a time-in-force ("TIF") other than Immediate-or-Cancel ("IOC") or Fill-or-Kill ("FOK") that is priced within its discretionary range. All other orders follow normal handling for the execution of an incoming order and remove liquidity when trading with a resting order with a Discretionary Range instruction.<sup>8</sup>

The Exchange proposes that a resting order with a Discretionary Range instruction would no longer perform a liquidity swap against any incoming orders, such that the incoming order would always act as the taker of liquidity, and the resting order with a Discretionary Range instruction would act as the maker of liquidity. As incoming Post Only orders always remove liquidity on entry in an inverted market where it is economically beneficial to remove liquidity,<sup>9</sup> this change would chiefly impact the execution of Discretionary Range orders against incoming orders with a TIF

other than IOC or FOK priced within the discretionary range.

EDGA has operated with an "inverted" fee schedule whereby orders that remove liquidity are provided a rebate and orders that add liquidity pay a fee.<sup>10</sup> On November 1, 2018, the Exchange filed an immediately effective change to its fee schedule to introduce a "high inverted" market model that increased both the rebate provided to orders that remove liquidity and the fee paid by orders that add liquidity.<sup>11</sup> With the recent changes to the fee schedule, an order that removes liquidity is provided a base rebate of \$0.0024 per share, and an order that adds liquidity pays a base fee of \$0.0030 per share.<sup>12</sup>

Under the current order handling, an order that executes immediately on entry, which would ordinarily be paid a rebate of \$0.0024 per share based on the new high inverted fee structure, could instead end up adding liquidity and paying a fee of up to \$0.0030 per share—*i.e.*, a swing of \$0.0054 per share—if the incoming order liquidity swaps when trading with a posted order that contains a Discretionary Range instruction. For example, assume the national best bid and offer is \$10.00 × \$10.05, and there is an order to buy on the EDGA Book priced at \$10.00 with discretion to pay up to \$10.03. If the Exchange were to receive an incoming Day order to sell at \$10.02, the incoming order would be posted to the EDGA Book and then trade with the Discretionary Range order at \$10.02 as the adder of liquidity, paying a fee of \$0.0030 per share instead of receiving the expected rebate of \$0.0024 per share.

Although likely to be a rare occurrence, the Exchange believes that paying a \$0.0030 per share fee in this scenario may be contrary to the expectations of Users that enter an order that trades on entry, who may instead expect to receive a \$0.0024 per share rebate for sending marketable order flow to EDGA. The Exchange therefore proposes to eliminate the liquidity swap component of the Discretionary Range instruction. As proposed, an order entered with a Discretionary Range instruction would never perform a liquidity swap with an incoming order. Since an order entered with a Discretionary Range instruction would not liquidity swap with an incoming

order under any circumstances, the Exchange proposes to reflect this change by providing that any contra-side order that executes against a resting order with a Discretionary Range instruction at its displayed or non-displayed ranked price, or a price in the discretionary range, will remove liquidity against the order with a Discretionary Range instruction.

In addition, the Exchange proposes to describe in Rule 11.6(d) how the Exchange would handle orders entered with a Discretionary Range instruction in the event that it changes its fees such that an incoming order with a Post Only instruction does not always remove liquidity on entry. As previously discussed, the Exchange is amending the Discretionary Range instruction such that orders entered with a Discretionary Range instruction would not liquidity swap with incoming orders, including orders entered with a Post Only instruction. Instead, the Exchange proposes that where an incoming order with a Post Only instruction does not remove liquidity on entry pursuant to Rule 11.6(n)(4) against a resting order with a Discretionary Range instruction, the discretionary range of the resting order with a Discretionary Range instruction would be shortened to equal the limit price of the incoming contra-side order with a Post Only instruction. While under an inverted fee schedule incoming orders with a Post Only instruction remove liquidity on entry, this language would be relevant if the Exchange were to move to a different market model (*e.g.*, maker/taker). In such an event, the Discretionary Range instruction would behave in a manner similar to recently adopted MidPoint Discretionary Orders ("MDO") on its affiliate Cboe EDGX Exchange, Inc. ("EDGX").<sup>13</sup> Like the proposed handling for EDGA orders entered with a Discretionary Range instruction, MDOs on EDGX are not willing to perform a liquidity swap, and would instead have their discretionary range shortened if an order with a Post Only instruction were to be posted within the discretionary range.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>14</sup> in general, and Section 6(b)(5) of

<sup>5</sup> A liquidity swap occurs when a resting order that is posted to the EDGA Book becomes the remover rather than the adder of liquidity for fee purposes.

<sup>6</sup> The term "User" means any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3. See Rule 1.5(ee).

<sup>7</sup> See Rule 11.6(d). An order with a Discretionary Range instruction resting on the EDGA Book will execute at its least aggressive price when matched for execution against an incoming order that also contains a Discretionary Range instruction, as permitted by the terms of both the incoming and resting order. *Id.*

<sup>8</sup> For example, an incoming order that executes at the ranked price of the Discretionary Range order, or an IOC or FOK order that executes at a price within the discretionary range would execute as the liquidity remover. *Id.*

<sup>9</sup> See Rule 11.6(n)(4).

<sup>10</sup> See Cboe EDGA U.S. Equities Exchange Fee Schedule.

<sup>11</sup> See Securities Exchange Act Release No. 84599 (November 15, 2018), 83 FR 58795 (November 21, 2018) (SR-CboeEDGA-2018-017).

<sup>12</sup> Members also have the opportunity to qualify for a lower fee or higher rebate based on volume executed on EDGA.

<sup>13</sup> See Securities Exchange Act Release No. 84327 (October 1, 2018), 83 FR 50416 (October 5, 2018) (SR-CboeEDGX-2018-041). The Exchange also offers MDOs on EDGA that follow the handling described in this filing for orders entered with a Discretionary Range instruction. See Rule 11.8(e).

<sup>14</sup> 15 U.S.C. 78f(b).

the Act,<sup>15</sup> in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange offers a Discretionary Range instruction that allows Users to specify a non-displayed discretionary price in addition to a displayed or non-displayed ranked price. As part of this instruction, an order entered with a discretionary price would liquidity swap in certain scenarios described in Rule 11.6(d), including when trading within the order's discretionary range against an incoming order that is entered with a TIF other than IOC or FOK. The Exchange believes that this result is undesirable under an inverted fee structure since the order that is negatively impacted by the swap from a rebate to a fee is the incoming order, and not the resting order that has opted into this handling by including a Discretionary Range instruction. Furthermore, this issue would be exacerbated under the new high inverted fee structure since the difference between the base fee for adding liquidity and base rebate for removing liquidity is now \$0.0054 per share. The Exchange therefore believes that eliminating the possibility of this liquidity swap is consistent with the public interest and the protection of investors.

With this change no resting orders on EDGA would liquidity swap with an incoming order, thereby ensuring that the incoming order would be the taker of liquidity, and paid the applicable rebate rather than charged an unexpected fee. Although certain other order instructions offered by the Exchange (e.g., Super Aggressive and Non-Displayed Swap)<sup>16</sup> contain a liquidity swap component, those order instructions do not liquidity swap under an inverted fee structure where a Post Only order would always remove liquidity on entry. The Exchange believes that amending its order handling, as proposed, to ensure a similar result in cases that involve the Discretionary Range instruction would promote just and equitable principles of trade.

Finally, the Exchange believes that the proposed operation of the Discretionary Range instruction where an order with a Post Only instruction

posts in the discretionary range is consistent with the protection of investors and the public interest. While the Exchange currently operates under an inverted fee schedule where an incoming order with a Post Only instruction would remove liquidity on entry, the Exchange believes that it would be appropriate to shorten the discretion of a resting order with a Discretionary Range instruction if necessary due to an incoming order with a Post Only instruction posting at a price within the discretionary range, which would be possible, for example, in the event the Exchange were to introduce a maker/taker market model. Shortening the order's discretionary range in such circumstances is intended to avoid the discretionary range extending past the contra-side order's limit price, which could create a price priority issue should a later order be entered and be eligible to execute against the resting order within its discretionary range but at a price that extends beyond the contra-side order with a Post Only instruction. As mentioned in the purpose section of this proposed rule change, similar behavior is already implemented for MDOs on EDGX.<sup>17</sup>

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to eliminate the possibility that a liquidity swap could cause an incoming order that was expecting to receive a rebate as a remover of liquidity to instead pay a fee. The Exchange believes that the proposed handling accords with the expectation of its Users when sending order flow to EDGA, which operates under an inverted fee model that generally incentivizes marketable order flow that removes liquidity on entry. The Exchange therefore believes that the proposed rule change would promote a fair and competitive market in securities traded on EDGA.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No comments were solicited or received on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>20</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>21</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. Waiver of the operative delay would allow the Exchange to immediately amend its rules to change its handling of orders entered with a Discretionary Range instruction so that such orders, when resting, no longer may liquidity swap with incoming orders with which they execute. The Exchange believes that eliminating this potential for a liquidity swap would be more consistent with the expectation of Exchange participants who submit orders that trade on entry and, in light of the Exchange's inverted fee structure, may expect to receive a rebate for such executions instead of incurring a fee due to a liquidity swap. The Exchange also believes that waiver of the operative delay will reduce the possibility that Exchange participants are inadvertently disadvantaged by a recent Exchange fee schedule change introducing higher fees and rebates. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> See Rule 11.6(n)(2), (n)(7).

<sup>17</sup> See note 13 supra.

designates the proposed rule change operative upon filing.<sup>22</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGA-2018-019 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-CboeEDGA-2018-019. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE,

<sup>22</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGA-2018-019, and should be submitted on or before December 26, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2018-26399 Filed 12-4-18; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84684; File No. SR-NASDAQ-2018-098]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the Exchange's Pricing Schedule

November 29, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 19, 2018, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (a) relocate its current Rule 7000 Series ("Equities Pricing"), entitled "Charges for Membership, Services, and Equipment," and The Nasdaq Options Market LLC's ("NOM") rules at Chapter XV ("Options Pricing"; together, "Equities and Options Pricing") to the Exchange's rulebook's ("Rulebook") shell

structure;<sup>3</sup> (b) make conforming cross-reference changes throughout the Rulebook; and (c) amend the Equity 4's title in the shell structure.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to (a) relocate the Equities and Options Pricing rules, currently under the Equities Rule 7000 Series and Options Chapter XV of the NOM rules, into the Rulebook's shell structure, respectively, under Equity 7 and Options 7 (both named "Pricing Schedule"); (b) make conforming cross-reference changes throughout the Rulebook; and (c) amend the Equity 4's title, "Equity Listing Rules," in the shell structure, as detailed below.

###### (a) Relocation of the Pricing Rules

The Exchange, as part of its continued effort to promote efficiency and the conformity of its processes with those of the Affiliated Exchanges,<sup>4</sup> and the goal of harmonizing and uniformizing its rules, proposes to relocate the Equities Pricing rules, currently under the Rule 7000 Series, into Equity 7, Pricing Schedule, of the shell structure. Specifically, the Exchange will add the word "Section" and renumber the

<sup>3</sup> In 2017, the Exchange added a shell structure to its Rulebook with the purpose of improving efficiency and readability and to align its rules closer to those of its five sister exchanges, The Nasdaq Stock Market LLC; Nasdaq PHLX LLC; Nasdaq ISE, LLC; Nasdaq GEMX, LLC; and Nasdaq MRX, LLC ("Affiliated Exchanges"). See Securities Exchange Act Release No. 82174 (November 29, 2017), 82 FR 57492 (December 5, 2017) (SR-BX-2017-054).

<sup>4</sup> See footnote 3.

<sup>23</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.



Equities Pricing rules as detailed in the table below:

7000 Series	Equity 7
7000 .....	Section 1.
7001 .....	Section 10.
7002 .....	Section 20.
7003 .....	Section 30.
7007 .....	Section 70.
7010 .....	Section 100.
7011 .....	Section 111.
7012 .....	Section 112.
7013 .....	Section 113.
7014 .....	Section 114.
7015 .....	Section 115.
7016 .....	Section 116.
7017 .....	Section 117.
7018 .....	Section 118.
7019 .....	Section 119.
7020 .....	Section 120.
7021 .....	Section 121.
7022 .....	Section 122.
7023 .....	Section 123.
IM-7023-1 .....	Section 123-IM-1.
7024 .....	Section 124.
7025 .....	Section 125.
7026 .....	Section 126.
IM-7026-1 .....	Section 126-IM-1.
7027 .....	Section 127.
7028 .....	Section 128.
7029 .....	Section 129.
7030 .....	Section 130.
7031 .....	Section 131.
7032 .....	Section 132.
7033 .....	Section 133.
7034 .....	Section 134.
7035 .....	Section 135.
7036 .....	Section 136.
7037 .....	Section 137.
IM-7037-1 .....	Section 137-IM-1.
7038 .....	Section 138.
7039 .....	Section 139.
IM-7039-1 .....	Section 139-IM-1.
7040 .....	Section 140.
7041 .....	Section 141.
7042 .....	Section 142.
7043 .....	Section 143.
7044 .....	Section 144.
7045 .....	Section 145.
7046 .....	Section 146.
7047 .....	Section 147.
IM-7047-1 .....	Section 147-IM-1.
7048 .....	Section 148.
7049 .....	Section 149.
7050 .....	Section 150.
7051 .....	Section 151.
7052 .....	Section 152.
7053 .....	Section 153.
7054 .....	Section 154.
7055 .....	Section 155.
7056 .....	Section 156.
7057 .....	Section 157.
IM-7057-1 .....	Section 157-IM-1.
7058 .....	Section 158.
7059 .....	Section 159.
7060 .....	Section 160.
7061 .....	Section 161.
7100 .....	Section 200.

The Exchange will also relocate the Options Pricing rules, currently under Chapter XV of the NOM rules, into Options 7, Pricing Schedule, of the shell structure. No renumbering of the

Options Pricing rules will be necessary other than replacing the abbreviated word "Sec." with the full word "Section."

The Exchange believes that the relocation of the Equities and Options Pricing rules will facilitate the use of the Rulebook by Members<sup>5</sup> of the Exchange, including those who are members of other Affiliated Exchanges, and other market participants. Moreover, the proposed changes are of a non-substantive nature and they will not amend the relocated rules, other than to update their numbers as previously detailed.

#### (b) Cross-Reference Updates

In connection with the changes described above, the Exchange proposes to update all cross-references in the Rulebook that direct the reader to the current placement of the Equities and Options Pricing rules and/or any of their subsections. Specifically, the Exchange will update the cross-references in Nasdaq Rules 1002(c)(1), IM-5220, and 8320(a)(1). Moreover, for consistency with the current title of General 8, Section 2 ("Direct Connectivity"), the Exchange proposes to update the description provided under Rule 7007(a) (to be relocated under Equity 7, Section 70(a)) by removing the text "to Nasdaq".

#### (c) Amendment of the Equity 4's Title

Finally, the Exchange will amend Equity 4's title in the shell structure, currently "Equity Listing Rules," and replace it with the word "Reserved," since no rules will be placed in this section of the shell structure.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by promoting efficiency and structural conformity of the Exchange's processes with those of the Affiliated Exchanges and to make the Exchange's Rulebook easier to read and more accessible to its Members and market participants. The Exchange believes that the relocation of the Equities and Options Pricing rules, cross-reference updates, and the

amendment to the Equity 4's title are of a non-substantive nature.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes do not impose a burden on competition because, as previously stated, they (i) are of a non-substantive nature, (ii) are intended to harmonize the structure of the Exchange's rules with those of its Affiliated Exchanges, and (iii) are intended to organize the Rulebook in a way that it will ease the Members' and market participants' navigation and reading of the rules.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>9</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay will allow it to promptly relocate the Pricing Schedule rules and continue to reorganize its Rulebook as already done in previous filings. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it would allow the Exchange, without delay, to reorganize its

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>5</sup> Exchange Rule 0120(i).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

Rulebook in a manner that improves accessibility, readability and structural consistency with the rules of its Affiliated Exchanges. For this reason, the Commission designates the proposed rule change to be operative upon filing.<sup>10</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2018-098 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-NASDAQ-2018-098. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official

<sup>10</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2018-098, and should be submitted on or before December 26, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2018-26400 Filed 12-4-18; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84682; File No. SR-ISE-2018-95]

### Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Supplementary Material .07 to ISE Rule 722

November 29, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 19, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Supplementary Material .07 to ISE Rule 722, which relates to Complex Orders, to correct inadvertent errors in the rule text.

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

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange filed a proposal to adopt certain Butterfly and Box Spread protections for complex order strategies and also reorganize and amend the existing Complex Order protections within Supplementary Material .07 to ISE Rule 722, among other things.<sup>3</sup> Subsequent to SR-ISE-2018-55 becoming effective, the Exchange received approval to make various revisions to Rule 722 to memorialize ISE's Complex Order functionality, among other things.<sup>4</sup> SR-ISE-2018-56 did not properly mark the rule text for Supplementary Material .07 of ISE Rule 722 against the Rulebook as amended by SR-ISE-2018-55. Specifically, SR-ISE-2018-56 failed to note the changes that had become effective within SR-ISE-2018-55. This rule change seeks to amend the current rule text of Supplementary Material .07 to Rule 722 to reconcile the approved rule texts of both SR-ISE-2018-55 and SR-ISE-2018-56. The proposal makes no substantive changes to ISE's rules.

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to

<sup>3</sup> Securities Exchange Act Release No. 83464 (June 19, 2018), 83 FR 29583 (June 25, 2018) (SR-ISE-2018-55).

<sup>4</sup> Securities Exchange Act Release No. 84373 (October, 2018), 83 FR 31783 (July 9, 2018) (SR-ISE-2018-56) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Its Rules Relating to Complex Orders).

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by correcting inadvertent errors within the rule text of Supplementary Material .07 to ISE Rule 722. Correcting this rule text error will help to ensure the accuracy of the current Rulebook. This rule change is not substantive.

#### *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. Specifically, the proposal does not impose a burden on intra-market or inter-market competition, because the purpose of this rule change is to correct inadvertent rule text errors within Supplementary Material .07 to Rule 722. This rule change is not substantive.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>9</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>10</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. ISE has requested that

the Commission waive the 30-day operative delay to allow the Exchange to immediately correct the errors in ISE Rule 722, Supplementary Material .07 and display Supplementary Material .07 to Rule 722 as intended. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. As noted above, the proposal, which makes no substantive changes to ISE's rules, is designed to correct inadvertent errors in the text of ISE Rule 722, Supplementary Material .07 and to assure that Supplementary Material .07 accurately reflects the changes included in SR-ISE-2018-55 and SR-ISE-2018-56.<sup>11</sup> Accordingly, the Commission waives the operative delay and designates the proposed rule change operative upon filing.<sup>12</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2018-95 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-2018-95. This file number should be included on the subject line if email is used. To help the Commission process and review your

<sup>11</sup> See notes 3 and 4, *supra*.

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2018-95, and should be submitted on or before December 26, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2018-26405 Filed 12-4-18; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Securities Exchange Act of 1934; Release No. 34-84676/November 29, 2018]

### **In the Matter of the NYSE Arca, Inc.; for an Order Granting the Approval of Proposed Rule Change To List and Trade Shares of the ForceShares Daily 4X US Market Futures Long Fund and ForceShares Daily 4X US Market Futures Short Fund Under Commentary .02 to NYSE Arca Equities Rule 8.200 (SR-NYSEArca-2016-120); Request for Additional Comment**

On October 17, 2016, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares of the ForceShares Daily 4X US Market Futures Long Fund and ForceShares Daily 4X US Market Futures Short Fund (“ForceShares ETPs”) under Commentary .02 to NYSE Arca Equities Rule 8.200. On November 4, 2016, the proposal was published for comment in the **Federal Register**.<sup>3</sup> On December 14, 2016, the Division of Trading and Markets, for the Commission pursuant to delegated authority, extended the time period for Commission action on the proposed rule change.<sup>4</sup> On February 1, 2017, the Division of Trading and Markets, for the Commission pursuant to delegated authority, instituted proceedings to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> On April 20, 2017, NYSE Arca submitted Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change as modified by previous amendments.<sup>6</sup> No comments on the proposed rule change were received. On May 2, 2017, the Division of Trading and Markets, for the Commission pursuant to delegated authority,<sup>7</sup> approved the proposed rule change, as modified by Amendment No. 3 (“May 2, 2017 Order”).<sup>8</sup>

On May 12, 2017, the Secretary of the Commission notified the Exchange that pursuant to Rule 431 of the Commission’s Rules of Practice,<sup>9</sup> the Commission would review the delegated action and that the May 2, 2017 Order was stayed until the Commission ordered otherwise.<sup>10</sup> On May 25, 2017, the Commission issued an order scheduling filing of statements on review (“May 25, 2017 Order”), in

which the Commission ordered that any party or other person may file any additional statement by June 15, 2017. The Commission further ordered that the May 2, 2017 Order shall remain stayed pending further order of the Commission. The Commission received six comment letters in response to the May 25, 2017 Order that support approval of the proposed rule change.<sup>11</sup>

In response to the May 25, 2017 Order, one commenter cited a working paper from staff of the Federal Reserve Board regarding the impact of leveraged and inverse exchange-traded products (“ETPs”) on the underlying market, and quoted the following statements from the paper: (a) “capital flows substantially reduce the need for ETFs to rebalance when returns are large in magnitude and, therefore, mitigate the potential for these products to amplify volatility. We also show theoretically that flows can completely eliminate ETF rebalancing in the limit” and (b) “[l]everaged and inverse ETFs have received heavy criticism based on the belief that they exacerbate volatility in financial markets. We show that concerns about these types of products are likely exaggerated. Empirically, we find that capital flows considerably reduce ETF rebalancing demand and, therefore, mitigate the potential for ETFs to amplify volatility. Our analysis has relevant and timely policy implications, as regulators are reportedly considering changes to how ETFs are regulated.”<sup>12</sup>

The Commission believes that questions and concerns remain regarding the potential systemic impact of the ForceShares ETPs. In particular, the amount of rebalancing activity for a leveraged or inverse ETP increases significantly as the ETP’s leverage ratio and net assets increase. Moreover, the rebalancing activities of both leveraged and inverse ETPs are in the same direction as the movement in the reference asset (*i.e.*, they sell when the market is going down and buy when the market is going up), which could

potentially further exacerbate market movements, particularly during periods of high market volatility. Because the ForceShares ETPs would have 4X and –4X leverage, they would have greater rebalancing activities than existing ETPs that have lower leverage ratios per dollar of net assets under management. In particular, there are questions concerning whether rebalancing activities of the ForceShares ETPs could potentially result in significant additional market volatility as compared to existing ETPs, and interfere with fair and orderly markets. This raises a potential concern that the listing and trading of shares of the ForceShares ETPs may not be consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to protect investors and the public interest.

The Commission notes that another working paper from staff of the Federal Reserve Board suggests that the rebalancing activities of leveraged and inverse ETPs increase volatility in the underlying securities.<sup>13</sup> In particular, that working paper suggests that the rebalancing activities of leveraged and inverse ETPs in response to a large market move, especially in periods of high volatility, could pose market risks.

The Commission invites additional written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. In particular, the Commission requests that interested persons provide additional written submissions of their views, data, and arguments with respect to the market impact issue identified above (including the market impact issue discussed in the Ivanov and Lenkey Paper and the Tuzun Paper), as well as any other comments they wish to submit regarding the proposed rule change. In particular, the Commission seeks comment, including, where relevant, any specific data, statistics, or studies, on the following:

1. Would the rebalancing activities of the ForceShares ETPs impact daily volatility of the portfolio holdings, the underlying index, or the underlying names comprising the index (together “underlying assets”)?<sup>14</sup> If so, how?

<sup>13</sup> See Tugkan Tuzun, *Are Leveraged and Inverse ETFs the New Portfolio Insurers?* (Board of Governors of the Federal Reserve System, Working Paper May 28, 2014) (“Tuzun Paper”).

<sup>14</sup> As explained in Amendment No. 3 to the proposed rule change, under normal market conditions, each ForceShares ETP may invest in Standard & Poor’s 500 Stock Price Index Futures contracts (“Big S&P Contracts”), E-Mini S&P 500

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 79201 (October 31, 2016), 81 FR 76977 (November 4, 2016) (SR-NYSEArca-2016-120).

<sup>4</sup> See Securities Exchange Act Release No. 79550 (December 14, 2016), 81 FR 92892 (December 20, 2016).

<sup>5</sup> See Securities Exchange Act Release No. 79914 (February 1, 2017), 82 FR 9625 (February 7, 2017).

<sup>6</sup> Amendment No. 3 replaced and superseded the proposed rule change as modified by Amendment No. 2. Amendment No. 2 had previously replaced and superseded the proposed rule change as modified by Amendment No. 1. Amendment No. 1 replaced and superseded the original filing in its entirety.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>8</sup> See Securities Exchange Act Release No. 80579 (May 2, 2017), 82 FR 21443 (May 8, 2017).

<sup>9</sup> 17 CFR 201.431.

<sup>10</sup> See letter to Elizabeth King, General Counsel and Corporate Secretary, New York Stock Exchange, from Brent J. Fields, Secretary, Commission, dated May 12, 2017, available at <https://www.sec.gov/rules/sro/nysearca/2017/34-80770-letter-from-secretary.pdf>.

<sup>11</sup> See letters to Brent J. Fields, Secretary, Commission, from Boris Ilyevsky, dated June 5, 2017; Kris Wallace, Member, ForceShares LLC, dated June 13, 2017; Douglas M. Yones, Head of Exchange Traded Products, New York Stock Exchange, dated June 13, 2017; Jonathan Yao, CEO, SogoTrade, Inc., dated June 14, 2017; and Kris Wallace, Member, ForceShares LLC, dated July 24, 2017 (“ForceShares Letter”); and letter to Commission, from James J. Angel, Associate Professor of Finance, Georgetown University, dated July 10, 2017.

<sup>12</sup> See ForceShares Letter at 5 (quoting Ivan T. Ivanov and Stephen L. Lenkey, *Are Concerns About Leveraged ETFs Overblown?* (Finance and Economics Discussion Series, Divisions of Research & Statistics and Monetary Affairs, Federal Reserve Board, Washington, DC, Working Paper 2014-106) (“Ivanov and Lenkey Paper”).

2. How much additional end-of-day trading volume in the underlying assets would the ForceShares ETPs potentially add? How much volume has existing leveraged and inverse ETPs added to end-of-day trading in their underlying assets?

3. Would the trading activity relating to the ForceShares ETPs exacerbate market movements or market volatility? Why or why not?

4. What type of hedging exposure is expected to arise from trading activity in these products?

5. How would this hedging exposure change or otherwise react to significant down market moves? For example, how might such hedging exposure be adjusted?

6. Would the listing and trading of shares of the ForceShares ETPs change the current leveraged and inverse ETP market? If so, how?

7. Do investors have access to information sufficient to fully understand the operation and risks of the ForceShares ETPs?

*It is ordered* that by December 20, 2018, any party or other person may file any additional statement.

By the Commission.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018-26403 Filed 12-4-18; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84709; File No. 10-234]

### Long-Term Stock Exchange, Inc.; Notice of Filing of Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934

November 30, 2018.

On November 9, 2018, Long-Term Stock Exchange, Inc. (“LTSE” or “Applicant”) filed with the Securities and Exchange Commission

Futures contracts (“E-Minis” and, together with Big S&P Contracts, “Primary S&P Interests”), swap agreements referencing Primary S&P Interests or the S&P 500 Index, over-the-counter forward contracts referencing Primary S&P Interests, options on Primary S&P Interests, and certain “Cash Equivalents.” For more information regarding the ForceShares ETPs, see Amendment No. 3, available at <https://www.sec.gov/comments/sr-nysearca-2016-120/nysearca2016120-1714666-150363.pdf>.

(“Commission”) a Form 1 application under the Securities Exchange Act of 1934 (“Exchange Act”), seeking registration as a national securities exchange under Section 6 of the Exchange Act.

The Commission is publishing this notice to solicit comments on LTSE’s Form 1 application. The Commission will take any comments it receives into consideration in making its determination about whether to grant LTSE’s request to be registered as a national securities exchange. The Commission will grant the registration if it finds that the requirements of the Exchange Act and the rules and regulations thereunder with respect to LTSE are satisfied.<sup>1</sup>

The Applicant’s Form 1 application provides detailed information on how LTSE proposes to satisfy the requirements of the Exchange Act. The Form 1 application also provides that LTSE would operate a fully automated electronic trading platform for the trading of listed equities and would not maintain a physical trading floor. It also provides that liquidity would be derived from orders to buy and orders to sell submitted to LTSE electronically by its registered broker-dealer members, as well as from quotes submitted electronically by market makers. Further, the Form 1 application states that LTSE would be wholly-owned by its parent company, LTSE Holdings, Inc. (“LTSEH”).

A more detailed description of the manner of operation of LTSE’s proposed system can be found in Exhibit E to LTSE’s Form 1 application. The proposed rulebook for the proposed exchange can be found in Exhibit B to LTSE’s Form 1 application, and the governing documents for both LTSE and LTSEH can be found in Exhibit A and Exhibit C to LTSE’s Form 1 application, respectively. A listing of the officers and directors of LTSE can be found in Exhibit J to LTSE’s Form 1 application.

LTSE’s Form 1 application, including all of the Exhibits referenced above, is available online at [www.sec.gov/rules/other.shtml](http://www.sec.gov/rules/other.shtml) as well as in the Commission’s Public Reference Room. Interested persons are invited to submit written data, views, and arguments concerning LTSE’s Form 1, including whether the application is consistent with the Exchange Act.

<sup>1</sup> 15 U.S.C. 78s(a).

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](mailto:rule-comments@sec.gov). Please include File Number 10-234 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 10-234. 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/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to LTSE’S Form 1 filed with the Commission, and all written communications relating to the application 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. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number 10-234 and should be submitted on or before January 22, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>2</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018-26517 Filed 12-5-18; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>2</sup> 17 CFR 200.30-3(a)(71)(i).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84680; File No. SR–NYSE–2018–46]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend the Listed Company Manual for Acquisition Companies To Reduce the Continued Listing Standards for Public Holders From 300 to 100 and To Enable the Exchange To Exercise Discretion To Allow Acquisition Companies a Reasonable Time Period Following a Business Combination To Demonstrate Compliance With the Applicable Quantitative Listing Standards

November 29, 2018.

On October 1, 2018, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the Listed Company Manual for Acquisition Companies (“ACs”) to reduce the continued listing standards for public holders from 300 to 100 and to enable the Exchange to exercise discretion to allow ACs a reasonable time period following a business combination to demonstrate compliance with the applicable quantitative listing standards. The proposed rule change was published for comment in the *Federal Register* on October 18, 2018.<sup>3</sup> The Commission received one comment on the proposal.<sup>4</sup>

Section 19(b)(2) of the Act<sup>5</sup> provides that within 45 days of the notice publication of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day

after publication of the notice for this proposed rule change is December 2, 2018. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposal and the comment letter. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> designates January 16, 2019, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSE–2018–46).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–26397 Filed 12–4–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84685; File No. SR–Phlx–2018–76]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pilot Period for the Listing of P.M.-Settled Nasdaq-100 Index Options Expiring on the Third Friday of the Month

November 29, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on November 20, 2018, Nasdaq PHLX LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the pilot period for the listing of P.M.-settled Nasdaq-100 Index Options expiring on the third Friday of the month (“NDXPM options”).

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaqphlx.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

In August 2017 the Commission approved a proposed rule change for the listing on the Exchange of NDXPM options on a pilot basis, with the pilot to terminate on the earlier to occur of (i) 12 months following the date of the first listing of the NDXPM options, or (ii) December 29, 2018.<sup>3</sup> Notwithstanding this approval, due to unforeseen technical programming delays P.M.-settled options on the NASDAQ–100 Index (“NASDAQ–100”) have not yet been listed by the Exchange. In order to allow sufficient time to realize the benefits of a pilot program for NDXPM options, the Exchange proposes to amend Rule 1101A, Commentary .05 such that he pilot will terminate on May 6, 2019. By extending the outer limit of the pilot period, the Exchange believes it will have adequate time to resolve the programming issues, implement the listing of NDXPM options, and provide the pilot reports associated with the initial approval order over a meaningful period of time. Without the amendment, the pilot period would end on December 29, 2018 and would not afford the Exchange or Commission a sufficient period of time within which NDXPM options may trade in order to be meaningfully evaluated by the Exchange as provided in the August 2017

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 84420 (October 12, 2018), 83 FR 52854 (October 18, 2018) (“Notice”).

<sup>4</sup> See Letter to Brent J. Fields, Secretary, Commission, from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, dated November 8, 2018 (“CII Letter”).

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> *Id.*

<sup>7</sup> 17 CFR 200.30–3(a)(31).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Rule 1101A Commentary .05 and Securities Exchange Act Release No. 81293 (August 2, 2017), 82 FR 37138 (August 8, 2017) (approving SR–Phlx–2017–04).

approval order.<sup>4</sup> The Exchange will make public on its website any data and analysis it submits to the Commission under the pilot program.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> 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. The Exchange believes the proposed rule change will protect investors and the public interest by preserving the opportunity to list NDXPM options until May 6, 2019, providing the Exchange, the Commission and investors the benefit of a pilot program of sufficient duration to yield meaningful information concerning the impact of NDXPM options on the market.

### 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. NDXPM options would be available for trading to all market participants. The proposed rule change will facilitate the listing and trading of a novel option product that will enhance competition among market participants, to the benefit of investors and the marketplace. The listing of NDXPM will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to NASDAQ-100 stocks. Further, this product could offer a competitive alternative to other existing investment products that seek to allow investors to gain broad market exposure. Also, the Exchange notes that it is possible for other exchanges to develop or license the use of a new or different index to compete with the NASDAQ-100 and seek Commission approval to list and trade options on such an index.

### 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 Act<sup>7</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>8</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2018-76 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-Phlx-2018-76. This file

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 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.

number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2018-76 and should be submitted on or before December 26, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2018-26396 Filed 12-4-18; 8:45 am]

**BILLING CODE 8011-01-P**

## SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA-2018-0066]

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

<sup>9</sup> 17 CFR 200.30-3(a)(12) and (59).

<sup>4</sup> The Exchange will issue an Options Trader Alert notifying Members when NDXPM options are listed.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202-395-6974, Email address: OIRA\_Submission@omb.eop.gov.

(SSA), Social Security Administration, OLCA, Attn: Reports

Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-966-2830, Email address: OR.Reports.Clearance@ssa.gov.

Or you may submit your comments online through [www.regulations.gov](http://www.regulations.gov), referencing Docket ID Number [SSA-2018-0066].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than February 4, 2019. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. *Application for Widow's or Widower's Insurance Benefits—20 CFR 404.335-404.338, & 404.603-0960-*

0004. Section 2029(e) and 202(f) of the Social Security Act (Act) set forth the requirements for entitlement to widow(er)'s benefits, including the requirements to file an application. For SSA to make a formal determination for entitlement to widow(er)'s benefits, we use Form SSA-10-BK to determine whether an applicant meets the statutory and regulatory conditions for entitlement to widow(er)'s Title II benefits. SSA employees interview individuals applying for benefits either face-to-face or via telephone, and enter the information on the paper form or into the Modernized Claims System (MCS). The respondents are applicants for widow(er)'s benefits.

*Type of Request:* Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA-10-BK MCS version .....	518,784	1	14	121,050
SSA-10-BK Paper version .....	2,255	1	15	564
Totals .....	521,039	.....	.....	121,614

2. *Notice Regarding Substitution of Party Upon Death of Claimant—Reconsideration of Disability Cessation—20 CFR Sections 404.907-404.921 and 416.1407-416.1421-0960-0351.* When a claimant dies before we make a determination on that person's request for reconsideration of a

disability cessation, SSA seeks a qualified substitute party to pursue the appeal. If SSA locates a qualified substitute party, the agency uses Form SSA-770 to collect information about whether to pursue or withdraw the reconsideration request. We use this information as the basis for the decision

to continue or discontinue with the appeals process. Respondents are substitute applicants who are pursuing a reconsideration request for a deceased claimant.

*Type of Request:* Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA-770 .....	1,200	1	5	100

3. *Centenarian and Medicare Non-Utilization Project Development Worksheets: Face-to-Face Interview and Telephone Interview—20 CFR 416.204(b) and 422.135-0960-0780.* SSA conducts interviews with centenary Title II beneficiaries and Title XVI recipients, and Medicare Non-Utilization Project (MNUP) beneficiaries age 90 and older to: (1) Assess if the beneficiaries are still living; (2) prevent fraud through identity misrepresentation; and (3) evaluate the well-being of the recipients to determine if they need a representative payee, or a change in representative payee. SSA

field office personnel obtain the information through one-time, in-person interviews with the centenarians and MNUP beneficiaries. If the centenarians and MNUP beneficiaries have representatives or caregivers, SSA personnel invite them to the interviews. During these interviews, SSA employees make overall observations of the centenarians, MNUP beneficiaries, and their representative payees (if applicable). The interviewer uses the appropriate Development Worksheet as a guide for the interview, in addition to documenting findings during the interview.

Non-completion of the Worksheets, or refusal of the interviews, may result in the suspension of the centenarians' or MNUP beneficiaries' payments. SSA conducts the interviews either over the telephone or through a face-to-face discussion with the respondents. Respondents are Centenarian and MNUP beneficiaries; their representative payees; or their caregivers.

*Type of Request:* Revision of an OMB-approved information collection.



Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Centenarian Project—Title XVI Only* .....	194	1	15	49
MNUP—All Title II Responses .....	4,413	1	15	1,103
Totals .....	4,607	.....	.....	1,152

\*Some cases are Title II and Title XVI rollovers from prior Centenarian workloads

II. SSA submitted the information collection below to OMB for clearance. Your comments regarding this information collection would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than January 4, 2019. Individuals can obtain copies of the OMB clearance package by writing to *OR.Reports.Clearance@ssa.gov*.

*Site Review Questionnaire for Volume and Fee-for-Service Payees and*

*Beneficiary Interview Form—20 CFR 404.2035, 404.2065, 416.665, 416.701, and 416.708—0960-0633.* SSA asks organizational representative payees to complete Form SSA-637, the Site Review Questionnaire for Volume and Fee-for-Service Payees, to provide information on how they carry out their responsibilities, including how they manage beneficiary funds. SSA then obtains information from the beneficiaries these organizations represent via Form SSA-639,

Beneficiary Interview Form, to corroborate the payees' statements. Due to the sensitivity of the information, SSA employees always complete the forms based on the answers respondents give during the interview. The respondents are individuals; State and local governments; non-profit and for-profit organizations serving as representative payees; and the beneficiaries they serve.

*Type of Request:* Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden of response (minutes)	Estimated total annual burden (hours)
SSA-637 .....	4,924	1	120	9,848
SSA-639 .....	21,772	1	10	3,629
Totals .....	26,696	.....	.....	13,477

Dated: November 29, 2018.

**Naomi Sipple,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 2018-26363 Filed 12-4-18; 8:45 am]

BILLING CODE 4191-02-P

**DEPARTMENT OF STATE**

[Public Notice: 10609]

**60-Day Notice of Proposed Information Collection: Local U.S. Citizen Skills/ Resources Survey**

**ACTION:** Notice of request for public comment.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

**DATES:** The Department will accept comments from the public up to February 4, 2019.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov*. You can search for the document by entering "Docket Number: DOS 2018-0052" in the Search field. Then click the "Comment Now" button and complete the comment form.

- *Email:* *RiversDA@state.gov*.
- *Regular Mail:* Send written comments to: U.S. Department of State, CA/OCS/PMO, SA-17, 10th Floor, Washington, DC 20522-1710.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Derek Rivers at SA-17, 10th Floor, Washington, DC 20522-1710, who may be reached on 202-485-6332 or at *RiversDA@state.gov*.

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Local U.S. Citizen Skills/Resources Survey.
  - *OMB Control Number:* OMB No. 1405-0188.
  - *Type of Request:* Revision of a currently approved collection.
  - *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
  - *Form Number:* DS-5506.
  - *Respondents:* United States Citizens.
  - *Estimated Number of Respondents:* 2,400.
  - *Estimated Number of Responses:* 2,400.
  - *Average Time per Response:* 15 minutes.
  - *Total Estimated Burden Time:* 600 hours.
  - *Frequency:* On Occasion.
  - *Obligation to Respond:* Voluntary.
- We are soliciting public comments to permit the Department to:
- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
  - Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the

validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

#### Abstract of Proposed Collection

The Local U.S. Citizen Skills/ Resources Survey is a systematic method of gathering information about skills and resources from U.S. citizens that will assist in improving the well-being of other U.S. citizens affected or potentially affected by a crisis.

#### Methodology

This information collection can be completed by the respondent electronically or manually. The information will be collected on-site at a U.S. Embassy/Consulate, by mail, fax, or email.

#### Michelle Bernier-Toth,

Managing Director, Bureau of Consular Affairs, Department of State.

[FR Doc. 2018-26414 Filed 12-4-18; 8:45 am]

BILLING CODE 4710-06-P

## DEPARTMENT OF STATE

[Public Notice: 10610]

### 60-Day Notice of Proposed Information Collection: Request for Entry Into Children's Passport Issuance Alert Program

**ACTION:** Notice of request for public comment.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

**DATES:** The Department will accept comments from the public up to February 4, 2019.

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

- *Web:* Persons with access to the internet may comment on this notice by going to [www.Regulations.gov](http://www.Regulations.gov). You can search for the document by entering "Docket Number: Dos-2018-0053" in the Search field. Then click the "Comment Now" button and complete the comment form.

- *Email:* [RiversDA@state.gov](mailto:RiversDA@state.gov).
- *Regular Mail:* Send written comments to: U.S. Department of State, CA/OCS/PMO, SA-17, 10th Floor, Washington, DC 20522-1710.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

#### FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Derek Rivers at SA-17, 10th Floor, Washington, DC 20522-1710, who may be reached on 202-485-6332 or at [RiversDA@state.gov](mailto:RiversDA@state.gov).

#### SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Request for Entry into Children's Passport Issuance Alert Program.
- *OMB Control Number:* 1405-0169.
- *Type of Request:* Revision of a previously approved information collection.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS-3077.
- *Respondents:* Concerned parents or their agents, institutions, or courts.
- *Estimated Number of Respondents:* 4,000.
- *Estimated Number of Responses:* 4,000.
- *Average Time per Response:* 30 minutes.
- *Total Estimated Burden Time:* 2,000 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

#### Abstract of Proposed Collection

The information requested will be used to support entry of the name of a minor (an unmarried, unemancipated person under 18 years of age) into the Children's Passport Issuance Alert Program (CPIAP). CPIAP provides a mechanism for parents or other persons with legal custody of a minor to obtain information regarding whether the Department has received a passport application for the minor. This program was developed as a means to prevent international parental child abduction and to help prevent other travel of a minor without the consent of a parent or legal guardian. If a minor's name and other identifying information has been entered into the CPIAP, when the Department receives an application for a new, replacement, or renewed passport for the minor, the application may be placed on hold for up to 90 days and the Office of Children's Issues may attempt to notify the requestor of receipt of the application. Form DS-3077 will be primarily submitted by a parent or legal guardian of a minor. This collection is authorized by 22 CFR 51.28, which is the regulation that implements the statutory two-parent consent requirement and prescribes the bases for an exception to the requirement.

#### Methodology

The completed Form DS-3077 can be filled out online and printed or completed by hand. The form must be manually signed and submitted to the Office of Children's Issues by email, fax or mail with supporting documentation.

#### Michelle Bernier-Toth,

Managing Director, Bureau of Consular Affairs, Department of State.

[FR Doc. 2018-26410 Filed 12-4-18; 8:45 am]

BILLING CODE 4710-06-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Commercial Air Tour Operator Reports

**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 for 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 September 19, 2018. The commercial air tour operational data provided to the FAA and the National Park Service will be used by the agencies as background information useful in the development of air tour management plans and voluntary agreements for purposes of meeting the mandate of the National Parks Air Tour Management Act (NPATMA) of 2000.

**DATES:** Written comments should be submitted by January 4, 2019.

**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](mailto: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.

**FOR FURTHER INFORMATION CONTACT:** Barbara Hall at (940) 594-5913, or by email at: [Barbara.L.Hall@faa.gov](mailto:Barbara.L.Hall@faa.gov).

**SUPPLEMENTARY INFORMATION:**

*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.

*OMB Control Number:* 2120-0750.

*Title:* Commercial Air Tour Operator Reports.

*Form Numbers:* There are no FAA forms associated with this collection of information.

*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 September 19, 2018 (83 FR 47395). One comment was received. The FAA Modernization and Reform Act of 2012 included amendments to the National Parks Air Tour Management Act (NPATMA) of 2000. One of these amendments required commercial air tour operators conducting tours over national park units to report on the number of operations they conduct and any such other information prescribed by the FAA Administrator and the Director of the National Park Service (NPS).

*Respondents:* Approximately 75 air tour operators.

*Frequency:* Information is collected quarterly, or annually for park units with 50 or fewer tours per year.

*Estimated Average Burden per Response:* 15 hours.

*Estimated Total Annual Burden:* 2,540 hours.

Issued in Washington, DC on November 29, 2018.

**Barbara Hall,**

*FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP-110.*

[FR Doc. 2018-26406 Filed 12-4-18; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent of Waiver With Respect to Land; Prairie Du Chien Municipal Airport, Prairie Du Chien, WI

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

**ACTION:** Notice.

**SUMMARY:** The FAA is considering a proposal to change 0.38 acres of Clear Zone Easement contained in Parcel 17 to Avigation Easement in exchange for converting 1.23 acres of Avigation Easement contained in Parcel 20 to Clear Zone Easement. Both Parcel 17 and Parcel 20 share a common boundary and are owned by Crossing Rivers Health Center located at Prairie du Chien Municipal Airport, Prairie du Chien, WI. The proposed release of 0.38 acres of Clear Zone Easement to Avigation Easement is not in the Runway Protection Zone (RPZ). Of the easement being converted to Clear Zone from Avigation Easement in exchange for the release, 0.89 acres (of the 1.23 acres) lies in the RPZ, which brings that portion of the RPZ into conformance with FAA standards and policies.

The release of 0.38 acres from Clear Zone Easement to Avigation Easement is

required to build an Access Road to the Crossing Rivers Health Center and install a sign for the hospital. The conversion from Clear Zone Easement to Avigation Easement will not result in any impact to surfaces protected by Part 77 or airport design surfaces. The Clear Zone Easement was originally purchased to enable the Airport to ensure airport compatible development. The proposed future use of 0.38 acres of the land as an access road will prevent any incompatible development of the surrounding area in the RPZ.

**DATES:** Comments must be received on or before January 4, 2019.

**ADDRESSES:** Documents are available for review by appointment at the FAA Chicago Airports District Office, Richard Pur, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, IL 60018, Telephone: (847) 294-7527/ Fax: (847) 294-7046 and City of Prairie Du Chien, 37735 US Highway 18, Prairie Du Chien, WI 53821, Telephone: (608) 326-2118.

Written comments on the Sponsor's request must be delivered or mailed to: Richard Pur, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon, Ste. 320, Des Plaines, IL 60018, Telephone: (847) 294-7527/Fax: (847) 294-7046.

**FOR FURTHER INFORMATION CONTACT:** Richard Pur, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon, Ste. 320 Des Plaines, IL 60018, Telephone: (847) 294-7527/Fax: (847) 294-7046.

**SUPPLEMENTARY INFORMATION:** In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The Clear Zone Easement (within Parcel 17) is owned by the City of Prairie du Chien. The easement was originally purchased to ensure airport compatible development.

Based on current Fair Market Value of Clear Zone Easement and Avigation Easement being released and acquired in exchange, the net gain to the airport in value of easements is \$11,249.00.

This notice announces that the FAA is considering the release of the subject airport property at the Prairie du Chien Municipal Airport, Prairie du Chien, WI from federal easement covenants, subject to a reservation for continuing right of flight as well as restrictions on the released property as required in FAA Order 5190.6B section 22.16.

Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

**Easement Parcel 1, Part of Airport Parcel 17 (Legal Description) Avigation Easement Converted From Clear Zone Easement per Proposed Release**

Avigation Easement located in Farmlot 43, of the Private Land Claims at Prairie du Chien, City of Prairie du Chien, Crawford County, Wisconsin. Also being part of Lot 1, Crawford County Certified Survey Map Number 237, Document Number 207064 recorded in the Crawford County Register of Deeds Office, described as follows:

Commencing at the Northeast Corner of Farmlot 43, of the Private Land Claims at Prairie du Chien; thence S79°36'51" W, 688.32 feet along the north line of Farmlot 43; thence S10°23'09" E, 1370.77 feet to a found ¾" iron re-bar at the Northeast Corner of Lot 1, Crawford County Certified Survey Map Number 237, Document Number 207064 recorded in the Crawford County Register of Deeds Office; thence N69°31'09" W, 242.02 feet along the north line of said Lot 1, Crawford County Certified Survey Map Number 237 to a set ¾" iron rebar, said point being the Point of Beginning of this Avigation Easement; thence S27°44'00" W, 87.40 feet to a set ¾" iron rebar to the beginning of a curve; Thence Southwesterly, 42.36 Feet along the arc of a curve to the left, radius of 167.00 Feet, central angle of 14°31'58", (the long chord of which bears S20°28'01" W, 42.25 Feet) to the end of said curve and a set ¾" iron rebar; thence S13°12'02" W, 136.02 to the southerly line of said Lot 1, Crawford County Certified Survey Map Number 237 to a set ¾" iron rebar; thence N47°16'51" W, 75.84 feet along the south line of said Lot 1, Crawford County Certified Survey Map Number 237 to a set ¾" iron rebar; thence N13°12'02" E, 98.65 feet to a set ¾" iron rebar to the beginning of a curve; Thence Northeasterly, 59.10 Feet along the arc of a curve to the right, radius of 233.00 Feet, central angle of 14°31'58", (the long chord of which bears N20°28'01" E, 58.94 Feet) to the end of said curve and a ¾" iron rebar; thence N27°44'00" E, 79.00 feet to the north line of said Lot 1, Crawford County Certified Survey Map Number 237 to a set ¾" iron rebar; thence S69°31'09" E, 66.53 feet along the north line of said Lot 1, Crawford County Certified Survey Map Number 237 to the Point of Beginning.

Containing 0.38 acres more or less.

Issued in Des Plaines, IL on November, 28, 2018.

**Deb Bartell,**

*Manager, Chicago Airports District Office, FAA, Great Lakes Region.*

[FR Doc. 2018-26476 Filed 12-4-18; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Westover Airport; Chicopee and Ludlow, Massachusetts**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure map for Westover Airport is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Westover Airport in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before May 6, 2019.

**DATES:** The effective date of the FAA's determination on the noise exposure map and of the start of its review of the associated noise compatibility program is November 7, 2018. The public comment period ends on January 7, 2019.

**FOR FURTHER INFORMATION CONTACT:** Richard Doucette, Federal Aviation Administration, Airports Division, 1200 District Ave., Burlington MA 01803. Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure map submitted for Westover Airport, as submitted by the Westover Metropolitan Development Corporation under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150, is in compliance with applicable requirements of Part 150, effective November 7, 2018. Further, FAA is reviewing a proposed noise compatibility program for that airport, under Part 150, which will be approved or disapproved on or before May 6, 2019. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts non compatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act

requires such map to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted a noise exposure map that is found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or proposes, for the introduction of additional non-compatible uses.

The Westover Metropolitan Development Corporation submitted to the FAA, on November 7, 2018, a noise exposure map, descriptions, and other documentation that were produced during the Airport Noise Compatibility Planning (Part 150) study at Westover Airport from September 2017 to October 2018. It was requested that the FAA review this material as the noise exposure map, as described in Section 103(a)(1) of the Act, 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 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Westover Metropolitan Development Corporation. The specific maps under consideration were:

"Existing (2018) Conditions Noise Exposure Map, NEM-1"

"Future (2023) Conditions Noise Exposure Map, NEM-2"

The FAA has determined that the maps for Westover Airport are in compliance with applicable requirements. This determination is effective on November 7, 2018. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure map

to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted the map, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Westover Airport, also effective on November 7, 2018. Preliminary review of the submitted material indicates that it conforms to the 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 May 6, 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, create an undue burden on interstate or foreign commerce, or be 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 program with specific reference to these factors. All comments, 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 map, the FAA's evaluation of the map, and the proposed noise compatibility program are available for examination at the following locations:

Westover Airport, 255 Padgette Street, Chicopee, Massachusetts 01022.

Federal Aviation Administration, Airports Division, 1200 District Avenue, Burlington, Massachusetts 01803.

Questions may be directed to the individual named above under the

heading: **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts on November 7, 2018.

**Richard P. Doucette,**

*FAA, New England Region, Airports Division.*

[FR Doc. 2018-26478 Filed 12-4-18; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**[Docket No. NHTSA-2018-0077; Notice 1]**

**Cooper Tire & Rubber Company, Receipt of Petition for Decision of Inconsequential Noncompliance**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Cooper Tire & Rubber Company (Cooper Tire) has determined that certain Cooper brand tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Cooper Tire filed a noncompliance report dated May 4, 2018, and subsequently petitioned NHTSA on May 21, 2018, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

**DATES:** The closing date for comments on the petition is January 7, 2019.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and be submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- **Hand Delivery:** Deliver comments by hand to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

- **Electronically:** Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at <https://www.regulations.gov/> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477-78).

**SUPPLEMENTARY INFORMATION:**

**I. Overview**

Cooper Tire has determined that certain Cooper brand tires do not fully comply with paragraph S5.5.1 of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR part 571.139). Cooper Tire filed a noncompliance report dated May 4, 2018, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*, and subsequently petitioned NHTSA on May 21, 2018, pursuant to 49 U.S.C. 30118(d) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of Cooper Tire's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of this petition.

## II. Tires Involved

Approximately 327 Evolution H/T size 245/70R16 tubeless radial tires, manufactured between June 4, 2017, and June 10, 2017, are potentially involved.

## III. Noncompliance

Cooper Tire explains that the noncompliance is that the subject tires were molded with an incorrectly ordered serial week and year on the outboard sidewall as required by paragraph S5.5.1(b) of FMVSS No. 139. Specifically, the subject tires were manufactured with serial week "1723" when they should have been manufactured with serial week "2317."

## IV. Rule Requirements

Paragraph S5.5.1(b) of FMVSS No. 139, includes the requirements relevant to this petition:

- For tires manufactured on or after September 1, 2009, each tire must be labeled with the tire identification number required by 49 CFR part 574 on the intended outboard sidewall of the tire.
- Except for retreaded tires, if a tire does not have an intended outboard sidewall, the tire must be labeled with the tire identification number required by 49 CFR part 574 on one sidewall and with either the tire identification number or a partial tire identification number, containing all characters in the tire identification number except for the date code and, at the discretion of the manufacturer, any optional code, on the other side wall.

## V. Summary of Petition

Cooper Tire described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Cooper Tire submitted the following arguments:

1. While the 327 tires in the subject population contain an incorrectly ordered week and year for the fourth grouping of TIN numbers, they are in all other respects properly labeled and meet all performance requirements under the FMVSS's. The serial week of manufacture has no bearing on the performance or operation of a tire and does not create a safety concern to either the operator of the vehicle on which the tires are mounted, or the safety of

personnel in the tire repair, retread, and recycle industry.

2. Tire registration and traceability will not be interrupted. Cooper Tire's internally controlled online registration system has been modified to be able to accept the incorrectly ordered 1723 date code. Any tires registered with that date code and TIN will be identified properly as having been manufactured in the 23rd week of 2017. This will ensure that Cooper Tire is able to identify these tires in the event they must be recalled. If a recall is necessary, Cooper Tire will explain the date issue in any recall notice.

3. Cooper Tire can also confirm that it will not use the same full Tire Identification Number in year 2023. Cooper Tire uses the third grouping of numbers within the TIN to identify the SKU or make of the tire, as is permitted at the option of the manufacturer under the regulations. *See* 49 CFR 574.5(g)(3). In this case, IJ9 is the third grouping and indicates that this tire is a Cooper Evolution H/T. While Cooper Tire has not yet set its year 2023 production schedule, if Cooper Evolution H/T tires are made in year 2023, Cooper Tire will assign another unique identifier so that the tires made in year 2017 will be distinguishable from the tires made in year 2023. This will eliminate the potential for SKUs produced in year 2017 to be confused with those produced in year 2023, and will allow for Cooper Tire to readily identify the 327 tires that are the subject of this petition.

4. NHTSA has granted a number of previous inconsequential petitions relating to mislabeled TINs, provided that the mislabeling does not affect the manufacturer's ability to identify the tires. "The purpose of the date code is to identify a tire so that, if necessary, the appropriate action can be taken in the interest of public safety such as, a safety recall notice." *Bridgestone/Firestone, Inc.; Grant of Application, 64 FR 29080 (May 28, 1999); see also Cooper Tire & Rubber Company, Grant of Application, 68 FR 16115 (April 2, 2003) (same).* Accordingly, NHTSA has explained in multiple instances that "[t]he agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is the effect of the noncompliance on the ability of the tire manufacturer to identify the tires in the event of recall." *Bridgestone/Firestone, Inc., Grant of Application, 66 FR 45076 (August 27, 2001).* As a result, NHTSA has granted petitions and found that TIN noncompliance is inconsequential to safety in cases where the TIN is out of sequence or mislabeled, including where the week and/or year of

manufacture is mislabeled and even where the date code is missing altogether. *See, e.g., Bridgestone Firestone North America Tire, LLC, Grant of Petition, 71 FR 4396 (January 26, 2006) (granting petition where date code was missing because manufacturer could still identify and recall the tires); Cooper Tire & Rubber Company, Grant of Application, 68 FR 16115 (April 2, 2003) (granting petition where tires were labeled with wrong plant code, because "the tires have a unique DOT identification"); Bridgestone/Firestone, Inc., Grant of Application, 66 FR 45076 (Aug. 27, 2001) (granting petition where the date code was labeled incorrectly, because "the information included on the tire identification label and the manufacturer's tire production records is sufficient to ensure that these tires can be identified in the event of a recall"); Bridgestone/Firestone, Inc.; Grant of Application, 64 FR 29080 (May 28, 1999) (granting petition where the wrong year was marked in the date code on the tires); Cooper Tire & Rubber Company; Grant of Application, 63 FR 29059 (May 27, 1998) (granting petition where the date code was missing where tires had a unique TIN for recall purposes); Bridgestone/Firestone, Inc.; Grant of Application, 60 FR 57617 (November 16, 1995) (granting petition where the date code was out of sequence); Uniroyal Goodrich Tire Company; Grant of Petition, 59 FR. 64232 (December 13, 1994) (granting petition where week and year were mislabeled on tires). As with other cases in which NHTSA has granted petitions for a determination of inconsequential noncompliance, Cooper Tire will be able identify the tires that are the subject of this petition in the event of recall. As described above, these tires will have a unique DOT identifier that will allow for Cooper Tire to identify and recall them in the event that any issues arise in the future.*

5. Cooper Tire has taken steps over the last two years to add additional checks in its processes to prevent TIN errors. For example, Cooper Tire has implemented software that allows for a specific plant to choose only its plant code from a drop-down menu when engraving that portion of the TIN. Date codes are updated on a weekly basis and often produced in advance of the serial week. The serial week and year is manually entered in the system and then engraved on a plug for use. Cooper Tire is working to prevent future issues and evaluating the possibility of additional technology which will restrict the selection of date codes to a contained period of time. Cooper Tire is

also reviewing its inspection processes to ensure that errors of this sort are identified earlier in the process.

Cooper Tire concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

Cooper Tire's complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: <https://www.regulations.gov> and by following the online search instructions to locate the docket number as listed in the title of this notice.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that Cooper Tire no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Cooper Tire notified them that the subject noncompliance existed.

**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.

**Claudia W. Covell,**

*Acting Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2018-26510 Filed 12-4-18; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2018-0072; Notice 1]

#### Michelin North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Michelin North America, Inc. (MNA) has determined that certain Michelin XZL brand tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 lbs) and Motorcycles*. MNA filed a noncompliance report dated May 21, 2018, and subsequently petitioned NHTSA on June 15, 2018, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

**DATES:** The closing date for comments on the petition is January 7, 2019.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and be submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- **Hand Delivery:** Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.

- **Electronically:** Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and

supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477-78).

#### SUPPLEMENTARY INFORMATION:

##### I. Overview

MNA has determined that certain Michelin brand tires do not fully comply with paragraph S6.4 of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 lbs) and Motorcycles* (49 CFR 571.119). MNA filed a noncompliance report dated May 21, 2018, pursuant to 49 CFR part 573, *Defects and Noncompliance Responsibility and Reports*. MNA subsequently petitioned NHTSA on June 18, 2018, pursuant to 49 U.S.C. 20118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

##### II. Tires Involved

Approximately 752 Michelin XZL size 16.00R20 tires manufactured between January 19, 2018, and April 9, 2018, are potentially involved.

##### III. Noncompliance

MNA explains that the noncompliance was due to a mold error which left the subject tires with fewer than the required number of treadwear indicators specified in paragraph S6.4 of FMVSS No. 119. Specifically, the tires were manufactured with 4 rows of treadwear indicators instead of the required minimum of 6 treadwear indicators.

#### IV. Rule Requirements

Paragraph S6.4 of FMVSS No. 119, includes the requirements relevant to this petition:

- Except as specified, each tire shall have at least six treadwear indicators spaced approximately equally around the circumference of the tire that enable a person inspecting the tire to determine visually whether the tire has worn to a tread depth of 1.6 mm (one-sixteenth of an inch). Tires with a rim diameter code of 12 or smaller shall have at least three such treadwear indicators. Motorcycle tires shall have at least three such indicators which permit visual determination that the tire has worn to a tread depth of 0.8 mm (one-thirty-second of an inch).

#### V. Summary of Petition

MNA described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, MNA submitted the following arguments:

1. *Functionality:* Truck tires normally have 6 treadwear indicators spaced equally around the circumference of the tire. The function of these indicators is to enable a person inspecting the tire to determine visually whether the tire has worn to a tread depth of 1.6 mm (1/16 in). In the case where tires have 6 treadwear indicators spaced equally around the tire, the indicators would appear at 60 degree intervals around the circumference of the tread. In the case of the subject tires, the 4 treadwear indicators are equally spaced; thus, appearing at 90 degree intervals around the circumference of the tread area of the tire. When normally loaded, approximately 10 percent of the tread band is in contact with the road surface. In most truck applications, the remaining 90 percent of the tread band is accessible for inspection. In the event that a vehicle is parked with one of the treadwear indicators positioned in the ground contact patch area, three other treadwear indicators would be accessible around the circumference of the tire.

In addition, MNA tires have a molded "Bib" symbol on the tread shoulder to indicate the location of the treadwear indicator. These molded symbols aid the person inspecting the tire to visually locate the treadwear indicator and determine if the tire has worn to the extent that the tread depth is 1.6 mm (1/16 in) or less.

2. *NHTSA's Prior Decisions:* NHTSA has previously granted Petitions for Determination of Inconsequential Noncompliance in similar cases related

to 49 CFR 571.119 S6.4 treadwear indicators.

On August 19, 2014, NHTSA issued a Grant of Petition to Cooper Tire and Rubber Company with the following comments: "*NHTSA Analysis: The purpose for tire treadwear indicators is to serve as a means for a person to visually inspect a tire's tread depth and readily determine if a tire has worn to the extent that tread depth is 1.6 mm (one-sixteenth of an inch) or less.*"

*Cooper stated that while the subject tires were molded with only five treadwear indicators that it believes that those indicators still provide ample coverage over the surface of the tire. NHTSA agrees with Cooper that in this case the subject noncompliance will have no significant effect on the safety of the vehicles on which the subject tires are mounted. The subject tires have five indicators; 4 indicators spaced at 60 degrees and one indicator spaced at 120 degrees. NHTSA believes that in this case, the absence of a single indicator does not significantly affect a person's ability to visually inspect a tire and readily recognize when a significant portion of the tire's tread is worn to the point that a tire should be replaced."*

In the Cooper decision it is relevant to note:

(a) While the Cooper Mickey Thompson Baja MTZ tires had only one missing treadwear indicator, the maximum circumferential space between the two most distant treadwear indicators was 120 degrees. NHTSA determined that this confirmation of treadwear indicators does not significantly affect a person's ability to inspect a tire. In MNA's case, the maximum circumferential space between the two most distant treadwear indicators is less, at 90 degrees.

(b) The Cooper petition cites a Grant of Petition issued to Motor Bikes Imports, Inc. in 1987 which included a 49 CFR 571.119 S6.4 noncompliance related to motor bike tires with only 1 treadwear indicator. NHTSA's decision stated a "relatively small number of tires which remain in use nevertheless bear one treadwear indicator" concluding the existence of only a single treadwear indicator combined with the relatively low volume of tires in the market were inconsequential as they relate to motor vehicle safety.

3. *Product Performance & Monitoring:* Product Performance & Monitoring MNA has no indication through our customer care network, fleet contacts or field engineers, of any issues related to monitoring and measuring of treadwear on the 16.00R20 XZL tires. The lack of two treadwear indicators on the tire was detected in the manufacturing process.

We have no customer complaints or warranty claims related to the reduced number of treadwear indicators. The reduced number of treadwear indicators has no impact on product performance. Product performance and customer satisfaction of the subject tires is equivalent to tires produced with 6 treadwear indicators. The tires comply with all safety standards and tire marking requirements of 49 CFR 571.119.

MNA's complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: <https://www.regulations.gov> and by following the online search instructions to locate the docket number as listed in the title of this notice.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that MNA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after MNA notified them that the subject noncompliance existed.

**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.

**Claudia W. Covell,**  
Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 2018-26511 Filed 12-4-18; 8:45 am]

**BILLING CODE 4910-59-P**

#### DEPARTMENT OF TRANSPORTATION

##### Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2018-0099]

##### Pipeline Safety: Request for Special Permit; Gulf South Pipeline Company, LP

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

**ACTION:** Notice.



**SUMMARY:** PHMSA is publishing this notice to seek public comments on a request for a special permit, seeking relief from compliance with certain requirements in the federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

**DATES:** Submit any comments regarding this special permit request by January 4, 2019.

**ADDRESSES:** Comments should reference the docket number for the specific special permit request and may be submitted in the following ways:

- *E-Gov website:* <http://www.Regulations.gov>. This site allows the public to enter comments on any Federal Register notice issued by any agency.

- *Fax:* 1-202-493-2251.
- *Mail:* Docket Management System: 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:* Docket Management System: 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.

*Instructions:* You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at <http://www.Regulations.gov>.

*Note: Privacy Act Statement:* There is a privacy statement published at <http://www.Regulations.gov>. Comments, including any personal information provided, are posted without changes or edits to <http://www.Regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

General: Ms. Kay McIver by telephone at 202-366-0113, or email at [kay.mciver@dot.gov](mailto:kay.mciver@dot.gov).

Technical: Mr. Steve Nanney by telephone at 713-628-7479, or email at [Steve.Nanney@dot.gov](mailto:Steve.Nanney@dot.gov).

**SUPPLEMENTARY INFORMATION:** PHMSA received a special permit request from Gulf South Pipeline Company, LP, (“GSPC”) to deviate from the pipeline safety regulations in 49 CFR 192.611, for four segments totaling 4.65 miles, of 30-inch diameter Index 130 pipeline,

located in Ascension and Livingston Parishes, Louisiana, where the class location has changed from a Class 1 to Class 3 location. In lieu of pipe replacement, GSPC seeks permission to perform alternative risk control activities based on integrity management program principles and requirements. Due to class location changes from a Class 1 to Class 3 in the 1990s, GSPC lowered the maximum allowable operating pressure as required by § 192.611, from 936 pounds per square inch gauge (psig) to 780 psig. However, GSPC now seeks to update the line to restore the previous MAOP, using Subpart K of § 192.555.

The special permit request provided by the operator includes a draft environmental assessment, (EA), proposed special permit conditions, and location map. These documents are filed at <http://www.Regulations.gov>, in Docket No. PHMSA-2018-0099. We invite interested persons to participate by reviewing the special permit documents and draft EA at <http://www.Regulations.gov>, and by submitting written comments, data or other views. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comment closing date. Comments received after the comment closing date will be evaluated if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our decision to grant or deny a request.

Issued in Washington, DC on November 29, 2018, under authority delegated in 49 CFR 1.97.

**Linda Daugherty,**

*Deputy Associate Administrator for Field Operations.*

[FR Doc. 2018-26380 Filed 12-4-18; 8:45 am]

**BILLING CODE 4910-60-P**

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**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**Agency Information Collection Activities: Information Collection Renewal; Comment Request; Annual Stress Test Rule**

**AGENCY:** Office of the Comptroller of the Currency, Treasury (OCC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The 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 the renewal of this information collection as required by the Paperwork Reduction Act of 1995 (PRA).

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 Office of Management and Budget (OMB) control number.

Currently, the OCC is soliciting comment concerning the renewal of its information collection titled “Annual Stress Test Rule.”

**DATES:** Comments must be received by February 4, 2019.

**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](mailto:prainfo@occ.treas.gov).
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557-0311, 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 “1557-0311” in your comment. In general, the OCC will publish comments on [www.reginfo.gov](http://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 collection<sup>1</sup> by any of the following methods:

- **Viewing Comments Electronically:** Go to [www.reginfo.gov](http://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

<sup>1</sup> 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.

information collection can be located by searching by OMB control number "1557-0311" or "Annual Stress Test Rule." 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](http://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, Clearance Officer, (202) 649-5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th St. SW, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the 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 renewal of the collection of information set forth in this document.

*Title:* Annual Stress Test Rule.

*OMB Control No.:* 1557-0311.

*Description:* Section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires certain financial companies, including national banks and federal savings associations, to conduct annual stress tests<sup>2</sup> and requires the primary financial

regulatory agency<sup>3</sup> of those financial companies to issue regulations implementing the stress test requirements.<sup>4</sup>

Twelve CFR 46.6(a) specifies the calculations of the potential impact on capital that must be made during each quarter of a planning horizon. Section 46.6(c)(1) requires the senior management of each covered institution to establish and maintain a system of controls, oversight, and documentation, including policies and procedures that, at a minimum, describe the covered institution's stress test practices and methodologies and processes for updating the covered institution's stress test practices. Section 46.6(c)(2) provides that the board of directors of the covered institution shall approve and review these policies and procedures no less than annually and provide the board of directors and senior management with a summary of the stress test results.

Section 46.7 provides that each covered institution shall report to the OCC and to the Board of Governors of the Federal Reserve System annually the results of the stress test in the time, manner and form specified by the OCC.

Section 46.8 requires that a covered institution publish a summary of the results of its annual stress tests on its website or in any other forum that is reasonably accessible to the public. The summary must include a description of the types of risks included in the stress test, a summary description of the methodologies used in the stress test, estimates of aggregate losses, pre-provision net revenue, provisions for loan and lease losses, net income, and pro forma capital ratios and an explanation of the most significant causes of the changes in regulatory capital ratios. The summary also must reflect, for estimates of aggregate losses, pre-provision net revenue, provisions for loan and lease losses, the estimated cumulative effects and estimated capital ratios, net income, and pro forma capital ratios (including regulatory and any other capital ratios specified by the OCC) at the end of the planning horizon, under the severely adverse scenario.

*Type of Review:* Regular.

*Affected Public:* Businesses or other for-profit.

*Estimated Number of Respondents:* 61.

*Estimated Total Annual Burden:* 63,440 hours.

Comments submitted in response to this notice will be summarized and 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 OCC, including whether the information has practical utility;

(b) The accuracy of the OCC'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 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: November 29, 2018.

**Theodore J. Dowd,**

*Deputy Chief Counsel, Office of the Comptroller of the Currency.*

[FR Doc. 2018-26382 Filed 12-4-18; 8:45 am]

**BILLING CODE 4810-33-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 6252

**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 Form 6252, Installment Sale Income.

**DATES:** Written comments should be received on or before February 4, 2019 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 the form and instructions should be directed to LaNita Van Dyke, at (202) 317-6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or

<sup>2</sup> 12 U.S.C. 5365(i)(2)(A).

<sup>3</sup> 12 U.S.C. 5301(12).

<sup>4</sup> 12 U.S.C. 5365(i)(2)(C).

through the internet at  
*Lanita.VanDyke@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Installment Sale Income.

*OMB Number:* 1545-0228.

*Form Number:* 6252.

*Abstract:* Internal Revenue Code section 453 provides that if real or personal property is disposed of at a gain and at least one payment is to be received in a tax year after the year of sale, the income is to be reported in installments, as payment is received. Form 6252 provides for the computation of income to be reported in the year of sale and in years after the year of sale. It also provides for the computation of installment sales between certain related parties required by Code section 453(e).

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business of other for-profit organizations, individuals or households, and farms.

*Estimated Number of Respondents:* 521,898.

*Estimated Time per Respondent:* 3 hrs., 4 minutes.

*Estimated Total Annual Burden Hours:* 1,597,008.

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: November 26, 2018.

**Laurie Brimmer,**

*Senior Tax Analyst.*

[FR Doc. 2018-26472 Filed 12-4-18; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Proposed Collection; Comment Request for Form 13285-A**

**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 Form 13285-A, Reducing Tax Burden on America's Taxpayers.

**DATES:** Written comments should be received on or before February 4, 2019 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 the form and instructions should be directed to LaNita Van Dyke, at (202) 317-6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Reducing Tax Burden on America's Taxpayers.

*OMB Number:* 1545-2009.

*Form Number:* 13285-A.

*Abstract:* The IRS Office of Taxpayer Burden Reduction (TBR) needs the taxpaying public's help to identify meaningful taxpayer burden reduction opportunities that impact a large number of taxpayers. This form should be used to refer ideas for reducing taxpayer burden to the TBR for consideration and implementation.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, Business or other for-profit organizations, non-profit institutions, farms, Federal Government, State, local or tribal governments.

*Estimated Number of Respondents:* 250.

*Estimated Time per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 62.

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: November 27, 2018.

**Laurie Brimmer,**

*Senior Tax Analyst.*

[FR Doc. 2018-26468 Filed 12-4-18; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Proposed Collection; Comment Request for Regulation Project**

**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 an existing notice of proposed rulemaking and temporary regulations, FI-255-82 (TD 7852), Registration Requirements With Respect to Debt Obligations (§ 5f.103-1(c)).

**DATES:** Written comments should be received on or before February 4, 2019 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 regulation should be directed to LaNita Van Dyke, at (202) 317-6009, at Internal Revenue Service, room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at [Lanita.VanDyke@irs.gov](mailto:Lanita.VanDyke@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Registration Requirements With Respect to Debt Obligations.

*OMB Number:* 1545-0945.

*Regulation Project Number:* FI-255-82.

*Abstract:* These regulations require an issuer of a registration-required obligation and any person holding the obligation as a nominee or custodian on behalf of another to maintain ownership records in a manner which will permit examination by the Internal Revenue Service in connection with enforcement of the Internal Revenue laws.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension without change of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and, state, local or tribal governments.

*Estimated Number of Recordkeepers:* 50,000.

*Estimated Time Per Recordkeeper:* 1 hour.

*Estimated Total Annual Burden Hours:* 50,000.

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: November 26, 2018.

**Laurie Brimmer,**

*Senior Tax Analyst.*

[FR Doc. 2018-26465 Filed 12-4-18; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 5304-SIMPLE, Form 5305-SIMPLE, and Notice 98-4

**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 Form 5304-SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—Not for Use With a Designated Financial Institution; Form 5305-SIMPLE, Savings Incentive Match

Plan for Employees of Small Employers (SIMPLE)—for Use With a Designated Financial Institution; Notice 98-4, Simple IRA Plan Guidance

**DATES:** Written comments should be received on or before February 4, 2019 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 the forms, instructions, and notice should be directed to LaNita Van Dyke, at (202) 317-6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at [LaNita.VanDyke@irs.gov](mailto:LaNita.VanDyke@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Form 5304-SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—Not for Use With a Designated Financial Institution, Form 5305-SIMPLE; Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—for Use With a Designated Financial Institution; SIMPLE IRA Plan Guidance (Notice 98-4).

*OMB Number:* 1545-1502.

*Form Number:* Form 5304-SIMPLE, Form 5305-SIMPLE, and Notice 98-4.

*Abstract:* Form 5304-SIMPLE is a model SIMPLE IRA agreement that was created to be used by an employer to permit employees who are not using a designated financial institution to make salary reduction contributions to a SIMPLE IRA described in Internal Revenue Code section 408(p). Form 5305-SIMPLE is also a model SIMPLE IRA agreement, but it is for use with a designated financial institutions. Notice 98-4 provides guidance for employers and trustees regarding how they can comply with the requirements of Code section 408(p) in establishing and maintaining a SIMPLE IRA, including information regarding the notification and reporting requirements under Code section 408.

*Current Actions:* There are no changes for the forms at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations not-for-profit institutions, and individuals.

*Estimated Number of Respondents:* 600,000.

*Estimated Time per Respondent:* 3 hours, 31 minutes.

*Estimated Total Annual Burden Hours:* 2,113,000.

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: November 26, 2018.

**Laurie Brimmer,**

*Supervisory Tax Analyst.*

[FR Doc. 2018-26470 Filed 12-4-18; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Notice 2007-52

**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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Notice 2007-52, Qualifying Advanced Coal Project Program.

**DATES:** Written comments should be received on or before February 4, 2019 to be assured of consideration.

**ADDRESSES:** Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Sara Covington, (202) 317-6038, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at [Sara.L.Covington@irs.gov](mailto:Sara.L.Covington@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Qualifying Advanced Coal Project Program.

*OMB Number:* 1545-2003.

*Regulation Project Number:* Notice 2007-52.

*Abstract:* This notice establishes the qualifying advanced coal project program under § 48A of the Internal Revenue Code. The notice provides the time and manner for a taxpayer to apply for an allocation of qualifying advanced coal project credits and, once the taxpayer has received this allocation, the time and manner for the taxpayer to file for a certification of its qualifying advanced coal project.

*Current Actions:* There are no changes in the paperwork burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses and other for-profit organizations.

*Estimated Number of Respondents:* 45.

*Estimated Time Per Respondent:* 110 hours.

*Estimated Total Annual Burden*

*Hours:* 4,950.

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: November 29, 2018.

**Laurie Brimmer,**

*Senior Tax Analyst.*

[FR Doc. 2018-26466 Filed 12-4-18; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Regulation Project

**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 Distributions of Stock and Stock Rights.

**DATES:** Written comments should be received on or before February 4, 2019 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 the regulation should be directed to LaNita Van Dyke, at (202) 317-6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at [Lanita.VanDyke@irs.gov](mailto:Lanita.VanDyke@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Distributions of Stock and Stock Rights.

*OMB Number:* 1545-1438.

*Regulation Project Number:* TD 8643.

*Abstract:* The requested information is required to notify the Service that a holder of preferred stock callable at a premium by the issuer has made a determination regarding the likelihood of exercise of the right to call that is different from the issuer's determination.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, and business or other for-profit organizations.

*Estimated Number of Respondents:* 2,000.

*Estimated Time per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 333.

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: November 26, 2018.

**Laurie Brimmer,**  
Senior Tax Analyst.

[FR Doc. 2018-26471 Filed 12-4-18; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 13013, 13013-D and, 14388

**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 Form 13013, Taxpayer Advocacy Panel (TAP) Membership Application, and Form 13013-D, Taxpayer Advocacy Panel Tax Check Waiver and Form 14388 Taxpayer Advocate Panel (TAP) Outreach.

**DATES:** Written comments should be received on or before February 4, 2019 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 the form should be directed to LaNita Van Dyke, at (202) 317-6009, at Internal Revenue Service, room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at [Lanita.VanDyke@irs.gov](mailto:Lanita.VanDyke@irs.gov).

#### SUPPLEMENTARY INFORMATION:

*Titles:* Taxpayer Advocacy Panel (TAP) Membership Application; Taxpayer Advocacy Panel Tax Check Waiver and Taxpayer Advocacy Panel (TAP) Outreach

*OMB Number:* 1545-1788.

*Form Numbers:* 13013, 13013-D, and 14388.

*Abstract:* Form 13013, Taxpayer Advocacy Panel (TAP) Membership Application, is used as an application to volunteer to serve on the Taxpayer Advocacy Panel (TAP), an advisory panel to the Internal Revenue Service. The TAP application is necessary for the purpose of recruiting perspective members to voluntarily participate on the Taxpayer Advocacy Panel for the Internal Revenue Service. It is necessary to gather information to rank applicants as well as to balance the panels demographically.

*Abstract:* Form 13013-D, Taxpayer Advocacy Panel Tax Check Waiver, is used by new and continuing members of IRS Advisory Committees/Councils are who are required to undergo a tax compliance check as a condition of membership. The tax check waiver authorizes the Government Liaison Disclosure analysts to provide the results to the appropriate IRS officials.

*Abstract:* Form 14388, This tri-fold self-mailer is to be used by taxpayers to mail or fax to a specific TAP office, listed on the mailer who have any suggestions they would like to elevate to the Taxpayer advocacy Panel.

*Current Actions:* There are no changes being made to the forms at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 200.

*Estimated Time Per Respondent:* 2 hours, 25 minutes.

*Estimated Total Annual Burden Hours:* 450.

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: November 27, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018-26469 Filed 12-4-18; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Office of the Assistant Secretary for International Affairs; Survey of U.S. Ownership of Foreign Securities as of December 31, 2018

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Notice of reporting requirements.

**SUMMARY:** By this Notice, the Department of the Treasury is informing the public that it is conducting a mandatory survey of ownership of foreign securities by U.S. residents as of December 31, 2018. This Notice constitutes legal notification to all United States persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, this survey. The reporting form SHCA (2018) and instructions may be printed from the internet at: <http://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms-sh.aspx#shc>.

**Definition:** Pursuant to 22 U.S.C. 3102, a United States person is any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency), who resides in the United States or is subject to the jurisdiction of the United States.

**Who Must Report:** The reporting panel is based upon the data submitted for the 2016 Benchmark survey and the June 2018 TIC report "Aggregate Holdings of Long-Term Securities by U.S. and Foreign Residents" (TIC SLT). Entities required to report will be contacted individually by the Federal Reserve Bank of New York. Entities not contacted by the Federal Reserve Bank of New York have no reporting responsibilities.

**What To Report:** This report will collect information on holdings by U.S. residents of foreign securities, including equities, long-term debt securities, and short-term debt securities (including selected money market instruments).

**How To Report:** Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, may be obtained at the website address given above in the Summary. Completed reports can be submitted electronically or mailed to the Federal Reserve Bank of New York, Data and Statistics Function, 6th Floor, 33 Liberty Street, New York, NY 10045-0001. Inquiries can be made to the survey staff of the Federal Reserve Bank of New York at (212) 720-6300 or email: [SHC.help@ny.frb.org](mailto:SHC.help@ny.frb.org). Inquiries can also be made to Dwight Wolkow at (202) 622-1276, email: [comments2TIC@do.treas.gov](mailto:comments2TIC@do.treas.gov).

**When To Report:** Data must be submitted to the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, by March 1, 2019.

**Paperwork Reduction Act Notice:** This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 1505-0146. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. The estimated average annual burden associated with this collection of information is 49 hours per respondent for end-investors and custodians that file Schedule 3 reports covering their securities entrusted to U.S. resident custodians, 146 hours per respondent for large end-investors filing Schedule 2 reports, and 546 hours per respondent for large custodians of securities filing Schedule 2 reports. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Attention: Administrator, International Portfolio Investment Data Reporting Systems, Room 5422, Washington, DC 20220 and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

**Dwight Wolkow,**

Administrator, International Portfolio Investment Data Reporting Systems.

[FR Doc. 2018-26491 Filed 12-4-18; 8:45 am]

BILLING CODE 4810-25-P

## DEPARTMENT OF VETERANS AFFAIRS

### Reasonable Charges for Medical Care or Services; v3.25, 2019 Calendar Year Update and National Average Administrative Prescription Drug Charge Update

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** This Department of Veterans Affairs (VA) notice updates the data for calculating the "Reasonable Charges" collected or recovered by VA for medical care or services. This notice also updates the "National Average Administrative Prescription Costs" for purposes of calculating VA's charges for prescription drugs that were not administered during treatment, but provided or furnished by VA to a veteran.

#### FOR FURTHER INFORMATION CONTACT:

Romona Greene, Office of Community Care, Revenue Operations, Payer Relations and Services, Rates and Charges (10D1C1), Veterans Health Administration (VHA), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 382-2521. (This is not a toll free number).

**SUPPLEMENTARY INFORMATION:** Section 17.101(a)(1) of 38 Code of Federal Regulations (CFR) sets forth the "Reasonable Charges" for medical care or services provided or furnished by VA to a veteran: "For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses for care) under a health plan contract; For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance." Section 17.101 provides the methodologies for establishing billed amounts for several types of charges; however, this notice will only address partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by

Healthcare Common Procedure Coding System (HCPCS) Level II codes.

Section 17.101(a)(2) provides that the actual charge amounts at individual VA medical facilities based on these methodologies and the data sources used for calculating those actual charge amounts will either be published as a notice in the **Federal Register** or will be posted on the internet site of the Veterans Health Administration Office of Community Care's website at [https://www.va.gov/communitycare/revenue\\_ops/payer\\_rates.asp](https://www.va.gov/communitycare/revenue_ops/payer_rates.asp).

Certain charges are hereby updated as stated in this notice and will be effective on January 1, 2019.

In cases where VA has not established charges for medical care or services provided or furnished at VA expense (by either VA or non-VA providers) under other provisions or regulations, the method for determining VA's charges is set forth at 38 CFR 17.101(a)(8).

Based on the methodologies set forth in § 17.101, this notice provides an update to charges for 2019 HCPCS Level II and Current Procedural Terminology (CPT) codes. Charges are also being updated based on more recent versions of data sources for the following charge types: Partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes. As of the date of this notice, the actual charge amounts at individual VA medical facilities based on the methodologies in § 17.101 will be posted on the VHA Office of Community Care's website at [https://www.va.gov/communitycare/revenue\\_ops/payer\\_rates.asp](https://www.va.gov/communitycare/revenue_ops/payer_rates.asp) under the heading "Reasonable Charges Data Tables" and identified as "v3.25 Data Tables (Outpatient and Professional)."

The list of data sources used for calculating the actual charge amounts listed above also will be posted on the VHA Office of Community Care's website under the heading "Reasonable Charges Data Sources" and identified as "Reasonable Charges v3.25 Data Sources (Outpatient and Professional) (PDF)."

Acute inpatient facility charges and skilled nursing facility/sub-acute inpatient facility charges remain the same as set forth in the notice published in the **Federal Register** on September 19, 2018 (83 FR 47412).

We are also updating the list of VA medical facility locations. The list of VA medical facility locations, including the first three digits of their zip codes as well as provider-based/non-provider-based designations, will be posted on the VHA Office of Community Care's website under the heading "VA Medical Facility Locations" and identified as "v3.25 (Jan19)."

As indicated in 38 CFR 17.101(m), when VA provides or furnishes prescription drugs not administered during treatment, "charges billed separately for such prescription drugs will consist of the amount that equals the total of the actual cost to VA for the drugs and the national average of VA administrative costs associated with dispensing the drugs for each prescription." Section 17.101(m) includes the methodology for calculating the national average administrative cost for prescription drug charges not administered during treatment.

VA determines the amount of the national average administrative cost annually for the prior fiscal year (October through September) and then applies the charge at the start of the next calendar year. The national average administrative drug cost for calendar year 2019 is \$17.66. This change will be posted on the VHA Office of Community Care's website at [https://www.va.gov/COMMUNITYCARE/revenue\\_ops/admin\\_costs.asp](https://www.va.gov/COMMUNITYCARE/revenue_ops/admin_costs.asp) under the heading "CY 2019 Average Administrative Cost for Prescriptions."

Consistent with § 17.101, the national average administrative cost, the updated data, and supplementary tables containing the changes described in this notice will be posted online, as indicated in this notice. This notice will be posted on the VHA Office of Community Care's website at [https://www.va.gov/communitycare/revenue\\_ops/payer\\_rates.asp](https://www.va.gov/communitycare/revenue_ops/payer_rates.asp) under the heading "Reasonable Charges Rules, Notices, & **Federal Register**" and identified as "v3.25 **Federal Register** Notice 01/01/19 (Outpatient and Professional), and National Administrative Cost (PDF)." The national average administrative cost, updated data, and supplementary tables containing the changes described will be effective until changed by a subsequent **Federal Register** notice.

#### Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie,

Secretary, Department of Veterans Affairs, approved this document on November 29, 2018, for publication.

Dated: November 29, 2018.

**Jeffrey M. Martin,**

*Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.*

[FR Doc. 2018-26459 Filed 12-4-18; 8:45 am]

BILLING CODE 8320-01-P

## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-NEW]

### Agency Information Collection Activity Under OMB Review: VA Educational Assistance Program Feedback

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before January 4, 2019.

**ADDRESSES:** Submit written comments on the collection of information through [www.Regulations.gov](http://www.Regulations.gov), or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov). Please refer to "OMB Control No. 2900-NEW" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Danny S. Green, Acting Department Clearance Officer—OI&T (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 421-1354 or email [Danny.Green2@va.gov](mailto:Danny.Green2@va.gov). Please refer to "OMB Control No. 2900-NEW" in any correspondence.

#### SUPPLEMENTARY INFORMATION:

*Authority:* Public Law 114-315 Section 414; 44 U.S.C. 3501-3521.

*Title:* VA Educational Assistance Program Feedback.

*OMB Control Number:* 2900-NEW.  
*Type of Review:* New collection.



*Abstract:* Public Law 114–315 Section 414 requires VA to obtain feedback from individuals using their entitlement to educational assistance under the educational assistance programs administered by the Secretary of Veteran Affairs. Program beneficiaries are asked to provide feedback on the information required by Public Law 114–315 Section 414. The information collected is from individuals who have used or are using their entitlement to education assistance under chapters 30, 32, 33, and 35 of title 38, United States Code, to pursue a program of education or training. The feedback from the

survey assesses the outcomes, situations, and decisions by the beneficiaries of the educational assistance chapters under title 38 United States Code.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at Vol. 83, No. 188, Thursday, September 27, 2018, page 48897–48898.

*Affected Public:* Individuals and Households.

*Estimated Annual Burden:* 833 hours.

*Estimated Average Burden per Respondent:* 5 minutes.

*Frequency of Response:* Once.

*Estimated Number of Respondents:* 10,000.

By direction of the Secretary.

**Cynthia D. Harvey-Pryor**,  
*Government Information Specialist,*  
*Department of Veterans Affairs.*

[FR Doc. 2018–26377 Filed 12–4–18; 8:45 am]

**BILLING CODE 8320–01–P**



# FEDERAL REGISTER

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Part II

Department of Justice

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Antitrust Division

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United States v. Sinclair Broadcast Group, Inc., et al.; Proposed Final  
Judgments and Competitive Impact Statement; Notice

**DEPARTMENT OF JUSTICE****Antitrust Division****United States v. Sinclair Broadcast Group, Inc., et al.; Proposed Final Judgments and Competitive Impact Statement**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that proposed Final Judgments, Stipulations, and a Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America v. Sinclair Broadcast Group, Inc., et al.*, Civil Action No. 1:18–cv–2609. On November 13, 2018, the United States filed a Complaint alleging that Sinclair Broadcast Group, Inc., Raycom Media, Inc., Tribune Media Company, Meredith Corporation, Griffin Communications, LLC, and Dreamcatcher Broadcasting, LLC (collectively, “Defendants”) violated Section 1 of the Sherman Act, 15 U.S.C. 1, by agreeing to unlawfully exchange station-specific, competitively sensitive information regarding spot advertising revenues. The proposed Final Judgments, filed at the same time as the Complaint, prohibit sharing of competitively sensitive information, require Defendants to implement antitrust compliance training programs, and impose cooperation and reporting requirements on Defendants.

Copies of the Complaint, proposed Final Judgments, Stipulations and Competitive Impact Statement are available for inspection on the Antitrust Division’s website at <http://www.justice.gov/atr> and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division’s website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Owen Kendler, Chief, Media, Entertainment, and Professional Services Section, Antitrust Division, Department of Justice, 450 Fifth Street

NW, Suite 4000, Washington, DC 20530 (telephone: 202–616–5935).

**Patricia A. Brink,**

*Director of Civil Enforcement.*

**United States District Court for the District of Columbia**

*United States of America, 450 Fifth Street NW, Washington, DC 20530, Plaintiff, v. Sinclair Broadcast Group, Inc., 10706 Beaver Dam Road, Hunt Valley, Maryland 21030; Raycom Media, Inc., 201 Monroe Street, Montgomery, AL 36104; Tribune Media Company, 435 North Michigan Avenue, Chicago, IL 60611; Meredith Corporation, 1716 Locust Street, Des Moines, IA 50309; Griffin Communications, LLC, 7401 N Kelley Avenue, Oklahoma City, OK 73111; and Dreamcatcher Broadcasting, LLC, 2016 Broadway, Santa Monica, CA 90404, Defendants.*

Case No. 1:18–cv–2609

Judge: Tanya S. Chutkan

**COMPLAINT**

The United States of America, acting under the direction of the Acting Attorney General of the United States, brings this civil antitrust action to obtain equitable relief against Defendants Sinclair Broadcast Group, Inc. (“Sinclair”), Raycom Media, Inc. (“Raycom”), Tribune Media Company (“Tribune”), Meredith Corporation (“Meredith”), Griffin Communications, LLC (“Griffin”), and Dreamcatcher Broadcasting, LLC (“Dreamcatcher”), alleging as follows:

**I. NATURE OF THE ACTION**

1. This action challenges under Section 1 of the Sherman Act Defendants’ agreements to unlawfully exchange competitively sensitive information among broadcast television stations.

2. Sinclair, Raycom, Tribune, Meredith, Griffin, and Dreamcatcher (“Defendants”) and certain other television broadcast station groups (“Other Broadcasters”) compete in various configurations in a number of designated marketing areas (“DMAs”) in the market for broadcast television spot advertising. Certain national sales representation firms (“Sales Rep Firms”) represent broadcast station groups, including the Defendants, in their sales of spot advertising to advertisers. Defendants’, Other Broadcasters’, and Sales Rep Firms’ concerted behavior in exchanging competitively sensitive information has enabled the Defendants and Other Broadcasters to reduce competition in the sale of broadcast television spot advertising where they purport to compete head to head.

3. Defendants’ agreements are restraints of trade that are unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1. The Court should therefore enjoin Defendants from exchanging competitively sensitive information with and among competing broadcast television stations.

**II. JURISDICTION AND VENUE**

4. Each Defendant sells spot advertising to advertisers throughout the United States, or owns and operates broadcast television stations in multiple states or in DMAs that

cross state lines. Sales Rep Firms represent broadcast stations throughout the United States, including each of the Defendants, in the sale of spot advertising to advertisers throughout the United States. Such activities, including the exchanges of competitively sensitive information featured in this Complaint, are in the flow of and substantially affect interstate commerce. The Court has subject matter jurisdiction under Section 4 of the Sherman Act, 15 U.S.C. § 4, and under 28 U.S.C. §§ 1331 and 1337, to prevent and restrain the Defendants from violating Section 1 of the Sherman Act, 15 U.S.C. § 1.

5. Defendants have consented to venue and personal jurisdiction in this District. Venue is proper in this judicial district under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391.

**III. DEFENDANTS**

6. Defendant Sinclair is a Maryland corporation with its principal place of business in Hunt Valley, Maryland. Sinclair owns or operates 130 television stations in 87 DMAs and had over \$2.7 billion in revenues in 2017.

7. Defendant Raycom is a Delaware corporation with its principal place of business in Montgomery, Alabama. Raycom owns or operates 55 television stations in 43 DMAs and had over \$670 million in revenues in 2017.

8. Defendant Tribune is a Delaware corporation with its principal place of business in Chicago, Illinois. Tribune owns or operates 41 television stations in 31 DMAs and had over \$1.8 billion in revenues in 2017.

9. Defendant Meredith is an Iowa corporation with its principal place of business in Des Moines, Iowa. Meredith owns or operates 17 television stations in 12 DMAs and had over \$1.7 billion in revenues in 2017.

10. Defendant Griffin is an Oklahoma corporation with its principal place of business in Oklahoma City, Oklahoma. Griffin owns or operates four television stations in two DMAs and had over \$60 million in revenues in 2017.

11. Defendant Dreamcatcher is a Delaware corporation with its principal place of business in Santa Monica, California. Dreamcatcher owns or operates three television stations in two DMAs and had over \$50 million in revenues in 2017.

**IV. INDUSTRY BACKGROUND**

12. Broadcast television is important to both viewers and advertisers. For viewers, broadcast stations, including local affiliates of ABC, CBS, FOX, and NBC (collectively, the “Big 4” stations), offer not only highly rated entertainment and sports programming, but also local reporting of the news and events in their own communities and regions. The wide popularity of broadcast station programming—and the concomitant opportunity to reach a large local audience—also make broadcast television critical to advertisers, including local businesses that seek to reach potential customers in their own communities.

13. Broadcast stations sell advertising “spots” during breaks in their programming.

An advertiser purchases spots from a broadcast station to communicate its message to viewers within the DMA in which the broadcast television station is located.

14. Broadcast stations typically divide their sale of spot advertising into two categories: local sales and national sales. Local sales are sales a broadcast station makes through its own local sales staff, typically to advertisers located within the DMA. National sales are sales a broadcast station makes through either a Sales Rep Firm or through a centrally located broadcast group staff, typically to regional or national advertisers.

15. Sales Rep Firms represent broadcast stations in negotiations with advertisers' or advertisers' agents regarding the sale of broadcast stations' spot advertising. There are two primary Sales Rep Firms in the United States. Often a Sales Rep Firm represents two or more competing stations in the same DMA. In those cases, the Sales Rep Firms purportedly erect firewalls to prevent coordination and information sharing between sales teams representing competing stations.

#### V. THE UNLAWFUL AGREEMENTS

16. Defendants and Other Broadcasters have agreed in many DMAs across the United States to reciprocally exchange revenue pacing information. Certain Defendants also engaged in the exchange of other forms of competitively sensitive sales information in certain DMAs. Pacing compares a broadcast station's revenues booked for a certain time period to the revenues booked for the same point in time in the previous year. Pacing indicates how each station is performing versus the rest of the market and provides insight into each station's remaining spot advertising inventory for the period.

17. Defendants' exchange of competitively sensitive information has taken at least two forms.

18. First, Defendants and Other Broadcasters regularly exchanged pacing information through the Sales Rep Firms. At least once per quarter, but frequently more often, the Sales Rep Firms representing the Big 4 stations in a DMA exchanged real-time pacing information regarding each station's revenues, and reported the information to the Defendants and the other Big 4 station owners in the DMA. Typically, the exchanges included data on individual stations' booked sales for current and future months as well as a comparison to past periods. To the extent a Sales Rep Firm represents more than one Big 4 station in a DMA through sales teams separated by a supposed firewall, the exchange of pacing and other competitively sensitive information occurred between the sales teams and through those firewalls. Once given to the Defendants and Other Broadcasters in the DMA, the competitors' pacing information was then disseminated to the stations' sales managers and other individuals with authority over pricing and sales for the broadcast stations. These exchanges occurred with Defendants' knowledge and frequently at Defendants' instruction, and occurred in DMAs across the United States.

19. Second, in some DMAs, Defendants and Other Broadcasters exchanged

competitively sensitive information, including real-time pacing information for booked sales for current and future months, directly between broadcast station employees. These exchanges predominantly concerned local sales, but sometimes pertained to all sales or national sales.

20. These exchanges of pacing information allowed stations to better understand, in real time, the availability of inventory on competitors' stations, which is often a key factor affecting negotiations with buyers over spot advertising prices. The exchanges also helped stations to anticipate whether competitors were likely to raise, maintain, or lower spot advertising prices. Understanding competitors' pacing can help stations gauge competitors' and advertisers' negotiation strategies, inform their own pricing strategies, and help them resist more effectively advertisers' attempts to obtain lower prices by playing stations off of one another. Defendants' information exchanges therefore distorted the normal price-setting mechanism in the spot advertising market and harmed the competitive process.

21. Defendants' and Other Broadcasters' regular information exchanges, directly and through the Sales Rep Firms, reflect concerted action between horizontal competitors in the broadcast television spot advertising market.

#### VI. VIOLATION ALLEGED

##### (Violation of Section 1 of the Sherman Act)

22. The United States repeats and realleges paragraphs 1 through 21 as if fully set forth herein.

23. Defendants violated Section 1 of the Sherman Act, 15 U.S.C. § 1, by agreeing to exchange competitively sensitive information, either directly or through Sales Rep Firms. Defendants' exchange of pacing information resulted in anticompetitive effects in the broadcast television spot advertising markets in many DMAs throughout the United States.

24. The scheme consists of exchanges between Defendants and Other Broadcasters, either directly or through the Sales Rep Firms, in many DMAs, of their stations' revenue pacing information or, for certain Defendants in certain DMAs, other competitively sensitive information concerning spot advertising sales.

25. These unlawful information sharing agreements between Defendants, Other Broadcasters, and Sales Rep Firms have had, and likely will continue to have, anticompetitive effects in spot advertising markets by disrupting the normal mechanisms for negotiating and setting prices and harming the competitive process.

26. Defendants' agreements to exchange competitively sensitive information are unreasonable restraints of interstate trade and commerce. This offense is likely to continue and recur unless the requested relief is granted.

#### VII. REQUESTED RELIEF

27. The United States requests that the Court:

a. adjudge that the information sharing agreements unreasonably restrain trade and are unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1;

b. permanently enjoin and restrain Defendants from sharing pacing or other competitively sensitive information or agreeing to share such information with any other broadcast station or broadcast station group, directly or indirectly, and requiring Defendants to take such internal measures as are necessary to ensure compliance with that injunction;

c. award the United States the costs of this action; and

d. award such other relief to the United States as the Court may deem just and proper.

Dated: November 13, 2018

Respectfully submitted,  
FOR PLAINTIFF UNITED STATES OF AMERICA,

Makan Delrahim (D.C. Bar #457795),  
*Assistant Attorney General for Antitrust.*

William J. Rinner,  
*Acting Chief of Staff and Senior Counsel.*

Patricia A. Brink,  
*Director of Civil Enforcement.*

Owen M. Kendler,  
*Chief, Media, Entertainment & Professional Services Section.*

Yvette Tarlov (D.C. Bar #442452),  
*Assistant Chief, Media, Entertainment & Professional Services Section.*

Lee F. Berger (D.C. Bar #482435),  
Richard A. Hellings, Jr.,  
Gregg Malawer (D.C. Bar #481685),  
Bennett J. Matelson (D.C. Bar #454551),  
Monsura A. Sirajee,  
*United States Department of Justice Antitrust Division, Media, Entertainment & Professional Services Section, 450 Fifth Street, N.W., Suite 4000, Washington, DC 20530, Telephone: (202) 514-0230, Facsimile: (202) 514-7308.*

#### United States District Court for the District of Columbia

*United States of America; Plaintiff, v. Sinclair Broadcast Group, Inc., et al.*  
Defendants.

Case No. 1:18-cv-2609

Judge: Tanya S. Chutkan

#### [PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on November \_\_, 2018, alleging that Defendant Sinclair Broadcast Group, Inc., among others, violated Section 1 of the Sherman Act, 15 U.S.C. § 1, the United States and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

AND WHEREAS, this Final Judgment does not constitute any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, the United States and Defendant agree to be bound by the

provisions of this Final Judgment pending its approval by this Court;

AND WHEREAS, the Defendant agrees to undertake certain actions and to refrain from engaging in certain forms of information sharing with its competitors;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

## I. JURISDICTION

This Court has jurisdiction over the subject matter and each of the parties to this action. The allegations in the Complaint arise under Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1. *See* 28 U.S.C. § 1331.

## II. DEFINITIONS

As used in this Final Judgment:

A. “Advertiser” means an advertiser, an advertiser’s buying agent, or an advertiser’s representative.

B. “Agreement” means any agreement, understanding, pact, contract, or arrangement, formal or informal, oral or written, between two or more Persons.

C. “Communicate,” “Communicating,” and “Communication(s)” means to provide, send, discuss, circulate, exchange, request, or solicit information, whether directly or indirectly, and regardless of the means by which it is accomplished, including orally or by written means of any kind, such as electronic communications, e-mails, facsimiles, telephone communications, voicemails, text messages, audio recordings, meetings, interviews, correspondence, exchange of written or recorded information, or face-to-face meetings.

D. “Competitively Sensitive Information” means any of the following information, less than eighteen months old, of Defendant or any broadcast television station regarding the sale of spot advertising on broadcast television stations: Non-Public Information relating to pricing or pricing strategies, pacing, holding capacity, revenues, or market shares. Reports containing only aggregated market-level or national data are not Competitively Sensitive Information, but reports (including by paid subscription) that are customized or confidential to a particular Station or broadcast television station group are Competitively Sensitive Information.

E. “Cooperative Agreement” means (1) joint sales agreements, joint operating agreements, local marketing agreements, news share agreements, or shared services agreements, or (2) any agreement through which a Person exercises control over any broadcast television station not owned by the Person.

F. “Defendant” means Sinclair Broadcast Group, Inc., a Maryland corporation with its headquarters in Hunt Valley, Maryland, its successors and assigns, and its subsidiaries, divisions, and Stations, and their directors, officers, and employees.

G. “DMA” means Designated Market Area as defined by A.C. Nielsen Company and used by the *Investing in Television BIA Market Report 2018*.

H. “Management” means all directors and officers of Defendant, or any other employee

with management or supervisory responsibilities for Defendant’s business or operations related to the sale of spot advertising on any Station.

I. “Non-Public Information” means information that is not available from public sources or generally available to the public. Measurement or quantification of a Station’s future holding capacity is Non-Public Information, but measurement or quantification of a Station’s past holding capacity is not Non-Public Information. For the avoidance of doubt, the fact that information is available by paid subscription does not on its own render the information public.

J. “Person” means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

K. “Sales Representative Firm” means any organization, including without limitation Katz Media Group, Inc. and Cox Reps, Inc., and their respective subsidiaries and divisions, that represents a Station or its owner in the sale of spot advertising.

L. “Sales Representative Firm Manager” means, for each of Defendant’s Sales Representative Firms, the employee of the Sales Representative Firm with primary responsibility for the relationship with Defendant.

M. “Sales Staff” means Defendant’s employees with responsibility for the sale of spot advertising on any Station.

N. “Station” means any broadcast television station, its successors and assigns, and its subsidiaries, divisions, groups, and its owner or operator and its directors, officers, managers, and employees, unless a Station owns, is owned by, or is under common ownership with a Sales Representative Firm, in which case that Sales Representative Firm will not be considered a Station.

## III. APPLICABILITY

This Final Judgment applies to Defendant, other Persons in active concert or participation with Defendant who receive actual notice of this Final Judgment by personal service or otherwise, and any Person that signs an Acknowledgment of Applicability, attached as Exhibit 2, to the extent set forth therein, as a condition of the purchase of a Station owned by Defendant as of October 1, 2018. This Final Judgment applies to Defendant’s actions performed under any Cooperative Agreement, even if those actions are taken on behalf of a third party. This Final Judgment is fully enforceable, including by penalty of contempt, against all of the foregoing.

## IV. PROHIBITED CONDUCT

A. Defendant’s Management and Sales Staff shall not, directly or indirectly:

1. Communicate Competitively Sensitive Information to any Station in the same DMA it does not own or operate;

2. Knowingly use Competitively Sensitive Information from or regarding any Station in the same DMA it does not own or operate;

3. Encourage or facilitate the Communication of Competitively Sensitive

Information to or from any Station in the same DMA it does not own or operate; or

4. Attempt to enter into, enter into, maintain, or enforce any agreement to Communicate Competitively Sensitive Information with any Station in the same DMA it does not own or operate.

B. The prohibitions under Paragraph IV(A) apply to Defendant’s Communicating or agreeing to Communicate through a Sales Representative Firm or a third-party agent at Defendant’s instruction or request.

C. Defendant shall not sell any Station owned by the Defendant as of October 1, 2018 to any Person unless that Person has first executed the Acknowledgment of Applicability, attached as Exhibit 2. Defendant shall submit any Acknowledgment of Applicability to the United States within 15 days of consummating the sale of such Station. The United States, in its sole discretion, may waive the prohibition in this Paragraph IV(C) on a Station-by-Station basis. Alternatively, the United States and the Person signing the Acknowledgment of Applicability may agree to void the Acknowledgment of Applicability at any time. The first sentence of this paragraph shall not apply to the sale of any Station to a Person already bound to a final judgment entered by a court regarding the Communication of Competitively Sensitive Information.

## V. CONDUCT NOT PROHIBITED

A. Nothing in Section IV shall prohibit Defendant from Communicating, using, or encouraging or facilitating the Communication of, Competitively Sensitive Information with an actual or prospective Advertiser, except that, if the Advertiser is another Station, Defendant’s Communicating, using, or encouraging or facilitating the Communication of, Competitively Sensitive Information is excluded from the terms of Section IV only insofar as is reasonably necessary to negotiate the sale of spot advertising on broadcast television stations. For the avoidance of doubt, Defendant is not prohibited from internally using Competitively Sensitive Information received from an Advertiser that is a Station under the preceding sentence, but Defendant is prohibited from Communicating that Competitively Sensitive Information to a Station in the same DMA that it does not own or operate.

B. Nothing in Section IV shall prohibit Defendant from, after securing advice of counsel and in consultation with the Antitrust Compliance Officer, Communicating, using, encouraging or facilitating the Communication of, or attempting to enter into, entering into, maintaining, or enforcing any agreement to Communicate Competitively Sensitive Information with any Station when such Communication or use is (a) for the purpose of evaluating or effectuating a bona fide acquisition, disposition, or exchange of Stations or related assets, or (b) reasonably necessary for achieving the efficiencies of any other legitimate competitor collaboration. With respect to any such agreement:

1. For all agreements under Part V(B)(a) with any other Station to Communicate

Competitively Sensitive Information that Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment, Defendant shall maintain documents sufficient to show:

- i. the specific transaction or proposed transaction to which the sharing of Competitively Sensitive Information relates;
- ii. the employees, identified with reasonable specificity, who are involved in the sharing of Competitively Sensitive Information; and
- iii. the termination date or event of the sharing of Competitively Sensitive Information.

2. All agreements under Part V(B)(b) with any other Station to Communicate Competitively Sensitive Information that Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment shall be in writing, and shall:

- i. identify and describe, with specificity, the collaboration to which it is ancillary;
- ii. be narrowly tailored to permit the Communication of Competitively Sensitive Information only when reasonably necessary and only to the employees reasonably necessary to effectuate the collaboration;
- iii. identify with reasonable specificity the Competitively Sensitive Information Communicated pursuant to the agreement and identify the employees to receive the Competitively Sensitive Information;
- iv. contain a specific termination date or event; and
- v. be signed by all parties to the agreement, including any modifications to the agreement.

3. For Communications under Part V(B)(a) above, Defendant shall maintain copies of all materials required under Paragraph V(B)(1) for five years or the duration of the Final Judgment, whichever is shorter, following entry into any agreement to Communicate or receive Competitively Sensitive Information, and Defendant shall make such documents available to the United States upon request, if such request is made during the preservation period.

4. For Communications under Part V(B)(b) above, Defendant shall furnish a copy of all materials required under Paragraph V(B)(2) to the United States within thirty days of the entry, renewal, or extension of the agreement.

5. For purposes of this Section V(B) only, a Joint Sales Agreement, Local Marketing Agreement, or similar agreement pursuant to which the Defendant Communicates, uses, encourages or facilitates the Communication of, or attempts to enter into, enters into, maintains, or enforces any agreement to Communicate Competitively Sensitive Information related solely to the sale of spot advertising for which Defendant is responsible on a Station, shall be considered a "legitimate competitor collaboration" under Part V(B)(b).

C. Nothing in Section IV shall prohibit Defendant from engaging in conduct in accordance with the doctrine established in *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), *United Mine Workers v. Pennington*, 381 U.S. 657 (1965), and their progeny.

D. Nothing in Section IV prohibits Defendant from (1) Communicating,

encouraging or facilitating the Communication of, or attempting to enter into, entering into, maintaining, or enforcing any agreement to Communicate Competitively Sensitive Information for the purpose of aggregation if (a) Competitively Sensitive Information is sent to or received from, and the aggregation is managed by, a third party not owned or operated by any Station; (b) the information disseminated by the aggregator is limited to historical total broadcast television station revenue or other geographic or characteristic categorization (e.g., national, local, or political sales revenue); and (c) any information disseminated is sufficiently aggregated such that it would not allow a recipient to identify, deduce, or estimate the prices or pacing of any individual broadcast television station not owned or operated by that recipient; or (2) using information that meets the requirements of Parts V(D)(1)(a)–(c).

## VI. REQUIRED CONDUCT

A. Within ten days of entry of this Final Judgment, Defendant shall appoint an Antitrust Compliance Officer who is an internal employee or Officer of the Defendant, and identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. Within forty-five days of a vacancy in the Antitrust Compliance Officer position, Defendant shall appoint a replacement, and shall identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. Defendant's initial or replacement appointment of an Antitrust Compliance Officer is subject to the approval of the United States, in its sole discretion.

B. The Antitrust Compliance Officer shall have, or shall retain outside counsel who has, the following minimum qualifications:

1. be an active member in good standing of the bar in any U.S. jurisdiction; and
2. have at least five years' experience in legal practice, including experience with antitrust matters, unless finding an Antitrust Compliance Officer or outside counsel meeting this experience requirement is a hardship on or is not reasonably available to the Defendant, under which circumstances the Defendant may select an Antitrust Compliance Officer or shall retain outside counsel who has at least five years' experience in legal practice, including experience with regulatory or compliance matters.

C. The Antitrust Compliance Officer shall, directly or through the employees or counsel working at the Antitrust Compliance Officer's responsibility and direction:

1. within fourteen days of entry of the Final Judgment, furnish to all of Defendant's Management and Sales Staff and Sales Representative Firm Managers a copy of this Final Judgment, the Competitive Impact Statement filed by the United States with the Court, and a cover letter in a form attached as Exhibit 1;
2. within fourteen days of entry of the Final Judgment, in a manner to be devised by Defendant and approved by the United States, provide Defendant's Management and Sales Staff reasonable notice of the meaning and requirements of this Final Judgment;

3. annually brief Defendant's Management and Sales Staff on the meaning and requirements of this Final Judgment and the U.S. antitrust laws;

4. brief any person who succeeds a person in any position identified in Paragraph VI(C)(3), within sixty days of such succession;

5. obtain from each person designated in Paragraph VI(C)(3) or VI(C)(4), within thirty days of that person's receipt of the Final Judgment, a certification that the person (i) has read and understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not been reported to Defendant; and (iii) understands that failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court;

6. annually communicate to Defendant's Management and Sales Staff that they may disclose to the Antitrust Compliance Officer, without reprisal for such disclosure, information concerning any violation or potential violation of this Final Judgment or the U.S. antitrust laws by Defendant;

7. within thirty days of the latest filing of the Complaint, Proposed Final Judgment, or Competitive Impact Statement in this action, Defendant shall provide notice, in each DMA in which Defendant owns or operates a Station, to (i) every full power Station in that DMA that sells broadcast television spot advertising that Defendant does not own or operate and (ii) any Sales Representative Firm selling advertising in that DMA on behalf of Defendant, of the Complaint, Proposed Final Judgment, and Competitive Impact Statement in a form and manner to be proposed by Defendant and approved by the United States in its sole discretion. Defendant shall provide the United States with its proposal, including the list of recipients, within ten days of the filing of the Complaint; and

8. maintain for five years or until expiration of the Final Judgment, whichever is shorter, a copy of all materials required to be issued under Paragraph VI(C), and furnish them to the United States within ten days if requested to do so, except documents protected under the attorney-client privilege or the attorney work-product doctrine. For all materials required to be furnished under Paragraph VI(C) which Defendant claims are protected under the attorney-client privilege or the attorney work-product doctrine, Defendant shall furnish to the United States a privilege log.

D. Defendant shall:

1. upon Management or the Antitrust Compliance Officer learning of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, (i) promptly take appropriate action to investigate, and in the event of a violation, terminate or modify the activity so as to comply with this Final Judgment, (ii) maintain all documents related to any violation or potential violation of this Final Judgment for a period of five years or the duration of this Final Judgment, whichever is shorter, and (iii) maintain, and furnish to the United States at the United States' request, a log of (a) all such documents and

documents for which Defendant claims protection under the attorney-client privilege or the attorney work product doctrine, and (b) all potential and actual violations, even if no documentary evidence regarding the violations exist;

2. within thirty days of Management or the Antitrust Compliance Officer learning of any such violation or potential violation of any of the terms and conditions contained in this Final Judgment, file with the United States a statement describing any violation or potential violation of any of the terms and conditions contained in this Final Judgment, which shall include a description of any Communications constituting the violation or potential violation, including the date and place of the Communication, the Persons involved, and the subject matter of the Communication;

3. establish a whistleblower protection policy, which provides that any employee may disclose, without reprisal for such disclosure, to the Antitrust Compliance Officer information concerning any violation or potential violation by the Defendant of this Final Judgment or U.S. antitrust laws;

4. have its CEO, General Counsel or Chief Legal Officer certify in writing to the United States annually on the anniversary date of the entry of this Final Judgment that Defendant has complied with the provisions of this Final Judgment;

5. maintain and produce to the United States upon request: (i) a list identifying all employees having received the annual antitrust briefing required under Paragraphs VI(C)(3) and VI(C)(4); and (ii) copies of all materials distributed as part of the annual antitrust briefing required under Paragraphs VI(C)(3) and V(C)(4). For all materials requested to be produced under this Paragraph VI(D)(5) for which Defendant claims is protected under the attorney-client privilege or the attorney work-product doctrine, Defendant shall furnish to the United States a privilege log; and

6. instruct each Sales Representative Firm Manager that the Sales Representative Firm shall not Communicate any of Defendant's Competitively Sensitive Information in a way that would violate Sections IV and V of this Final Judgment if the Sales Representative Firm were included in the definition of "Defendant" in Paragraph II(F), in a form and manner to be proposed by Defendant and approved by the United States in its sole discretion, maintained and produced to the United States upon request.

E. For the avoidance of doubt, the term "potential violation" as used in Paragraph VI(D) does not include the discussion of future conduct.

F. If Defendant acquires a Station after entry of this Final Judgment, this Section VI will not apply to that acquired Station or the employees of that acquired Station until 120 days after closing of the acquisition of that acquired Station.

#### VII. DEFENDANT'S COOPERATION

A. Defendant shall cooperate fully and truthfully with the United States in any investigation or litigation examining whether or alleging that Defendant, any Station that Defendant does not own or operate, or any

Sales Representative Firm Communicated Competitively Sensitive Information with or among Defendant or any other Station or any Sales Representative Firm in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1. Defendant shall use its best efforts to ensure that all current and former officers, directors, employees, and agents also fully and promptly cooperate with the United States. The full, truthful, and continuing cooperation of Defendant shall include, but not be limited to:

1. providing sworn testimony, that is not protected by the attorney-client privilege or the attorney work product doctrine, to the United States regarding the Communicated of Competitively Sensitive Information or any agreement with any other Station it does not own or such other Station's Sales Representative Firm to Communicate Competitively Sensitive Information while an employee of the Defendant;

2. producing, upon request of the United States, all documents, data, and other materials, wherever located, to the extent not protected under the attorney-client privilege or the attorney work-product doctrine, in the possession, custody, or control of Defendant, that relate to the Communication of Competitively Sensitive Information or any agreement with any other Station or such other Station's Sales Representative Firm to Communicate Competitively Sensitive Information, and a log of documents protected by the attorney-client privilege or the attorney work product doctrine;

3. making available for interview any officers, directors, employees, and agents of Defendant if so requested on reasonable notice by the United States; and

4. testifying at trial and other judicial proceedings fully, truthfully, and under oath, when called upon to do so by the United States;

5. provided however, that the obligations of Defendant to cooperate fully with the United States as described in this Section VII shall cease upon the conclusion of all of the United States' investigations and the United States' litigations examining whether or alleging that Defendant, any Station that Defendant does not own or operate or such other Station's Sales Representative Firm Communicated Competitively Sensitive Information or with or among Defendant or any other Station or any Sales Representative Firm in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1, including exhaustion of all appeals or expiration of time for all appeals of any Court ruling in each such matter, at which point the United States will provide written notice to Defendant that its obligations under this Section VII have expired.

B. Defendant is obligated to impose a litigation hold until the United States provides written notice to the Defendant that its obligations under this Section VII have expired. This Paragraph VII(B) does not apply to documents created after entry of this Final Judgment.

C. Subject to the full, truthful, and continuing cooperation of Defendant, as defined in Paragraph VII(A), the United States will not bring any further civil action or any criminal charges against Defendant

related to any Communication of Competitively Sensitive Information or any agreement to Communicate Competitively Sensitive Information with any other Station it does not own or operate or such other Station's Sales Representative Firm when that agreement:

1. was Communicated, entered into and terminated on or before the date of the filing of the Complaint in this action (or in the case of a Station that is acquired by Defendant after entry of this Final Judgment, was Communicated or entered into before the acquisition and terminated within 120 days after the closing of the acquisition); and

2. does not constitute or include an agreement to fix prices or divide markets.

D. The United States' agreement set forth in Paragraph VII(C) does not apply to any acts of perjury or subornation of perjury (18 U.S.C. §§ 1621–22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), contempt (18 U.S.C. §§ 401–402), or obstruction of justice (18 U.S.C. § 1503, *et seq.*) by the Defendant or its officers, directors, and employees. The United States' agreement set forth in Paragraph VII(C) does not release any claims against any Sales Representative Firm.

#### VIII. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment or of any related orders, or of determining whether the Final Judgment should be modified, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant, be permitted:

1. to access during Defendant's office hours to inspect and copy, or at the option of the United States, to require Defendant to provide electronic or hard copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendant, relating to any matters that are the subject of this Final Judgment, not protected by the attorney-client privilege or the attorney work product doctrine; and

2. to interview, either informally or on the record, Defendant's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendant; and

3. to obtain from Defendant written reports or responses to written interrogatories, of information not protected by the attorney-client privilege or attorney work product doctrine, under oath if requested, relating to any matters that are the subject of this Final Judgment as may be requested.

B. No information or documents obtained by the means provided in this Section VIII shall be divulged by the United States to any Person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a

party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or for law enforcement purposes, or as otherwise required by law.

C. If at the time information or documents are furnished by Defendant to the United States, Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendant ten calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

#### IX. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

#### X. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including its right to seek an order of contempt from this Court. Defendant agrees that in any civil contempt action, any motion to show cause, or any similar civil action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendant waives any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. Defendant agrees that it may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendant has violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against Defendant, whether litigated or resolved prior to litigation, Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

#### XI. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire seven years from the date of its entry, except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendant that the continuation of the Final Judgment no longer is necessary or in the public interest.

#### XII. NOTICE

For purposes of this Final Judgment, any notice or other communication required to be provided to the United States shall be sent to the person at the address set forth below (or such other addresses as the United States may specify in writing to Defendant): Chief, Media, Entertainment, and Professional Services Section, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW, Suite 4000, Washington, D.C. 20530.

#### XIII. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

IT IS SO ORDERED by the Court, this \_\_\_ day of \_\_\_, 201\_\_\_.  
Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

United States District Judge

#### Exhibit 1

[Company Letterhead]  
[Name and Address of Antitrust Compliance Officer]

Re: *Prohibitions Against Sharing of Competitively Sensitive Information*

Dear [XX]:

I provide you this notice regarding a judgment recently entered by a federal judge in Washington, D.C. prohibiting the sharing of certain information with other broadcast television station(s).

The judgment applies to our company and all of its employees, including you, so it is important that you understand the obligations it imposes on us. [CEO Name] has asked me to let each of you know that [s/he] expects you to take these obligations seriously and abide by them.

The judgment prohibits us from sharing or receiving, directly or indirectly (including through our national sales representative firm), competitively sensitive information with or from any employee, agent, or representative of another broadcast television station in the same DMA it does not own or operate. Competitively sensitive information means any non-public information regarding the sale of spot advertising on broadcast

television stations, including information relating to any pricing or pricing strategies, pacing, holding capacity, revenues, or market shares. There are limited exceptions to this restriction, which are listed in the judgment. The company will provide briefing on the legitimate or illegitimate exchange of information. You must consult with me if you have any questions on whether a particular circumstance is subject to an exception under the judgment.

A copy of the judgment is attached. Please read it carefully and familiarize yourself with its terms. The judgment, rather than the above description, is controlling. If you have any questions about the judgment or how it affects your sale of spot advertising, please contact me as soon as possible.

Please sign and return the attached Employee Certification to [Defendant's Antitrust Compliance Officer] within thirty days of your receipt of this letter. Thank you for your cooperation.

Sincerely,

[Defendant's Antitrust Compliance Officer]

#### Employee Certification

I, \_\_\_\_\_ [name], \_\_\_\_\_ [position] at \_\_\_\_\_ [station or location] do hereby certify that I (i) have read and understand, and agree to abide by, the terms of the Final Judgment; (ii) am not aware of any violation of the Final Judgment that has not been reported to [Defendant]; and (iii) understand that my failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court.

Name: \_\_\_\_\_

Date: \_\_\_\_\_

#### EXHIBIT 2

#### United States District Court for the District of Columbia

*United States of America*; Plaintiff, v.  
*Sinclair Broadcast Group, Inc., et al.*  
Defendants.

Case No. 1:18-cv-2609

Judge: Tanya S. Chutkan

#### ACKNOWLEDGEMENT OF APPLICABILITY

The undersigned acknowledges that [Full Buyer Name], including its successors and assigns, and its subsidiaries, divisions, and broadcast television stations, and their directors, officers, and employees ("Acquirer"), following consummation of the Acquirer's acquisition of [insert names of station or stations acquired] (each, an "Acquired Station"), is bound by the Final Judgment entered by this Court on [date] ("Final Judgment"), as if the Acquirer were a Defendant under the Final Judgment, as follows:

1. The Acquirer shall be bound in full by all Sections of the Consent Decree not specifically discussed below.

2. As to Sections IV, V, and VII of the Final Judgment, the Acquirer is bound to the Final Judgment only as to (i) each Acquired Station, each Acquired Station's successors and assigns, and each Acquired Station's subsidiaries and divisions, and each Acquired Station's directors, officers, and employees, (ii) Acquirer's officers and



directors only with respect to any responsibilities or actions regarding any Acquired Stations, and (iii) employees with management or supervisory responsibilities for Acquirer's business or operations related to the sale of spot advertising on any Acquired Station, only with respect to those responsibilities.

3. As to Section VI(C)(3), VI(C)(4), VI(C)(6), VI(C)(8), VI(D), VI(E), and VIII of the Final Judgment, the Acquirer is bound to the Final Judgment only as to (i) each Acquired Station, each Acquired Station's successors and assigns, and each Acquired Station's subsidiaries and divisions, and each Acquired Station's directors, officers, and employees, (ii) Acquirer's officers and directors, and (iii) employees with management or supervisory responsibilities for Acquirer's business or operations related to the sale of spot advertising on any Acquired Station.

4. The release contained in Sections VII(C) and (D) applies to the Acquirer, but only to civil actions or criminal charges arising from actions taken by any Acquired Station.

5. The Acquirer shall not be bound by Sections VI(C)(1), VI(C)(2), VI(C)(5), VI(C)(7), and VI(F) of the Final Judgment at all.

6. Section VI(A) applies to the Acquirer, but is modified to make the initial period for appointing an Antitrust Compliance Officer in the first sentence 120 days from consummation of the Acquirer's acquisition of the Acquired Station or Acquired Stations.

This Acknowledgement of Applicability may be voided by a joint written agreement between the United States and the Acquirer.

Dated: [ ]

Respectfully submitted,

/s/ \_\_\_\_\_

[Counsel for Acquirer]

**United States District Court for the District of Columbia**

*United States of America*; Plaintiff, v. *Sinclair Broadcast Group, Inc., et al.* Defendants.

Case No. 1:18-cv-2609

Judge: Tanya S. Chutkan

**[PROPOSED] FINAL JUDGMENT**

WHEREAS, Plaintiff, United States of America, filed its Complaint on November \_\_, 2018, alleging that Defendant Raycom Media, Inc., among others, violated Section 1 of the Sherman Act, 15 U.S.C. § 1, the United States and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

AND WHEREAS, this Final Judgment does not constitute any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, the United States and Defendant agree to be bound by the provisions of this Final Judgment pending its approval by this Court;

AND WHEREAS, the Defendant agrees to undertake certain actions and to refrain from engaging in certain forms of information sharing with its competitors;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any

issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

**I. JURISDICTION**

This Court has jurisdiction over the subject matter and each of the parties to this action. The allegations in the Complaint arise under Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1. See 28 U.S.C. § 1331.

**II. DEFINITIONS**

As used in this Final Judgment:

A. "Advertiser" means an advertiser, an advertiser's buying agent, or an advertiser's representative.

B. "Agreement" means any agreement, understanding, pact, contract, or arrangement, formal or informal, oral or written, between two or more Persons.

C. "Communicate," "Communicating," and "Communication(s)" means to provide, send, discuss, circulate, exchange, request, or solicit information, whether directly or indirectly, and regardless of the means by which it is accomplished, including orally or by written means of any kind, such as electronic communications, e-mails, facsimiles, telephone communications, voicemails, text messages, audio recordings, meetings, interviews, correspondence, exchange of written or recorded information, or face-to-face meetings.

D. "Competitively Sensitive Information" means any of the following information, less than eighteen months old, of Defendant or any broadcast television station regarding the sale of spot advertising on broadcast television stations: Non-Public Information relating to pricing or pricing strategies, pacing, holding capacity, revenues, or market shares. Reports containing only aggregated market-level or national data are not Competitively Sensitive Information, but reports (including by paid subscription) that are customized or confidential to a particular Station or broadcast television station group are Competitively Sensitive Information.

E. "Cooperative Agreement" means (1) joint sales agreements, joint operating agreements, local marketing agreements, news share agreements, or shared services agreements, or (2) any agreement through which a Person exercises control over any broadcast television station not owned by the Person.

F. "Defendant" means Raycom Media, Inc., a Delaware corporation with its headquarters in Birmingham, Alabama, its successors and assigns, and its subsidiaries, divisions, and Stations, and their directors, officers, and employees.

G. "DMA" means Designated Market Area as defined by A.C. Nielsen Company and used by the *Investing in Television BIA Market Report 2018*.

H. "Management" means all directors and officers of Defendant, or any other employee with management or supervisory responsibilities for Defendant's business or operations related to the sale of spot advertising on any Station.

I. "Non-Public Information" means information that is not available from public sources or generally available to the public. Measurement or quantification of a Station's

future holding capacity is Non-Public Information, but measurement or quantification of a Station's past holding capacity is not Non-Public Information. For the avoidance of doubt, the fact that information is available by paid subscription does not on its own render the information public.

J. "Person" means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

K. "Sales Representative Firm" means any organization, including without limitation Katz Media Group, Inc. and Cox Reps, Inc., and their respective subsidiaries and divisions, that represents a Station or its owner in the sale of spot advertising.

L. "Sales Representative Firm Manager" means, for each of Defendant's Sales Representative Firms, the employee of the Sales Representative Firm with primary responsibility for the relationship with Defendant.

M. "Sales Staff" means Defendant's employees with responsibility for the sale of spot advertising on any Station.

N. "Station" means any broadcast television station, its successors and assigns, and its subsidiaries, divisions, groups, and its owner or operator and its directors, officers, managers, and employees, unless a Station owns, is owned by, or is under common ownership with a Sales Representative Firm, in which case that Sales Representative Firm will not be considered a Station.

**III. APPLICABILITY**

This Final Judgment applies to Defendant, other Persons in active concert or participation with Defendant who receive actual notice of this Final Judgment by personal service or otherwise, and any Person that signs an Acknowledgment of Applicability, attached as Exhibit 2, to the extent set forth therein, as a condition of the purchase of a Station owned by Defendant as of October 1, 2018. This Final Judgment applies to Defendant's actions performed under any Cooperative Agreement, even if those actions are taken on behalf of a third party. This Final Judgment is fully enforceable, including by penalty of contempt, against all of the foregoing. Notwithstanding any other provision contained herein, this Final Judgment does not apply to broadcast television stations owned by Gray Television, Inc. that were not owned by Raycom Media, Inc. as of October 1, 2018.

**IV. PROHIBITED CONDUCT**

A. Defendant's Management and Sales Staff shall not, directly or indirectly:

1. Communicate Competitively Sensitive Information to any Station in the same DMA it does not own or operate;

2. Knowingly use Competitively Sensitive Information from or regarding any Station in the same DMA it does not own or operate;

3. Encourage or facilitate the Communication of Competitively Sensitive Information to or from any Station in the same DMA it does not own or operate; or

4. Attempt to enter into, enter into, maintain, or enforce any agreement to Communicate Competitively Sensitive Information with any Station in the same DMA it does not own or operate.

B. The prohibitions under Paragraph IV(A) apply to Defendant's Communicating or agreeing to Communicate through a Sales Representative Firm or a third-party agent at Defendant's instruction or request.

C. Defendant shall not sell any Station owned by the Defendant as of October 1, 2018 to any Person unless that Person has first executed the Acknowledgment of Applicability, attached as Exhibit 2. Defendant shall submit any Acknowledgment of Applicability to the United States within 15 days of consummating the sale of such Station. The United States, in its sole discretion, may waive the prohibition in this Paragraph IV(C) on a Station-by-Station basis. Alternatively, the United States and the Person signing the Acknowledgment of Applicability may agree to void the Acknowledgment of Applicability at any time. The first sentence of this paragraph shall not apply to the sale of any Station to a Person already bound to a final judgment entered by a court regarding the Communication of Competitively Sensitive Information.

#### V. CONDUCT NOT PROHIBITED

A. Nothing in Section IV shall prohibit Defendant from Communicating, using, or encouraging or facilitating the Communication of, Competitively Sensitive Information with an actual or prospective Advertiser, except that, if the Advertiser is another Station, Defendant's Communicating, using, or encouraging or facilitating the Communication of, Competitively Sensitive Information is excluded from the terms of Section IV only insofar as is reasonably necessary to negotiate the sale of spot advertising on broadcast television stations. For the avoidance of doubt, Defendant is not prohibited from internally using Competitively Sensitive Information received from an Advertiser that is a Station under the preceding sentence, but Defendant is prohibited from Communicating that Competitively Sensitive Information to a Station in the same DMA that it does not own or operate.

B. Nothing in Section IV shall prohibit Defendant from, after securing advice of counsel and in consultation with the Antitrust Compliance Officer, Communicating, using, encouraging or facilitating the Communication of, or attempting to enter into, entering into, maintaining, or enforcing any agreement to Communicate Competitively Sensitive Information with any Station when such Communication or use is (a) for the purpose of evaluating or effectuating a bona fide acquisition, disposition, or exchange of Stations or related assets, or (b) reasonably necessary for achieving the efficiencies of any other legitimate competitor collaboration. With respect to any such agreement:

1. For all agreements under Part V(B)(a) with any other Station to Communicate Competitively Sensitive Information that

Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment, Defendant shall maintain documents sufficient to show:

i. the specific transaction or proposed transaction to which the sharing of Competitively Sensitive Information relates;

ii. the employees, identified with reasonable specificity, who are involved in the sharing of Competitively Sensitive Information; and

iii. the termination date or event of the sharing of Competitively Sensitive Information.

2. All agreements under Part V(B)(b) with any other Station to Communicate Competitively Sensitive Information that Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment shall be in writing, and shall:

i. identify and describe, with specificity, the collaboration to which it is ancillary;

ii. be narrowly tailored to permit the Communication of Competitively Sensitive Information only when reasonably necessary and only to the employees reasonably necessary to effectuate the collaboration;

iii. identify with reasonable specificity the Competitively Sensitive Information Communicated pursuant to the agreement and identify the employees to receive the Competitively Sensitive Information;

iv. contain a specific termination date or event; and

v. be signed by all parties to the agreement, including any modifications to the agreement.

3. For Communications under Part V(B)(a) above, Defendant shall maintain copies of all materials required under Paragraph V(B)(1) for five years or the duration of the Final Judgment, whichever is shorter, following entry into any agreement to Communicate or receive Competitively Sensitive Information, and Defendant shall make such documents available to the United States upon request, if such request is made during the preservation period.

4. For Communications under Part V(B)(b) above, Defendant shall furnish a copy of all materials required under Paragraph V(B)(2) to the United States within thirty days of the entry, renewal, or extension of the agreement.

5. For purposes of this Section V(B) only, a Joint Sales Agreement, Local Marketing Agreement, or similar agreement pursuant to which the Defendant Communicates, uses, encourages or facilitates the Communication of, or attempts to enter into, enters into, maintains, or enforces any agreement to Communicate Competitively Sensitive Information related solely to the sale of spot advertising for which Defendant is responsible on a Station, shall be considered a "legitimate competitor collaboration" under Part V(B)(b).

C. Nothing in Section IV shall prohibit Defendant from engaging in conduct in accordance with the doctrine established in *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), *United Mine Workers v. Pennington*, 381 U.S. 657 (1965), and their progeny.

D. Nothing in Section IV prohibits Defendant from (1) Communicating,

encouraging or facilitating the Communication of, or attempting to enter into, entering into, maintaining, or enforcing any agreement to Communicate Competitively Sensitive Information for the purpose of aggregation if (a) Competitively Sensitive Information is sent to or received from, and the aggregation is managed by, a third party not owned or operated by any Station; (b) the information disseminated by the aggregator is limited to historical total broadcast television station revenue or other geographic or characteristic categorization (e.g., national, local, or political sales revenue); and (c) any information disseminated is sufficiently aggregated such that it would not allow a recipient to identify, deduce, or estimate the prices or pacing of any individual broadcast television station not owned or operated by that recipient; or (2) using information that meets the requirements of Parts V(D)(1)(a)–(c).

#### VI. REQUIRED CONDUCT

A. Within ten days of entry of this Final Judgment, Defendant shall appoint an Antitrust Compliance Officer who is an internal employee or Officer of the Defendant, and identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. Within forty-five days of a vacancy in the Antitrust Compliance Officer position, Defendant shall appoint a replacement, and shall identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. Defendant's initial or replacement appointment of an Antitrust Compliance Officer is subject to the approval of the United States, in its sole discretion.

B. The Antitrust Compliance Officer shall have, or shall retain outside counsel who has, the following minimum qualifications:

1. be an active member in good standing of the bar in any U.S. jurisdiction; and

2. have at least five years' experience in legal practice, including experience with antitrust matters, unless finding an Antitrust Compliance Officer or outside counsel meeting this experience requirement is a hardship on or is not reasonably available to the Defendant, under which circumstances the Defendant may select an Antitrust Compliance Officer or shall retain outside counsel who has at least five years' experience in legal practice, including experience with regulatory or compliance matters.

C. The Antitrust Compliance Officer shall, directly or through the employees or counsel working at the Antitrust Compliance Officer's responsibility and direction:

1. within fourteen days of entry of the Final Judgment, furnish to all of Defendant's Management and Sales Staff and Sales Representative Firm Managers a copy of this Final Judgment, the Competitive Impact Statement filed by the United States with the Court, and a cover letter in a form attached as Exhibit 1;

2. within fourteen days of entry of the Final Judgment, in a manner to be devised by Defendant and approved by the United States, provide Defendant's Management and Sales Staff reasonable notice of the meaning and requirements of this Final Judgment;

3. annually brief Defendant's Management and Sales Staff on the meaning and requirements of this Final Judgment and the U.S. antitrust laws;

4. brief any person who succeeds a person in any position identified in Paragraph VI(C)(3), within sixty days of such succession;

5. obtain from each person designated in Paragraph VI(C)(3) or VI(C)(4), within thirty days of that person's receipt of the Final Judgment, a certification that the person (i) has read and understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not been reported to Defendant; and (iii) understands that failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court;

6. annually communicate to Defendant's Management and Sales Staff that they may disclose to the Antitrust Compliance Officer, without reprisal for such disclosure, information concerning any violation or potential violation of this Final Judgment or the U.S. antitrust laws by Defendant;

7. within thirty days of the latest filing of the Complaint, Proposed Final Judgment, or Competitive Impact Statement in this action, Defendant shall provide notice, in each DMA in which Defendant owns or operates a Station, to (i) every full power Station in that DMA that sells broadcast television spot advertising that Defendant does not own or operate and (ii) any Sales Representative Firm selling advertising in that DMA on behalf of Defendant, of the Complaint, Proposed Final Judgment, and Competitive Impact Statement in a form and manner to be proposed by Defendant and approved by the United States in its sole discretion. Defendant shall provide the United States with its proposal, including the list of recipients, within ten days of the filing of the Complaint; and

8. maintain for five years or until expiration of the Final Judgment, whichever is shorter, a copy of all materials required to be issued under Paragraph VI(C), and furnish them to the United States within ten days if requested to do so, except documents protected under the attorney-client privilege or the attorney work-product doctrine. For all materials required to be furnished under Paragraph VI(C) which Defendant claims are protected under the attorney-client privilege or the attorney work-product doctrine, Defendant shall furnish to the United States a privilege log.

D. Defendant shall:

1. upon Management or the Antitrust Compliance Officer learning of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, (i) promptly take appropriate action to investigate, and in the event of a violation, terminate or modify the activity so as to comply with this Final Judgment, (ii) maintain all documents related to any violation or potential violation of this Final Judgment for a period of five years or the duration of this Final Judgment, whichever is shorter, and (iii) maintain, and furnish to the United States at the United States' request, a log of (a) all such documents and

documents for which Defendant claims protection under the attorney-client privilege or the attorney work product doctrine, and (b) all potential and actual violations, even if no documentary evidence regarding the violations exist;

2. within thirty days of Management or the Antitrust Compliance Officer learning of any such violation or potential violation of any of the terms and conditions contained in this Final Judgment, file with the United States a statement describing any violation or potential violation of any of the terms and conditions contained in this Final Judgment, which shall include a description of any Communications constituting the violation or potential violation, including the date and place of the Communication, the Persons involved, and the subject matter of the Communication;

3. establish a whistleblower protection policy, which provides that any employee may disclose, without reprisal for such disclosure, to the Antitrust Compliance Officer information concerning any violation or potential violation by the Defendant of this Final Judgment or U.S. antitrust laws;

4. have its CEO, General Counsel or Chief Legal Officer certify in writing to the United States annually on the anniversary date of the entry of this Final Judgment that Defendant has complied with the provisions of this Final Judgment;

5. maintain and produce to the United States upon request: (i) a list identifying all employees having received the annual antitrust briefing required under Paragraphs VI(C)(3) and VI(C)(4); and (ii) copies of all materials distributed as part of the annual antitrust briefing required under Paragraphs VI(C)(3) and VI(C)(4). For all materials requested to be produced under this Paragraph VI(D)(5) for which Defendant claims is protected under the attorney-client privilege or the attorney work-product doctrine, Defendant shall furnish to the United States a privilege log; and

6. instruct each Sales Representative Firm Manager that the Sales Representative Firm shall not Communicate any of Defendant's Competitively Sensitive Information in a way that would violate Sections IV and V of this Final Judgment if the Sales Representative Firm were included in the definition of "Defendant" in Paragraph II(F), in a form and manner to be proposed by Defendant and approved by the United States in its sole discretion, maintained and produced to the United States upon request.

E. For the avoidance of doubt, the term "potential violation" as used in Paragraph VI(D) does not include the discussion of future conduct.

F. If Defendant acquires a Station after entry of this Final Judgment, this Section VI will not apply to that acquired Station or the employees of that acquired Station until 120 days after closing of the acquisition of that acquired Station.

#### VII. DEFENDANT'S COOPERATION

A. Defendant shall cooperate fully and truthfully with the United States in any investigation or litigation examining whether or alleging that Defendant, any Station that Defendant does not own or operate, or any

Sales Representative Firm Communicated Competitively Sensitive Information with or among Defendant or any other Station or any Sales Representative Firm in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1. Defendant shall use its best efforts to ensure that all current and former officers, directors, employees, and agents also fully and promptly cooperate with the United States. The full, truthful, and continuing cooperation of Defendant shall include, but not be limited to:

1. providing sworn testimony, that is not protected by the attorney-client privilege or the attorney work product doctrine, to the United States regarding the Communicated of Competitively Sensitive Information or any agreement with any other Station it does not own or such other Station's Sales Representative Firm to Communicate Competitively Sensitive Information while an employee of the Defendant;

2. producing, upon request of the United States, all documents, data, and other materials, wherever located, to the extent not protected under the attorney-client privilege or the attorney work-product doctrine, in the possession, custody, or control of Defendant, that relate to the Communication of Competitively Sensitive Information or any agreement with any other Station or such other Station's Sales Representative Firm to Communicate Competitively Sensitive Information, and a log of documents protected by the attorney-client privilege or the attorney work product doctrine;

3. making available for interview any officers, directors, employees, and agents of Defendant if so requested on reasonable notice by the United States; and

4. testifying at trial and other judicial proceedings fully, truthfully, and under oath, when called upon to do so by the United States;

5. provided however, that the obligations of Defendant to cooperate fully with the United States as described in this Section VII shall cease upon the conclusion of all of the United States' investigations and the United States' litigations examining whether or alleging that Defendant, any Station that Defendant does not own or operate or such other Station's Sales Representative Firm Communicated Competitively Sensitive Information or with or among Defendant or any other Station or any Sales Representative Firm in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1, including exhaustion of all appeals or expiration of time for all appeals of any Court ruling in each such matter, at which point the United States will provide written notice to Defendant that its obligations under this Section VII have expired.

B. Defendant is obligated to impose a litigation hold until the United States provides written notice to the Defendant that its obligations under this Section VII have expired. This Paragraph VII(B) does not apply to documents created after entry of this Final Judgment.

C. Subject to the full, truthful, and continuing cooperation of Defendant, as defined in Paragraph VII(A), the United States will not bring any further civil action or any criminal charges against Defendant

related to any Communication of Competitively Sensitive Information or any agreement to Communicate Competitively Sensitive Information with any other Station it does not own or operate or such other Station's Sales Representative Firm when that agreement:

1. was Communicated, entered into and terminated on or before the date of the filing of the Complaint in this action (or in the case of a Station that is acquired by Defendant after entry of this Final Judgment, was Communicated or entered into before the acquisition and terminated within 120 days after the closing of the acquisition); and

2. does not constitute or include an agreement to fix prices or divide markets.

D. The United States' agreement set forth in Paragraph VII(C) does not apply to any acts of perjury or subornation of perjury (18 U.S.C. §§ 1621–22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), contempt (18 U.S.C. §§ 401–402), or obstruction of justice (18 U.S.C. § 1503, *et seq.*) by the Defendant or its officers, directors, and employees. The United States' agreement set forth in Paragraph VII(C) does not release any claims against any Sales Representative Firm.

#### VIII. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment or of any related orders, or of determining whether the Final Judgment should be modified, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant, be permitted:

1. to access during Defendant's office hours to inspect and copy, or at the option of the United States, to require Defendant to provide electronic or hard copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendant, relating to any matters that are the subject of this Final Judgment, not protected by the attorney-client privilege or the attorney work product doctrine; and

2. to interview, either informally or on the record, Defendant's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendant; and

3. to obtain from Defendant written reports or responses to written interrogatories, of information not protected by the attorney-client privilege or attorney work product doctrine, under oath if requested, relating to any matters that are the subject of this Final Judgment as may be requested.

B. No information or documents obtained by the means provided in this Section VIII shall be divulged by the United States to any Person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a

party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or for law enforcement purposes, or as otherwise required by law.

C. If at the time information or documents are furnished by Defendant to the United States, Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendant ten calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

#### IX. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

#### X. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including its right to seek an order of contempt from this Court. Defendant agrees that in any civil contempt action, any motion to show cause, or any similar civil action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendant waives any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. Defendant agrees that it may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendant has violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against Defendant, whether litigated or resolved prior to litigation, Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

#### XI. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire seven years from the date of its entry, except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendant that the continuation of the Final Judgment no longer is necessary or in the public interest.

#### XII. NOTICE

For purposes of this Final Judgment, any notice or other communication required to be provided to the United States shall be sent to the person at the address set forth below (or such other addresses as the United States may specify in writing to Defendant): Chief, Media, Entertainment, and Professional Services Section, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW, Suite 4000, Washington, D.C. 20530.

#### XIII. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

IT IS SO ORDERED by the Court, this \_\_\_ day of \_\_\_, 201\_\_\_.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

United States District Judge

#### Exhibit 1

[Company Letterhead]

[Name and Address of Antitrust Compliance Officer]

Re: *Prohibitions Against Sharing of Competitively Sensitive Information*

Dear [XX]:

I provide you this notice regarding a judgment recently entered by a federal judge in Washington, D.C. prohibiting the sharing of certain information with other broadcast television station(s).

The judgment applies to our company and all of its employees, including you, so it is important that you understand the obligations it imposes on us. [CEO Name] has asked me to let each of you know that [s/he] expects you to take these obligations seriously and abide by them.

The judgment prohibits us from sharing or receiving, directly or indirectly (including through our national sales representative firm), competitively sensitive information with or from any employee, agent, or representative of another broadcast television station in the same DMA it does not own or operate. Competitively sensitive information means any non-public information regarding

the sale of spot advertising on broadcast television stations, including information relating to any pricing or pricing strategies, pacing, holding capacity, revenues, or market shares. There are limited exceptions to this restriction, which are listed in the judgment. The company will provide briefing on the legitimate or illegitimate exchange of information. You must consult with me if you have any questions on whether a particular circumstance is subject to an exception under the judgment.

A copy of the judgment is attached. Please read it carefully and familiarize yourself with its terms. The judgment, rather than the above description, is controlling. If you have any questions about the judgment or how it affects your sale of spot advertising, please contact me as soon as possible.

Please sign and return the attached Employee Certification to [Defendant's Antitrust Compliance Officer] within thirty days of your receipt of this letter. Thank you for your cooperation.

Sincerely,

[Defendant's Antitrust Compliance Officer]

#### Employee Certification

I, \_\_\_\_\_ [name], \_\_\_\_\_ [position] at \_\_\_\_\_ [station or location] do hereby certify that I (i) have read and understand, and agree to abide by, the terms of the Final Judgment; (ii) am not aware of any violation of the Final Judgment that has not been reported to [Defendant]; and (iii) understand that my failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court.

Name:

Date:

#### Exhibit 2

#### United States District Court for the District of Columbia

*United States of America*; Plaintiff, v. *SINCLAIR BROADCAST GROUP, INC., et al.* Defendants.

Case No. 1:18-cv-2609

Judge: Tanya S. Chutkan

#### ACKNOWLEDGEMENT OF APPLICABILITY

The undersigned acknowledges that [Full Buyer Name], including its successors and assigns, and its subsidiaries, divisions, and broadcast television stations, and their directors, officers, and employees ("Acquirer"), following consummation of the Acquirer's acquisition of [insert names of station or stations acquired] (each, an "Acquired Station"), is bound by the Final Judgment entered by this Court on [date] ("Final Judgment"), as if the Acquirer were a Defendant under the Final Judgment, as follows:

1. The Acquirer shall be bound in full by all Sections of the Consent Decree not specifically discussed below.

2. As to Sections IV, V, and VII of the Final Judgment, the Acquirer is bound to the Final Judgment only as to (i) each Acquired Station, each Acquired Station's successors and assigns, and each Acquired Station's subsidiaries and divisions, and each

Acquired Station's directors, officers, and employees, (ii) Acquirer's officers and directors only with respect to any responsibilities or actions regarding any Acquired Stations, and (iii) employees with management or supervisory responsibilities for Acquirer's business or operations related to the sale of spot advertising on any Acquired Station, only with respect to those responsibilities.

3. As to Section VI(C)(3), VI(C)(4), VI(C)(6), VI(C)(8), VI(D), VI(E), and VIII of the Final Judgment, the Acquirer is bound to the Final Judgment only as to (i) each Acquired Station, each Acquired Station's successors and assigns, and each Acquired Station's subsidiaries and divisions, and each Acquired Station's directors, officers, and employees, (ii) Acquirer's officers and directors, and (iii) employees with management or supervisory responsibilities for Acquirer's business or operations related to the sale of spot advertising on any Acquired Station.

4. The release contained in Sections VII(C) and (D) applies to the Acquirer, but only to civil actions or criminal charges arising from actions taken by any Acquired Station.

5. The Acquirer shall not be bound by Sections VI(C)(1), VI(C)(2), VI(C)(5), VI(C)(7), and VI(F) of the Final Judgment at all.

6. Section VI(A) applies to the Acquirer, but is modified to make the initial period for appointing an Antitrust Compliance Officer in the first sentence 120 days from consummation of the Acquirer's acquisition of the Acquired Station or Acquired Stations.

This Acknowledgement of Applicability may be voided by a joint written agreement between the United States and the Acquirer.

Dated: [ ]

Respectfully submitted,

/s/ \_\_\_\_\_

[Counsel for Acquirer]

#### United States District Court for the District of Columbia

*United States of America*; Plaintiff, v. *Sinclair Broadcast Group, Inc., et al.* Defendants.

Case No. 1:18-cv-2609

Judge: Tanya S. Chutkan

#### [PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on November \_\_\_\_, 2018, alleging that Defendant Tribune Media Company, among others, violated Section 1 of the Sherman Act, 15 U.S.C. § 1, the United States and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

AND WHEREAS, this Final Judgment does not constitute any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, the United States and Defendant agree to be bound by the provisions of this Final Judgment pending its approval by this Court;

AND WHEREAS, the Defendant agrees to undertake certain actions and to refrain from engaging in certain forms of information sharing with its competitors;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

#### I. JURISDICTION

This Court has jurisdiction over the subject matter and each of the parties to this action. The allegations in the Complaint arise under Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1. See 28 U.S.C. § 1331.

#### II. DEFINITIONS

As used in this Final Judgment:

A. "Advertiser" means an advertiser, an advertiser's buying agent, or an advertiser's representative.

B. "Agreement" means any agreement, understanding, pact, contract, or arrangement, formal or informal, oral or written, between two or more Persons.

C. "Communicate," "Communicating," and "Communication(s)" means to provide, send, discuss, circulate, exchange, request, or solicit information, whether directly or indirectly, and regardless of the means by which it is accomplished, including orally or by written means of any kind, such as electronic communications, e-mails, facsimiles, telephone communications, voicemails, text messages, audio recordings, meetings, interviews, correspondence, exchange of written or recorded information, or face-to-face meetings.

D. "Competitively Sensitive Information" means any of the following information, less than eighteen months old, of Defendant or any broadcast television station regarding the sale of spot advertising on broadcast television stations: Non-Public Information relating to pricing or pricing strategies, pacing, holding capacity, revenues, or market shares. Reports containing only aggregated market-level or national data are not Competitively Sensitive Information, but reports (including by paid subscription) that are customized or confidential to a particular Station or broadcast television station group are Competitively Sensitive Information.

E. "Cooperative Agreement" means (1) joint sales agreements, joint operating agreements, local marketing agreements, news share agreements, or shared services agreements, or (2) any agreement through which a Person exercises control over any broadcast television station not owned by the Person.

F. "Defendant" means Tribune Media Company, a Delaware corporation with its headquarters in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, and Stations, and their directors, officers, and employees.

G. "DMA" means Designated Market Area as defined by A.C. Nielsen Company and used by the *Investing in Television BIA Market Report 2018*.

H. "Management" means all directors and officers of Defendant, or any other employee with management or supervisory responsibilities for Defendant's business or operations related to the sale of spot advertising on any Station.

I. "Non-Public Information" means information that is not available from public

sources or generally available to the public. Measurement or quantification of a Station's future holding capacity is Non-Public Information, but measurement or quantification of a Station's past holding capacity is not Non-Public Information. For the avoidance of doubt, the fact that information is available by paid subscription does not on its own render the information public.

J. "Person" means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

K. "Sales Representative Firm" means any organization, including without limitation Katz Media Group, Inc. and Cox Repts, Inc., and their respective subsidiaries and divisions, that represents a Station or its owner in the sale of spot advertising.

L. "Sales Representative Firm Manager" means, for each of Defendant's Sales Representative Firms, the employee of the Sales Representative Firm with primary responsibility for the relationship with Defendant.

M. "Sales Staff" means Defendant's employees with responsibility for the sale of spot advertising on any Station.

N. "Station" means any broadcast television station, its successors and assigns, and its subsidiaries, divisions, groups, and its owner or operator and its directors, officers, managers, and employees, unless a Station owns, is owned by, or is under common ownership with a Sales Representative Firm, in which case that Sales Representative Firm will not be considered a Station.

### III. APPLICABILITY

This Final Judgment applies to Defendant, other Persons in active concert or participation with Defendant who receive actual notice of this Final Judgment by personal service or otherwise, and any Person that signs an Acknowledgment of Applicability, attached as Exhibit 2, to the extent set forth therein, as a condition of the purchase of a Station owned by Defendant as of October 1, 2018. This Final Judgment applies to Defendant's actions performed under any Cooperative Agreement, even if those actions are taken on behalf of a third party. This Final Judgment is fully enforceable, including by penalty of contempt, against all of the foregoing.

### IV. PROHIBITED CONDUCT

A. Defendant's Management and Sales Staff shall not, directly or indirectly:

1. Communicate Competitively Sensitive Information to any Station in the same DMA it does not own or operate;
2. Knowingly use Competitively Sensitive Information from or regarding any Station in the same DMA it does not own or operate;
3. Encourage or facilitate the Communication of Competitively Sensitive Information to or from any Station in the same DMA it does not own or operate; or
4. Attempt to enter into, enter into, maintain, or enforce any agreement to Communicate Competitively Sensitive Information with any Station in the same DMA it does not own or operate.

B. The prohibitions under Paragraph IV(A) apply to Defendant's Communicating or agreeing to Communicate through a Sales Representative Firm or a third-party agent at Defendant's instruction or request.

C. Defendant shall not sell any Station owned by the Defendant as of October 1, 2018 to any Person unless that Person has first executed the Acknowledgment of Applicability, attached as Exhibit 2. Defendant shall submit any Acknowledgment of Applicability to the United States within 15 days of consummating the sale of such Station. The United States, in its sole discretion, may waive the prohibition in this Paragraph IV(C) on a Station-by-Station basis. Alternatively, the United States and the Person signing the Acknowledgment of Applicability may agree to void the Acknowledgment of Applicability at any time. The first sentence of this paragraph shall not apply to the sale of any Station to a Person already bound to a final judgment entered by a court regarding the Communication of Competitively Sensitive Information.

### V. CONDUCT NOT PROHIBITED

A. Nothing in Section IV shall prohibit Defendant from Communicating, using, or encouraging or facilitating the Communication of, Competitively Sensitive Information with an actual or prospective Advertiser, except that, if the Advertiser is another Station, Defendant's Communicating, using, or encouraging or facilitating the Communication of, Competitively Sensitive Information is excluded from the terms of Section IV only insofar as is reasonably necessary to negotiate the sale of spot advertising on broadcast television stations. For the avoidance of doubt, Defendant is not prohibited from internally using Competitively Sensitive Information received from an Advertiser that is a Station under the preceding sentence, but Defendant is prohibited from Communicating that Competitively Sensitive Information to a Station in the same DMA that it does not own or operate.

B. Nothing in Section IV shall prohibit Defendant from, after securing advice of counsel and in consultation with the Antitrust Compliance Officer, Communicating, using, encouraging or facilitating the Communication of, or attempting to enter into, entering into, maintaining, or enforcing any agreement to Communicate Competitively Sensitive Information with any Station when such Communication or use is (a) for the purpose of evaluating or effectuating a bona fide acquisition, disposition, or exchange of Stations or related assets, or (b) reasonably necessary for achieving the efficiencies of any other legitimate competitor collaboration. With respect to any such agreement:

1. For all agreements under Part V(B)(a) with any other Station to Communicate Competitively Sensitive Information that Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment, Defendant shall maintain documents sufficient to show:

- i. the specific transaction or proposed transaction to which the sharing of Competitively Sensitive Information relates;
- ii. the employees, identified with reasonable specificity, who are involved in the sharing of Competitively Sensitive Information; and
- iii. the termination date or event of the sharing of Competitively Sensitive Information.

2. All agreements under Part V(B)(b) with any other Station to Communicate Competitively Sensitive Information that Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment shall be in writing, and shall:

- i. identify and describe, with specificity, the collaboration to which it is ancillary;
- ii. be narrowly tailored to permit the Communication of Competitively Sensitive Information only when reasonably necessary and only to the employees reasonably necessary to effectuate the collaboration;
- iii. identify with reasonable specificity the Competitively Sensitive Information Communicated pursuant to the agreement and identify the employees to receive the Competitively Sensitive Information;
- iv. contain a specific termination date or event; and
- v. be signed by all parties to the agreement, including any modifications to the agreement.

3. For Communications under Part V(B)(a) above, Defendant shall maintain copies of all materials required under Paragraph V(B)(1) for five years or the duration of the Final Judgment, whichever is shorter, following entry into any agreement to Communicate or receive Competitively Sensitive Information, and Defendant shall make such documents available to the United States upon request, if such request is made during the preservation period.

4. For Communications under Part V(B)(b) above, Defendant shall furnish a copy of all materials required under Paragraph V(B)(2) to the United States within thirty days of the entry, renewal, or extension of the agreement.

5. For purposes of this Section V(B) only, a Joint Sales Agreement, Local Marketing Agreement, or similar agreement pursuant to which the Defendant Communicates, uses, encourages or facilitates the Communication of, or attempts to enter into, enters into, maintains, or enforces any agreement to Communicate Competitively Sensitive Information related solely to the sale of spot advertising for which Defendant is responsible on a Station, shall be considered a "legitimate competitor collaboration" under Part V(B)(b).

C. Nothing in Section IV shall prohibit Defendant from engaging in conduct in accordance with the doctrine established in *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), *United Mine Workers v. Pennington*, 381 U.S. 657 (1965), and their progeny.

D. Nothing in Section IV prohibits Defendant from (1) Communicating, encouraging or facilitating the Communication of, or attempting to enter into, entering into, maintaining, or enforcing any agreement to Communicate

Competitively Sensitive Information for the purpose of aggregation if (a) Competitively Sensitive Information is sent to or received from, and the aggregation is managed by, a third party not owned or operated by any Station; (b) the information disseminated by the aggregator is limited to historical total broadcast television station revenue or other geographic or characteristic categorization (e.g., national, local, or political sales revenue); and (c) any information disseminated is sufficiently aggregated such that it would not allow a recipient to identify, deduce, or estimate the prices or pacing of any individual broadcast television station not owned or operated by that recipient; or (2) using information that meets the requirements of Parts V(D)(1)(a)–(c).

## VI. REQUIRED CONDUCT

A. Within ten days of entry of this Final Judgment, Defendant shall appoint an Antitrust Compliance Officer who is an internal employee or Officer of the Defendant, and identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. Within forty-five days of a vacancy in the Antitrust Compliance Officer position, Defendant shall appoint a replacement, and shall identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. Defendant's initial or replacement appointment of an Antitrust Compliance Officer is subject to the approval of the United States, in its sole discretion.

B. The Antitrust Compliance Officer shall have, or shall retain outside counsel who has, the following minimum qualifications:

1. be an active member in good standing of the bar in any U.S. jurisdiction; and
2. have at least five years' experience in legal practice, including experience with antitrust matters, unless finding an Antitrust Compliance Officer or outside counsel meeting this experience requirement is a hardship on or is not reasonably available to the Defendant, under which circumstances the Defendant may select an Antitrust Compliance Officer or shall retain outside counsel who has at least five years' experience in legal practice, including experience with regulatory or compliance matters.

C. The Antitrust Compliance Officer shall, directly or through the employees or counsel working at the Antitrust Compliance Officer's responsibility and direction:

1. within fourteen days of entry of the Final Judgment, furnish to all of Defendant's Management and Sales Staff and Sales Representative Firm Managers a copy of this Final Judgment, the Competitive Impact Statement filed by the United States with the Court, and a cover letter in a form attached as Exhibit 1;
2. within fourteen days of entry of the Final Judgment, in a manner to be devised by Defendant and approved by the United States, provide Defendant's Management and Sales Staff reasonable notice of the meaning and requirements of this Final Judgment;
3. annually brief Defendant's Management and Sales Staff on the meaning and requirements of this Final Judgment and the U.S. antitrust laws;

4. brief any person who succeeds a person in any position identified in Paragraph VI(C)(3), within sixty days of such succession;

5. obtain from each person designated in Paragraph VI(C)(3) or VI(C)(4), within thirty days of that person's receipt of the Final Judgment, a certification that the person (i) has read and understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not been reported to Defendant; and (iii) understands that failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court;

6. annually communicate to Defendant's Management and Sales Staff that they may disclose to the Antitrust Compliance Officer, without reprisal for such disclosure, information concerning any violation or potential violation of this Final Judgment or the U.S. antitrust laws by Defendant;

7. within thirty days of the latest filing of the Complaint, Proposed Final Judgment, or Competitive Impact Statement in this action, Defendant shall provide notice, in each DMA in which Defendant owns or operates a Station, to (i) every full power Station in that DMA that sells broadcast television spot advertising that Defendant does not own or operate and (ii) any Sales Representative Firm selling advertising in that DMA on behalf of Defendant, of the Complaint, Proposed Final Judgment, and Competitive Impact Statement in a form and manner to be proposed by Defendant and approved by the United States in its sole discretion. Defendant shall provide the United States with its proposal, including the list of recipients, within ten days of the filing of the Complaint; and

8. maintain for five years or until expiration of the Final Judgment, whichever is shorter, a copy of all materials required to be issued under Paragraph VI(C), and furnish them to the United States within ten days if requested to do so, except documents protected under the attorney-client privilege or the attorney work-product doctrine. For all materials required to be furnished under Paragraph VI(C) which Defendant claims are protected under the attorney-client privilege or the attorney work-product doctrine, Defendant shall furnish to the United States a privilege log.

D. Defendant shall:

1. upon Management or the Antitrust Compliance Officer learning of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, (i) promptly take appropriate action to investigate, and in the event of a violation, terminate or modify the activity so as to comply with this Final Judgment, (ii) maintain all documents related to any violation or potential violation of this Final Judgment for a period of five years or the duration of this Final Judgment, whichever is shorter, and (iii) maintain, and furnish to the United States at the United States' request, a log of (a) all such documents and documents for which Defendant claims protection under the attorney-client privilege or the attorney work-product doctrine, and (b) all potential and actual violations, even if

no documentary evidence regarding the violations exist;

2. within thirty days of Management or the Antitrust Compliance Officer learning of any such violation or potential violation of any of the terms and conditions contained in this Final Judgment, file with the United States a statement describing any violation or potential violation of any of the terms and conditions contained in this Final Judgment, which shall include a description of any Communications constituting the violation or potential violation, including the date and place of the Communication, the Persons involved, and the subject matter of the Communication;

3. establish a whistleblower protection policy, which provides that any employee may disclose, without reprisal for such disclosure, to the Antitrust Compliance Officer information concerning any violation or potential violation by the Defendant of this Final Judgment or U.S. antitrust laws;

4. have its CEO, General Counsel or Chief Legal Officer certify in writing to the United States annually on the anniversary date of the entry of this Final Judgment that Defendant has complied with the provisions of this Final Judgment;

5. maintain and produce to the United States upon request: (i) a list identifying all employees having received the annual antitrust briefing required under Paragraphs VI(C)(3) and VI(C)(4); and (ii) copies of all materials distributed as part of the annual antitrust briefing required under Paragraphs VI(C)(3) and VI(C)(4). For all materials requested to be produced under this Paragraph VI(D)(5) for which Defendant claims is protected under the attorney-client privilege or the attorney work-product doctrine, Defendant shall furnish to the United States a privilege log; and

6. instruct each Sales Representative Firm Manager that the Sales Representative Firm shall not Communicate any of Defendant's Competitively Sensitive Information in a way that would violate Sections IV and V of this Final Judgment if the Sales Representative Firm were included in the definition of "Defendant" in Paragraph II(F), in a form and manner to be proposed by Defendant and approved by the United States in its sole discretion, maintained and produced to the United States upon request.

E. For the avoidance of doubt, the term "potential violation" as used in Paragraph VI(D) does not include the discussion of future conduct.

F. If Defendant acquires a Station after entry of this Final Judgment, this Section VI will not apply to that acquired Station or the employees of that acquired Station until 120 days after closing of the acquisition of that acquired Station.

## VII. DEFENDANT'S COOPERATION

A. Defendant shall cooperate fully and truthfully with the United States in any investigation or litigation examining whether or alleging that Defendant, any Station that Defendant does not own or operate, or any Sales Representative Firm Communicated Competitively Sensitive Information with or among Defendant or any other Station or any Sales Representative Firm in violation of

Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1. Defendant shall use its best efforts to ensure that all current and former officers, directors, employees, and agents also fully and promptly cooperate with the United States. The full, truthful, and continuing cooperation of Defendant shall include, but not be limited to:

1. providing sworn testimony, that is not protected by the attorney-client privilege or the attorney work product doctrine, to the United States regarding the Communicating of Competitively Sensitive Information or any agreement with any other Station it does not own or such other Station's Sales Representative Firm to Communicate Competitively Sensitive Information while an employee of the Defendant;

2. producing, upon request of the United States, all documents, data, and other materials, wherever located, to the extent not protected under the attorney-client privilege or the attorney work-product doctrine, in the possession, custody, or control of Defendant, that relate to the Communication of Competitively Sensitive Information or any agreement with any other Station or such other Station's Sales Representative Firm to Communicate Competitively Sensitive Information, and a log of documents protected by the attorney-client privilege or the attorney work product doctrine;

3. making available for interview any officers, directors, employees, and agents of Defendant if so requested on reasonable notice by the United States; and

4. testifying at trial and other judicial proceedings fully, truthfully, and under oath, when called upon to do so by the United States;

5. provided however, that the obligations of Defendant to cooperate fully with the United States as described in this Section VII shall cease upon the conclusion of all of the United States' investigations and the United States' litigations examining whether or alleging that Defendant, any Station that Defendant does not own or operate or such other Station's Sales Representative Firm Communicated Competitively Sensitive Information or with or among Defendant or any other Station or any Sales Representative Firm in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1, including exhaustion of all appeals or expiration of time for all appeals of any Court ruling in each such matter, at which point the United States will provide written notice to Defendant that its obligations under this Section VII have expired.

B. Defendant is obligated to impose a litigation hold until the United States provides written notice to the Defendant that its obligations under this Section VII have expired. This Paragraph VII(B) does not apply to documents created after entry of this Final Judgment.

C. Subject to the full, truthful, and continuing cooperation of Defendant, as defined in Paragraph VII(A), the United States will not bring any further civil action or any criminal charges against Defendant related to any Communication of Competitively Sensitive Information or any agreement to Communicate Competitively Sensitive Information with any other Station

it does not own or operate or such other Station's Sales Representative Firm when that agreement:

1. was Communicated, entered into and terminated on or before the date of the filing of the Complaint in this action (or in the case of a Station that is acquired by Defendant after entry of this Final Judgment, was Communicated or entered into before the acquisition and terminated within 120 days after the closing of the acquisition); and

2. does not constitute or include an agreement to fix prices or divide markets.

D. The United States' agreement set forth in Paragraph VII(C) does not apply to any acts of perjury or subornation of perjury (18 U.S.C. §§ 1621–22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), contempt (18 U.S.C. §§ 401–402), or obstruction of justice (18 U.S.C. § 1503, *et seq.*) by the Defendant or its officers, directors, and employees. The United States' agreement set forth in Paragraph VII(C) does not release any claims against any Sales Representative Firm.

#### VIII. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment or of any related orders, or of determining whether the Final Judgment should be modified, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant, be permitted:

1. to access during Defendant's office hours to inspect and copy, or at the option of the United States, to require Defendant to provide electronic or hard copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendant, relating to any matters that are the subject of this Final Judgment, not protected by the attorney-client privilege or the attorney work product doctrine; and

2. to interview, either informally or on the record, Defendant's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendant; and

3. to obtain from Defendant written reports or responses to written interrogatories, of information not protected by the attorney-client privilege or attorney work product doctrine, under oath if requested, relating to any matters that are the subject of this Final Judgment as may be requested.

B. No information or documents obtained by the means provided in this Section VIII shall be divulged by the United States to any Person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or for law enforcement purposes, or as otherwise required by law.

C. If at the time information or documents are furnished by Defendant to the United States, Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendant ten calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

#### IX. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

#### X. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including its right to seek an order of contempt from this Court. Defendant agrees that in any civil contempt action, any motion to show cause, or any similar civil action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendant waives any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. Defendant agrees that it may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendant has violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against Defendant, whether litigated or resolved prior to litigation, Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

#### XI. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire seven years from



the date of its entry, except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendant that the continuation of the Final Judgment no longer is necessary or in the public interest.

**XII. NOTICE**

For purposes of this Final Judgment, any notice or other communication required to be provided to the United States shall be sent to the person at the address set forth below (or such other addresses as the United States may specify in writing to Defendant): Chief, Media, Entertainment, and Professional Services Section, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW, Suite 4000, Washington, D.C. 20530.

**XIII. PUBLIC INTEREST DETERMINATION**

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

IT IS SO ORDERED by the Court, this \_\_\_ day of \_\_\_, 201\_\_.  
Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

United States District Judge

**Exhibit 1**

[Company Letterhead]  
[Name and Address of Antitrust Compliance Officer]

Re: *Prohibitions Against Sharing of Competitively Sensitive Information*

Dear [XX]:

I provide you this notice regarding a judgment recently entered by a federal judge in Washington, D.C. prohibiting the sharing of certain information with other broadcast television station(s).

The judgment applies to our company and all of its employees, including you, so it is important that you understand the obligations it imposes on us. [CEO Name] has asked me to let each of you know that [s/he] expects you to take these obligations seriously and abide by them.

The judgment prohibits us from sharing or receiving, directly or indirectly (including through our national sales representative firm), competitively sensitive information with or from any employee, agent, or representative of another broadcast television station in the same DMA it does not own or operate. Competitively sensitive information means any non-public information regarding the sale of spot advertising on broadcast television stations, including information relating to any pricing or pricing strategies, pacing, holding capacity, revenues, or market

shares. There are limited exceptions to this restriction, which are listed in the judgment. The company will provide briefing on the legitimate or illegitimate exchange of information. You must consult with me if you have any questions on whether a particular circumstance is subject to an exception under the judgment.

A copy of the judgment is attached. Please read it carefully and familiarize yourself with its terms. The judgment, rather than the above description, is controlling. If you have any questions about the judgment or how it affects your sale of spot advertising, please contact me as soon as possible.

Please sign and return the attached Employee Certification to [Defendant's Antitrust Compliance Officer] within thirty days of your receipt of this letter. Thank you for your cooperation.

Sincerely,  
[Defendant's Antitrust Compliance Officer]

**Employee Certification**

I, \_\_\_ [name], \_\_\_ [position] at \_\_\_ [station or location] do hereby certify that I (i) have read and understand, and agree to abide by, the terms of the Final Judgment; (ii) am not aware of any violation of the Final Judgment that has not been reported to [Defendant]; and (iii) understand that my failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court.

Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit 2**

**United States District Court for the District of Columbia**

*United States of America*; Plaintiff, v. *Sinclair Broadcast Group, Inc., et al.* Defendants.

Case No. 1:18-cv-2609  
Judge: Tanya S. Chutkan

**ACKNOWLEDGEMENT OF APPLICABILITY**

The undersigned acknowledges that [Full Buyer Name], including its successors and assigns, and its subsidiaries, divisions, and broadcast television stations, and their directors, officers, and employees ("Acquirer"), following consummation of the Acquirer's acquisition of [insert names of station or stations acquired] (each, an "Acquired Station"), is bound by the Final Judgment entered by this Court on [date] ("Final Judgment"), as if the Acquirer were a Defendant under the Final Judgment, as follows:

1. The Acquirer shall be bound in full by all Sections of the Consent Decree not specifically discussed below.

2. As to Sections IV, V, and VII of the Final Judgment, the Acquirer is bound to the Final Judgment only as to (i) each Acquired Station, each Acquired Station's successors and assigns, and each Acquired Station's subsidiaries and divisions, and each Acquired Station's directors, officers, and employees, (ii) Acquirer's officers and directors only with respect to any responsibilities or actions regarding any Acquired Stations, and (iii) employees with

management or supervisory responsibilities for Acquirer's business or operations related to the sale of spot advertising on any Acquired Station, only with respect to those responsibilities.

3. As to Section VI(C)(3), VI(C)(4), VI(C)(6), VI(C)(8), VI(D), VI(E), and VIII of the Final Judgment, the Acquirer is bound to the Final Judgment only as to (i) each Acquired Station, each Acquired Station's successors and assigns, and each Acquired Station's subsidiaries and divisions, and each Acquired Station's directors, officers, and employees, (ii) Acquirer's officers and directors, and (iii) employees with management or supervisory responsibilities for Acquirer's business or operations related to the sale of spot advertising on any Acquired Station.

4. The release contained in Sections VII(C) and (D) applies to the Acquirer, but only to civil actions or criminal charges arising from actions taken by any Acquired Station.

5. The Acquirer shall not be bound by Sections VI(C)(1), VI(C)(2), VI(C)(5), VI(C)(7), and VI(F) of the Final Judgment at all.

6. Section VI(A) applies to the Acquirer, but is modified to make the initial period for appointing an Antitrust Compliance Officer in the first sentence 120 days from consummation of the Acquirer's acquisition of the Acquired Station or Acquired Stations.

This Acknowledgement of Applicability may be voided by a joint written agreement between the United States and the Acquirer.

Dated: [ ]

Respectfully submitted,

/s/ \_\_\_\_\_

[Counsel for Acquirer]

**United States District Court for the District of Columbia**

*United States of America*; Plaintiff, v. *Sinclair Broadcast Group, Inc., et al.* Defendants.

Case No. 1:18-cv-2609  
Judge: Tanya S. Chutkan

**[PROPOSED] FINAL JUDGMENT**

WHEREAS, Plaintiff, United States of America, filed its Complaint on November \_\_\_, 2018, alleging that Defendant Meredith Corporation, among others, violated Section 1 of the Sherman Act, 15 U.S.C. § 1, the United States and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

AND WHEREAS, this Final Judgment does not constitute any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, the United States and Defendant agree to be bound by the provisions of this Final Judgment pending its approval by this Court;

AND WHEREAS, the Defendant agrees to undertake certain actions and to refrain from engaging in certain forms of information sharing with its competitors;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

## I. JURISDICTION

This Court has jurisdiction over the subject matter and each of the parties to this action. The allegations in the Complaint arise under Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1. See 28 U.S.C. § 1331.

## II. DEFINITIONS

As used in this Final Judgment:

A. “Advertiser” means an advertiser, an advertiser’s buying agent, or an advertiser’s representative.

B. “Agreement” means any agreement, understanding, pact, contract, or arrangement, formal or informal, oral or written, between two or more Persons.

C. “Communicate,” “Communicating,” and “Communication(s)” means to provide, send, discuss, circulate, exchange, request, or solicit information, whether directly or indirectly, and regardless of the means by which it is accomplished, including orally or by written means of any kind, such as electronic communications, e-mails, facsimiles, telephone communications, voicemails, text messages, audio recordings, meetings, interviews, correspondence, exchange of written or recorded information, or face-to-face meetings.

D. “Competitively Sensitive Information” means any of the following information, less than eighteen months old, of Defendant or any broadcast television station regarding the sale of spot advertising on broadcast television stations: Non-Public Information relating to pricing or pricing strategies, pacing, holding capacity, revenues, or market shares. Reports containing only aggregated market-level or national data are not Competitively Sensitive Information, but reports (including by paid subscription) that are customized or confidential to a particular Station or broadcast television station group are Competitively Sensitive Information.

E. “Cooperative Agreement” means (1) joint sales agreements, joint operating agreements, local marketing agreements, news share agreements, or shared services agreements, or (2) any agreement through which a Person exercises control over any broadcast television station not owned by the Person.

F. “Defendant” means Meredith Corporation, an Iowa corporation with its headquarters in Des Moines, Iowa, its successors and assigns, and its subsidiaries, divisions, and Stations, and their directors, officers, and employees.

G. “DMA” means Designated Market Area as defined by A.C. Nielsen Company and used by the *Investing in Television BIA Market Report 2018*.

H. “Management” means all directors and officers of Defendant, or any other employee with management or supervisory responsibilities for Defendant’s business or operations related to the sale of spot advertising on any Station.

I. “Non-Public Information” means information that is not available from public sources or generally available to the public. Measurement or quantification of a Station’s future holding capacity is Non-Public Information, but measurement or quantification of a Station’s past holding capacity is not Non-Public Information. For

the avoidance of doubt, the fact that information is available by paid subscription does not on its own render the information public.

J. “Person” means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

K. “Sales Representative Firm” means any organization, including without limitation Katz Media Group, Inc. and Cox Reps, Inc., and their respective subsidiaries and divisions, that represents a Station or its owner in the sale of spot advertising.

L. “Sales Representative Firm Manager” means, for each of Defendant’s Sales Representative Firms, the employee of the Sales Representative Firm with primary responsibility for the relationship with Defendant.

M. “Sales Staff” means Defendant’s employees with responsibility for the sale of spot advertising on any Station.

N. “Station” means any broadcast television station, its successors and assigns, and its subsidiaries, divisions, groups, and its owner or operator and its directors, officers, managers, and employees, unless a Station owns, is owned by, or is under common ownership with a Sales Representative Firm, in which case that Sales Representative Firm will not be considered a Station.

## III. APPLICABILITY

This Final Judgment applies to Defendant, other Persons in active concert or participation with Defendant who receive actual notice of this Final Judgment by personal service or otherwise, and any Person that signs an Acknowledgment of Applicability, attached as Exhibit 2, to the extent set forth therein, as a condition of the purchase of a Station owned by Defendant as of October 1, 2018. This Final Judgment applies to Defendant’s actions performed under any Cooperative Agreement, even if those actions are taken on behalf of a third party. This Final Judgment is fully enforceable, including by penalty of contempt, against all of the foregoing.

## IV. PROHIBITED CONDUCT

A. Defendant’s Management and Sales Staff shall not, directly or indirectly:

1. Communicate Competitively Sensitive Information to any Station in the same DMA it does not own or operate;

2. Knowingly use Competitively Sensitive Information from or regarding any Station in the same DMA it does not own or operate;

3. Encourage or facilitate the Communication of Competitively Sensitive Information to or from any Station in the same DMA it does not own or operate; or

4. Attempt to enter into, enter into, maintain, or enforce any agreement to Communicate Competitively Sensitive Information with any Station in the same DMA it does not own or operate.

B. The prohibitions under Paragraph IV(A) apply to Defendant’s Communicating or agreeing to Communicate through a Sales Representative Firm or a third-party agent at Defendant’s instruction or request.

C. Defendant shall not sell any Station owned by the Defendant as of October 1, 2018 to any Person unless that Person has first executed the Acknowledgment of Applicability, attached as Exhibit 2. Defendant shall submit any Acknowledgement of Applicability to the United States within 15 days of consummating the sale of such Station. The United States, in its sole discretion, may waive the prohibition in this Paragraph IV(C) on a Station-by-Station basis. Alternatively, the United States and the Person signing the Acknowledgement of Applicability may agree to void the Acknowledgement of Applicability at any time. The first sentence of this paragraph shall not apply to the sale of any Station to a Person already bound to a final judgment entered by a court regarding the Communication of Competitively Sensitive Information.

## V. CONDUCT NOT PROHIBITED

A. Nothing in Section IV shall prohibit Defendant from Communicating, using, or encouraging or facilitating the Communication of, Competitively Sensitive Information with an actual or prospective Advertiser, except that, if the Advertiser is another Station, Defendant’s Communicating, using, or encouraging or facilitating the Communication of, Competitively Sensitive Information is excluded from the terms of Section IV only insofar as is reasonably necessary to negotiate the sale of spot advertising on broadcast television stations. For the avoidance of doubt, Defendant is not prohibited from internally using Competitively Sensitive Information received from an Advertiser that is a Station under the preceding sentence, but Defendant is prohibited from Communicating that Competitively Sensitive Information to a Station in the same DMA that it does not own or operate.

B. Nothing in Section IV shall prohibit Defendant from, after securing advice of counsel and in consultation with the Antitrust Compliance Officer, Communicating, using, encouraging or facilitating the Communication of, or attempting to enter into, entering into, maintaining, or enforcing any agreement to Communicate Competitively Sensitive Information with any Station when such Communication or use is (a) for the purpose of evaluating or effectuating a bona fide acquisition, disposition, or exchange of Stations or related assets, or (b) reasonably necessary for achieving the efficiencies of any other legitimate competitor collaboration. With respect to any such agreement:

1. For all agreements under Part V(B)(a) with any other Station to Communicate Competitively Sensitive Information that Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment, Defendant shall maintain documents sufficient to show:

i. the specific transaction or proposed transaction to which the sharing of Competitively Sensitive Information relates;

ii. the employees, identified with reasonable specificity, who are involved in the sharing of Competitively Sensitive Information; and

iii. the termination date or event of the sharing of Competitively Sensitive Information.

2. All agreements under Part V(B)(b) with any other Station to Communicate Competitively Sensitive Information that Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment shall be in writing, and shall:

- i. identify and describe, with specificity, the collaboration to which it is ancillary;
- ii. be narrowly tailored to permit the Communication of Competitively Sensitive Information only when reasonably necessary and only to the employees reasonably necessary to effectuate the collaboration;
- iii. identify with reasonable specificity the Competitively Sensitive Information Communicated pursuant to the agreement and identify the employees to receive the Competitively Sensitive Information;
- iv. contain a specific termination date or event; and
- v. be signed by all parties to the agreement, including any modifications to the agreement.

3. For Communications under Part V(B)(a) above, Defendant shall maintain copies of all materials required under Paragraph V(B)(1) for five years or the duration of the Final Judgment, whichever is shorter, following entry into any agreement to Communicate or receive Competitively Sensitive Information, and Defendant shall make such documents available to the United States upon request, if such request is made during the preservation period.

4. For Communications under Part V(B)(b) above, Defendant shall furnish a copy of all materials required under Paragraph V(B)(2) to the United States within thirty days of the entry, renewal, or extension of the agreement.

5. For purposes of this Section V(B) only, a Joint Sales Agreement, Local Marketing Agreement, or similar agreement pursuant to which the Defendant Communicates, uses, encourages or facilitates the Communication of, or attempts to enter into, enters into, maintains, or enforces any agreement to Communicate Competitively Sensitive Information related solely to the sale of spot advertising for which Defendant is responsible on a Station, shall be considered a "legitimate competitor collaboration" under Part V(B)(b).

C. Nothing in Section IV shall prohibit Defendant from engaging in conduct in accordance with the doctrine established in *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), *United Mine Workers v. Pennington*, 381 U.S. 657 (1965), and their progeny.

D. Nothing in Section IV prohibits Defendant from (1) Communicating, encouraging or facilitating the Communication of, or attempting to enter into, entering into, maintaining, or enforcing any agreement to Communicate Competitively Sensitive Information for the purpose of aggregation if (a) Competitively Sensitive Information is sent to or received from, and the aggregation is managed by, a third party not owned or operated by any Station; (b) the information disseminated by the aggregator is limited to historical total

broadcast television station revenue or other geographic or characteristic categorization (e.g., national, local, or political sales revenue); and (c) any information disseminated is sufficiently aggregated such that it would not allow a recipient to identify, deduce, or estimate the prices or pacing of any individual broadcast television station not owned or operated by that recipient; or (2) using information that meets the requirements of Parts V(D)(1)(a)–(c).

## VI. REQUIRED CONDUCT

A. Within ten days of entry of this Final Judgment, Defendant shall appoint an Antitrust Compliance Officer who is an internal employee or Officer of the Defendant, and identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. Within forty-five days of a vacancy in the Antitrust Compliance Officer position, Defendant shall appoint a replacement, and shall identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. Defendant's initial or replacement appointment of an Antitrust Compliance Officer is subject to the approval of the United States, in its sole discretion.

B. The Antitrust Compliance Officer shall have, or shall retain outside counsel who has, the following minimum qualifications:

1. be an active member in good standing of the bar in any U.S. jurisdiction; and
2. have at least five years' experience in legal practice, including experience with antitrust matters, unless finding an Antitrust Compliance Officer or outside counsel meeting this experience requirement is a hardship on or is not reasonably available to the Defendant, under which circumstances the Defendant may select an Antitrust Compliance Officer or shall retain outside counsel who has at least five years' experience in legal practice, including experience with regulatory or compliance matters.

C. The Antitrust Compliance Officer shall, directly or through the employees or counsel working at the Antitrust Compliance Officer's responsibility and direction:

1. within fourteen days of entry of the Final Judgment, furnish to all of Defendant's Management and Sales Staff and Sales Representative Firm Managers a copy of this Final Judgment, the Competitive Impact Statement filed by the United States with the Court, and a cover letter in a form attached as Exhibit 1;
2. within fourteen days of entry of the Final Judgment, in a manner to be devised by Defendant and approved by the United States, provide Defendant's Management and Sales Staff reasonable notice of the meaning and requirements of this Final Judgment;
3. annually brief Defendant's Management and Sales Staff on the meaning and requirements of this Final Judgment and the U.S. antitrust laws;
4. brief any person who succeeds a person in any position identified in Paragraph VI(C)(3), within sixty days of such succession;
5. obtain from each person designated in Paragraph VI(C)(3) or VI(C)(4), within thirty

days of that person's receipt of the Final Judgment, a certification that the person (i) has read and understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not been reported to Defendant; and (iii) understands that failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court;

6. annually communicate to Defendant's Management and Sales Staff that they may disclose to the Antitrust Compliance Officer, without reprisal for such disclosure, information concerning any violation or potential violation of this Final Judgment or the U.S. antitrust laws by Defendant;

7. within thirty days of the latest filing of the Complaint, Proposed Final Judgment, or Competitive Impact Statement in this action, Defendant shall provide notice, in each DMA in which Defendant owns or operates a Station, to (i) every full power Station in that DMA that sells broadcast television spot advertising that Defendant does not own or operate and (ii) any Sales Representative Firm selling advertising in that DMA on behalf of Defendant, of the Complaint, Proposed Final Judgment, and Competitive Impact Statement in a form and manner to be proposed by Defendant and approved by the United States in its sole discretion. Defendant shall provide the United States with its proposal, including the list of recipients, within ten days of the filing of the Complaint; and

8. maintain for five years or until expiration of the Final Judgment, whichever is shorter, a copy of all materials required to be issued under Paragraph VI(C), and furnish them to the United States within ten days if requested to do so, except documents protected under the attorney-client privilege or the attorney work-product doctrine. For all materials required to be furnished under Paragraph VI(C) which Defendant claims are protected under the attorney-client privilege or the attorney work-product doctrine, Defendant shall furnish to the United States a privilege log.

D. Defendant shall:

1. upon Management or the Antitrust Compliance Officer learning of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, (i) promptly take appropriate action to investigate, and in the event of a violation, terminate or modify the activity so as to comply with this Final Judgment, (ii) maintain all documents related to any violation or potential violation of this Final Judgment for a period of five years or the duration of this Final Judgment, whichever is shorter, and (iii) maintain, and furnish to the United States at the United States' request, a log of (a) all such documents and documents for which Defendant claims protection under the attorney-client privilege or the attorney work-product doctrine, and (b) all potential and actual violations, even if no documentary evidence regarding the violations exist;

2. within thirty days of Management or the Antitrust Compliance Officer learning of any such violation or potential violation of any of the terms and conditions contained in this

Final Judgment, file with the United States a statement describing any violation or potential violation of any of the terms and conditions contained in this Final Judgment, which shall include a description of any Communications constituting the violation or potential violation, including the date and place of the Communication, the Persons involved, and the subject matter of the Communication;

3. establish a whistleblower protection policy, which provides that any employee may disclose, without reprisal for such disclosure, to the Antitrust Compliance Officer information concerning any violation or potential violation by the Defendant of this Final Judgment or U.S. antitrust laws;

4. have its CEO, General Counsel or Chief Legal Officer certify in writing to the United States annually on the anniversary date of the entry of this Final Judgment that Defendant has complied with the provisions of this Final Judgment;

5. maintain and produce to the United States upon request: (i) a list identifying all employees having received the annual antitrust briefing required under Paragraphs VI(C)(3) and VI(C)(4); and (ii) copies of all materials distributed as part of the annual antitrust briefing required under Paragraphs VI(C)(3) and V(C)(4). For all materials requested to be produced under this Paragraph VI(D)(5) for which Defendant claims is protected under the attorney-client privilege or the attorney work-product doctrine, Defendant shall furnish to the United States a privilege log; and

6. instruct each Sales Representative Firm Manager that the Sales Representative Firm shall not Communicate any of Defendant's Competitively Sensitive Information in a way that would violate Sections IV and V of this Final Judgment if the Sales Representative Firm were included in the definition of "Defendant" in Paragraph II(F), in a form and manner to be proposed by Defendant and approved by the United States in its sole discretion, maintained and produced to the United States upon request.

E. For the avoidance of doubt, the term "potential violation" as used in Paragraph VI(D) does not include the discussion of future conduct.

F. If Defendant acquires a Station after entry of this Final Judgment, this Section VI will not apply to that acquired Station or the employees of that acquired Station until 120 days after closing of the acquisition of that acquired Station.

#### VII. DEFENDANT'S COOPERATION

A. Defendant shall cooperate fully and truthfully with the United States in any investigation or litigation examining whether or alleging that Defendant, any Station that Defendant does not own or operate, or any Sales Representative Firm Communicated Competitively Sensitive Information with or among Defendant or any other Station or any Sales Representative Firm in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1. Defendant shall use its best efforts to ensure that all current and former officers, directors, employees, and agents also fully and promptly cooperate with the United States. The full, truthful, and continuing

cooperation of Defendant shall include, but not be limited to:

1. providing sworn testimony, that is not protected by the attorney-client privilege or the attorney work product doctrine, to the United States regarding the Communicated Competitively Sensitive Information or any agreement with any other Station it does not own or such other Station's Sales Representative Firm to Communicate Competitively Sensitive Information while an employee of the Defendant;

2. producing, upon request of the United States, all documents, data, and other materials, wherever located, to the extent not protected under the attorney-client privilege or the attorney work-product doctrine, in the possession, custody, or control of Defendant, that relate to the Communication of Competitively Sensitive Information or any agreement with any other Station or such other Station's Sales Representative Firm to Communicate Competitively Sensitive Information, and a log of documents protected by the attorney-client privilege or the attorney work product doctrine;

3. making available for interview any officers, directors, employees, and agents of Defendant if so requested on reasonable notice by the United States; and

4. testifying at trial and other judicial proceedings fully, truthfully, and under oath, when called upon to do so by the United States;

5. provided however, that the obligations of Defendant to cooperate fully with the United States as described in this Section VII shall cease upon the conclusion of all of the United States' investigations and the United States' litigations examining whether or alleging that Defendant, any Station that Defendant does not own or operate or such other Station's Sales Representative Firm Communicated Competitively Sensitive Information or with or among Defendant or any other Station or any Sales Representative Firm in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1, including exhaustion of all appeals or expiration of time for all appeals of any Court ruling in each such matter, at which point the United States will provide written notice to Defendant that its obligations under this Section VII have expired.

B. Defendant is obligated to impose a litigation hold until the United States provides written notice to the Defendant that its obligations under this Section VII have expired. This Paragraph VII(B) does not apply to documents created after entry of this Final Judgment.

C. Subject to the full, truthful, and continuing cooperation of Defendant, as defined in Paragraph VII(A), the United States will not bring any further civil action or any criminal charges against Defendant related to any Communication of Competitively Sensitive Information or any agreement to Communicate Competitively Sensitive Information with any other Station it does not own or operate or such other Station's Sales Representative Firm when that agreement:

1. was Communicated, entered into and terminated on or before the date of the filing of the Complaint in this action (or in the case

of a Station that is acquired by Defendant after entry of this Final Judgment, was Communicated or entered into before the acquisition and terminated within 120 days after the closing of the acquisition); and

2. does not constitute or include an agreement to fix prices or divide markets.

D. The United States' agreement set forth in Paragraph VII(C) does not apply to any acts of perjury or subornation of perjury (18 U.S.C. §§ 1621–22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), contempt (18 U.S.C. §§ 401–402), or obstruction of justice (18 U.S.C. § 1503, *et seq.*) by the Defendant or its officers, directors, and employees. The United States' agreement set forth in Paragraph VII(C) does not release any claims against any Sales Representative Firm.

#### VIII. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment or of any related orders, or of determining whether the Final Judgment should be modified, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant, be permitted:

1. to access during Defendant's office hours to inspect and copy, or at the option of the United States, to require Defendant to provide electronic or hard copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendant, relating to any matters that are the subject of this Final Judgment, not protected by the attorney-client privilege or the attorney work product doctrine; and

2. to interview, either informally or on the record, Defendant's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendant; and

3. to obtain from Defendant written reports or responses to written interrogatories, of information not protected by the attorney-client privilege or attorney work product doctrine, under oath if requested, relating to any matters that are the subject of this Final Judgment as may be requested.

B. No information or documents obtained by the means provided in this Section VIII shall be divulged by the United States to any Person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or for law enforcement purposes, or as otherwise required by law.

C. If at the time information or documents are furnished by Defendant to the United States, Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the

Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendant ten calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

#### IX. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

#### X. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including its right to seek an order of contempt from this Court. Defendant agrees that in any civil contempt action, any motion to show cause, or any similar civil action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendant waives any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. Defendant agrees that it may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendant has violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against Defendant, whether litigated or resolved prior to litigation, Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

#### XI. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire seven years from the date of its entry, except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendant that the continuation of the Final Judgment

no longer is necessary or in the public interest.

#### XII. NOTICE

For purposes of this Final Judgment, any notice or other communication required to be provided to the United States shall be sent to the person at the address set forth below (or such other addresses as the United States may specify in writing to Defendant): Chief, Media, Entertainment, and Professional Services Section, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW, Suite 4000, Washington, D.C. 20530.

#### XIII. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

IT IS SO ORDERED by the Court, this \_\_\_ day of \_\_\_, 201\_\_.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

United States District Judge

#### Exhibit 1

[Company Letterhead]

[Name and Address of Antitrust Compliance Officer]

Re: *Prohibitions Against Sharing of Competitively Sensitive Information*

Dear [XX]:

I provide you this notice regarding a judgment recently entered by a federal judge in Washington, D.C. prohibiting the sharing of certain information with other broadcast television station(s).

The judgment applies to our company and all of its employees, including you, so it is important that you understand the obligations it imposes on us. [CEO Name] has asked me to let each of you know that [s/he] expects you to take these obligations seriously and abide by them.

The judgment prohibits us from sharing or receiving, directly or indirectly (including through our national sales representative firm), competitively sensitive information with or from any employee, agent, or representative of another broadcast television station in the same DMA it does not own or operate. Competitively sensitive information means any non-public information regarding the sale of spot advertising on broadcast television stations, including information relating to any pricing or pricing strategies, pacing, holding capacity, revenues, or market shares. There are limited exceptions to this restriction, which are listed in the judgment. The company will provide briefing on the legitimate or illegitimate exchange of information. You must consult with me if

you have any questions on whether a particular circumstance is subject to an exception under the judgment.

A copy of the judgment is attached. Please read it carefully and familiarize yourself with its terms. The judgment, rather than the above description, is controlling. If you have any questions about the judgment or how it affects your sale of spot advertising, please contact me as soon as possible.

Please sign and return the attached Employee Certification to [Defendant's Antitrust Compliance Officer] within thirty days of your receipt of this letter. Thank you for your cooperation.

Sincerely,  
[Defendant's Antitrust Compliance Officer]

#### Employee Certification

I, \_\_\_ [name], \_\_\_ [position] at [station or location] do hereby certify that I (i) have read and understand, and agree to abide by, the terms of the Final Judgment; (ii) am not aware of any violation of the Final Judgment that has not been reported to [Defendant]; and (iii) understand that my failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court.

Name: \_\_\_\_\_

Date: \_\_\_\_\_

#### Exhibit 2

#### United States District Court for the District of Columbia

*United States of America*; Plaintiff,  
*v. Sinclair Broadcast Group, Inc., et al.*  
Defendants.

Case No. 1:18-cv-2609

Judge: Tanya S. Chutkan

#### ACKNOWLEDGEMENT OF APPLICABILITY

The undersigned acknowledges that [Full Buyer Name], including its successors and assigns, and its subsidiaries, divisions, and broadcast television stations, and their directors, officers, and employees ("Acquirer"), following consummation of the Acquirer's acquisition of [insert names of station or stations acquired] (each, an "Acquired Station"), is bound by the Final Judgment entered by this Court on [date] ("Final Judgment"), as if the Acquirer were a Defendant under the Final Judgment, as follows:

7. The Acquirer shall be bound in full by all Sections of the Consent Decree not specifically discussed below.

8. As to Sections IV, V, and VII of the Final Judgment, the Acquirer is bound to the Final Judgment only as to (i) each Acquired Station, each Acquired Station's successors and assigns, and each Acquired Station's subsidiaries and divisions, and each Acquired Station's directors, officers, and employees, (ii) Acquirer's officers and directors only with respect to any responsibilities or actions regarding any Acquired Stations, and (iii) employees with management or supervisory responsibilities for Acquirer's business or operations related to the sale of spot advertising on any Acquired Station, only with respect to those responsibilities.

9. As to Section VI(C)(3), VI(C)(4), VI(C)(6), VI(C)(8), VI(D), VI(E), and VIII of the Final Judgment, the Acquirer is bound to the Final Judgment only as to (i) each Acquired Station, each Acquired Station's successors and assigns, and each Acquired Station's subsidiaries and divisions, and each Acquired Station's directors, officers, and employees, (ii) Acquirer's officers and directors, and (iii) employees with management or supervisory responsibilities for Acquirer's business or operations related to the sale of spot advertising on any Acquired Station.

10. The release contained in Sections VII(C) and (D) applies to the Acquirer, but only to civil actions or criminal charges arising from actions taken by any Acquired Station.

11. The Acquirer shall not be bound by Sections VI(C)(1), VI(C)(2), VI(C)(5), VI(C)(7), and VI(F) of the Final Judgment at all.

12. Section VI(A) applies to the Acquirer, but is modified to make the initial period for appointing an Antitrust Compliance Officer in the first sentence 120 days from consummation of the Acquirer's acquisition of the Acquired Station or Acquired Stations.

This Acknowledgement of Applicability may be voided by a joint written agreement between the United States and the Acquirer.

Dated: [ ]

Respectfully submitted,

/s/ \_\_\_\_\_

[Counsel for Acquirer]

**United States District Court for the District of Columbia**

*United States of America; Plaintiff, v. Sinclair Broadcast Group, Inc., et al.*  
Defendants.

Case No. 1:18-cv-2609

Judge: Tanya S. Chutkan

**[PROPOSED] FINAL JUDGMENT**

WHEREAS, Plaintiff, United States of America, filed its Complaint on November \_\_, 2018, alleging that Defendant Griffin Communications, LLC, among others, violated Section 1 of the Sherman Act, 15 U.S.C. § 1, the United States and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

AND WHEREAS, this Final Judgment does not constitute any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, the United States and Defendant agree to be bound by the provisions of this Final Judgment pending its approval by this Court;

AND WHEREAS, the Defendant agrees to undertake certain actions and to refrain from engaging in certain forms of information sharing with its competitors;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

**I. JURISDICTION**

This Court has jurisdiction over the subject matter and each of the parties to this action.

The allegations in the Complaint arise under Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1. See 28 U.S.C. § 1331.

**II. DEFINITIONS**

As used in this Final Judgment:

A. "Advertiser" means an advertiser, an advertiser's buying agent, or an advertiser's representative.

B. "Agreement" means any agreement, understanding, pact, contract, or arrangement, formal or informal, oral or written, between two or more Persons.

C. "Communicate," "Communicating," and "Communication(s)" means to provide, send, discuss, circulate, exchange, request, or solicit information, whether directly or indirectly, and regardless of the means by which it is accomplished, including orally or by written means of any kind, such as electronic communications, e-mails, facsimiles, telephone communications, voicemails, text messages, audio recordings, meetings, interviews, correspondence, exchange of written or recorded information, or face-to-face meetings.

D. "Competitively Sensitive Information" means any of the following information, less than eighteen months old, of Defendant or any broadcast television station regarding the sale of spot advertising on broadcast television stations: Non-Public Information relating to pricing or pricing strategies, pacing, holding capacity, revenues, or market shares. Reports containing only aggregated market-level or national data are not Competitively Sensitive Information, but reports (including by paid subscription) that are customized or confidential to a particular Station or broadcast television station group are Competitively Sensitive Information.

E. "Cooperative Agreement" means (1) joint sales agreements, joint operating agreements, local marketing agreements, news share agreements, or shared services agreements, or (2) any agreement through which a Person exercises control over any broadcast television station not owned by the Person.

F. "Defendant" means Griffin Communications, LLC, an Oklahoma limited liability company with its headquarters in Oklahoma City, Oklahoma, its successors and assigns, and its subsidiaries, divisions, and Stations, and their directors, officers, and employees.

G. "DMA" means Designated Market Area as defined by A.C. Nielsen Company and used by the *Investing in Television BIA Market Report 2018*.

H. "Management" means all directors and officers of Defendant, or any other employee with management or supervisory responsibilities for Defendant's business or operations related to the sale of spot advertising on any Station.

I. "Non-Public Information" means information that is not available from public sources or generally available to the public. Measurement or quantification of a Station's future holding capacity is Non-Public Information, but measurement or quantification of a Station's past holding capacity is not Non-Public Information. For the avoidance of doubt, the fact that information is available by paid subscription

does not on its own render the information public.

J. "Person" means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

K. "Sales Representative Firm" means any organization, including without limitation Katz Media Group, Inc. and Cox Reps, Inc., and their respective subsidiaries and divisions, that represents a Station or its owner in the sale of spot advertising.

L. "Sales Representative Firm Manager" means, for each of Defendant's Sales Representative Firms, the employee of the Sales Representative Firm with primary responsibility for the relationship with Defendant.

M. "Sales Staff" means Defendant's employees with responsibility for the sale of spot advertising on any Station.

N. "Station" means any broadcast television station, its successors and assigns, and its subsidiaries, divisions, groups, and its owner or operator and its directors, officers, managers, and employees, unless a Station owns, is owned by, or is under common ownership with a Sales Representative Firm, in which case that Sales Representative Firm will not be considered a Station.

**III. APPLICABILITY**

This Final Judgment applies to Defendant, other Persons in active concert or participation with Defendant who receive actual notice of this Final Judgment by personal service or otherwise, and any Person that signs an Acknowledgment of Applicability, attached as Exhibit 2, to the extent set forth therein, as a condition of the purchase of a Station owned by Defendant as of October 1, 2018. This Final Judgment applies to Defendant's actions performed under any Cooperative Agreement, even if those actions are taken on behalf of a third party. This Final Judgment is fully enforceable, including by penalty of contempt, against all of the foregoing.

**IV. PROHIBITED CONDUCT**

A. Defendant's Management and Sales Staff shall not, directly or indirectly:

1. Communicate Competitively Sensitive Information to any Station in the same DMA it does not own or operate;

2. Knowingly use Competitively Sensitive Information from or regarding any Station in the same DMA it does not own or operate;

3. Encourage or facilitate the Communication of Competitively Sensitive Information to or from any Station in the same DMA it does not own or operate; or

4. Attempt to enter into, enter into, maintain, or enforce any agreement to Communicate Competitively Sensitive Information with any Station in the same DMA it does not own or operate.

B. The prohibitions under Paragraph IV(A) apply to Defendant's Communicating or agreeing to Communicate through a Sales Representative Firm or a third-party agent at Defendant's instruction or request.

C. Defendant shall not sell any Station owned by the Defendant as of October 1,

2018 to any Person unless that Person has first executed the Acknowledgement of Applicability, attached as Exhibit 2. Defendant shall submit any Acknowledgement of Applicability to the United States within 15 days of consummating the sale of such Station. The United States, in its sole discretion, may waive the prohibition in this Paragraph IV(C) on a Station-by-Station basis. Alternatively, the United States and the Person signing the Acknowledgement of Applicability may agree to void the Acknowledgement of Applicability at any time. The first sentence of this paragraph shall not apply to the sale of any Station to a Person already bound to a final judgment entered by a court regarding the Communication of Competitively Sensitive Information.

#### V. CONDUCT NOT PROHIBITED

A. Nothing in Section IV shall prohibit Defendant from Communicating, using, or encouraging or facilitating the Communication of, Competitively Sensitive Information with an actual or prospective Advertiser, except that, if the Advertiser is another Station, Defendant's Communicating, using, or encouraging or facilitating the Communication of, Competitively Sensitive Information is excluded from the terms of Section IV only insofar as is reasonably necessary to negotiate the sale of spot advertising on broadcast television stations. For the avoidance of doubt, Defendant is not prohibited from internally using Competitively Sensitive Information received from an Advertiser that is a Station under the preceding sentence, but Defendant is prohibited from Communicating that Competitively Sensitive Information to a Station in the same DMA that it does not own or operate.

B. Nothing in Section IV shall prohibit Defendant from, after securing advice of counsel and in consultation with the Antitrust Compliance Officer, Communicating, using, encouraging or facilitating the Communication of, or attempting to enter into, entering into, maintaining, or enforcing any agreement to Communicate Competitively Sensitive Information with any Station when such Communication or use is (a) for the purpose of evaluating or effectuating a bona fide acquisition, disposition, or exchange of Stations or related assets, or (b) reasonably necessary for achieving the efficiencies of any other legitimate competitor collaboration. With respect to any such agreement:

1. For all agreements under Part V(B)(a) with any other Station to Communicate Competitively Sensitive Information that Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment, Defendant shall maintain documents sufficient to show:
  - i. the specific transaction or proposed transaction to which the sharing of Competitively Sensitive Information relates;
  - ii. the employees, identified with reasonable specificity, who are involved in the sharing of Competitively Sensitive Information; and

- iii. the termination date or event of the sharing of Competitively Sensitive Information.

2. All agreements under Part V(B)(b) with any other Station to Communicate Competitively Sensitive Information that Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment shall be in writing, and shall:
  - i. identify and describe, with specificity, the collaboration to which it is ancillary;
  - ii. be narrowly tailored to permit the Communication of Competitively Sensitive Information only when reasonably necessary and only to the employees reasonably necessary to effectuate the collaboration;
  - iii. identify with reasonable specificity the Competitively Sensitive Information Communicated pursuant to the agreement and identify the employees to receive the Competitively Sensitive Information;
  - iv. contain a specific termination date or event; and
  - v. be signed by all parties to the agreement, including any modifications to the agreement.

3. For Communications under Part V(B)(a) above, Defendant shall maintain copies of all materials required under Paragraph V(B)(1) for five years or the duration of the Final Judgment, whichever is shorter, following entry into any agreement to Communicate or receive Competitively Sensitive Information, and Defendant shall make such documents available to the United States upon request, if such request is made during the preservation period.
4. For Communications under Part V(B)(b) above, Defendant shall furnish a copy of all materials required under Paragraph V(B)(2) to the United States within thirty days of the entry, renewal, or extension of the agreement.
5. For purposes of this Section V(B) only, a Joint Sales Agreement, Local Marketing Agreement, or similar agreement pursuant to which the Defendant Communicates, uses, encourages or facilitates the Communication of, or attempts to enter into, enters into, maintains, or enforces any agreement to Communicate Competitively Sensitive Information related solely to the sale of spot advertising for which Defendant is responsible on a Station, shall be considered a "legitimate competitor collaboration" under Part V(B)(b).

C. Nothing in Section IV shall prohibit Defendant from engaging in conduct in accordance with the doctrine established in *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), *United Mine Workers v. Pennington*, 381 U.S. 657 (1965), and their progeny.

D. Nothing in Section IV prohibits Defendant from (1) Communicating, encouraging or facilitating the Communication of, or attempting to enter into, entering into, maintaining, or enforcing any agreement to Communicate Competitively Sensitive Information for the purpose of aggregation if (a) Competitively Sensitive Information is sent to or received from, and the aggregation is managed by, a third party not owned or operated by any Station; (b) the information disseminated by the aggregator is limited to historical total

broadcast television station revenue or other geographic or characteristic categorization (e.g., national, local, or political sales revenue); and (c) any information disseminated is sufficiently aggregated such that it would not allow a recipient to identify, deduce, or estimate the prices or pacing of any individual broadcast television station not owned or operated by that recipient; or (2) using information that meets the requirements of Parts V(D)(1)(a)–(c).

#### VI. REQUIRED CONDUCT

A. Within ten days of entry of this Final Judgment, Defendant shall appoint an Antitrust Compliance Officer who is an internal employee or Officer of the Defendant, and identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. Within forty-five days of a vacancy in the Antitrust Compliance Officer position, Defendant shall appoint a replacement, and shall identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. Defendant's initial or replacement appointment of an Antitrust Compliance Officer is subject to the approval of the United States, in its sole discretion.

B. The Antitrust Compliance Officer shall have, or shall retain outside counsel who has, the following minimum qualifications:

1. be an active member in good standing of the bar in any U.S. jurisdiction; and
2. have at least five years' experience in legal practice, including experience with antitrust matters, unless finding an Antitrust Compliance Officer or outside counsel meeting this experience requirement is a hardship on or is not reasonably available to the Defendant, under which circumstances the Defendant may select an Antitrust Compliance Officer or shall retain outside counsel who has at least five years' experience in legal practice, including experience with regulatory or compliance matters.

C. The Antitrust Compliance Officer shall, directly or through the employees or counsel working at the Antitrust Compliance Officer's responsibility and direction:

1. within fourteen days of entry of the Final Judgment, furnish to all of Defendant's Management and Sales Staff and Sales Representative Firm Managers a copy of this Final Judgment, the Competitive Impact Statement filed by the United States with the Court, and a cover letter in a form attached as Exhibit 1;
2. within fourteen days of entry of the Final Judgment, in a manner to be devised by Defendant and approved by the United States, provide Defendant's Management and Sales Staff reasonable notice of the meaning and requirements of this Final Judgment;
3. annually brief Defendant's Management and Sales Staff on the meaning and requirements of this Final Judgment and the U.S. antitrust laws;
4. brief any person who succeeds a person in any position identified in Paragraph VI(C)(3), within sixty days of such succession;
5. obtain from each person designated in Paragraph VI(C)(3) or VI(C)(4), within thirty

days of that person's receipt of the Final Judgment, a certification that the person (i) has read and understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not been reported to Defendant; and (iii) understands that failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court;

6. annually communicate to Defendant's Management and Sales Staff that they may disclose to the Antitrust Compliance Officer, without reprisal for such disclosure, information concerning any violation or potential violation of this Final Judgment or the U.S. antitrust laws by Defendant;

7. within thirty days of the latest filing of the Complaint, Proposed Final Judgment, or Competitive Impact Statement in this action, Defendant shall provide notice, in each DMA in which Defendant owns or operates a Station, to (i) every full power Station in that DMA that sells broadcast television spot advertising that Defendant does not own or operate and (ii) any Sales Representative Firm selling advertising in that DMA on behalf of Defendant, of the Complaint, Proposed Final Judgment, and Competitive Impact Statement in a form and manner to be proposed by Defendant and approved by the United States in its sole discretion. Defendant shall provide the United States with its proposal, including the list of recipients, within ten days of the filing of the Complaint; and

8. maintain for five years or until expiration of the Final Judgment, whichever is shorter, a copy of all materials required to be issued under Paragraph VI(C), and furnish them to the United States within ten days if requested to do so, except documents protected under the attorney-client privilege or the attorney work-product doctrine. For all materials required to be furnished under Paragraph VI(C) which Defendant claims are protected under the attorney-client privilege or the attorney work-product doctrine, Defendant shall furnish to the United States a privilege log.

D. Defendant shall:

1. upon Management or the Antitrust Compliance Officer learning of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, (i) promptly take appropriate action to investigate, and in the event of a violation, terminate or modify the activity so as to comply with this Final Judgment, (ii) maintain all documents related to any violation or potential violation of this Final Judgment for a period of five years or the duration of this Final Judgment, whichever is shorter, and (iii) maintain, and furnish to the United States at the United States' request, a log of (a) all such documents and documents for which Defendant claims protection under the attorney-client privilege or the attorney work-product doctrine, and (b) all potential and actual violations, even if no documentary evidence regarding the violations exist;

2. within thirty days of Management or the Antitrust Compliance Officer learning of any such violation or potential violation of any of the terms and conditions contained in this

Final Judgment, file with the United States a statement describing any violation or potential violation of any of the terms and conditions contained in this Final Judgment, which shall include a description of any Communications constituting the violation or potential violation, including the date and place of the Communication, the Persons involved, and the subject matter of the Communication;

3. establish a whistleblower protection policy, which provides that any employee may disclose, without reprisal for such disclosure, to the Antitrust Compliance Officer information concerning any violation or potential violation by the Defendant of this Final Judgment or U.S. antitrust laws;

4. have its CEO, General Counsel or Chief Legal Officer certify in writing to the United States annually on the anniversary date of the entry of this Final Judgment that Defendant has complied with the provisions of this Final Judgment;

5. maintain and produce to the United States upon request: (i) a list identifying all employees having received the annual antitrust briefing required under Paragraphs VI(C)(3) and VI(C)(4); and (ii) copies of all materials distributed as part of the annual antitrust briefing required under Paragraphs VI(C)(3) and VI(C)(4). For all materials requested to be produced under this Paragraph VI(D)(5) for which Defendant claims is protected under the attorney-client privilege or the attorney work-product doctrine, Defendant shall furnish to the United States a privilege log; and

6. instruct each Sales Representative Firm Manager that the Sales Representative Firm shall not Communicate any of Defendant's Competitively Sensitive Information in a way that would violate Sections IV and V of this Final Judgment if the Sales Representative Firm were included in the definition of "Defendant" in Paragraph II(F), in a form and manner to be proposed by Defendant and approved by the United States in its sole discretion, maintained and produced to the United States upon request.

E. For the avoidance of doubt, the term "potential violation" as used in Paragraph VI(D) does not include the discussion of future conduct.

F. If Defendant acquires a Station after entry of this Final Judgment, this Section VI will not apply to that acquired Station or the employees of that acquired Station until 120 days after closing of the acquisition of that acquired Station.

#### VII. DEFENDANT'S COOPERATION

A. Defendant shall cooperate fully and truthfully with the United States in any investigation or litigation examining whether or alleging that Defendant, any Station that Defendant does not own or operate, or any Sales Representative Firm Communicated Competitively Sensitive Information with or among Defendant or any other Station or any Sales Representative Firm in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1. Defendant shall use its best efforts to ensure that all current and former officers, directors, employees, and agents also fully and promptly cooperate with the United States. The full, truthful, and continuing

cooperation of Defendant shall include, but not be limited to:

1. providing sworn testimony, that is not protected by the attorney-client privilege or the attorney work-product doctrine, to the United States regarding the Communicated Competitively Sensitive Information or any agreement with any other Station it does not own or such other Station's Sales Representative Firm to Communicate Competitively Sensitive Information while an employee of the Defendant;

2. producing, upon request of the United States, all documents, data, and other materials, wherever located, to the extent not protected under the attorney-client privilege or the attorney work-product doctrine, in the possession, custody, or control of Defendant, that relate to the Communication of Competitively Sensitive Information or any agreement with any other Station or such other Station's Sales Representative Firm to Communicate Competitively Sensitive Information, and a log of documents protected by the attorney-client privilege or the attorney work-product doctrine;

3. making available for interview any officers, directors, employees, and agents of Defendant if so requested on reasonable notice by the United States; and

4. testifying at trial and other judicial proceedings fully, truthfully, and under oath, when called upon to do so by the United States;

5. provided however, that the obligations of Defendant to cooperate fully with the United States as described in this Section VII shall cease upon the conclusion of all of the United States' investigations and the United States' litigations examining whether or alleging that Defendant, any Station that Defendant does not own or operate or such other Station's Sales Representative Firm Communicated Competitively Sensitive Information or with or among Defendant or any other Station or any Sales Representative Firm in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1, including exhaustion of all appeals or expiration of time for all appeals of any Court ruling in each such matter, at which point the United States will provide written notice to Defendant that its obligations under this Section VII have expired.

B. Defendant is obligated to impose a litigation hold until the United States provides written notice to the Defendant that its obligations under this Section VII have expired. This Paragraph VII(B) does not apply to documents created after entry of this Final Judgment.

C. Subject to the full, truthful, and continuing cooperation of Defendant, as defined in Paragraph VII(A), the United States will not bring any further civil action or any criminal charges against Defendant related to any Communication of Competitively Sensitive Information or any agreement to Communicate Competitively Sensitive Information with any other Station it does not own or operate or such other Station's Sales Representative Firm when that agreement:

1. was Communicated, entered into and terminated on or before the date of the filing of the Complaint in this action (or in the case



of a Station that is acquired by Defendant after entry of this Final Judgment, was Communicated or entered into before the acquisition and terminated within 120 days after the closing of the acquisition); and

2. does not constitute or include an agreement to fix prices or divide markets.

D. The United States' agreement set forth in Paragraph VII(C) does not apply to any acts of perjury or subornation of perjury (18 U.S.C. §§ 1621–22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), contempt (18 U.S.C. §§ 401–402), or obstruction of justice (18 U.S.C. § 1503, *et seq.*) by the Defendant or its officers, directors, and employees. The United States' agreement set forth in Paragraph VII(C) does not release any claims against any Sales Representative Firm.

#### VIII. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment or of any related orders, or of determining whether the Final Judgment should be modified, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant, be permitted:

1. to access during Defendant's office hours to inspect and copy, or at the option of the United States, to require Defendant to provide electronic or hard copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendant, relating to any matters that are the subject of this Final Judgment, not protected by the attorney-client privilege or the attorney work product doctrine; and

2. to interview, either informally or on the record, Defendant's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendant; and

3. to obtain from Defendant written reports or responses to written interrogatories, of information not protected by the attorney-client privilege or attorney work product doctrine, under oath if requested, relating to any matters that are the subject of this Final Judgment as may be requested.

B. No information or documents obtained by the means provided in this Section VIII shall be divulged by the United States to any Person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or for law enforcement purposes, or as otherwise required by law.

C. If at the time information or documents are furnished by Defendant to the United States, Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the

Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendant ten calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

#### IX. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

#### X. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including its right to seek an order of contempt from this Court. Defendant agrees that in any civil contempt action, any motion to show cause, or any similar civil action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendant waives any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. Defendant agrees that it may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendant has violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against Defendant, whether litigated or resolved prior to litigation, Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

#### XI. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire seven years from the date of its entry, except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendant that the continuation of the Final Judgment

no longer is necessary or in the public interest.

#### XII. NOTICE

For purposes of this Final Judgment, any notice or other communication required to be provided to the United States shall be sent to the person at the address set forth below (or such other addresses as the United States may specify in writing to Defendant): Chief, Media, Entertainment, and Professional Services Section, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW, Suite 4000, Washington, D.C. 20530.

#### XIII. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

IT IS SO ORDERED by the Court, this \_\_\_ day of \_\_\_, 201\_\_.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

United States District Judge

#### Exhibit 1

[Company Letterhead]

[Name and Address of Antitrust Compliance Officer]

Re: *Prohibitions Against Sharing of Competitively Sensitive Information*

Dear [XX]:

I provide you this notice regarding a judgment recently entered by a federal judge in Washington, D.C. prohibiting the sharing of certain information with other broadcast television station(s).

The judgment applies to our company and all of its employees, including you, so it is important that you understand the obligations it imposes on us. [CEO Name] has asked me to let each of you know that [s/he] expects you to take these obligations seriously and abide by them.

The judgment prohibits us from sharing or receiving, directly or indirectly (including through our national sales representative firm), competitively sensitive information with or from any employee, agent, or representative of another broadcast television station in the same DMA it does not own or operate. Competitively sensitive information means any non-public information regarding the sale of spot advertising on broadcast television stations, including information relating to any pricing or pricing strategies, pacing, holding capacity, revenues, or market shares. There are limited exceptions to this restriction, which are listed in the judgment. The company will provide briefing on the legitimate or illegitimate exchange of information. You must consult with me if

you have any questions on whether a particular circumstance is subject to an exception under the judgment.

A copy of the judgment is attached. Please read it carefully and familiarize yourself with its terms. The judgment, rather than the above description, is controlling. If you have any questions about the judgment or how it affects your sale of spot advertising, please contact me as soon as possible.

Please sign and return the attached Employee Certification to [Defendant's Antitrust Compliance Officer] within thirty days of your receipt of this letter. Thank you for your cooperation.

Sincerely,

[Defendant's Antitrust Compliance Officer]

#### Employee Certification

I, \_\_\_ [name], \_\_\_ [position] at \_\_\_ [station or location] do hereby certify that I (i) have read and understand, and agree to abide by, the terms of the Final Judgment; (ii) am not aware of any violation of the Final Judgment that has not been reported to [Defendant]; and (iii) understand that my failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court.

Name:

Date:

#### Exhibit 2

#### United States District Court for the District of Columbia

*United States of America*; Plaintiff, v. *Sinclair Broadcast Group, Inc., et al.* Defendants.

Case No. 1:18-cv-2609

Judge: Tanya S. Chutkan

#### ACKNOWLEDGEMENT OF APPLICABILITY

The undersigned acknowledges that [Full Buyer Name], including its successors and assigns, and its subsidiaries, divisions, and broadcast television stations, and their directors, officers, and employees ("Acquirer"), following consummation of the Acquirer's acquisition of [insert names of station or stations acquired] (each, an "Acquired Station"), is bound by the Final Judgment entered by this Court on [date] ("Final Judgment"), as if the Acquirer were a Defendant under the Final Judgment, as follows:

13. The Acquirer shall be bound in full by all Sections of the Consent Decree not specifically discussed below.

14. As to Sections IV, V, and VII of the Final Judgment, the Acquirer is bound to the Final Judgment only as to (i) each Acquired Station, each Acquired Station's successors and assigns, and each Acquired Station's subsidiaries and divisions, and each Acquired Station's directors, officers, and employees, (ii) Acquirer's officers and directors only with respect to any responsibilities or actions regarding any Acquired Stations, and (iii) employees with management or supervisory responsibilities for Acquirer's business or operations related to the sale of spot advertising on any Acquired Station, only with respect to those responsibilities.

15. As to Section VI(C)(3), VI(C)(4), VI(C)(6), VI(C)(8), VI(D), VI(E), and VIII of the Final Judgment, the Acquirer is bound to the Final Judgment only as to (i) each Acquired Station, each Acquired Station's successors and assigns, and each Acquired Station's subsidiaries and divisions, and each Acquired Station's directors, officers, and employees, (ii) Acquirer's officers and directors, and (iii) employees with management or supervisory responsibilities for Acquirer's business or operations related to the sale of spot advertising on any Acquired Station.

16. The release contained in Sections VII(C) and (D) applies to the Acquirer, but only to civil actions or criminal charges arising from actions taken by any Acquired Station.

17. The Acquirer shall not be bound by Sections VI(C)(1), VI(C)(2), VI(C)(5), VI(C)(7), and VI(F) of the Final Judgment at all.

18. Section VI(A) applies to the Acquirer, but is modified to make the initial period for appointing an Antitrust Compliance Officer in the first sentence 120 days from consummation of the Acquirer's acquisition of the Acquired Station or Acquired Stations.

This Acknowledgement of Applicability may be voided by a joint written agreement between the United States and the Acquirer.

Dated: [ ]

Respectfully submitted,

/s/

[Counsel for Acquirer]

#### United States District Court for the District of Columbia

*United States of America*; Plaintiff, v. *Sinclair Broadcast Group, Inc., et al.* Defendants.

Case No. 1:18-cv-2609

Judge: Tanya S. Chutkan

#### [PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on November \_\_\_, 2018, alleging that Defendant Dreamcatcher Broadcasting, LLC, among others, violated Section 1 of the Sherman Act, 15 U.S.C. § 1, the United States and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

AND WHEREAS, this Final Judgment does not constitute any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, the United States and Defendant agree to be bound by the provisions of this Final Judgment pending its approval by this Court;

AND WHEREAS, the Defendant agrees to undertake certain actions and to refrain from engaging in certain forms of information sharing with its competitors;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

#### I. JURISDICTION

This Court has jurisdiction over the subject matter and each of the parties to this action.

The allegations in the Complaint arise under Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1. See 28 U.S.C. § 1331.

#### II. DEFINITIONS

As used in this Final Judgment:

A. "Advertiser" means an advertiser, an advertiser's buying agent, or an advertiser's representative.

B. "Agreement" means any agreement, understanding, pact, contract, or arrangement, formal or informal, oral or written, between two or more Persons.

C. "Communicate," "Communicating," and "Communication(s)" means to provide, send, discuss, circulate, exchange, request, or solicit information, whether directly or indirectly, and regardless of the means by which it is accomplished, including orally or by written means of any kind, such as electronic communications, e-mails, facsimiles, telephone communications, voicemails, text messages, audio recordings, meetings, interviews, correspondence, exchange of written or recorded information, or face-to-face meetings.

D. "Competitively Sensitive Information" means any of the following information, less than eighteen months old, of Defendant or any broadcast television station regarding the sale of spot advertising on broadcast television stations: Non-Public Information relating to pricing or pricing strategies, pacing, holding capacity, revenues, or market shares. Reports containing only aggregated market-level or national data are not Competitively Sensitive Information, but reports (including by paid subscription) that are customized or confidential to a particular Station or broadcast television station group are Competitively Sensitive Information.

E. "Cooperative Agreement" means (1) joint sales agreements, joint operating agreements, local marketing agreements, news share agreements, or shared services agreements, or (2) any agreement through which a Person exercises control over any broadcast television station not owned by the Person.

F. "Defendant" means Dreamcatcher Broadcasting, LLC, a Delaware corporation with its headquarters in Santa Monica, California, its successors and assigns, and its subsidiaries, divisions, and Stations, and their directors, officers, and employees.

G. "DMA" means Designated Market Area as defined by A.C. Nielsen Company and used by the *Investing in Television BIA Market Report 2018*.

H. "Management" means all directors and officers of Defendant, or any other employee with management or supervisory responsibilities for Defendant's business or operations related to the sale of spot advertising on any Station.

I. "Non-Public Information" means information that is not available from public sources or generally available to the public. Measurement or quantification of a Station's future holding capacity is Non-Public Information, but measurement or quantification of a Station's past holding capacity is not Non-Public Information. For the avoidance of doubt, the fact that information is available by paid subscription does not on its own render the information public.

J. "Person" means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

K. "Sales Representative Firm" means any organization, including without limitation Katz Media Group, Inc. and Cox Reps, Inc., and their respective subsidiaries and divisions, that represents a Station or its owner in the sale of spot advertising.

L. "Sales Representative Firm Manager" means, for each of Defendant's Sales Representative Firms, the employee of the Sales Representative Firm with primary responsibility for the relationship with Defendant.

M. "Sales Staff" means Defendant's employees with responsibility for the sale of spot advertising on any Station.

N. "Station" means any broadcast television station, its successors and assigns, and its subsidiaries, divisions, groups, and its owner or operator and its directors, officers, managers, and employees, unless a Station owns, is owned by, or is under common ownership with a Sales Representative Firm, in which case that Sales Representative Firm will not be considered a Station.

### III. APPLICABILITY

This Final Judgment applies to Defendant, other Persons in active concert or participation with Defendant who receive actual notice of this Final Judgment by personal service or otherwise, and any Person that signs an Acknowledgment of Applicability, attached as Exhibit 2, to the extent set forth therein, as a condition of the purchase of a Station owned by Defendant as of October 1, 2018. This Final Judgment applies to Defendant's actions performed under any Cooperative Agreement, even if those actions are taken on behalf of a third party. This Final Judgment is fully enforceable, including by penalty of contempt, against all of the foregoing.

### IV. PROHIBITED CONDUCT

A. Defendant's Management and Sales Staff shall not, directly or indirectly:

1. Communicate Competitively Sensitive Information to any Station in the same DMA it does not own or operate;

2. Knowingly use Competitively Sensitive Information from or regarding any Station in the same DMA it does not own or operate;

3. Encourage or facilitate the Communication of Competitively Sensitive Information to or from any Station in the same DMA it does not own or operate; or

4. Attempt to enter into, enter into, maintain, or enforce any agreement to Communicate Competitively Sensitive Information with any Station in the same DMA it does not own or operate.

B. The prohibitions under Paragraph IV(A) apply to Defendant's Communicating or agreeing to Communicate through a Sales Representative Firm or a third-party agent at Defendant's instruction or request.

C. Defendant shall not sell any Station owned by the Defendant as of October 1, 2018 to any Person unless that Person has first executed the Acknowledgment of

Applicability, attached as Exhibit 2. Defendant shall submit any Acknowledgment of Applicability to the United States within 15 days of consummating the sale of such Station. The United States, in its sole discretion, may waive the prohibition in this Paragraph IV(C) on a Station-by-Station basis. Alternatively, the United States and the Person signing the Acknowledgment of Applicability may agree to void the Acknowledgment of Applicability at any time. The first sentence of this paragraph shall not apply to the sale of any Station to a Person already bound to a final judgment entered by a court regarding the Communication of Competitively Sensitive Information.

### V. CONDUCT NOT PROHIBITED

A. Nothing in Section IV shall prohibit Defendant from Communicating, using, or encouraging or facilitating the Communication of, Competitively Sensitive Information with an actual or prospective Advertiser, except that, if the Advertiser is another Station, Defendant's Communicating, using, or encouraging or facilitating the Communication of, Competitively Sensitive Information is excluded from the terms of Section IV only insofar as is reasonably necessary to negotiate the sale of spot advertising on broadcast television stations. For the avoidance of doubt, Defendant is not prohibited from internally using Competitively Sensitive Information received from an Advertiser that is a Station under the preceding sentence, but Defendant is prohibited from Communicating that Competitively Sensitive Information to a Station in the same DMA that it does not own or operate.

B. Nothing in Section IV shall prohibit Defendant from, after securing advice of counsel and in consultation with the Antitrust Compliance Officer, Communicating, using, encouraging or facilitating the Communication of, or attempting to enter into, entering into, maintaining, or enforcing any agreement to Communicate Competitively Sensitive Information with any Station when such Communication or use is (a) for the purpose of evaluating or effectuating a bona fide acquisition, disposition, or exchange of Stations or related assets, or (b) reasonably necessary for achieving the efficiencies of any other legitimate competitor collaboration. With respect to any such agreement:

1. For all agreements under Part V(B)(a) with any other Station to Communicate Competitively Sensitive Information that Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment, Defendant shall maintain documents sufficient to show:

i. the specific transaction or proposed transaction to which the sharing of Competitively Sensitive Information relates;

ii. the employees, identified with reasonable specificity, who are involved in the sharing of Competitively Sensitive Information; and

iii. the termination date or event of the sharing of Competitively Sensitive Information.

2. All agreements under Part V(B)(b) with any other Station to Communicate Competitively Sensitive Information that Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment shall be in writing, and shall:

i. identify and describe, with specificity, the collaboration to which it is ancillary;

ii. be narrowly tailored to permit the Communication of Competitively Sensitive Information only when reasonably necessary and only to the employees reasonably necessary to effectuate the collaboration;

iii. identify with reasonable specificity the Competitively Sensitive Information Communicated pursuant to the agreement and identify the employees to receive the Competitively Sensitive Information;

iv. contain a specific termination date or event; and

v. be signed by all parties to the agreement, including any modifications to the agreement.

3. For Communications under Part V(B)(a) above, Defendant shall maintain copies of all materials required under Paragraph V(B)(1) for five years or the duration of the Final Judgment, whichever is shorter, following entry into any agreement to Communicate or receive Competitively Sensitive Information, and Defendant shall make such documents available to the United States upon request, if such request is made during the preservation period.

4. For Communications under Part V(B)(b) above, Defendant shall furnish a copy of all materials required under Paragraph V(B)(2) to the United States within thirty days of the entry, renewal, or extension of the agreement.

5. For purposes of this Section V(B) only, a Joint Sales Agreement, Local Marketing Agreement, or similar agreement pursuant to which the Defendant Communicates, uses, encourages or facilitates the Communication of, or attempts to enter into, enters into, maintains, or enforces any agreement to Communicate Competitively Sensitive Information related solely to the sale of spot advertising for which Defendant is responsible on a Station, shall be considered a "legitimate competitor collaboration" under Part V(B)(b).

C. Nothing in Section IV shall prohibit Defendant from engaging in conduct in accordance with the doctrine established in *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), *United Mine Workers v. Pennington*, 381 U.S. 657 (1965), and their progeny.

D. Nothing in Section IV prohibits Defendant from (1) Communicating, encouraging or facilitating the Communication of, or attempting to enter into, entering into, maintaining, or enforcing any agreement to Communicate Competitively Sensitive Information for the purpose of aggregation if (a) Competitively Sensitive Information is sent to or received from, and the aggregation is managed by, a third party not owned or operated by any Station; (b) the information disseminated by the aggregator is limited to historical total broadcast television station revenue or other geographic or characteristic categorization (e.g., national, local, or political sales

revenue); and (c) any information disseminated is sufficiently aggregated such that it would not allow a recipient to identify, deduce, or estimate the prices or pacing of any individual broadcast television station not owned or operated by that recipient; or (2) using information that meets the requirements of Parts V(D)(1)(a)–(c).

## VI. REQUIRED CONDUCT

A. Within ten days of entry of this Final Judgment, Defendant shall appoint an Antitrust Compliance Officer who is an internal employee or Officer of the Defendant, and identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. Within forty-five days of a vacancy in the Antitrust Compliance Officer position, Defendant shall appoint a replacement, and shall identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. Defendant's initial or replacement appointment of an Antitrust Compliance Officer is subject to the approval of the United States, in its sole discretion.

B. The Antitrust Compliance Officer shall have, or shall retain outside counsel who has, the following minimum qualifications:

1. be an active member in good standing of the bar in any U.S. jurisdiction; and
2. have at least five years' experience in legal practice, including experience with antitrust matters, unless finding an Antitrust Compliance Officer or outside counsel meeting this experience requirement is a hardship on or is not reasonably available to the Defendant, under which circumstances the Defendant may select an Antitrust Compliance Officer or shall retain outside counsel who has at least five years' experience in legal practice, including experience with regulatory or compliance matters.

C. The Antitrust Compliance Officer shall, directly or through the employees or counsel working at the Antitrust Compliance Officer's responsibility and direction:

1. within fourteen days of entry of the Final Judgment, furnish to all of Defendant's Management and Sales Staff and Sales Representative Firm Managers a copy of this Final Judgment, the Competitive Impact Statement filed by the United States with the Court, and a cover letter in a form attached as Exhibit 1;
2. within fourteen days of entry of the Final Judgment, in a manner to be devised by Defendant and approved by the United States, provide Defendant's Management and Sales Staff reasonable notice of the meaning and requirements of this Final Judgment;
3. annually brief Defendant's Management and Sales Staff on the meaning and requirements of this Final Judgment and the U.S. antitrust laws;
4. brief any person who succeeds a person in any position identified in Paragraph VI(C)(3), within sixty days of such succession;
5. obtain from each person designated in Paragraph VI(C)(3) or VI(C)(4), within thirty days of that person's receipt of the Final Judgment, a certification that the person (i) has read and understands and agrees to abide

by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not been reported to Defendant; and (iii) understands that failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court;

6. annually communicate to Defendant's Management and Sales Staff that they may disclose to the Antitrust Compliance Officer, without reprisal for such disclosure, information concerning any violation or potential violation of this Final Judgment or the U.S. antitrust laws by Defendant;

7. within thirty days of the latest filing of the Complaint, Proposed Final Judgment, or Competitive Impact Statement in this action, Defendant shall provide notice, in each DMA in which Defendant owns or operates a Station, to (i) every full power Station in that DMA that sells broadcast television spot advertising that Defendant does not own or operate and (ii) any Sales Representative Firm selling advertising in that DMA on behalf of Defendant, of the Complaint, Proposed Final Judgment, and Competitive Impact Statement in a form and manner to be proposed by Defendant and approved by the United States in its sole discretion. Defendant shall provide the United States with its proposal, including the list of recipients, within ten days of the filing of the Complaint; and

8. maintain for five years or until expiration of the Final Judgment, whichever is shorter, a copy of all materials required to be issued under Paragraph VI(C), and furnish them to the United States within ten days if requested to do so, except documents protected under the attorney-client privilege or the attorney work-product doctrine. For all materials required to be furnished under Paragraph VI(C) which Defendant claims are protected under the attorney-client privilege or the attorney work-product doctrine, Defendant shall furnish to the United States a privilege log.

D. Defendant shall:

1. upon Management or the Antitrust Compliance Officer learning of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, (i) promptly take appropriate action to investigate, and in the event of a violation, terminate or modify the activity so as to comply with this Final Judgment, (ii) maintain all documents related to any violation or potential violation of this Final Judgment for a period of five years or the duration of this Final Judgment, whichever is shorter, and (iii) maintain, and furnish to the United States at the United States' request, a log of (a) all such documents and documents for which Defendant claims protection under the attorney-client privilege or the attorney work product doctrine, and (b) all potential and actual violations, even if no documentary evidence regarding the violations exist;

2. within thirty days of Management or the Antitrust Compliance Officer learning of any such violation or potential violation of any of the terms and conditions contained in this Final Judgment, file with the United States a statement describing any violation or potential violation of any of the terms and

conditions contained in this Final Judgment, which shall include a description of any Communications constituting the violation or potential violation, including the date and place of the Communication, the Persons involved, and the subject matter of the Communication;

3. establish a whistleblower protection policy, which provides that any employee may disclose, without reprisal for such disclosure, to the Antitrust Compliance Officer information concerning any violation or potential violation by the Defendant of this Final Judgment or U.S. antitrust laws;

4. have its CEO, General Counsel or Chief Legal Officer certify in writing to the United States annually on the anniversary date of the entry of this Final Judgment that Defendant has complied with the provisions of this Final Judgment;

5. maintain and produce to the United States upon request: (i) a list identifying all employees having received the annual antitrust briefing required under Paragraphs VI(C)(3) and VI(C)(4); and (ii) copies of all materials distributed as part of the annual antitrust briefing required under Paragraphs VI(C)(3) and VI(C)(4). For all materials requested to be produced under this Paragraph VI(D)(5) for which Defendant claims is protected under the attorney-client privilege or the attorney work-product doctrine, Defendant shall furnish to the United States a privilege log; and

6. instruct each Sales Representative Firm Manager that the Sales Representative Firm shall not Communicate any of Defendant's Competitively Sensitive Information in a way that would violate Sections IV and V of this Final Judgment if the Sales Representative Firm were included in the definition of "Defendant" in Paragraph II(F), in a form and manner to be proposed by Defendant and approved by the United States in its sole discretion, maintained and produced to the United States upon request.

E. For the avoidance of doubt, the term "potential violation" as used in Paragraph VI(D) does not include the discussion of future conduct.

F. If Defendant acquires a Station after entry of this Final Judgment, this Section VI will not apply to that acquired Station or the employees of that acquired Station until 120 days after closing of the acquisition of that acquired Station.

## VII. DEFENDANT'S COOPERATION

A. Defendant shall cooperate fully and truthfully with the United States in any investigation or litigation examining whether or alleging that Defendant, any Station that Defendant does not own or operate, or any Sales Representative Firm Communicated Competitively Sensitive Information with or among Defendant or any other Station or any Sales Representative Firm in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1. Defendant shall use its best efforts to ensure that all current and former officers, directors, employees, and agents also fully and promptly cooperate with the United States. The full, truthful, and continuing cooperation of Defendant shall include, but not be limited to:

1. providing sworn testimony, that is not protected by the attorney-client privilege or

the attorney work product doctrine, to the United States regarding the Communicative of Competitively Sensitive Information or any agreement with any other Station it does not own or such other Station's Sales Representative Firm to Communicate Competitively Sensitive Information while an employee of the Defendant;

2. producing, upon request of the United States, all documents, data, and other materials, wherever located, to the extent not protected under the attorney-client privilege or the attorney work-product doctrine, in the possession, custody, or control of Defendant, that relate to the Communication of Competitively Sensitive Information or any agreement with any other Station or such other Station's Sales Representative Firm to Communicate Competitively Sensitive Information, and a log of documents protected by the attorney-client privilege or the attorney work product doctrine;

3. making available for interview any officers, directors, employees, and agents of Defendant if so requested on reasonable notice by the United States; and

4. testifying at trial and other judicial proceedings fully, truthfully, and under oath, when called upon to do so by the United States;

5. provided however, that the obligations of Defendant to cooperate fully with the United States as described in this Section VII shall cease upon the conclusion of all of the United States' investigations and the United States' litigations examining whether or alleging that Defendant, any Station that Defendant does not own or operate or such other Station's Sales Representative Firm Communicated Competitively Sensitive Information or with or among Defendant or any other Station or any Sales Representative Firm in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1, including exhaustion of all appeals or expiration of time for all appeals of any Court ruling in each such matter, at which point the United States will provide written notice to Defendant that its obligations under this Section VII have expired.

B. Defendant is obligated to impose a litigation hold until the United States provides written notice to the Defendant that its obligations under this Section VII have expired. This Paragraph VII(B) does not apply to documents created after entry of this Final Judgment.

C. Subject to the full, truthful, and continuing cooperation of Defendant, as defined in Paragraph VII(A), the United States will not bring any further civil action or any criminal charges against Defendant related to any Communication of Competitively Sensitive Information or any agreement to Communicate Competitively Sensitive Information with any other Station it does not own or operate or such other Station's Sales Representative Firm when that agreement:

1. was Communicated, entered into and terminated on or before the date of the filing of the Complaint in this action (or in the case of a Station that is acquired by Defendant after entry of this Final Judgment, was Communicated or entered into before the acquisition and terminated within 120 days after the closing of the acquisition); and

2. does not constitute or include an agreement to fix prices or divide markets.

D. The United States' agreement set forth in Paragraph VII(C) does not apply to any acts of perjury or subornation of perjury (18 U.S.C. §§ 1621–22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), contempt (18 U.S.C. §§ 401–402), or obstruction of justice (18 U.S.C. § 1503, *et seq.*) by the Defendant or its officers, directors, and employees. The United States' agreement set forth in Paragraph VII(C) does not release any claims against any Sales Representative Firm.

#### VIII. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment or of any related orders, or of determining whether the Final Judgment should be modified, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant, be permitted:

1. to access during Defendant's office hours to inspect and copy, or at the option of the United States, to require Defendant to provide electronic or hard copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendant, relating to any matters that are the subject of this Final Judgment, not protected by the attorney-client privilege or the attorney work product doctrine; and

2. to interview, either informally or on the record, Defendant's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendant; and

3. to obtain from Defendant written reports or responses to written interrogatories, of information not protected by the attorney-client privilege or attorney work product doctrine, under oath if requested, relating to any matters that are the subject of this Final Judgment as may be requested.

B. No information or documents obtained by the means provided in this Section VIII shall be divulged by the United States to any Person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or for law enforcement purposes, or as otherwise required by law.

C. If at the time information or documents are furnished by Defendant to the United States, Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States

shall give Defendant ten calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

#### IX. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

#### X. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including its right to seek an order of contempt from this Court. Defendant agrees that in any civil contempt action, any motion to show cause, or any similar civil action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendant waives any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. Defendant agrees that it may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendant has violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against Defendant, whether litigated or resolved prior to litigation, Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

#### XI. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire seven years from the date of its entry, except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendant that the continuation of the Final Judgment no longer is necessary or in the public interest.

#### XII. NOTICE

For purposes of this Final Judgment, any notice or other communication required to be

provided to the United States shall be sent to the person at the address set forth below (or such other addresses as the United States may specify in writing to Defendant): Chief, Media, Entertainment, and Professional Services Section, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW, Suite 4000, Washington, D.C. 20530.

### XIII. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

IT IS SO ORDERED by the Court, this \_\_\_ day of \_\_\_, 201\_\_.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

United States District Judge

#### Exhibit 1

[Company Letterhead]

[Name and Address of Antitrust Compliance Officer]

Re: *Prohibitions Against Sharing of Competitively Sensitive Information*

Dear [XX]:

I provide you this notice regarding a judgment recently entered by a federal judge in Washington, D.C. prohibiting the sharing of certain information with other broadcast television station(s).

The judgment applies to our company and all of its employees, including you, so it is important that you understand the obligations it imposes on us. [CEO Name] has asked me to let each of you know that [s/he] expects you to take these obligations seriously and abide by them.

The judgment prohibits us from sharing or receiving, directly or indirectly (including through our national sales representative firm), competitively sensitive information with or from any employee, agent, or representative of another broadcast television station in the same DMA it does not own or operate. Competitively sensitive information means any non-public information regarding the sale of spot advertising on broadcast television stations, including information relating to any pricing or pricing strategies, pacing, holding capacity, revenues, or market shares. There are limited exceptions to this restriction, which are listed in the judgment. The company will provide briefing on the legitimate or illegitimate exchange of information. You must consult with me if you have any questions on whether a particular circumstance is subject to an exception under the judgment.

A copy of the judgment is attached. Please read it carefully and familiarize yourself with its terms. The judgment, rather than the

above description, is controlling. If you have any questions about the judgment or how it affects your sale of spot advertising, please contact me as soon as possible.

Please sign and return the attached Employee Certification to [Defendant's Antitrust Compliance Officer] within thirty days of your receipt of this letter. Thank you for your cooperation.

Sincerely,

[Defendant's Antitrust Compliance Officer]

#### Employee Certification

I, \_\_\_ [name], \_\_\_ [position] at \_\_\_ [station or location] do hereby certify that I (i) have read and understand, and agree to abide by, the terms of the Final Judgment; (ii) am not aware of any violation of the Final Judgment that has not been reported to [Defendant]; and (iii) understand that my failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court.

Name:

Date:

#### Exhibit 2

#### United States District Court for the District of Columbia

*United States of America*; Plaintiff, v. *Sinclair Broadcast Group, Inc., et al.*, Defendants.

Case No. 1:18-cv-2609

Judge: Tanya S. Chutkan

#### ACKNOWLEDGEMENT OF APPLICABILITY

The undersigned acknowledges that [Full Buyer Name], including its successors and assigns, and its subsidiaries, divisions, and broadcast television stations, and their directors, officers, and employees ("Acquirer"), following consummation of the Acquirer's acquisition of [insert names of station or stations acquired] (each, an "Acquired Station"), is bound by the Final Judgment entered by this Court on [date] ("Final Judgment"), as if the Acquirer were a Defendant under the Final Judgment, as follows:

1. The Acquirer shall be bound in full by all Sections of the Consent Decree not specifically discussed below.

2. As to Sections IV, V, and VII of the Final Judgment, the Acquirer is bound to the Final Judgment only as to (i) each Acquired Station, each Acquired Station's successors and assigns, and each Acquired Station's subsidiaries and divisions, and each Acquired Station's directors, officers, and employees, (ii) Acquirer's officers and directors only with respect to any responsibilities or actions regarding any Acquired Stations, and (iii) employees with management or supervisory responsibilities for Acquirer's business or operations related to the sale of spot advertising on any Acquired Station, only with respect to those responsibilities.

3. As to Section VI(C)(3), VI(C)(4), VI(C)(6), VI(C)(8), VI(D), VI(E), and VIII of the Final Judgment, the Acquirer is bound to the Final Judgment only as to (i) each Acquired Station, each Acquired Station's successors and assigns, and each Acquired Station's

subsidiaries and divisions, and each Acquired Station's directors, officers, and employees, (ii) Acquirer's officers and directors, and (iii) employees with management or supervisory responsibilities for Acquirer's business or operations related to the sale of spot advertising on any Acquired Station.

4. The release contained in Sections VII(C) and (D) applies to the Acquirer, but only to civil actions or criminal charges arising from actions taken by any Acquired Station.

5. The Acquirer shall not be bound by Sections VI(C)(1), VI(C)(2), VI(C)(5), VI(C)(7), and VI(F) of the Final Judgment at all.

6. Section VI(A) applies to the Acquirer, but is modified to make the initial period for appointing an Antitrust Compliance Officer in the first sentence 120 days from consummation of the Acquirer's acquisition of the Acquired Station or Acquired Stations.

This Acknowledgement of Applicability may be voided by a joint written agreement between the United States and the Acquirer.

Dated: [ ]

Respectfully submitted,

/s/

[Counsel for Acquirer]

#### United States District Court for the District of Columbia

*United States of America*, Plaintiff, v. *Sinclair Broadcast Group, Inc., Raycom Media, Inc., Tribune Media Company, Meredith Corporation, Griffin Communications, LLC, and Dreamcatcher Broadcasting, LLC*, Defendants.

Case No. 1:18-cv-2609

Judge: Tanya S. Chutkan

#### COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA" or "Tunney Act"), files this Competitive Impact Statement relating to the proposed Final Judgments against Defendants Sinclair Broadcast Group, Inc. ("Sinclair"), Raycom Media, Inc. ("Raycom"), Tribune Media Company ("Tribune"), Meredith Corporation ("Meredith"), Griffin Communications, LLC ("Griffin"), and Dreamcatcher Broadcasting, LLC ("Dreamcatcher") (collectively, "Defendants"), submitted for entry in this civil antitrust proceeding.

#### I. Nature and Purpose of the Proceeding

On November 13, 2018, the United States filed a civil antitrust complaint alleging that Defendants agreed among themselves and other broadcast television stations in many local markets to reciprocally exchange station-specific, competitively sensitive information regarding spot advertising revenues. The Complaint alleges Defendants' agreements are unreasonable restraints of trade that are unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint seeks injunctive relief to prevent Defendants from exchanging competitively sensitive information with and among competing broadcast television stations.

Along with the Complaint, the United States filed proposed Final Judgments for each of the Defendants. The proposed Final

Judgments are substantively the same for all Defendants. The proposed Final Judgments prohibit sharing of competitively sensitive information, require Defendants to implement antitrust compliance training programs, and impose cooperation and reporting requirements.

The United States and Defendants have stipulated that the proposed Final Judgments may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgments would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgments and to punish violations thereof.

**II. Description of the Events Giving Rise to the Alleged Violation**

**A. Industry Background**

Broadcast television stations sell advertising time to businesses that want to advertise their products to television viewers. Broadcast television “spot” advertising,<sup>1</sup> which typically comprises the majority of a station’s revenues, is sold directly by the station itself or through its sales representatives to advertisers who want to target viewers in specific geographic areas called Designated Market Areas (“DMAs”).<sup>2</sup>

Broadcast stations typically make their spot advertising sales through two channels: (1) local sales, which are sales made by the station’s own local sales staff to advertisers who are usually located within the DMA; and (2) national sales, which are sales made either by the broadcast group’s national sales staff or by a national sales representative firm (“Sales Rep Firm”) to regional or national advertisers.

Defendants own or operate multiple broadcast television stations, as set forth in the following table:

Defendant	Stations	DMAs
Sinclair .....	130	87
Raycom .....	55	43
Tribune .....	41	31
Meredith .....	17	12
Griffin .....	4	2
Dreamcatcher .....	3	2

Defendants, along with certain other television broadcast station groups, compete in various configurations in multiple DMAs across the United States. Each Defendant sells spot advertising time to advertisers that seek to target viewers in the DMAs in which

Defendants operate. Prices are individually negotiated with advertisers, and advertisers are able to “play off” the stations against each other to obtain competitive rates.

There are two primary Sales Rep Firms in the United States today, and each represents hundreds of television stations throughout the country in the sale of national advertising time. It is common for one Sales Rep Firm to represent multiple competing stations in the same DMA. In such cases, the stations and the Sales Rep Firms purportedly create firewalls to prevent coordination and information sharing between the sales teams representing competing stations.

**B. The Exchanges of Competitively Sensitive Information**

The Complaint alleges that Defendants and other broadcasters have agreed in many DMAs to reciprocally exchange station-specific revenue pacing data. Revenue pacing data compares a station’s revenues booked for a certain time period to the revenues booked for the same point in time in the previous year, indicating how each station is performing versus the rest of the market and providing insight into each station’s remaining spot advertising inventory for the current period or future periods. The exchanges were systematic and typically included non-public pacing data on national revenues, local revenues, or both, depending on the DMA. The Complaint further alleges that certain Defendants engaged in the exchange of other forms of competitively sensitive information relating to spot advertising in certain DMAs.

The Complaint alleges that the Defendants exchanged pacing information in at least two ways. First, Defendants and other television broadcast stations exchanged information through the Sales Rep Firms. The information was passed both within and between Sales Rep Firms representing competing stations, and was done with Defendants’ knowledge and frequently at Defendants’ instruction. Second, in some DMAs, Defendants and other broadcasters exchanged pacing information directly between local station employees.

The Complaint alleges that these exchanges of pacing information allowed stations to better understand, in real time, the availability of inventory on competitors’ stations, which is often a key factor affecting negotiations with buyers over spot advertising prices. The exchanges also helped stations to anticipate whether competitors were likely to raise, maintain, or lower spot advertising prices. Understanding competitors’ pacing can help stations gauge competitors’ and advertisers’ negotiation strategies, inform their own pricing strategies, and help them resist more effectively advertisers’ attempts to obtain lower prices by playing stations off of one another. Defendants’ information exchanges therefore distorted the normal price-setting mechanism in the spot advertising market and harmed the competitive process within the affected DMAs.

**III. Explanation of the Proposed Final Judgments**

The provisions of the proposed Final Judgments closely track the relief sought in

the Complaint and are intended to provide prompt, certain, and effective remedies that will ensure that Defendants and their employees and sales representatives will not impede competition by sharing competitively sensitive information, directly or indirectly, including through Sales Rep Firms, with their rival broadcast television stations. The requirements and prohibitions in the proposed Final Judgments will terminate Defendants’ illegal conduct, prevent recurrence of the same or similar conduct, ensure that Defendants establish an antitrust compliance program, and provide the United States with cooperation in its ongoing investigation. The proposed Final Judgments protect competition and consumers by putting a stop to the anticompetitive information sharing alleged in the Complaint.

**A. Prohibited Conduct**

The proposed Final Judgments broadly prohibit Defendants from sharing competitively sensitive information with rival broadcast television stations in the same DMA.<sup>3</sup> Specifically, Section IV ensures that Defendants will not, directly or indirectly, communicate competitively sensitive information, including pricing or pricing strategies, pacing, holding capacity, revenues, or market shares, to broadcast television stations in the same DMA or to those stations’ sales representatives and agents.

The proposed Final Judgment provides that its provisions will apply to stations owned by the settling Defendants even if Defendants sell those stations to new buyers. In particular, Paragraph IV(C) provides that Defendants may not sell any stations they own as of October 1, 2018, unless the buyer has executed an Acknowledgement that each station will continue to be bound by the terms of the proposed Final Judgment. The United States, in its discretion, may waive this requirement on a station-by-station basis, or alternatively the buyer and the United States may agree to void the Acknowledgement after the sale has been consummated.

**B. Conduct Not Prohibited**

Section V makes clear that the proposed Final Judgments do not prohibit Defendants from sharing or receiving competitively sensitive information in certain specified circumstances where the information sharing appears unlikely to cause harm to competition. Paragraph V(A) allows Defendants to communicate competitively sensitive information to advertising customers or prospective customers. Paragraph V(B) allows for the communication of competitively sensitive information with other broadcasters (i) for purposes of evaluating or effectuating a transaction, such

<sup>3</sup> As the proposed Final Judgments for each of the Defendants are substantively identical, references to sections throughout this Competitive Impact Statement refer to the same section in each Final Judgment. The only exception is Section III of the proposed Final Judgment for Defendant Raycom, which has a provision that, in light of the proposed acquisition of Raycom by Gray Television, Inc. (“Gray”), clarifies that the proposed Final Judgment does not apply to stations Gray owned that were not owned by Raycom as of October 1, 2018.

<sup>1</sup> Spot advertising differs from other types of television advertising, such as network and syndicated television advertising, which are sold by television networks and producers of syndicated programs on a nationwide basis and broadcast in every market where the network or syndicated program is aired.

<sup>2</sup> A DMA is a geographical unit designated by the A.C. Nielsen Company, a company that surveys television viewers and furnishes data to aid in evaluating television audiences. There are 210 DMAs in the United States. DMAs are widely accepted by television stations, advertisers, and advertising agencies as the standard geographic area to use in evaluating television audience size and demographic composition.

as the purchase or sale of a station; or (ii) when reasonably necessary for achieving the efficiencies of a legitimate collaboration among competitors, such as a lawful joint venture.<sup>4</sup> Paragraph V(C) confirms that the proposed Final Judgments do not prohibit petitioning conduct protected by the Noerr-Pennington doctrine. Paragraph V(D) permits the exchange of competitively sensitive information through certain third-party aggregation services under the conditions listed in that paragraph, including that the aggregated data does not permit individual stations to identify, deduce, or estimate the prices or pacing of their competitors.

#### C. Antitrust Compliance Obligations

Under Section VI of the proposed Final Judgments, each of the Defendants must designate an Antitrust Compliance Officer who is responsible for implementing training and antitrust compliance programs and ensuring compliance with the Final Judgment. Among other duties, the Antitrust Compliance Officer will be required to distribute copies of the Final Judgment and ensure that training on the Final Judgment and the antitrust laws is provided to Defendants' management and sales staff. Section VI also requires Defendants to establish an antitrust whistleblower policy and remedy and report violations of the Final Judgment. Under Paragraph VI(D)(4), each Defendant, through its CEO, General Counsel, or Chief Legal Officer, must certify annual compliance with the Final Judgment. This compliance program is necessary in light of the extensive history of communications among rival stations that facilitated Defendants' agreements.

#### D. Defendants' Cooperation

As outlined in Section VII, Defendants must cooperate fully and truthfully with the United States in any investigation or litigation relating to the sharing of competitively sensitive information in the broadcast television industry. The required cooperation may include providing sworn testimony, employee interviews, and/or documents and data.

Paragraph VII(C) provides that, subject to each Defendant's truthful and continuing cooperation as defined in Paragraphs VII(A) and (B), the United States will not bring further civil actions or criminal charges against that Defendant for any agreement to share competitively sensitive information with any other station or Sales Rep Firm when the agreement: (1) was entered into and terminated before the date of the filing of the

Complaint and (2) does not constitute or include an agreement to fix prices or divide markets.

#### E. Enforcement of Final Judgment

The proposed Final Judgments contain provisions designed to promote compliance and make the enforcement of Division consent decrees as effective as possible. Paragraph X(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgments, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that the Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph X(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgments. The proposed Final Judgments were drafted to restore all competition the United States alleged was harmed by Defendants' challenged conduct. The Defendants agree that they will abide by the proposed Final Judgments, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgments that is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face, and as interpreted in light of this procompetitive purpose.

Paragraph X(C) further provides that, should the Court find in an enforcement proceeding that a Defendant has violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, in order to compensate American taxpayers for any costs associated with the investigation and enforcement of violations of a proposed Final Judgment, Paragraph X(C) provides that in any successful effort by the United States to enforce a Final Judgment against a Defendant, whether litigated or resolved before litigation, Defendant agrees to reimburse the United States for any attorneys' fees, experts' fees, or costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Finally, Section XI of the proposed Final Judgments provides that each Final Judgment shall expire seven years from the date of its entry, except that after five years from the date of its entry, the Final Judgments may be terminated upon notice by the United States to the Court and the Defendants that the continuation of the Final Judgments is no longer necessary or in the public interest.

#### IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been

injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgments will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgments have no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

#### V. Procedures Available for Modification of the Proposed Final Judgments

The United States and Defendants have stipulated that the Court may enter the proposed Final Judgments after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgments are in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgments within which any person may submit to the United States written comments regarding the proposed Final Judgments. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgments at any time before the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: Owen M. Kendler, Chief, Media, Entertainment, & Professional Services Section, Antitrust Division, United States Department of Justice, 450 5th Street, N.W., Suite 4000, Washington, DC 20530.

Under Section IX, the proposed Final Judgments provide that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgments.

#### VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgments, seeking injunctive relief against Defendants' conduct through a full trial on the merits. The United States is satisfied, however, that the relief sought in the proposed Final Judgments will terminate the anticompetitive conduct alleged in the Complaint and more quickly restore the benefits of competition to advertisers. Thus, the proposed Final Judgments would achieve the relief the United States might have obtained through

<sup>4</sup> Paragraph V(B)(5) states that, for purposes of Paragraph V(B) only, certain types of Joint Sales Agreements, Local Marketing Agreements, and similar agreements qualify as a "legitimate competitor collaboration" under Paragraph V(B)(b). Paragraph V(B)(5) was included in recognition of the fact that some broadcasters have entered into a number of these agreements in various DMAs. The question of whether these agreements have any effect on competition was outside the scope of the United States' investigation in this matter. Accordingly, Paragraph V(B)(5) should not be read as an admission that such agreements otherwise comply with the antitrust laws, and the United States takes no position on that question for purposes of this proceeding.



litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

### VII. Standard of Review Under the APPA for the Proposed Final Judgments

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment “is in the public interest.” 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court’s inquiry is necessarily a limited one as the government is entitled to “broad discretion to settle with the defendant within the reaches of the public interest.” *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); see generally *United States v. SBC Commc’ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. U.S. Airways Group, Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the “court’s inquiry is limited” in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at \*3 (D.D.C. Aug. 11, 2009) (noting that the court’s review of a consent judgment is limited and only inquires “into whether the government’s determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable”).

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government’s complaint, whether the decree is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not “engage in an unrestricted evaluation of what relief would best serve the public.” *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel*

*Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); see also *Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at \*3. Instead:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court’s role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is “within the reaches of the public interest.” More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel*, 648 F.2d at 666 (emphasis added) (citations omitted).<sup>5</sup>

In determining whether a proposed settlement is in the public interest, a district court “must accord deference to the government’s predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.” *SBC Commc’ns*, 489 F. Supp. 2d at 17; see also *U.S. Airways*, 38 F. Supp. 3d at 74–75 (noting that a court should not reject the proposed remedies because it believes others are preferable and that room must be made for the government to grant concessions in the negotiation process for settlements); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be “deferential to the government’s predictions as to the effect of the proposed remedies”); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant “due respect to the government’s prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case”). The ultimate question is whether “the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the ‘reaches of the public interest.’” *Microsoft*, 56 F.3d at 1461 (quoting *United States v. Western Elec. Co.*, 900 F.2d 283, 309 (D.C. Cir. 1990)). To meet this standard, the United States “need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.” *SBC Commc’ns*, 489 F. Supp. 2d at 17.

Moreover, the court’s role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459; see also *U.S. Airways*, 38 F. Supp.

3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government’s decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at \*20 (“the ‘public interest’ is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged”). Because the “court’s authority to review the decree depends entirely on the government’s exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60. As a court in this district confirmed in *SBC Communications*, courts “cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.” *SBC Commc’ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments,<sup>6</sup> Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. § 16(e)(2); see also *U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: “[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court’s “scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.” *SBC Commc’ns*, 489 F. Supp. 2d at 11. A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways*, 38 F. Supp. 3d at 76. See also *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the “Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone”); S. Rep. No. 93–298 93d Cong., 1st Sess., at 6 (1973) (“Where the public interest

<sup>5</sup> See also *BNS*, 858 F.2d at 464 (holding that the court’s “ultimate authority under the [APPA] is limited to approving or disapproving the consent decree”); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to “look at the overall picture not hypercritically, nor with a microscope, but with an artist’s reducing glass”).

<sup>6</sup> The 2004 amendments substituted “shall” for “may” in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. Compare 15 U.S.C. § 16(e) (2004), with 15 U.S.C. § 16(e)(1) (2006); see also *SBC Commc’ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments “effected minimal changes” to Tunney Act review).

can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.”).

#### **VIII. Determinative Documents**

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgments.

Dated: November 13, 2018

Respectfully submitted,

\_\_\_\_\_  
Lee F. Berger \* (D.C. Bar #482435)

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# FEDERAL REGISTER

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Part III

## Environmental Protection Agency

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40 CFR Part 51

Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 51**

[EPA-HQ-OAR-2016-0202; FRL-9986-53-OAR]

RIN 2060-AS82

**Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing nonattainment area and ozone transport region (OTR) implementation requirements for the 2015 ozone national ambient air quality standards (NAAQS) (2015 ozone NAAQS) that were promulgated on October 1, 2015. This final rule is largely an update to the implementing regulations previously promulgated for the 2008 ozone NAAQS, and we are retaining without significant revision the majority of those provisions to implement the 2015 ozone NAAQS. This final rule addresses a range of nonattainment area and OTR state implementation plan (SIP) requirements for the 2015 ozone NAAQS, including attainment demonstrations, reasonable further progress (RFP) and associated milestone demonstrations, reasonably available control technology (RACT), reasonably available control measures (RACM), major nonattainment new source review, emissions inventories, the timing of required SIP submissions and compliance with emission control measures in the SIP. The EPA is not taking any final action regarding our proposed approach for revoking a prior ozone NAAQS and establishing anti-backsliding requirements; the agency intends to address any revocation of the 2008 ozone NAAQS and any potential anti-backsliding requirements in a separate future rulemaking.

**DATES:** This final rule is effective on February 4, 2019.

**ADDRESSES:** The EPA has established a docket for this action, identified by Docket ID No. EPA-HQ-OAR-2016-0202. All documents in the docket are listed in the <http://www.regulations.gov> website. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on

the internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically in <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For further general information on this final rule, contact Mr. Robert Lingard, Office of Air Quality Planning and Standards (OAQPS), U.S. EPA, at (919) 541-5272 or [lingard.robert@epa.gov](mailto:lingard.robert@epa.gov); or Mr. Butch Stackhouse, OAQPS, U.S. EPA, at (919) 541-5208 or [stackhouse.butch@epa.gov](mailto:stackhouse.butch@epa.gov). For information on the Information Collection Request (ICR), contact Mr. Butch Stackhouse, OAQPS, U.S. EPA, at (919) 541-5208 or [stackhouse.butch@epa.gov](mailto:stackhouse.butch@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Preamble Glossary of Terms and Acronyms*

The following are abbreviations of terms used in the preamble.

ACT Alternative Control Techniques  
 AERR Air Emissions Reporting Requirements  
 AVERT AVOIDed Emissions geneRation Tool  
 BSMP Basic Smoke Management Practices  
 CAA Clean Air Act  
 CFR Code of Federal Regulations  
 CO Carbon Monoxide  
 CTG Control Techniques Guidelines  
 DOI Department of the Interior  
 DOT Department of Transportation  
 EE/RE Energy Efficiency and Renewable Energy  
 EMFAC EMISSION FACTors Model  
 EPA Environmental Protection Agency  
 FLM Federal Land Managers  
 FR Federal Register  
 ICR Information Collection Request  
 I/M Inspection and Maintenance  
 IPT Interprecursor Trade or Interprecursor Trading  
 MCD Milestone Compliance Demonstration  
 MOVES Motor Vehicle Emissions Simulator  
 NAAQS National Ambient Air Quality Standards  
 NNSR Nonattainment New Source Review  
 NO<sub>x</sub> Nitrogen Oxides  
 O<sub>3</sub> Ozone  
 OAQPS Office of Air Quality Planning and Standards  
 OMB Office of Management and Budget  
 OTR Ozone Transport Region  
 PAMS Photochemical Assessment Monitoring Station  
 PM<sub>2.5</sub> Fine Particulate Matter  
 ppm Parts per Million  
 PRA Paperwork Reduction Act  
 PTE Potential to Emit  
 PUC Public Utility Commission  
 RACM Reasonably Available Control Measures  
 RACT Reasonably Available Control Technology  
 RFP Reasonable Further Progress  
 ROP Rate of Progress  
 RPS Renewable Portfolio Standard

SIP State Implementation Plan  
 SO<sub>2</sub> Sulfur Dioxide  
 tpy Tons per Year  
 TAR Tribal Authority Rule  
 TAS Treatment as a State  
 TGD Technical Guidance Document  
 TIP Tribal Implementation Plan  
 USB U.S. Background  
 U.S.C. United States Code  
 USDA U.S. Department of Agriculture  
 VOC Volatile Organic Compounds

*B. Does this action apply to me?*

Entities potentially affected directly by this final rule include state, local and tribal governments and air pollution control agencies (“air agencies”) responsible for attainment and maintenance of the NAAQS. Entities potentially affected indirectly by this final rule as regulated sources include owners and operators of sources of emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>) that contribute to ground-level ozone formation.

*C. Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this **Federal Register** document will be posted at <http://www.epa.gov/ozone-pollution>.

*D. How is this notice organized?*

The information presented in this notice is organized as follows:

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## II. Background and Summary of Final Rule

On October 1, 2015, the EPA promulgated revisions to the primary and secondary NAAQS for ozone, setting them at a level of 0.070 parts per million (ppm)<sup>1</sup> (see 80 FR 65292). Since

<sup>1</sup> Annual fourth highest daily maximum 8-hour average concentration, averaged over 3 years. For a detailed explanation of the calculation of the 3-year 8-hour average, see 40 CFR part 50, Appendix P.

the 2015 primary and secondary NAAQS for ozone are identical, for convenience, we refer to both as “the 2015 ozone NAAQS” or “the 2015 ozone standards.” The 2015 ozone NAAQS retains the same general form and averaging time as the 0.075 ppm NAAQS set in 2008.

Following revisions to a NAAQS, the EPA and air agencies work together to implement the revised NAAQS. To assist air agencies, the EPA considers the extent to which existing EPA regulations and guidance are sufficient to implement the standard and whether any revisions or updates to those regulations and guidance would be helpful or appropriate in facilitating the implementation of the revised standard by air agencies and regulated entities. The Clean Air Act (CAA or Act) does not require that the EPA promulgate new or revised implementing regulations or guidance when a NAAQS is revised. However, in certain circumstances, the EPA has determined that revisions to implementing regulations are necessary to ensure that the CAA’s requirements are clear for both air agencies and regulated entities. Air agencies are required to submit SIPs, as provided in the CAA and in EPA regulations. It is important to note that the existing EPA regulations in title 40 part 51 of the Code of Federal Regulations (CFR) applicable to SIPs generally and to particular pollutants (e.g., ozone and its precursors) continue to apply even if these regulations are not updated.

The 1990 CAA Amendments contained ozone NAAQS implementation provisions that were specific to the then-current 1-hour ozone NAAQS, including regulatory provisions and SIP-related deadlines that do not directly apply to the revised 8-hour ozone NAAQS. To fill the resulting statutory gaps and provide other needed regulatory guidance, the EPA has promulgated several iterations of implementing regulations for the 8-hour ozone NAAQS that was issued by the EPA in 1997 and revised in 2008. For purposes of the 2015 ozone NAAQS, the EPA is generally applying the overall framework and policy approach of the implementation provisions associated with the previous 8-hour NAAQS, with the exception of elements addressed in the adverse portions of the D.C. Circuit’s February 2018 decision in *South Coast Air Quality Management District v. EPA* (discussed later in this preamble), to provide for regulatory certainty and consistent implementation across time. This overall regulatory framework and policy approach has been developed over time with input

from numerous stakeholders, including the states responsible for fulfilling the CAA’s NAAQS implementation requirements under the CAA’s system of cooperative federalism. The framework and policy approach have also been significantly informed by numerous court opinions rendered on specific regulatory provisions, where the EPA’s initial interpretation of the CAA’s ozone implementation requirements was vacated or otherwise restricted.

An initial step in implementing a revised NAAQS is the process in which states and some tribes recommend area designations (i.e., as nonattainment, attainment or unclassifiable) to the EPA. The EPA then evaluates air quality data and other factors prior to making our proposed and final determinations regarding area designations. Areas designated as nonattainment for a revised ozone NAAQS are classified (i.e., as Marginal, Moderate, Serious, Severe or Extreme) according to the severity of the nonattainment at the time of designation (as determined based on the area’s “design value” (DV)).<sup>2</sup> The EPA has already finalized in a separate action the air quality thresholds corresponding with, and attainment dates for, each level of nonattainment area classification for the 2015 ozone NAAQS (see 83 FR 10376; March 9, 2018), which were then applied when the EPA promulgated final nonattainment area designations for that standard (see 83 FR 25766; June 4, 2018 (for most of the U.S.); 83 FR 35136; July 25, 2018 (for the San Antonio, Texas area)).

On November 17, 2016, the EPA solicited public comment on proposed revisions to the ozone NAAQS implementing regulations as they apply to the 2015 ozone NAAQS, including the nonattainment area classification scheme and SIP requirements, in a notice of proposed rulemaking (NPRM) (81 FR 81276). The public comment period for the NPRM ran from November 17, 2016, to February 13, 2017. The EPA received a total of 79 comment submissions on the NPRM. As explained previously, those comments relating to the nonattainment area classifications scheme were addressed in a separate action in March 2018 finalizing those classifications (see generally 83 FR 10376). The preamble to this final rule discusses significant comments received on the SIP requirements portion of the NPRM and

<sup>2</sup> The air quality DV for the 8-hour ozone NAAQS is the 3-year average of the annual fourth highest daily maximum 8-hour average concentration for a specific monitor. When an area has multiple monitors, the area’s DV is determined by the individual monitor with the highest DV.

how those comments were considered by the EPA in general terms. The accompanying Response to Comments document provides more detailed responses to the comments received. The public comments received on the NPRM and the EPA's Response to Comments document are posted in the docket at <http://www.regulations.gov> (Docket ID No. EPA-HQ-OAR-2016-0202).

We are finalizing submittal deadlines and specific CAA requirements for the content of nonattainment area and OTR SIPs for the 2015 ozone NAAQS in this rule. As a general matter, this final rule follows the same basic principles and approach that the EPA applied to interpret the CAA's part D ozone nonattainment area requirements in developing the implementation rule for the 2008 ozone NAAQS.<sup>3</sup>

In the NPRM, the EPA also proposed and sought comment on two alternative approaches for revoking the 2008 ozone NAAQS for all purposes and, where applicable, establishing anti-backsliding requirements. The first approach to revoking the 2008 ozone NAAQS would parallel the approach used in revoking the 1-hour and 1997 ozone NAAQS. Under this first approach, the 2008 ozone NAAQS would be revoked at essentially the same time for all areas of the U.S., and a set of protective anti-backsliding requirements would be promulgated for all areas that are designated nonattainment for the 2008 and 2015 NAAQS as of 1 year after the effective date of designation for the 2015 ozone NAAQS. Under the second approach, the 2008 ozone NAAQS would not be revoked in any area designated nonattainment for the 2008 ozone NAAQS until that area is redesignated to attainment with an approved CAA section 175A 10-year maintenance plan; the 2008 ozone NAAQS would in no case be revoked earlier than 1 year after the effective date of designation for the 2015 ozone NAAQS. The 2008 ozone NAAQS would be revoked in all other areas 1 year after the effective date of designation for the 2015 ozone NAAQS.

The EPA's approach to revoking the 1997 ozone NAAQS was challenged in *South Coast Air Quality Management District v. EPA*, 882 F.3d 1138 (D.C. Cir. 2018) (hereinafter referred to as *South Coast II*). On February 16, 2018, the D.C. Circuit issued a partially adverse decision in that case. The EPA is currently assessing the implications of

the decision on those aspects of the proposal regarding revocation of the 2008 ozone NAAQS. Thus, the EPA is not acting today on any of the proposed revocation options of the 2008 ozone NAAQS or any proposed anti-backsliding requirements. The EPA intends to address any revocation of the 2008 ozone NAAQS, and any potential anti-backsliding requirements in a separate future rulemaking.

Regarding the format of this preamble, on topics where we made a specific proposal, we include detailed information about what we proposed, what we are finalizing and our rationale, as well as responses to significant comments. As stated previously, we are retaining without significant revision the majority of existing implementing regulations associated with the 2008 ozone NAAQS for purposes of implementing the 2015 ozone NAAQS, as discussed in Section III of this preamble. We discuss those aspects of existing implementing regulations that we are revising for purposes of implementing the 2015 ozone NAAQS in Section IV of this preamble. Section V of this preamble addresses several topics, relevant to implementing of the 2015 ozone NAAQS, on which we solicited public comment in the November 2016 proposal, but for which we are not promulgating any specific revisions to the agency's implementing regulations at this time.

### III. Provisions of the 2008 Ozone NAAQS Implementing Regulations To Be Retained Without Significant Revision

For purposes of implementing the 2015 ozone NAAQS, we are retaining without significant revision the majority of regulatory provisions previously promulgated for purposes of implementing the 2008 ozone NAAQS. The classification and SIP requirement provisions for the 2008 standards were codified at subpart AA of 40 CFR part 51, and the corresponding provisions for the 2015 standards will now be codified in subpart CC of part 51.

#### A. Submission Deadlines and Form for Nonattainment Area and OTR SIP Elements Due Under CAA Sections 182 and 184

##### 1. Deadlines for Submitting Nonattainment Area and OTR SIP Elements

*a. Summary of Proposal.* The EPA proposed to retain our existing approach to establishing deadlines for submitting ozone nonattainment area SIP elements. For reference, the final 2008 Ozone NAAQS SIP Requirements Rule

provides an extensive discussion of the EPA's current approach and rationale for SIP element submittal deadlines (80 FR 12265; March 6, 2015).

*b. Final Rule.* The EPA is adopting the proposed approach for establishing deadlines for submitting nonattainment area SIP elements under CAA section 182 for the 2015 ozone NAAQS, based on the approach and rationale articulated in the final 2008 Ozone SIP Requirements Rule. Section 182 of the CAA requires states with ozone nonattainment areas to submit various SIP elements within specified time periods after November 15, 1990 (the date of enactment of the 1990 CAA Amendments). For the 2015 ozone NAAQS, the EPA is retaining the approach adopted for the 2008 ozone NAAQS: The SIP elements listed will generally be due, with the limited exceptions discussed later, according to the timeframes provided for those SIP elements in CAA section 182, but measured from the effective date of nonattainment designation rather than from November 15, 1990.

Accordingly, states with areas designated nonattainment have: 2 years from the effective date of a nonattainment designation to submit SIP revisions addressing emissions inventories (required by CAA section 182(a)(1)), RACT (CAA section 182(b)(2)) and emissions statement regulations<sup>4</sup> (CAA section 182(a)(3)(B)); 3 years from the effective date of nonattainment designation to submit SIP revisions addressing 15 percent rate of progress (ROP) plans (CAA section 182(b)(1)) and Moderate area attainment demonstrations (CAA section 182(b)(1)); and 4 years from the effective date of nonattainment designation to submit SIP revisions addressing 3 percent per year<sup>5</sup> RFP plans (CAA section 182(c)(2)) and attainment demonstrations for Serious and higher classified areas (CAA section 182(c)(2)), where applicable. If an area is subject to vehicle inspection and maintenance (I/M) program requirements based on its classification, the SIP revision due date for the I/M requirements is already codified in 40 CFR 51.372(b)(2) and is aligned with the due date for the attainment demonstration SIP for the area (*i.e.*, either 3 or 4 years from the effective date of nonattainment designation, depending on the area's

<sup>4</sup> See Section IV.E of this preamble for additional information on emissions statements.

<sup>5</sup> The 3 percent per year RFP plans are typically submitted in 3-year increments, *i.e.*, as 9 percent RFP plans that produce average reductions of 3 percent of baseline emissions per year.

<sup>3</sup> See "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements" (80 FR 12264; March 6, 2015), hereafter referred to as the 2008 Ozone NAAQS SIP Requirements Rule.

classification: 3 years for Moderate areas, 4 years for Serious and higher).

SIP revisions addressing CAA section 185 penalty fee programs in areas initially classified Severe or Extreme are due 10 years from the effective date of nonattainment designation. The 10-year submittal deadline is consistent with section 182(d)(3) of the CAA, which provided slightly more than 10 years for submission of the fee program SIP revision for areas designated as nonattainment and classified as Severe or Extreme by operation of law in 1990 for the 1-hour ozone NAAQS.

SIP submissions addressing nonattainment new source review (NNSR) permit program requirements applicable to the 2015 ozone NAAQS are due 3 years from the effective date of nonattainment designation (*see* new 40 CFR 51.1314). This is consistent with the approach articulated in the 2008 Ozone NAAQS SIP Requirements Rule. This approach is based on the provision in CAA section 172(b) requiring the submission of plans or plan revisions “no later than 3 years from the date of the nonattainment designation.”

We note also that the EPA’s past implementing regulations for revised ozone NAAQS have required OTR states to submit RACT SIP revisions based on the timeframe provided in CAA section 184 as measured from the effective date of designations made pursuant to those revised NAAQS, rather than from November 15, 1990. This requirement was first codified in 40 CFR 51.916 for the 1997 ozone NAAQS, and later codified for the 2008 ozone NAAQS in 40 CFR 51.1116. Under those provisions, states in the OTR are required to submit SIP revisions addressing the RACT requirements of CAA section 184 no later than 2 years after the effective date of designations for nonattainment areas for the revised ozone NAAQS. The EPA is adopting these same general requirements for the 2015 ozone NAAQS (*see* Section III.J of this preamble).

#### *c. Comments and Responses.*

*Comment:* The only adverse comment the EPA received regarding the proposed submittal dates for SIP elements for the 2015 ozone NAAQS specifically pertained to the proposed 3-year schedule for submitting new or revised SIP elements addressing NNSR program requirements. The commenter, objecting to the proposed 3-year NNSR SIP due date, claimed that such a timeframe is contrary to CAA section 182(a)(2)(C), which, based on the commenter’s interpretation, affords 2 years for nonattainment areas to submit their NNSR permit requirements SIP. The EPA received support for the

proposed 3-year NNSR SIP revision deadline from two air agency commenters.

*Response:* The EPA disagrees with the commenter’s argument that a 2-year maximum deadline for NNSR plans for the 2015 ozone NAAQS is required by the CAA. The commenter argues that a 2-year deadline is mandated under provisions contained in CAA section 182. As explained in the 2008 Ozone NAAQS SIP Requirements Rule (*see* 80 FR 12267, March 6, 2015), and the 2015 Ozone NAAQS Implementation Rule Proposal (*see* 80 FR 81278, November 17, 2016), the EPA recognized that CAA section 182(a)(2)(C)(i), under the heading “Corrections to the State implementation plans—Permit programs,” contains a requirement for states to submit SIP revisions to meet the requirements of CAA sections 172(c)(5) and 173 within 2 years after the date of enactment of the 1990 CAA Amendments. The EPA continues to support the interpretation of the statute that the submission of NNSR SIPs due on November 15, 1992, *i.e.*, the date 2 years after enactment of the 1990 CAA Amendments, fulfilled this statutory “corrections” requirement. The plan submittal schedules set forth in the 1990 CAA Amendments at section 182(a)(2) were applicable to the then existing 1-hour ozone NAAQS, and Congress intended them to address SIP-related transition issues unique to the transition from provisions “as in effect immediately before November 15, 1990” to provisions in the newly enacted 1990 CAA Amendments.

The CAA, in the generally applicable subpart 1 provisions of Part D of Title I, specifically section 172(b), provides a submittal schedule for plan revisions following the EPA’s promulgation of “the designation of an area as nonattainment with respect to a national ambient air quality standard. . . .” *See* 42 U.S.C. 7502(b). At the time of the 1990 CAA Amendments, designations for the 1-hour ozone NAAQS were already in existence for all areas of the country—including nonattainment areas. The 1990 CAA Amendments under Title I Part D Subpart 2 added increased programmatic controls and a tiered classification structure on top of the existing ozone nonattainment designations, imposing still more SIP submission requirements on the higher classified areas. Given the existing NNSR programs developed under prior statutory authority, it is reasonable to believe that Congress thought that the initial NNSR SIP corrections required under the newly created section 182(a)(2)(C) could be developed and submitted to the EPA quickly. The EPA

continues to support the interpretation of the statute that the submission of “corrections to the SIP,” including NNSR SIPs, due on November 15, 1992, fulfilled the statutory requirement addressing the SIP revisions associated with the 1-hour ozone standard. Hence, the EPA continues to support the interpretation that the general NAAQS implementation provisions in CAA subpart 1 at section 172(b) govern when the EPA establishes a deadline for the submittal of NNSR SIP revisions that are triggered by ozone NAAQS revisions occurring after November 15, 1990.

#### 2. Form and Content of Nonattainment and OTR SIP Element Submissions Required Under a Revised NAAQS

*a. Summary of Proposal.* The EPA proposed to retain our existing CAA interpretation that air agencies are required to submit all nonattainment SIP elements applicable for an area’s classification following revision of the NAAQS. The EPA also took comment on an option for air agencies to submit a certification statement for previously approved SIP elements. When submitting SIP elements, air agencies may certify that an existing regulation is adequate to meet certain nonattainment area planning requirements for a revised ozone NAAQS, in lieu of submitting a new revised regulation.

*b. Final Rule.* The EPA is finalizing the proposed requirements. We continue to interpret the general SIP requirements of subpart 1 of part D of Title I and the specific nonattainment area planning requirements of CAA section 182 to require air agencies to submit a SIP element to meet each nonattainment area planning requirement for the 2015 ozone NAAQS. Many air agencies already have regulations in place to address certain nonattainment area planning requirements due to nonattainment designations for a prior ozone NAAQS. Air agencies should review any existing regulation that was previously approved by the EPA to determine whether it is sufficient to fulfill obligations triggered by the revised ozone NAAQS.<sup>6</sup> For example, a state may have an emissions statement regulation (per CAA section 182(a)(3)(B)) that has been previously approved by the EPA for a prior ozone NAAQS that covers all the state’s nonattainment areas and relevant classes and categories of sources for the 2015 ozone NAAQS, and that is likely to be sufficient for purposes of meeting

<sup>6</sup> This review should include determining whether the nonattainment area boundary for the current ozone NAAQS is consistent with the boundary for the previous standards.

the emissions statement requirement for the 2015 ozone NAAQS. Where an air agency determines that an existing regulation is adequate to meet applicable nonattainment area planning requirements of CAA section 182 (or OTR RACT requirements of CAA section 184) for a revised ozone NAAQS, that air agency's SIP revision may provide a written statement certifying that determination in lieu of submitting new revised regulations. The EPA has acted on similar certifications in the past. *See e.g.*, 83 FR 26221 (June 6, 2018) (explaining that the EPA is approving Pennsylvania's certification that the state's previously approved emissions statement regulation meets the requirements of CAA section 182(a)(3)(B) for the 2008 ozone standards). Other previously approved nonattainment SIP elements that may be sufficient for purposes of an area that has been designated nonattainment for a revised ozone NAAQS might include (but are not necessarily limited to): NNSR, vehicle I/M programs and clean fuels requirement for boilers.

An air agency choosing to provide a written certification in lieu of submitting a new or revised regulation must provide the certification to the EPA qualifying as a SIP revision in accordance with CAA section 110 and 40 CFR 51.102, 103 and part 51 Appendix V. An air agency should identify the related applicable requirements and explain how each is met for the revised ozone NAAQS by the regulation previously approved for a prior ozone NAAQS. The purpose of the statement is to demonstrate compliance with the nonattainment area planning requirements for the new NAAQS. These written statements must be treated in the same manner as any other SIP submission and must be provided to the EPA in accordance with applicable SIP submission requirements and deadlines.

In cases where a previously approved regulation is modified for any reason, or where no regulation exists, air agencies must provide the new or modified regulation as a SIP submission. This would include new or modified RACT provisions for states with nonattainment areas and states in an OTR resulting from a new review of major source emission controls.

#### *c. Comments and Responses.*

*Comment:* Several commenters objected to the EPA's expectation that states certify the adequacy of previously approved SIP elements for a revised NAAQS with written statements, through the same process as other SIP revisions. They argue the certification process is redundant and therefore a

waste of resources because the EPA already has several processes to ensure that states meet CAA section 110 planning obligations including infrastructure SIPs. Two commenters supported the EPA's option for SIP certification statements, citing its benefits in streamlining the SIP development process.

*Response:* The EPA disagrees with commenters that SIP certification statements triggered by a NAAQS revision are redundant and already accomplished through other SIP processes, including infrastructure SIPs. As noted previously, we continue to interpret the general SIP requirements of CAA section 110 and specific nonattainment planning requirements of CAA section 182 to require an air agency to provide a SIP submission to meet each nonattainment area planning requirement for a revised ozone NAAQS. To the extent that commenters suggest the EPA should adopt a general presumption of adequacy for previously approved SIP elements, we disagree. We note in particular that the infrastructure SIP submission triggered by a NAAQS revision provides the public and the EPA an opportunity to review the basic structure of a state's air quality management program and is not intended—nor can it be presumed—to address the adequacy of individual nonattainment SIP elements for purposes of the revised NAAQS.

The submission of individual nonattainment SIP elements for purposes of the revised NAAQS provides the public and the EPA an opportunity to review and comment upon each element of a nonattainment SIP. If the air agency reviews an existing SIP element and concludes it does not need to be revised in light of the new NAAQS, submission of a certification SIP allows the public to review the air agency's assessment and provide comment on any changes they may think necessary. The EPA then also has an opportunity to review the air agency's assessment and ensure that it is consistent with CAA requirements in relation to the revised 2015 ozone NAAQS.

As noted by other commenters, the certification statement option is intended to streamline the SIP submission process, providing air agencies with the flexibility to address multiple SIP elements in a single certification statement, and combine the SIP certification action with other actions subject to public notice and comment. The EPA does not believe that developing and submitting certification SIP elements will be a significant and unnecessary drain on state resources.

#### *B. Redesignation to Nonattainment Following Initial Designations*

##### 1. Summary of Proposal

The EPA proposed to retain our existing requirements concerning SIP-related deadlines for areas initially designated attainment for a current ozone NAAQS and subsequently redesignated to nonattainment for the same standards. These requirements are codified for the 2008 ozone NAAQS at 40 CFR 51.1106.

##### 2. Final Rule

The EPA is finalizing the proposed requirements. The newly adopted provisions, codified at 40 CFR 51.1306, generally allow an extension of any absolute, fixed date applicable to SIP requirements under part 51—excluding attainment dates—equal to the length of time between the effective date of the initial designation for the NAAQS and the effective date of the redesignation, unless otherwise provided in the implementation provisions for the 2015 ozone NAAQS.<sup>7</sup> The maximum attainment date for a redesignated area would be based on the area's classification.

##### 3. Comments and Responses

The EPA received no adverse comments on the proposed requirements.

#### *C. Determining Eligibility for 1-Year Attainment Date Extensions for the 2015 Ozone NAAQS Under CAA Section 181(a)(5)*

##### 1. Summary of Proposal

The EPA proposed to retain our existing approach for eligibility criteria for 1-year attainment date extensions under CAA section 181(a)(5). These criteria are codified for the 1997 ozone NAAQS in 40 CFR 51.907 and for the 2008 ozone NAAQS in 40 CFR 51.1107, and we proposed to retain the same approach for purposes of the 2015 ozone NAAQS.

##### 2. Final Rule

The EPA is finalizing the proposed approach. Under the newly adopted provisions, codified at 40 CFR 51.1307, an area that fails to attain a specific ozone NAAQS by its attainment date

<sup>7</sup> For example, the adopted RACT provisions at 40 CFR 51.1312(a)(3)(ii) for reclassified nonattainment areas (which would include areas redesignated to nonattainment) require that RACT SIP revisions be implemented as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier (*see* Section IV.B of this preamble).



would be eligible for the first 1-year extension if, for the attainment year, the area's fourth highest daily maximum 8-hour average is at or below the level of the standards. The area would be eligible for the second 1-year extension if the area's fourth highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, is at or below the level of the standards. For the second 1-year extension, the area's fourth highest daily maximum 8-hour average for each year (the attainment year and the first extension year) must be determined using the monitor which, for that year, has the fourth highest daily maximum 8-hour average of all the monitors that represent that area (*i.e.*, the area's fourth highest daily maximum 8-hour average for each year could be derived from a different monitor).

In addition to demonstrating that an area meets these general eligibility criteria, an air agency must demonstrate that it has complied with all requirements and commitments pertaining to the area in the applicable SIP, per CAA section 181(a)(5)(A). Given the state and federal partnership in implementing the CAA, it is reasonable for the EPA to interpret CAA section 181(a)(5)(A) as permitting the agency to rely upon the certified statements of our state counterparts, and the EPA has long interpreted the provision to be satisfied by such statements.<sup>8</sup> In practice, in conjunction with a request for an extension, a state air agency's Executive Officer, or other senior individual with equivalent responsibilities, signs and affirms that the state is complying with its applicable federally approved SIP.

### 3. Comments and Responses

*Comment:* The EPA received general support for retaining the current 1-year attainment date extension approach. One commenter requested that either the EPA codify clear and specific instructions on the criteria that must be met, beyond the monitoring requirements in proposed section 51.1307, or that the EPA update guidance for ozone to correspond with the carbon monoxide (CO) attainment date extension guidance<sup>9</sup> since the EPA

<sup>8</sup> See "Procedures for Processing Bump Ups and Extension Requests for Marginal Ozone Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, U.S. EPA, February 3, 1994.

<sup>9</sup> The CO guidance referenced is contained in the Sally Shaver memo, "Criteria for Granting Attainment Date Extensions, Making Attainment Determinations, and Determinations of Failure to Attain the NAAQS for Moderate CO Nonattainment Areas" (10/23/95), available at: <https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/>

ties consideration of an attainment date extension for CO to a state's "substantial" efforts to reduce emissions.

*Response:* We disagree with the commenter that the EPA should codify instructions or develop separate guidance for granting attainment date extensions under an ozone NAAQS. CAA section 181(a)(5)(A) requires a state to have complied with all applicable SIP requirements and commitments to qualify for an attainment date extension. As discussed previously, the EPA has long interpreted CAA section 181(a)(5)(A) as permitting the agency to rely upon the certified statements of our state counterparts that a state has complied with all applicable ozone SIP requirements and commitments to qualify for an attainment date extension. In practice, we have found this approach for ozone NAAQS implementation to be reasonable and sufficient, and do not intend to develop separate 1-year attainment deadline extension guidance for the ozone NAAQS at this time.

#### D. Modeling and Attainment Demonstration Requirements

##### 1. Summary of Proposal

The EPA proposed to retain our existing modeling and attainment demonstration requirements, which are codified for the 2008 ozone NAAQS in 40 CFR 51.1108, and to establish criteria and due dates for attainment demonstrations and implementation of control measures for the 2015 ozone NAAQS. Due dates for attainment demonstrations are established relative to the effective date of area designations, and all control measures in the attainment demonstration must be implemented no later than the beginning of the attainment year ozone season, notwithstanding specific RACT and/or RACM implementation deadline requirements. For reference, the final 2008 Ozone NAAQS SIP Requirements Rule provides an extensive discussion of attainment demonstration elements and related modeling protocols (80 FR 12268; March 6, 2015). The EPA's current procedures for modeling are well developed and described in the EPA's "Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, PM<sub>2.5</sub>, and Regional Haze" (November 2018).<sup>10</sup>

<sup>10</sup> 19951023\_shaver\_attainment\_extension\_co\_naa.pdf.

<sup>10</sup> Modeling guidance, tools and supporting documents for SIP attainment demonstration are available at: [http://www3.epa.gov/scram001/guidance\\_sip.htm](http://www3.epa.gov/scram001/guidance_sip.htm).

##### 2. Final Rule

The EPA is finalizing modeling requirements as outlined in the proposal, and adopted at 40 CFR 51.1308. The EPA continues to believe the modeling requirements established in the final 2008 Ozone NAAQS SIP Requirements Rule are reasonable, primarily because photochemical modeling is generally available and reasonable to employ. However, this requirement also explicitly allows for another analytical method, determined by the Administrator to be at least as effective as photochemical modeling, to be substituted for or used to supplement a photochemical modeling-based assessment of an emissions control strategy. Any alternative analysis should be based on technically credible methods that allows for the timely submittal of the attainment demonstration. States should review the EPA modeling guidance<sup>11</sup> and consult their appropriate EPA Regional office before proceeding with alternative analyses. Under CAA section 182(a), states are not required to submit an attainment demonstration SIP for Marginal areas. The EPA offers assistance to states as they consider the most appropriate course of action for Marginal areas that may be at risk of failing to meet the NAAQS within the applicable 3-year timeframe. If necessary, states can choose to adopt additional controls for such areas or they can request a voluntary reclassification to a higher classification category. The EPA believes that voluntary reclassification for areas that are not likely to attain by their attainment date may facilitate quicker attainment, including through the development of the attainment plans required of Moderate and higher classified areas.

##### 3. Comments and Responses

*Comment:* One commenter stated that the EPA should finalize our 2014 draft modeling guidance. Another commenter stated that the use of photochemical grid modeling (or equivalent) for attainment demonstrations should be left to a state's discretion.

*Response:* The EPA acknowledges the need to update modeling guidance and has recently released an updated (November 2018) version, as described previously.

<sup>11</sup> The modeling guidance can be found in the EPA's "Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, PM<sub>2.5</sub>, and Regional Haze," available at: <https://www3.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf>.

In regard to the use of photochemical grid modeling, the EPA is retaining the same modeling and attainment demonstration requirements as established in the final 2008 Ozone NAAQS SIP Requirements Rule. CAA section 182(c)(2)(A) contains specific requirements for states to use photochemical modeling or another analytical method determined to be at least as effective in their SIPs for Serious and higher classified nonattainment areas. Since photochemical modeling is the most scientifically rigorous technique to determine NO<sub>x</sub> and/or VOC emissions reductions needed to show attainment of the NAAQS and is readily available, we are requiring photochemical modeling (or another analytical method determined to be at least as effective) for all attainment demonstrations (including Moderate areas). We continue to believe that photochemical modeling is the most technically credible method of estimating future year ozone concentrations based on projected VOC and NO<sub>x</sub> precursor emissions.

#### E. Requirements for RFP

##### 1. Summary of Proposal

The EPA proposed in general to retain our existing approach for RFP requirements and to add new regulatory provisions codifying statutory requirements for RFP milestone compliance demonstrations (MCDs) (see Section IV.A of this preamble). The EPA also sought comment on requiring states to use the year of an area's designation as nonattainment as the baseline year for the emissions inventory for the RFP requirement.

The existing RFP requirements for the 2008 ozone NAAQS are codified in 40 CFR 51.1110 and are organized by the following major subjects: Submission deadline for SIP revisions; RFP requirements for affected areas;<sup>12</sup> creditability of emission control measures; creditability of out-of-area emissions reductions; calculation of non-creditable emissions reductions; and baseline emissions inventories for RFP plans. For reference, the final 2008 Ozone NAAQS SIP Requirements Rule provides an extensive discussion of the EPA's rationale and approach for how air agencies can provide for RFP in their

nonattainment SIPs (80 FR 12271; March 6, 2015).

In general terms, ozone nonattainment areas must achieve RFP toward attainment of the ozone NAAQS, as established in the RFP provisions of subparts 1 and 2 of part D of the CAA. Section 172(c)(2) of subpart 1 requires that nonattainment SIPs must provide for RFP, defined in CAA section 171(1) as "such annual incremental reductions in emissions" as required by CAA part D or as required by the Administrator for ensuring attainment of the NAAQS. Subpart 2 establishes specific percent reduction targets for ozone nonattainment areas. For Moderate and higher classified areas, CAA section 182(b)(1) requires a 15 percent reduction in VOC emissions from the baseline anthropogenic emissions within 6 years after November 15, 1990 (this RFP requirement is also referred to as ROP). The 15 percent ROP requirement must be met by the end of the 6-year period regardless of when the nonattainment area attains the NAAQS. For an area that already has an approved SIP providing for the 15 percent ROP requirement for VOC under either the 1-hour ozone NAAQS or a prior 8-hour ozone NAAQS, the EPA proposed that the area would not need to meet that requirement again. Instead, such areas would be treated like areas covered under CAA section 172(c)(2) if they are classified as Moderate for the 2015 ozone NAAQS. The EPA proposed to retain our existing interpretation of CAA section 172(c)(2) to require such areas to obtain 15 percent reductions in ozone precursor emissions over the first 6 years after the baseline year. For areas classified Serious and higher, the EPA proposed to retain our existing interpretation of CAA section 182(c)(2)(B) to require such areas to obtain 18 percent ozone precursor emission reductions in that 6-year period.<sup>13</sup> For areas classified Serious and higher, CAA section 182(c)(2)(B) requires an additional 3 percent per year reduction from baseline VOC emissions, averaged over consecutive 3-year periods, beginning 6 years after November 15, 1990, and applying each year until the attainment date. CAA section 182(c)(2)(B) also allows NO<sub>x</sub> reductions to be substituted for VOC reductions under certain conditions to

meet the 3 percent per year RFP requirement.

The EPA proposed that the default baseline year for RFP would be the calendar year for the most recently available triennial emissions inventory at the time ROP/RFP plans are developed (e.g., 2017 for initial designations effective in 2018). We further proposed that states may use an alternative year (i.e., a year other than 2017) between the year of the revised NAAQS issuance (2015) and the year in which nonattainment designation is effective. Consistent with our approach for the 2008 ozone NAAQS, we proposed that all states associated with a multi-state nonattainment area must consult and agree on a single RFP baseline year for the area. The EPA also invited comment on an alternative approach of requiring that states use the year of the effective date of an area's designation as the baseline year for the emissions inventory for the RFP requirements.

##### 2. Final Rule

The EPA is finalizing most aspects of our proposals for implementing the CAA's RFP provisions for purposes of the 2015 ozone NAAQS, as adopted at 40 CFR 51.1310. In general, the EPA is following essentially the same interpretation of CAA subpart 2 requirements for RFP as was applied to areas for the 2008 and 1997 8-hour ozone standards, with exceptions noted in this section. Areas classified Moderate for the 2015 ozone NAAQS that had SIPs previously approved to meet the ROP requirements for the 1-hour, 1997 8-hour or 2008 8-hour ozone NAAQS would be treated like areas covered under CAA section 172(c)(2), and would need to meet the 3 percent per year RFP requirements under CAA section 182(c)(2)(B) if they are classified Serious or higher for the 2015 standards. For the purposes of the 2015 ozone NAAQS, the EPA continues to interpret CAA section 172(c)(2) as requiring Moderate areas with an approved SIP under the 1-hour ozone NAAQS or prior 8-hour ozone NAAQS to achieve 15 percent ozone precursor (NO<sub>x</sub> and/or VOC) emission reductions over the first 6 years after the RFP baseline year for the 2015 ozone NAAQS. For areas classified Serious and higher, the EPA continues to interpret CAA section 182(c)(2)(B) to require such areas to obtain 18 percent ozone precursor emission reductions in that 6-year period. This interpretation was recently upheld in a challenge to the 2008 Ozone NAAQS SIP Requirements Rule in *South Coast II*, 882 F.3d at 1153. The EPA also continues to interpret CAA

<sup>12</sup> 40 CFR 51.1110(a)(2)-(4) establish three separate sets of RFP requirements for: (1) Areas with an approved 1-hour or 1997 ozone NAAQS 15 percent VOC ROP plan; (2) areas for which an approved 15 percent VOC ROP plan for the 1-hour or 1997 ozone NAAQS exists for only a portion of the area; and (3) areas without an approved 1-hour or 1997 ozone NAAQS 15 percent VOC ROP plan.

<sup>13</sup> Similar interpretations were made for the 1997 ozone NAAQS in the Phase 2 Ozone Implementation Rule (70 FR 71615, November 29, 2005), which were upheld in *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009), and for the 2008 ozone NAAQS in the 2008 Ozone NAAQS SIP Requirements Rule (80 FR 12271, March 6, 2015), which were upheld in *South Coast II*, 882 F.3d 1138 (D.C. Cir. 2018).

section 182(c)(2)(B) for the 2015 ozone NAAQS as requiring an additional 3 percent per year reduction from baseline emissions, averaged over consecutive 3-year periods, beginning 6 years after the RFP baseline year, and applying each year until the attainment date.

For the RFP baseline year for the 2015 ozone NAAQS, we are specifying that the baseline year shall be the calendar year for the most recently available triennial emissions inventory preceding the year of the area's effective date of designation as a nonattainment area. This approach was recently upheld by the D.C. Circuit in *South Coast II*. Alternatively, states may choose to use the year that corresponds with the year of the effective date of an area's nonattainment designation for the RFP baseline year.

For purposes of the 2008 ozone NAAQS, the EPA selected 2011 as a baseline year because it is tied to the 3-year statutory cycle for emissions inventories, and preceded the year in which nonattainment area designations for the 2008 ozone NAAQS were effective (*i.e.*, 2012). The D.C. Circuit in *South Coast II* upheld this approach as reasonable, because the chosen baseline year was tied to the triennial emissions inventory states must prepare. *South Coast II*, 882 F.3d at 1152. Further, we note that the EPA has historically interpreted RFP "baseline emissions" (CAA section 182(b)(1)(B)) as corresponding with the initial emissions inventory in CAA section 182(a) (*see, e.g.*, 80 FR 12290; March 6, 2015).<sup>14</sup> For an ozone NAAQS revision occurring after the CAA was amended in 1990, we interpret the periodic triennial inventory required by CAA section 182(a)(3) as effectively supplanting the initial emissions inventory required by CAA section 182(a)(1), because the revised periodic inventory must meet the same requirements as the initial emissions inventory. We therefore believe it is a reasonable interpretation of the CAA that RFP baseline year emissions may correspond with the calendar year and contents of the triennial inventory required by CAA section 182(a)(3). We are finalizing our approach that states shall use an RFP baseline year for the 2015 ozone NAAQS that corresponds with the calendar year for the most recent

triennial emissions inventory preceding the year of the area's effective date of nonattainment designation. For example, states with areas designated nonattainment in 2018 would use 2017 as the RFP baseline year, which would be the year of the most recent triennial emissions inventory.

For purposes of the 2015 ozone NAAQS, states may also use an alternative RFP baseline year that corresponds with the year of the effective date of an area's designation. This adopted approach for the 2015 ozone NAAQS revises the approach provided in the 2008 Ozone NAAQS SIP Requirements Rule, which allowed the state to select an alternative RFP baseline year between the year of the revised NAAQS issuance (*i.e.*, 2008) and the year in which nonattainment designations were effective (*i.e.*, 2012), so long as the state could explain why the alternative year was appropriate. The EPA's creation of the state-selected alternative RFP baseline year option for the 2008 Ozone NAAQS SIP Requirements Rule was rejected by the court in *South Coast II*, because the court found that the EPA failed to provide a statutory justification for why alternative baselines were appropriate. *South Coast II*, 882 F.3d at 1153. As noted previously, the EPA sought comment on an alternative approach that would have *required* states to use the year of the effective date of an area's designation (designation year) as the baseline year for the RFP emissions inventory instead of the triennial emissions inventory year.

As explained earlier, for purposes of the 2015 ozone NAAQS, we are specifying that the baseline year shall be the calendar year for the most recently available triennial emissions inventory preceding the year of the area's effective date of designation as a nonattainment area, but also allowing an alternative approach that provides states the option to use an area's designation year as the baseline year for RFP. This alternative option is grounded in our interpretation of the RFP requirement in CAA section 182(b)(1)(B), which defines "baseline emissions" in terms of total VOC and NO<sub>x</sub> emissions in the area "during the calendar year 1990." There is clear ambiguity in the statutory language at issue, since we do not believe Congress intended 1990 to be the baseline year for RFP requirements for all future ozone NAAQS. Therefore, the EPA must develop a reasonable interpretation of the baseline year provisions at issue. Note that section 93.119(e)(4) of the EPA's transportation conformity rule requires that for any NAAQS promulgated after 1997 the baseline year

is the "most recent year for which the EPA's Air Emissions Reporting Requirements (AERR) (40 CFR part 51, subpart A) requires submission of on-road mobile source emissions inventories as of the effective date of designations." For nonattainment areas for the 2015 ozone NAAQS, 2017 is the baseline year for transportation conformity purposes.

The calendar year 1990 is tied to the November 15, 1990, date of passage of the 1990 CAA Amendments, which "is the date on which Congress specified that the initial designations/ classifications . . . under the 1990 amendments would take effect." *NRDC v. EPA*, 777 F.3d 456 (D.C. Cir. 2014) (citing 42 U.S.C. 7407(d)(1)(C), 7511(a)(1)). Thus, for the 1-hour standard, the RFP baseline year was "calendar year 1990," which was *both* the year of the initial emissions inventory required by CAA section 182(a)(1) *and* the year of designations. However, for future promulgations and revisions of NAAQS, the year of designations and the year of the most recent triennial emissions inventory may not coincide—and for the 2015 ozone NAAQS, they do not. Where they do not coincide, no single year can be selected that presents both the attributes that 1990 did in the context of the Amendments and the subsequent implementation process. Accordingly, we believe that in the context of implementing a NAAQS for which these 2 years do not coincide, the textual reference in the RFP requirement's "baseline emissions" provision reference to the "calendar year 1990" (CAA section 182(a)(1)) can be reasonably read to refer to that year either as an area's year of initial designation or as the year of the relevant emissions inventory. We therefore believe it is a reasonable interpretation of the statute that states should be able to use an area's designation year for the 2015 ozone NAAQS as the RFP baseline year, as an alternative to the calendar year for the most recent triennial emissions inventory. All states associated with a multi-state nonattainment area must consult and agree on using the alternative baseline year.

### 3. Comments and Responses

*Comment:* The EPA received broad support for our proposal to retain the existing flexible approach to establishing an RFP baseline year. Commenters noted that an RFP baseline year fixed to an area's designation may not synchronize with the most recently available triennial emissions inventory at the time ROP/RFP plans are

<sup>14</sup> CAA section 182(b)(1)(B) defines "baseline emissions" as the total amount of actual VOC or NO<sub>x</sub> emissions from anthropogenic sources in the area during calendar year 1990, which we have interpreted as corresponding with the emissions inventory for the area as of November 15, 1990; the development of an emissions inventory with that reference date was required under CAA section 182(a)(1).

developed, may not be representative of ozone-producing conditions for the area, and/or would not account for early actions to reduce ozone precursor emissions. A fixed RFP baseline year could necessitate preparing separate emissions inventories, *e.g.*, for attainment demonstration modeling and RFP, at additional time and cost for air agencies with limited resources.

*Response:* As discussed previously, the EPA's creation of the state-selected alternative RFP baseline year option for the 2008 Ozone NAAQS SIP Requirements Rule was rejected by the court in *South Coast II*, because the court found that the EPA failed to provide a statutory justification for why alternative baselines were appropriate. We agree with the commenter that under certain circumstances a single fixed RFP baseline year could increase resource burden for air agencies. Thus, we are adopting an approach for the 2015 ozone NAAQS that syncs the RFP baseline with triennial emissions inventory reporting years, but permits states to alternatively choose the year of designation.

*Comment:* One commenter argued that the EPA's existing RFP baseline year approach is illegal because the Act plainly specifies the RFP baseline year in CAA section 182(b)(1)(B) (*i.e.*, calendar year 1990), and that RFP requirements would therefore be triggered—and the RFP baseline year would be set—by the date an area is designated for the revised NAAQS. The commenter claimed that where Congress wanted to authorize variation in implementing the ozone NAAQS, it did so expressly (*e.g.*, allowing the Administrator to adjust SIP deadlines for reclassified areas under CAA section 182(i)).

*Response:* As discussed previously, the court in *South Coast II* upheld the EPA's selection of 2011, *i.e.*, the most recent year from the 3-year statutory cycle for emissions inventories, as the default RFP baseline year for the 2008 ozone NAAQS as reasonable. We are adopting this same approach for the 2015 ozone NAAQS, while also allowing states to choose an alternative RFP baseline year corresponding with an area's designation year. For the reasons cited previously, we believe both options are reasonable interpretations of the CAA's RFP provisions in adapting those provisions to revised ozone NAAQS.

*Comment:* A commenter objected to the EPA's proposed interpretation of CAA section 182(b)(1) that would consider areas with an approved 15 percent ROP plan under a prior ozone NAAQS to have satisfied the 15 percent

ROP requirement for the 2015 ozone NAAQS. The EPA applied this interpretation previously for purposes of the 1997 and 2008 8-hour ozone standards. The commenter claimed that the proposed 15 percent ROP requirement illegally allows “paper-only” reductions to substitute for the actual emission reductions intended by Congress and articulated in the general rule for creditability of ROP reductions in CAA section 182(b)(1)(C) (*i.e.*, the required reductions are creditable “to the extent they have actually occurred”).

Another commenter objected to the 15 percent ROP requirement in general, describing it as outdated, not necessitated under the current ozone standards, and increasingly difficult to achieve given the decreases in ozone precursor emissions that have occurred since the CAA was amended in 1990. If the EPA continues to implement the 15 percent ROP requirement, the commenter argues that required emission reductions should be measured against the 1990 baseline in all cases, and that states should have discretion to apply NO<sub>x</sub> or VOC reductions toward the initial 15 percent (VOC) ROP increment.

*Response:* The EPA disagrees that a state must demonstrate that an area actually achieved the 15 percent ROP within 6 years of the baseline year for a prior NAAQS. Consistent with the decision in *NRDC v. EPA*, 571 F.3d 1235 (D.C. Cir. 2009), we continue to maintain that if a state has already met the requirement to submit for approval and to implement a nonattainment area ROP/RFP emissions reduction plan to meet the requirements of CAA section 182(b)(1)(A) for either the 1-hour standard or a prior 8-hour standard, the state will not have to meet it again for the 2015 ozone NAAQS. As noted previously, the court in *South Coast II* affirmed this approach for purposes of the 2008 Ozone NAAQS SIP Requirements Rule.

We also disagree with the comment that the 15 percent ROP is not necessary under current ozone standards and that, if required by the EPA, it should be measured against the 1990 baseline in all cases. The RFP regulation must comply with the CAA, and section 182(b)(1) of the CAA explicitly requires that ozone nonattainment areas classified as Moderate or higher submit an ROP plan to achieve a 15 percent reduction in VOC baseline emissions over a 6-year period following the baseline year. We continue to believe it is reasonable to interpret that baseline year as the one associated with the revised ozone NAAQS and not the year

1990 associated with the then-current 1-hour NAAQS. A 1990 baseline year for areas designated in 2018 would be impractical and an absurd result, especially for areas that were not nonattainment for the ozone NAAQS in 1990 and thus never subject to a past requirement to develop and use a 1990 nonattainment area emissions inventory for purposes of RFP. Assessing 15 percent ROP only during the period 1990–1996 would be meaningless for a nonattainment area that must in 2018 begin achieving emissions reductions to meet an ozone NAAQS with an attainment date in a year after 2018.

*Comment:* A number of commenters disagreed with the EPA's proposed requirement that creditable emission reductions for 15 percent ROP and 3 percent RFP must be obtained from sources within the nonattainment area. Several of the commenters referenced our proposed requirement regarding control measures for out-of-area sources in a state's jurisdiction (*see* Section IV.C of this preamble), and questioned whether it was reasonable that the EPA could require out-of-area emission reductions for attainment purposes, while not crediting those reductions toward RFP.

*Response:* The EPA disagrees with the commenters. The proposed requirement that emission reductions must be obtained from within the nonattainment area to be creditable for ROP and RFP is the same as that adopted in the 2008 Ozone NAAQS SIP Requirements Rule, which was challenged and upheld in *South Coast II*. The court in *South Coast II* declared that the related statutory text is unambiguous, noting that RFP is measured from “baseline emissions,” which is defined in the CAA as “the total amount of actual VOC or NO<sub>x</sub> emissions from all anthropogenic sources in the area during the” baseline year.<sup>15</sup> The court noted the singular term “the area” appears in a CAA section titled “Moderate Areas,” and not a greater area (CAA section 182(b); *see also* CAA section 182(c)). The court concluded, in considering the grammar and context of the CAA's RFP provisions, that “in the area” unambiguously refers to baseline emissions within the nonattainment area. *South Coast II*, 882 F.3d at 1146–47. Accordingly, the EPA concludes, as we did in the 2008 Ozone NAAQS SIP Requirements Rule, that we have no legal basis for allowing RFP credits for reductions outside the nonattainment area.

<sup>15</sup> *See* CAA sections 182(b)(1)(A), (b)(1)(B), (c)(2)(B), (d) and (e).

## F. Requirements for RACT and RACM

### 1. RACT

*a. Summary of Proposal.* The EPA proposed to retain our existing general RACT requirements, which are codified for the 2008 ozone NAAQS at 40 CFR 51.1112, and to add new deadline requirements for certain RACT SIP submissions (*see* Section IV.B of this preamble). For reference, the final 2008 Ozone NAAQS SIP Requirements Rule provides an extensive discussion of the EPA's rationale and approach for how air agencies can provide for RACT in their nonattainment SIPs (80 FR 12278; March 6, 2015).

*b. Final Rule.* The EPA is retaining our existing general RACT requirements for purposes of the 2015 ozone NAAQS. These requirements, which are being codified at 40 CFR 51.1312(a) and (b), address the content and timing of RACT SIP submittals and implementation, as well as major source criteria for RACT applicability.<sup>16</sup> Underlying these general RACT requirements are well-established EPA policies and guidance, including existing control techniques guidelines (CTGs) and alternative control techniques (ACTs).<sup>17</sup> Consistent with the EPA's prior guidance (80 FR 12279; March 6, 2015), when determining what is RACT for a particular source or source category, air agencies should also consider all other relevant information (including recent technical information and information received during the state's public comment period) that is available at the time they develop their RACT SIPs. The EPA's adopted RACT approach includes our longstanding policy with respect to "area wide average emission rates." This policy recognizes that states may demonstrate as part of their NO<sub>x</sub> RACT SIP submission that the weighted average NO<sub>x</sub> emission rate of all sources in the nonattainment area subject to RACT meets NO<sub>x</sub> RACT requirements;

<sup>16</sup> The EPA has defined RACT as the most stringent emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. *See* related discussion in "Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas," Memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators (December 9, 1976) (Strelow Memorandum) and the proposed General Preamble Supplement in 44 FR 53762 (September 17, 1979). Availability and feasibility may differ across sources in the same category. *See* "Criteria for Determining RACT in Region IV," Memorandum from John Calcagni, Chief, Economic Analysis Branch, to G.T. Helms, Jr., Chief, Control Programs Operations Branch (June 19, 1985).

<sup>17</sup> The EPA's CTGs and ACTs are available at: <https://www.epa.gov/ozone-pollution/control-techniques-guidelines-and-alternative-control-techniques-documents-reducing>.

states are not required to demonstrate RACT-level controls on a source-by-source basis. This approach for demonstrating RACT through area-wide average emissions rates was recently upheld in *South Coast II*, 882 F.3d at 1154. The EPA is also finalizing new submittal and implementation deadlines for certain RACT SIP revisions, as discussed in Section IV.B of this preamble.

#### *c. Comments and Responses.*

*Comment:* Two commenters stated that the EPA should extend the submittal deadline for RACT SIPs from 24 months to 36 months following the effective date of a nonattainment area's designation.

*Response:* The EPA has considered the comments regarding an extended submittal deadline for RACT SIP revisions, but, given the uncertainty regarding the statutory basis for providing such flexibility, does not interpret CAA section 182(b)(2) to allow extending the deadline for RACT SIP submissions triggered by initial nonattainment area designations. We are instead adopting an interpretation consistent with the requirement in the 2008 Ozone NAAQS SIP Requirements Rule that RACT SIP submissions triggered by initial nonattainment area designations must be submitted based on the timeframe provided in CAA section 182(b)(2), *i.e.*, no later than 24 months after the effective date of nonattainment designation for a specific ozone NAAQS. As discussed in Section IV.B of this preamble, the EPA is adopting an alternative approach for RACT SIP revisions triggered by nonattainment area reclassifications or the issuance of a new CTG.

*Comment:* Several commenters objected to the EPA proposing to retain our "area wide average emission rates" approach for RACT. They contend that the emissions averaging policy violates the clear terms of the CAA, which they argue requires each individual source to meet the NO<sub>x</sub> RACT requirement. One commenter provided a legal analysis of statutory language and legislative history as confirming the source-specific basis of RACT requirements. The same commenter also pointed to the EPA's previous RACT guidance<sup>18</sup> and the NO<sub>x</sub> RACT exemption provisions of CAA section 182(f)(1) and (2) as further evidence of RACT's source-specific basis.

*Response:* The EPA disagrees with the commenters. As mentioned previously, the D.C. Circuit recently upheld the RACT emissions averaging policy with respect to the 2008 ozone NAAQS, and

we are retaining it for purposes of the 2015 ozone NAAQS. The court held that "the plain language [of the CAA]—in the context of the interrelationship between [42 U.S.C. sections] 7511a(b)(2) and 7502(c)(1)—does not mandate RACT for each individual source." *South Coast II*, 882 F.3d at 1154. In addition to holding that the CAA does not require the approach advanced by the commenters, the court further held that the EPA's area-wide emissions averaging approach for the 2008 ozone NAAQS, which is adopted again here for the 2015 ozone standards, is reasonable. *Id.* ("The EPA's interpretation reasonably allows nonattainment areas to meet RACT-level emissions requirements through averaging within a nonattainment area.").

### 2. RACM

*a. Summary of Proposal.* The EPA proposed to retain our existing RACM requirements, which are codified for the 2008 ozone NAAQS at 40 CFR 51.1112. The EPA also proposed to codify the existing requirement under CAA section 172(c)(6) that, in addition to impacts of emissions from sources inside an ozone nonattainment area, air agencies must also consider the impacts of emissions from sources outside an ozone nonattainment area but within a state's boundaries, and to require such other measures for emissions reductions from these intrastate sources as needed to attain the ozone NAAQS by the applicable attainment date (*see* Section IV.C of this preamble). For reference, the final 2008 Ozone NAAQS SIP Requirements Rule describes the EPA's current rationale and approach for how air agencies can provide for RACM in their nonattainment SIPs (80 FR 12282; March 6, 2015).

*b. Final Rule.* The EPA is retaining our existing general RACM requirements for purposes of the 2015 ozone NAAQS, as codified at 40 CFR 51.1312(c). The EPA interprets the RACM provision to require a demonstration that an air agency has adopted all reasonable measures (including RACT) to meet RFP requirements and to demonstrate attainment as expeditiously as practicable and, thus, that no additional measures that are reasonably available will advance the attainment date or contribute to RFP for the area.<sup>19 20 21</sup>

<sup>19</sup> "State Implementation Plans; General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas" 44 FR 20375 (April 4, 1979). "State Implementation Plans; General Preamble for the Implementation of Title I

<sup>18</sup> *See* Strelow Memorandum.

Further, the EPA requires that air agencies consider all available measures, including those being implemented in other areas, but must adopt measures for an area only if those measures are economically and technologically feasible and will advance the attainment date, or if those measures are necessary for RFP. The EPA is retaining our existing general RACM requirements for the 2015 ozone NAAQS based on the current rationale and approach articulated in the final 2008 Ozone NAAQS SIP Requirements Rule, and the requirements of CAA section 172(c)(6).

*c. Comments and Responses.* The EPA received no adverse comments on our proposal to retain our existing general RACM requirements for purposes of the 2015 ozone NAAQS. Our responses to comments regarding consideration of other measures for emissions reductions from intrastate sources under CAA section 172(c)(6) are provided in Section IV.C of this preamble.

#### *G. CAA Section 182(f) NO<sub>x</sub> Exemption Provisions*

##### 1. Summary of Proposal

The EPA proposed to retain our existing NO<sub>x</sub> exemption provisions under CAA section 182(f), which are codified for the 2008 ozone NAAQS at 40 CFR 51.1113. These provisions would allow a person or an air agency to petition the Administrator for an exemption from NO<sub>x</sub> obligations for the 2015 ozone NAAQS under CAA section 182(f) for any area designated nonattainment and for any area in an OTR. The EPA proposed that NO<sub>x</sub> exemptions granted for a previous ozone NAAQS would not apply to relieve an area from CAA section 182(f) NO<sub>x</sub> obligations under the 2015 standards.

##### 2. Final Rule

The EPA is finalizing our proposal to retain the existing NO<sub>x</sub> exemption provisions under CAA section 182(f) for purposes of the 2015 ozone NAAQS, as codified at 40 CFR 51.1313. NO<sub>x</sub> exemptions granted for any prior ozone

NAAQS do not relieve an area from CAA section 182(f) NO<sub>x</sub> obligations under the 2015 ozone NAAQS. Consistent with current EPA policy, existing NO<sub>x</sub> exemptions for prior ozone standards remain valid for purposes of determining applicable requirements for implementing those prior standards.<sup>22</sup>

##### 3. Comments and Responses

The EPA received no significant adverse comments regarding our proposal to retain our existing NO<sub>x</sub> exemption provisions under CAA section 182(f) for purposes of the 2015 ozone NAAQS.

#### *H. General Nonattainment NSR Requirements*

##### 1. Summary of the Proposed Rule

With one significant exception, the EPA proposed to retain our NNSR requirements contained at 40 CFR 51.165 and part 51 Appendix S, which include provisions for the preconstruction review and issuance of permits to proposed new major stationary sources and major modifications locating in ozone nonattainment areas. The one exception pertained to a proposal to address interprecursor trading (IPT) for meeting the offset requirement for ozone, which is discussed further in Section IV.D of this preamble.

##### 2. Final Rule

The EPA is adopting general NNSR requirements for the 2015 ozone NAAQS at 40 CFR 51.1314, as proposed. As explained in Section IV.D of this preamble, the EPA is restating our existing policy on ozone IPT, which is currently codified at 40 CFR 51.165(a)(11) and part 51 Appendix S, section IV.G.5, in response to a petition for reconsideration. A basic understanding of how the NNSR requirements would otherwise apply to the 2015 ozone NAAQS can be obtained from the preamble discussion at Section VIII.C in the final rule establishing the 2015 ozone NAAQS. *See* 80 FR 65442 (October 26, 2015).

##### 3. Comments and Responses

The EPA received no significant adverse comments regarding our proposed general NNSR requirements. Please see Section IV.D of this preamble

for comments related to the EPA restating our existing policy on ozone IPT.

#### *I. Ambient Monitoring Requirements*

The EPA did not propose any changes to the existing ozone ambient monitoring requirements that are codified in 40 CFR part 58. Monitoring rule amendments published on October 17, 2006 (71 FR 61236), established minimum ozone monitoring requirements based on population and levels of ozone in an area to better prioritize monitoring resources. The minimum monitoring requirements are contained in Table D–2 of appendix D to part 58. The Photochemical Assessment Monitoring Station (PAMS) program collects ambient air measurements in accordance with the enhanced monitoring requirements of CAA section 182(c)(1). The rulemaking for the final 2015 ozone NAAQS included revisions to the PAMS requirements at 40 CFR part 58 (80 FR 65416; October 26, 2015). The revisions were intended to provide a more spatially dispersed monitoring network, reduce potential redundancy and improve data value while providing monitoring agencies flexibility in collecting additional information needed to understand their specific ozone issues. The EPA received no adverse comments on the existing part 58 ozone ambient monitoring requirements, and makes no changes to these existing requirements in this final rule.

#### *J. Requirements for an OTR*

##### 1. Summary of Proposal

The EPA proposed to retain our existing OTR requirements, and to add new deadline requirements for certain RACT SIP revisions (*see* Section IV.B of this preamble). The OTR requirements for the 2008 ozone NAAQS, which are codified in 40 CFR 51.1116, establish the general applicability of CAA sections 176A (interstate transport commissions) and 184 (control of interstate ozone air pollution), and stipulate the criteria and timing for RACT SIP submittals and RACT implementation for those portions of states located in an OTR (*see* 80 FR 12295; March 6, 2015). With the exception of additional submission and implementation deadlines for certain RACT SIP revisions (*see* Section IV.B of this preamble), the EPA proposed to retain the same requirements for the 2015 ozone NAAQS, without revision.

of the Clean Air Act Amendments of 1990; Proposed Rule." 57 FR 13560 (April 16, 1992).

<sup>20</sup> "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas," Memorandum from John S. Seitz, Director, OAQPS, November 30, 1999. Available at: [https://www3.epa.gov/ttn/naaqs/aqmguides/collection/cp2/19991130\\_seitz\\_racm\\_guide\\_ozone.pdf](https://www3.epa.gov/ttn/naaqs/aqmguides/collection/cp2/19991130_seitz_racm_guide_ozone.pdf).

<sup>21</sup> "Additional Submission on RACM from States with Severe One-Hour Ozone Nonattainment Area SIPs," Memorandum from John S. Seitz, Director, OAQPS, December 14, 2000, available at: [https://www3.epa.gov/ttn/naaqs/aqmguides/collection/cp2/20001214\\_seitz\\_additional\\_racm\\_submissions.pdf](https://www3.epa.gov/ttn/naaqs/aqmguides/collection/cp2/20001214_seitz_additional_racm_submissions.pdf).

<sup>22</sup> "Guidance on Limiting Nitrogen Oxides (NO<sub>x</sub>) Requirements Related to 8-Hour Ozone Implementation," Memorandum from Stephen D. Page, Director, OAQPS, to Air Directors, Regions I–X (January 14, 2005), available at: [https://www3.epa.gov/ttn/naaqs/aqmguides/collection/cp2/20050114\\_page\\_guidance\\_8-hr\\_ozone\\_nox\\_exemptions.pdf](https://www3.epa.gov/ttn/naaqs/aqmguides/collection/cp2/20050114_page_guidance_8-hr_ozone_nox_exemptions.pdf).

## 2. Final Rule

The EPA is finalizing the proposed OTR requirements. The adopted requirements for purposes of the 2015 ozone NAAQS are codified at 40 CFR 51.1316.

## 3. Comments and Responses

The EPA received no adverse comments specific to the proposed OTR requirements.

### *K. Fee Programs for Severe and Extreme Nonattainment Areas That Fail To Attain*

#### 1. Summary of Proposal

For the 2015 ozone NAAQS the EPA proposed to retain without revision our existing fee program SIP submission requirements for ozone nonattainment areas classified Severe or Extreme, which are codified for the 2008 ozone NAAQS in 40 CFR 51.1117.

## 2. Final Rule

The EPA is finalizing the proposed requirements. The adopted fee program provisions, codified for the 2015 ozone NAAQS at 40 CFR 51.1317, require states with ozone nonattainment areas classified Severe or Extreme to submit a SIP revision that meets the requirements of CAA section 185 (Enforcement for Severe and Extreme ozone nonattainment areas for failure to attain) within 10 years of the effective date of an area's nonattainment designation. For nonattainment areas reclassified to Severe or Extreme from a lower classification after the date of their initial nonattainment designation, the EPA retains the ability to set an alternative deadline for the section 185 SIP submission, if appropriate, in the final action reclassifying the area. We anticipate that adjusting the section 185 SIP submission deadline could be appropriate in situations where the reclassification action occurs on a date that is unreasonably near to or past the 10-year deadline applicable to areas initially designed Severe or Extreme.

## 3. Comments and Responses

The EPA received no adverse comments on the proposed requirements.

### *L. Applicability*

The EPA proposed to retain the provision that establishes applicability of the current ozone NAAQS implementation provisions with respect to the prior ozone NAAQS, which is codified for the 2008 ozone NAAQS at 40 CFR 51.1119. This applicability provision states that the implementation provisions for the 2008 ozone standards

(subpart AA of part 51) shall replace the implementation provisions for the previous 1997 standards (subpart X of part 51) after revocation of the 1997 NAAQS, except for anti-backsliding purposes. The EPA proposed to retain the same applicability provision for purposes of the 2015 ozone NAAQS, except that the proposed new implementation provisions (to be codified in subpart CC of part 51) would replace those for the 2008 ozone NAAQS (subpart AA) if the 2008 standards are revoked for all purposes, except for anti-backsliding purposes.

As discussed in Section II of this preamble, the EPA is not taking any final action regarding our approach for revoking a prior ozone NAAQS and establishing anti-backsliding requirements; the agency intends to address any revocation of the 2008 ozone NAAQS and any potential anti-backsliding requirements in a separate future rulemaking. As a result, we are not finalizing the proposed applicability provision discussed in this section at this time, which would be dependent on the particular approach that we take to any revocation action for 2008 ozone NAAQS that we may issue in the future.

### *M. International Transport*

Domestic ozone air quality can be influenced by emissions sources located outside of the U.S. These contributions to U.S. ozone concentrations from sources outside of the U.S., which can be from nearby sources in a bordering country or from sources many thousands of miles away,<sup>23</sup> can affect to varying degrees the ability of some areas to attain and maintain the 2015 ozone NAAQS. The EPA continues to work with air agencies and other countries to better understand the extent and implications of transboundary flows of air pollutants and, where possible, to mitigate their impact on U.S. domestic air quality.

In most areas in the U.S. with monitors that exceed the NAAQS, modeling studies demonstrate that the exceedances are due primarily to anthropogenic emissions sources within the U.S. However, Congress recognized the possibility that in some nonattainment areas the ability to attain the NAAQS may be impacted by

<sup>23</sup> Observational and modeling studies have shown that international ozone precursor emissions can lead to ozone formation within the atmospheric boundary layer over far-upwind areas. When meteorological conditions are favorable, this ozone can be transported within the mid- and upper troposphere where ozone lifetimes can exceed one week. Eventually, these ozone plumes can mix down to the surface and contribute to local ozone concentrations within the U.S. Task Force on Hemispheric Transport of Air Pollution, 2010.

emissions sources outside of the U.S., and through CAA section 179B (“International Border Areas”), Congress provided the EPA with the authority to address the impact of international emissions in areas designated nonattainment. Specifically, Congress provided that the EPA could approve attainment plans for areas that could attain the relevant NAAQS by the statutory attainment date “but for” emissions emanating from outside the U.S. When applicable, this CAA provision relieves states from imposing control measures on emissions sources in the state’s jurisdiction beyond those required to address reasonably controllable emissions from within the U.S. Specifically, CAA section 179B(a) provides that the EPA shall approve an attainment plan for such an area if: (i) The attainment plan meets all other applicable requirements of the CAA, and (ii) the submitting state can satisfactorily demonstrate that, “but for emissions emanating from outside the United States,” the area would attain and maintain the relevant NAAQS. In addition, CAA section 179B(b) applies specifically to the ozone NAAQS and provides that if a state demonstrates that an ozone nonattainment area would have timely attained the NAAQS by the applicable attainment date “but for emissions emanating from outside of the United States,” then the area need not apply for an extension of the ozone attainment dates pursuant to CAA section 181(a)(5), and is not subject to the stationary source fee program provisions of CAA section 185 and the mandatory reclassification provisions under CAA section 181(b)(2)<sup>24</sup> for areas that fail to attain the ozone NAAQS by the applicable attainment date. Section 179B, thus, can be an important tool that provides states relief from the requirement to demonstrate attainment—and from the more stringent planning requirements that would result from failure to attain—in areas where, even though the air agency has taken appropriate measures to address air quality in the affected area, emissions from outside of the U.S. prevent attainment.

#### 1. Summary of Proposal

The EPA proposed a requirement that all demonstrations under CAA section 179B(b), regardless of an area’s

<sup>24</sup> The EPA’s longstanding view is that CAA section 179B(b) contains an erroneous reference to section 181(a)(2), and that Congress actually intended to refer here to section 181(b)(2). See “State Implementation Plans: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” 57 FR 13498, 13569 n. 41 (April 16, 1992).

classification (including nonattainment areas classified as Marginal), must include a showing that the air agency has adopted all RACM, including RACT, for the area in accordance with CAA section 172(c)(1), 42 U.S.C. 7502(c)(1). We also asked for comment on whether the opportunity for air agencies to submit demonstrations under CAA section 179B should be limited to nonattainment areas adjoining international borders, and on any technical and legal basis for determining whether it is appropriate to have, or conversely whether it is appropriate not to have, such a geographic limitation. The proposal noted that the science review supporting the 2015 ozone NAAQS suggested that the influence of international sources on U.S. ozone levels will be largest in locations near the borders of Mexico or Canada (80 FR 65292, 65444; October 26, 2015) and that, historically, only states with nonattainment areas in the immediate vicinity of the Mexican border have submitted CAA section 179B demonstrations to the EPA (81 FR 81303; November 17, 2016).

## 2. Final Rule

The EPA is not finalizing our proposed requirement that all demonstrations under CAA section 179B(b) must include a showing that the air agency adopted all RACM, including RACT.

The EPA is choosing to not adopt our proposal for this final rule because the Act does not require states to implement RACM/RACT in Marginal ozone nonattainment areas. For purposes of CAA section 179B demonstrations for the 2015 ozone NAAQS, we are maintaining the approach used for prior ozone standards that only areas classified Moderate and higher must show that they have implemented RACM/RACT.

In the proposal, the EPA also solicited comment on whether—but did not propose that—demonstrations under CAA section 179B should be limited only to nonattainment areas adjoining international borders. After considering comments received, we are not adopting any geographic limitation on the use of CAA section 179B for purposes of the 2015 ozone NAAQS. We are instead clarifying that a demonstration prepared under CAA section 179B could consider emissions emanating from North American or intercontinental sources and is not restricted to areas adjoining international borders, consistent with the approach articulated in the preamble of the 2008 Ozone NAAQS SIP Requirements Rule.

The EPA encourages air agencies to coordinate with their EPA Regional office to identify approaches to evaluate the potential impacts of international transport and to determine the most appropriate information and analytical methods for each area's unique situation. The EPA will also work with air agencies that are developing attainment plans for which CAA section 179B is relevant, and ensure the air agencies have the benefit of the EPA's understanding of international transport of ozone and ozone precursors. Air agencies are encouraged to consult with their EPA Regional office to establish appropriate technical requirements for these analyses. In addition, the EPA is currently developing supplementary technical information and guidance to assist air agencies in preparing demonstrations that meet the requirements of CAA section 179B.

## 3. Comments and Responses

*Comment:* The EPA received numerous comments on our proposed RACM/RACT requirement for all demonstrations under CAA section 179B(b) (including for Marginal areas), and providing feedback on whether CAA section 179B applicability should be limited to nonattainment areas adjoining international borders. There was broad objection to both approaches, which many commenters interpreted as restricting the potential use of CAA section 179B for attainment plans under the 2015 ozone NAAQS.

*Response:* As discussed previously, the EPA is not interpreting CAA section 179B as requiring that demonstrations under CAA section 179B(b) for Marginal areas include a showing that the air agency adopted all RACM, including RACT. We are also finalizing our existing approach that does not restrict the use of CAA section 179B demonstrations to areas adjoining international borders.

*Comment:* Several commenters supported the proposed RACM/RACT requirement for all demonstrations under CAA section 179B(b). One commenter stated that CAA section 179B does not alter the subpart 1 requirement in CAA section 172(c)(1) that all SIPs provide for implementation of RACM/RACT as expeditiously as practicable. The same commenter also argued that failure to require RACM/RACT for Marginal areas seeking relief under CAA section 179B would upset the subpart 2 scheme for reclassification and implementation of basic reasonable control measures, and prevent attainment of the NAAQS as expeditiously as practicable.

*Response:* The EPA is not finalizing our proposed requirement that all demonstrations under CAA section 179B(b) must include a showing that the air agency adopted all RACM, including RACT. The Act does not require implementation of RACM/RACT in Marginal ozone nonattainment areas under the relevant implementation provisions in subpart 2, and nothing in 179B alters the statutory requirements with respect to RACM/RACT obligations in subpart 2. The EPA believes the CAA's specific provisions for ozone Marginal areas in section 182(a) rather than general nonattainment provisions in section 172(c)(1) prescribe the specific SIP revision requirements for such areas. In section 182(a), the CAA states "Each state [with a Marginal area] shall . . . submit to the Administrator the state implementation plan revisions (including the plan items) described under this subsection . . ." (emphasis added). Subsection 182(a) does not list RACM/RACT as a plan item. This is in clear contrast to the provisions in subsection 182(b) for Moderate and higher classified areas, which identifies specific RACT requirements (e.g., section 182(b)(2)) and plan submissions that "provide such specific annual reductions in emissions . . . as necessary to attain . . ." For this final rule, we are adopting our existing approach grounded in the plain language of CAA section 179B(b), which applies specifically to the ozone NAAQS and does not explicitly modify the subpart 2 planning requirements in CAA section 182 to require RACM/RACT for Marginal areas.

## IV. Provisions of the 2008 Ozone NAAQS Implementing Regulations To Be Retained With Specific Revisions

For purposes of implementing the 2015 ozone NAAQS, we are promulgating several regulatory provisions that are similar to the corresponding implementation provisions for the 2008 ozone NAAQS, but with modifications to reflect application to the 2015 ozone NAAQS, as explained later. The existing implementation provisions for the 2008 standards are codified at subpart AA of 40 CFR part 51, and the corresponding provisions for the 2015 standards will now be codified at subpart CC of part 51. The revised provisions for the 2015 standards address SIP requirements pertaining to MCD for RFP; the submission and implementation deadlines for RACT SIP revisions; the consideration of intrastate pollution sources outside of a nonattainment area for attainment planning purposes;



NNSR IPT for ozone; and emissions inventories and emissions statements.

#### A. Requirements for RFP: Milestone Compliance Demonstrations

The EPA proposed to revise our RFP provisions for purposes of the 2015 ozone NAAQS to address MCDs required under CAA section 182(g) for ozone nonattainment areas classified Serious or higher. The RFP regulatory provisions for the 2008 ozone NAAQS characterize the emissions reductions and time intervals that constitute RFP milestones, but do not address the requirements for demonstrating compliance with these milestones.

CAA section 182(g)(1) requires that states demonstrate whether nonattainment areas classified Serious, Severe or Extreme have achieved incremental RFP emission reductions needed to ensure attainment of the NAAQS by the prescribed applicable time intervals (*i.e.*, milestones). The statute establishes an initial milestone date of 6 years after November 15, 1990, and at intervals of 3 years thereafter. These milestones are established in the general RFP requirements of CAA sections 182(c)(2)(B) for Serious areas. Sections 182(d) and 182(e) incorporate those requirements for, respectively Severe and Extreme areas. Accordingly, the timeline for Serious areas provided in section 182(c)(2)(B) also applies to Severe and Extreme areas.

CAA section 182(g)(2) requires that states submit to the Administrator a demonstration that an RFP milestone has been met, not later than 90 days after the applicable milestone date. Section 182(g) refers to the required emissions reduction for the time interval as the “applicable milestone.” Section 182(g)(2) of the CAA states that the form, manner of submittal and contents of the required compliance demonstration shall be set by the Administrator by rule.

CAA sections 182(g)(3) and (g)(5) establish measures a state “shall elect” to implement if the state fails to submit a MCD by the due date or the EPA determines that a milestone was not met. For Serious and Severe areas, an air agency shall elect within 90 days of the failure or determination to: (1) Have the area reclassified to the next higher classification; (2) implement additional measures to meet the next milestone per the applicable contingency plan; or (3) adopt an economic incentive program as described in CAA section 182(g)(4). For an Extreme area, an air agency shall within 9 months of the failure or determination submit a SIP revision to implement a CAA section 182(g)(4) economic incentive program.

#### 1. Summary of Proposal

The EPA proposed that an air agency will have the option to demonstrate milestone compliance in terms of either: (1) Compliance with control measures requirements in an RFP plan that complies with the requirements of the CAA (*e.g.*, percent implementation), or (2) actual emissions reductions, as demonstrated with periodic emissions inventory data required under CAA section 182(a)(3)(A). In considering the form and content of an ozone MCD submittal, the EPA referenced the parallel regulatory requirements for fine particulate matter (PM<sub>2.5</sub>), which were added in the 2016 final implementing regulations for the PM<sub>2.5</sub> NAAQS.<sup>25</sup> The EPA also considered the amount of time allowed in the statute for states to make the required submittal.

#### 2. Final Rule

The EPA is finalizing MCD requirements for RFP as proposed. These requirements, codified at 40 CFR 51.1310(c), are consistent with the PM<sub>2.5</sub> SIP Requirements Rule.<sup>26</sup> Similar to the statutory requirements for ozone, CAA section 189(c)(1) establishes a 3-year cycle for PM<sub>2.5</sub> milestones. For both pollutants, the CAA provides Administrator discretion in setting the form and content of the milestone demonstration submittal.<sup>27</sup>

The PM<sub>2.5</sub> SIP Requirements Rule requires that the quantitative milestones be constructed such that they can be tracked, quantified and/or measured adequately in order for an air agency to meet its milestone reporting obligations, which come due 90 days after a given milestone date. For PM<sub>2.5</sub>, the EPA interprets CAA section 189(c) to allow air agencies to identify milestones that are suitable for the specific facts and circumstances of the attainment plan for a particular area, so long as they provide an objective means to measure RFP.<sup>28</sup>

<sup>25</sup> See “Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements” 81 CFR 58063–64; August 24, 2016), hereafter PM<sub>2.5</sub> SIP Requirements Rule.

<sup>26</sup> See *id.*

<sup>27</sup> CAA sections 182(g)(2) and 189(c)(2) share the same basic milestone demonstration submittal requirements, *i.e.*, not later than 90 days after the applicable milestone date, each State in which all or part of such area is located shall submit to the Administrator a demonstration that the milestone has been met. A demonstration shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require. For PM<sub>2.5</sub>, the statute further qualifies that the submittal must also demonstrate that all measures in the SIP have been implemented.

<sup>28</sup> In the Addendum to the General Preamble, the EPA suggested (for implementation of the PM<sub>10</sub> NAAQS) possible metrics that “support and demonstrate how the overall quantitative milestones identified for an area may be met,” such

The EPA is adopting a similar approach for MCDs for the 2015 ozone NAAQS. We interpret CAA sections 182(g)(1) and 182(g)(2) as imposing two separate obligations on an air agency: (1) To determine whether an affected nonattainment area has achieved an incremental emissions reduction corresponding with the RFP milestone; and (2) to demonstrate to the satisfaction of the Administrator that the RFP milestone has been met. We believe it would be sufficient for purposes of CAA section 182(g)(2) for an air agency to demonstrate milestone compliance in terms of compliance with control measures requirements in the approved RFP plan (*e.g.*, percent implementation), because the approach is grounded in SIP provisions that correlate control measures and resulting emissions reductions. As an alternative, an air agency could rely on periodic, triennial emissions inventory data for demonstration purposes where the appropriate data are obtainable within the 90-day MCD submittal timeframe.<sup>29</sup> In all cases, the EPA would review each RFP plan submission on a case-by-case basis to determine whether the milestones contained in the plan are specific enough to provide an objective means for evaluating the area’s progress toward attainment, consistent with the statutory requirements of CAA section 182(g).

We are providing additional guidance on the MCD submission process in this final rule. Consistent with the EPA’s process for PM<sub>2.5</sub> quantitative milestones, the EPA believes it would be appropriate for MCD to be submitted from the Governor or Governor’s designee to the Regional Administrator of the respective EPA Regional office serving the submitting state. The EPA will notify the state of our determination (regarding whether or not the state’s demonstration is adequate) by sending a letter to the appropriate

as percent implementation of control strategies, percent compliance with implemented control measures and adherence to a compliance schedule. This list was not exclusive or exhaustive but reflected the EPA’s view that the purpose of the quantitative milestone requirement is to provide an objective way to determine whether the area is making the necessary progress towards attainment by the applicable attainment date (59 FR 41998 at 42016; August 16, 1994).

<sup>29</sup> Triennial emissions reporting periods are set by regulation in the AERR at 40 CFR part 51, subpart A. The most recent and upcoming reporting years are 2017, 2020, 2023 and 2026, where the reports are due to the EPA by December 31 of the calendar year that follows the reporting year. As discussed in Section IV.E of this preamble, the adopted regulations for the 2015 ozone NAAQS provide that states may use the most recent triennial report period emissions inventory to satisfy the nonattainment area reporting requirements of CAA section 182(a)(3)(A). See 40 CFR 51.1315(b).

Governor or Governor's designee or, alternatively, by publishing a notice in the **Federal Register**. The EPA encourages states to submit MCDs, including supporting documents, through the agency's electronic SIP submission system<sup>30</sup> in order to simplify the process and reduce resource burden on all sides. The EPA believes it is consistent with statutory requirements to not consider MCDs to be formal SIP revisions subject to CAA public notice and comment requirements.

### 3. Comments and Responses

*Comment:* One commenter argued that an "actual emissions reductions" approach using emissions inventory data is the only lawful and rational approach for demonstrating RFP milestone compliance. Because the Act defines RFP baseline emissions in terms of actual VOC or NO<sub>x</sub> emissions (see CAA section 182(b)(1)(B)), the commenter contended that RFP can only be satisfied by actual emission reductions. This interpretation, they claimed, is supported by the CAA's legislative history and the EPA's General Preamble. Further, the commenter notes that RFP must address "any growth in emissions after" the baseline year (see CAA sections 182(b)(1)(A)(i) and 182(c)(2)(B)) and, therefore, only actual emissions would be sufficient to gauge compliance with an RFP baseline.

*Response:* The EPA disagrees with the commenter that actual emissions reductions are the only possible basis for demonstrating RFP milestone compliance under CAA section 182(g). For PM<sub>2.5</sub>, the statute requires quantitative milestones that demonstrate RFP, whereas for ozone CAA section 182(g)(1) uses the term "applicable milestone" to refer to the required RFP emissions reduction. However, CAA section 182(g)(2) specifically provides the Administrator the authority and discretion to establish the "form and manner" of MCDs, and the EPA is exercising this authority and discretion through the regulations adopted in this final rule. We encourage air agencies to work with their EPA Regional office to develop a MCD suitable for the specific facts and circumstances of the attainment plan for a particular area (addressing, as appropriate, the potential emissions growth noted by the commenter), which

provides an objective means to measure RFP.

*Comment:* Two commenters supported the EPA's proposed MCD requirements and urged the agency to issue related guidance. One of the commenters noted that the proposed MCD regulations were silent on the form and manner of submittal, and requested that the EPA clarify who is required to submit the MCD, whether the submission is considered a SIP revision, and whether public notice would be required for the MCD. The same commenter further requested that the EPA clarify whether historical emissions inventory data can be used for MCDs where the required RFP reduction was achieved in advance of the applicable milestone date.

*Response:* The EPA has provided additional guidance on the MCD submission process in this final rule preamble, as explained earlier, and intends to develop more detailed guidance for preparing RFP MCD for ozone and PM<sub>2.5</sub>. Regarding the use of historical emissions inventory data in MCDs, we believe our adopted MCD requirements would accommodate this approach, so long as the MCD submission provided a sufficiently objective means for evaluating the area's progress toward attainment, consistent with the statutory requirements of CAA section 182(g).

#### *B. Requirements for RACT: Deadlines for Submittal and Implementation of RACT SIP Revisions*

The EPA proposed new RACT SIP revision submission and implementation deadlines for specific kinds of triggering events that may occur after the EPA has initially designated areas under a revised ozone NAAQS. The RACT provisions established in the 2008 Ozone NAAQS SIP Requirements Rule address RACT SIP revision submission and implementation deadlines for areas (including portions of a state located in an OTR) subject to initial designation and existing RACT requirements, including requirements described in existing CTGs. CAA section 182(b)(2) establishes that a state shall submit a SIP revision to provide for implementation of RACT by 2 years after November 15, 1990, and provide for RACT implementation as expeditiously as practicable, but no later than May 31, 1995 (approximately 54 months from the enactment date of the 1990 CAA Amendments). As codified for the 2008 ozone NAAQS at 40 CFR 51.1112, the EPA interpreted this CAA timeframe to require submittal of RACT SIP revisions no later than 24 months

after the effective date of initial area designations, and implementation of the RACT SIP revisions no later than January 1 of the fifth year after the effective date of initial designations. Regarding mandatory reclassifications pursuant to CAA section 181(b)(2), CAA section 182(i) allows the Administrator to adjust applicable deadlines (excluding attainment dates), including those for SIP submissions and implementation. For voluntary reclassifications, CAA section 181(b)(3) does not establish a precise timeframe for submitting SIP revisions. The EPA's general practice is to establish SIP revision submission deadlines as part of the action granting an air agency's request for voluntary area reclassification.

The EPA is retaining these general RACT provisions for purposes of the 2015 ozone NAAQS, based on the rationale articulated in the final 2008 Ozone NAAQS SIP Requirements Rule (see Section III.F of this preamble). However, the existing RACT provisions do not specify deadlines for some RACT SIP revision submittal and implementation requirements triggered by events occurring after initial area designations, including area reclassifications and the issuance of new CTGs. The following sections address the RACT submittal and implementation deadlines for these post-designation scenarios.

#### 1. RACT SIP Revision Submittal and Implementation Deadlines for Newly Reclassified Areas

*a. Summary of Proposal.* The EPA proposed default submission and implementation deadlines for SIP revisions resulting from area reclassifications that occur after initial area designations under an ozone NAAQS.<sup>31</sup> This includes mandatory reclassification to a higher classification upon failure to attain (pursuant to CAA section 181(b)(2)) and voluntary reclassification to a higher classification upon an air agency's request (pursuant to CAA section 181(b)(3)). We proposed that, following a reclassification action, RACT SIP revisions be submitted no later than 24 months after the effective date of reclassification, or by an alternative deadline established by the Administrator as part of the action

<sup>31</sup> For purposes of this preamble discussion, "reclassification" is assumed to encompass nonattainment areas being reclassified to a higher classification, attainment areas being redesignated as nonattainment and assigned an initial classification of Moderate or higher, and new OTR assignments. Similarly, "RACT SIP revision" is assumed to encompass initial RACT SIPs triggered by an initial area classification of— or reclassification to—Moderate or higher.

<sup>30</sup> State Planning Electronic Collaboration System (SPECS) for SIPs. For more information see <https://www.epa.gov/air-quality-implementation-plans/submit-sips-online>.

reclassifying an area. We proposed that the RACT SIP revisions be implemented as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier. We also proposed that the Administrator would retain existing authority to establish a different implementation deadline as part of the action reclassifying an area. This proposed approach would apply to nonattainment area reclassifications.

*b. Final Rule.* The EPA is finalizing the proposed deadlines with clarifications, as codified at 40 CFR 51.1312(a)(2) and (3). To address reclassification scenarios, we are adopting default submission and implementation deadlines for resulting SIP revisions. Following a reclassification action, RACT SIP revisions must be submitted no later than 24 months after the effective date of reclassification, or by an alternative deadline established by the Administrator as part of the action reclassifying an area. RACT SIP revisions must be implemented as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier. We are clarifying that the term "ozone season attainment year" used in the preamble to the proposed rulemaking should read "attainment year ozone season" as correctly presented in the proposed regulatory definition at 40 CFR 51.1300(i). The Administrator retains authority to establish different RACT SIP revision submission and implementation deadlines as part of the action reclassifying an area.

We are also in this final rule clarifying the implementation deadline for RACT SIP revisions triggered by reclassification actions that occur after initial area designations. As presented in the preamble to the proposed rulemaking, these RACT SIP revisions must be implemented as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submission deadline, whichever is earlier. The Administrator also has the authority to establish a different implementation deadline as part of the reclassification action (81 FR 81293; November 17, 2016). The proposed regulatory text in 40 CFR

51.1312(a)(3)(ii) incorrectly omitted the alternative implementation deadline—*i.e.*, it omitted the phrase "start of the attainment year ozone season associated with the area's new attainment deadline"—and we have added this language to the final rule regulatory text, consistent with the discussion in the preamble to the proposed rulemaking. These default deadlines are grounded in the construct of the overall RACT SIP revision submission and implementation timeframe articulated in section 182(b)(2) of the CAA, and are also intended to, where possible, provide at least one full ozone season in advance of an area's maximum attainment date for implemented controls to achieve emission reductions.

*c. Comments and Responses.*

*Comment:* Several commenters expressed the general concern that the default timelines would not provide sufficient time for submission and/or implementation of RACT SIP revisions triggered by reclassification actions, with some commenters suggesting that air agencies should have 3 years to prepare and submit the required SIP revision. Another commenter said that the EPA should not establish RACT deadlines more stringent than those for similarly classified areas, and that it should be a state's responsibility to determine what is "as expeditiously as practicable" as it relates to the schedule for submitting its required SIP revision.

*Response:* The EPA acknowledges the commenters' general concern that mandatory reclassification actions can limit the time available to submit and implement required RACT SIP revisions, but emphasizes that CAA section 182(i) does not allow the EPA to extend the maximum attainment date corresponding with an area's new classification. We have noted this statutory constraint previously in establishing the SIP revision submission deadline for nonattainment areas reclassified to Moderate after failing to attain the 2008 ozone NAAQS by the Marginal attainment date of July 20, 2015. In the face of the impending Moderate area attainment date (July 20, 2018), the EPA exercised our authority under CAA section 182(i) to set a uniform SIP submission deadline for affected areas at the latest date compatible with the RACT implementation deadline for Moderate areas (81 FR 26699; May 4, 2016).<sup>32</sup>

Our adopted requirements are intended to maximize planning

flexibility within the fixed outer bound of an area's maximum attainment date, by retaining the Administrator's discretion under CAA section 182(i) to set alternative RACT SIP submission and implementation deadlines where appropriate. This discretion could potentially apply to the extended submission and implementation deadlines suggested by some commenters, though the degree of flexibility would be dictated by the available compliance timeframe, bounded by a reclassified area's maximum attainment date. For example, an air agency that anticipates an area will not timely attain can request a voluntary reclassification under CAA section 181(b)(3), which would provide more time and potential flexibility for required RACT SIP submissions and implementation than would a later mandatory reclassification under CAA section 181(b)(2) upon actual failure to attain.

At the same time, the EPA believes it is important to provide default submission and implementation deadlines grounded in our overall approach for RACT SIP revisions outlined in CAA section 182(b), in the event that the Administrator does not exercise his or her discretion to set alternative deadlines in a reclassification action. Regarding the comment that the EPA should not establish RACT deadlines more stringent than those for similarly classified areas, we disagree and note that (particularly for mandatory reclassification actions) the Administrator cannot alter the reclassified area's maximum attainment date, which necessarily provides a shorter RACT SIP timeframe than for areas initially assigned the same classification. The EPA disagrees with the comment that it should be a state's responsibility to determine what is "as expeditiously as practicable" as it relates to the schedule for submitting their required SIP revision. The language of CAA section 182(b)(2) clearly establishes the statutory basis for RACT SIP submission deadlines, while qualifying that the SIP revisions shall provide for *implementation* of required measures as expeditiously as practicable, but not later than a date that the EPA interprets relative to the Moderate area attainment date.

*Comment:* A commenter remarked that the proposed default deadlines for RACT SIP revisions triggered by reclassification actions could result in implementation deadlines occurring after a reclassified area's maximum attainment date. The commenter provided an example scenario where a

<sup>32</sup> That latest compatible date for the 2008 ozone NAAQS was no later than January 1 of the 5th year after the effective date of designation for the NAAQS, *i.e.*, January 1, 2017.

nonattainment area initially classified as Marginal (*e.g.*, in 2017) fails to attain by the Marginal attainment date (in 2020) and is reclassified to Moderate (in 2021), with its RACT SIP submission due 2 years later (in 2023). The commenter goes on to illustrate how applying a default RACT implementation deadline of no later than January 1 of the third year after the associated SIP revision submission deadline would place that default implementation deadline later than the 2023 attainment date for Moderate areas. The commenter noted it was arbitrary and unlawful for the EPA to propose default deadlines that contravene statutory structure in this manner.

*Response:* The EPA disagrees with the commenter that our default submission and implementation deadlines for RACT SIP revisions triggered by area reclassifications contravene the CAA. The default submission deadline of no later than 24 months after the effective date of reclassification is grounded in our longstanding interpretation of the RACT SIP submission timeframe in CAA section 182(b)(2). As discussed previously, we are clarifying and adopting in this final rule our proposed default implementation deadline that requires RACT SIP revisions to be implemented as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submission deadline, whichever is earlier. The EPA agrees with the commenter that applying the latter implementation deadline (*i.e.*, January 1 of the third year after the associated SIP revision submission) would exceed the area's maximum attainment date in the commenter's Marginal-to-Moderate hypothetical mandatory reclassification scenario. We note, however, that the earlier alternative default deadline (*i.e.*, implementation by the start of the attainment year ozone season) would instead apply in this case, and would be compatible with the RACT implementation occurring before the area's attainment date passes. In the case where an air agency requests a voluntary reclassification beyond a single level (*e.g.*, Marginal to Serious or Moderate to Severe),<sup>33</sup> the earlier default implementation deadline could

potentially be January 1 of the third year after the associated SIP revision submission. This approach is compatible with the statutory requirement for areas initially classified Serious and higher, which must implement RACT no later than January 1 of the fifth year after the effective date of designation (*i.e.*, the attainment year for Moderate areas), and are thus afforded additional time for implemented controls to achieve emission reductions.

## 2. RACT SIP Revision Submittal and Implementation Deadlines Associated With New Control Techniques Guidelines

*a. Summary of Proposal.* The EPA proposed two approaches for establishing submission and implementation deadlines for SIP revisions triggered by new CTGs issued by the EPA after the promulgation of initial area designations under a revised ozone NAAQS. Under the first approach, we proposed a RACT SIP submission deadline of no later than 24 months after the effective date of the action issuing the CTG, or the deadline established by the Administrator in the action issuing the CTG, and that RACT SIP revisions must be implemented no later than January 1 of the third year after the associated SIP revision submission deadline. Under the second approach, we also articulated the Administrator's authority to establish a deadline for implementing RACT SIP revisions as part of the action issuing a new CTG. These proposed approaches would apply to covered sources in nonattainment areas and portions of a state located in an OTR subject to new RACT SIP obligations.

*b. Final Rule.* The EPA is finalizing a combination of the proposed approaches, as codified at 40 CFR 51.1312(a)(2) and (3). For CTGs issued between November 15, 1990, and the date of attainment, CAA section 182(b)(2) requires a state to submit the associated RACT SIP revision, where applicable, within the timeframe established by the Administrator in issuing the CTG. The EPA interprets this provision as authorizing the Administrator to set a SIP submission deadline in the action issuing any future CTG. However, the agency is also establishing a default submission deadline of no later than 24 months after the effective date of the action issuing the CTG, which is grounded in our overall approach for RACT SIP revisions outlined in CAA section 182(b), in the event that the Administrator does not set an

alternative submission deadline as part of a CTG action.

While CAA section 182(b)(2) addresses the submission requirements for RACT SIP revisions triggered by new CTGs, the CAA is otherwise silent regarding the schedule for implementation of those RACT SIP revisions triggered by new CTGs. When new CTGs are issued, these RACT SIP revisions would be applicable to areas classified Moderate or higher, and to any portion of a state located in an OTR. For CTGs in effect at the time of initial area designations for a revised NAAQS, the EPA has interpreted the relevant CAA provisions to require implementation of related RACT SIP revisions as expeditiously as practicable, but no later than January 1 of the fifth year after the effective date of initial designations for the revised NAAQS (80 FR 12279; March 6, 2015). For RACT SIP revisions triggered by new CTGs issued after initial area designations, we are adopting the proposed default implementation deadline of no later than January 1 of the third year after the associated SIP revision submission deadline. We anticipate that this adopted default implementation deadline will provide an overall RACT schedule similar to that for sources subject to CTG requirements upon initial area designations.

We are also articulating in this final rule the Administrator's authority to establish an alternative to the default deadline for implementing RACT SIP revisions, as part of the action issuing a new CTG. Under this option, setting a RACT SIP revision implementation deadline as part of a CTG action would allow the Administrator to tailor the implementation timeframe to the particular technical considerations and attainment objectives associated with the sources subject to the CTG and the overall attainment schedule. The adopted approaches for establishing RACT SIP submission and implementation deadlines would apply to covered sources in nonattainment areas and portions of a state located in an OTR subject to new RACT SIP obligations.

### *c. Comments and Responses.*

*Comment:* Several commenters stated that a default submission deadline is not necessary for RACT SIP revisions triggered by the issuance of a CTG after initial area designations. They noted that the CAA expressly authorizes the Administrator to set a RACT SIP submission deadline as part of the related CTG document, and that a default deadline is either redundant or

<sup>33</sup> For example, the state of California requested and was granted voluntary reclassifications beyond a single level for several nonattainment areas for the 1997 ozone NAAQS (*see* 81 FR 81285; November 17, 2016).

could be interpreted to restrict the Administrator's authority.

*Response:* The EPA agrees with commenters that CAA section 182(b)(2) authorizes the Administrator to set a RACT SIP submission deadline as part of the related CTG document. As discussed previously, CAA section 182(b)(2) expressly requires that states submit RACT SIP revisions triggered by new CTG issuance within a period established by the Administrator, and we interpret this provision to authorize—but not require—the Administrator to set a RACT SIP submission deadline in the action issuing the CTG. As a result, we are adopting the proposed default SIP submission deadline of no later than 24 months after the effective date of the action issuing the CTG, in addition to affirming in this final rule the Administrator's existing authority to set an alternative RACT SIP submission deadline as part of the action issuing the CTG.

### C. Requirements for RACM: Consideration of Sources of Intrastate Transport of Pollution

#### 1. Summary of Proposal

As discussed in Section III.F.2 of this preamble, the EPA proposed to require that, for each nonattainment area for which an attainment demonstration is required (see Section III.D of this preamble), an air agency shall submit with the attainment demonstration a SIP revision demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements. The EPA further proposed to codify the existing requirement under CAA section 172(c)(6) that, in addition to sources located in an ozone nonattainment area, air agencies must also consider the impacts of emissions from sources outside an ozone nonattainment area (but within a state's boundaries), and must require other control measures on these intrastate sources if doing so is necessary to provide for attainment of the applicable ozone NAAQS within the area by the applicable attainment date. This proposed rulemaking provision is consistent with SIP elements required under the CAA, as well as existing EPA interpretations of CAA section 172(c)(6) as articulated in previous NAAQS implementation rulemakings.

#### 2. Final Rule

The EPA is finalizing the requirement regarding consideration of "other control measures" for intrastate sources of pollution, as proposed. CAA section

172(c)(6) requires that SIP provisions include enforceable emission limitations and other control measures, means or techniques as may be necessary or appropriate to attain a standard by the applicable attainment date. The EPA interprets this provision to include "additional reasonable measures," which are those measures and technologies that can be applied to any emissions source within the state's jurisdiction, including those outside of a nonattainment area. Upwind sources within a state may have a significant impact on air quality in a downwind nonattainment area, and failure to consider and require, as appropriate, reasonable control measures for these sources may preclude attainment of a NAAQS by the attainment date. Though not directly a part of a nonattainment area RACM analysis, the EPA has addressed this "other control measures" provision in the preamble discussions for previous NAAQS implementation rulemakings,<sup>34</sup> and for clarity is codifying this interpretation in this final rule at 40 CFR 51.1312(c). As discussed in Section III.F of this preamble, the EPA is otherwise adopting all RACM requirements for purposes of the 2015 ozone NAAQS, based on the rationale and approach articulated in the final 2008 Ozone NAAQS SIP Requirements Rule.

#### 3. Comments and Responses

*Comment:* A number of commenters opposed the EPA's interpretation of CAA section 172(c)(6) as applying to emissions sources outside of designated nonattainment areas. As one commenter stated, the plain language of CAA section 172 in general focuses its discussions and references to sources within a designated nonattainment area, and makes no mention of requiring emission reductions for sources outside the nonattainment area.

*Response:* The EPA disagrees with the commenters concerning the proper application of CAA section 172(c)(6). Unlike other SIP requirements under CAA section 172(c)(1), such as RACM/RACT-level controls on sources located in a nonattainment area, CAA section 172(c)(6) is not limited by its terms to sources located in the nonattainment area. Upwind sources within a state may have a significant impact on air quality in a nonattainment area, and CAA section 172(c)(6) imposes a potential obligation upon states to impose emission controls on sources located

outside a designated nonattainment area that are in addition to, and beyond those, otherwise required on sources located the nonattainment area, if necessary or appropriate for purposes of attainment by the attainment date.

*Comment:* Some commenters contended that emissions from sources outside a nonattainment area, if nearby and affecting a nonattainment area's ability to timely attain, should be accounted for in setting nonattainment area boundaries as part of the designations process under CAA section 107(d).

*Response:* The EPA agrees with commenters that a designated nonattainment area should already include the nearby sources that, at the time of designations, were determined to be contributing to violations in the area. But we disagree that the designations process under CAA section 107(d) is the exclusive approach for identifying relevant contributing sources for a nonattainment area, as there may be additional contributing sources within a state that were not sufficiently "nearby" the area, or were otherwise not identified in the nonattainment area designations process as contributing to violations in the area. Consistent with our existing policy, the EPA interprets CAA section 172(c)(6) as imposing a separate obligation to consider and control sources located outside of a nonattainment area but within a state's jurisdiction, if necessary or appropriate to attain a standard by the applicable attainment date.

*Comment:* Multiple commenters interpreted the EPA's proposal as imposing a mandatory requirement for states to consider and implement emission controls for intrastate sources located outside of a designated nonattainment area. Some commenters characterized the proposal as requiring RACM outside a nonattainment area, where other commenters requested that we further clarify a state's discretion, under CAA section 172(c)(6), to consider and require "other control measures" for sources located outside of a nonattainment area.

*Response:* The EPA believes our interpretation of CAA section 172(c)(6), under certain circumstances, establishes a mandatory requirement for states to consider and implement emission controls for sources inside the state but outside of a designated nonattainment area. The language of the statute, and our adopted regulatory text in 40 CFR 51.1312(c), describe a conditional requirement for placing controls such sources, *i.e.*, states are required to impose controls on sources located outside of a nonattainment area but

<sup>34</sup> See the Phase 2 proposed rulemaking (68 FR 32829; June 2, 2003) and final rule to implement the 8-hour ozone NAAQS (70 FR 71623; November 29, 2005), and the final rule to implement the PM<sub>2.5</sub> NAAQS (81 FR 58035; August 24, 2016).

within the state's jurisdiction, only in circumstances where that is necessary or appropriate to provide for attainment by the attainment date, because the emission controls required on sources *within* the nonattainment area are not sufficient to provide for attainment by that date. This qualification indicates that the obligation is tied to the attainment needs of the nonattainment area in question and does not apply more broadly. Further, the EPA emphasizes that we do not interpret section 172(c)(6) to automatically require states to conduct an evaluation of all sources and all potential controls throughout the entire state regardless of attainment needs. However, if necessary to achieve attainment by the applicable attainment date, the EPA believes the CAA obligates states to place emission controls on significant emissions sources elsewhere within the state as needed to achieve the necessary reductions.

*D. Nonattainment NSR Offset Requirement: Interprecursor Trading for Ozone Offsets*

1. Summary of Proposal

In response to a petition for reconsideration granted on November 5, 2015, the EPA proposed to reaffirm our longstanding policy regarding IPT for ozone, which is currently codified at 40 CFR 51.165(a)(11) and part 51 Appendix S, section IV.G.5,<sup>35</sup> by re-proposing the existing regulatory provisions with revised text, and adding specific criteria for developing and implementing an IPT program.<sup>36</sup> In addition, the EPA indicated that the re-proposed IPT provision, when finalized, would supersede any previous ozone IPT policy articulated in earlier EPA guidance.<sup>37</sup> Further, the November 17, 2016, proposal explained that the EPA proposed no other changes to the existing requirements in the NNSR regulations.<sup>38</sup>

<sup>35</sup> The EPA originally added these provisions specific to ozone to the NNSR regulation in 2015 as part of the final 2008 Ozone NAAQS SIP Requirements Rule. See 80 FR 12264 at 12288.

<sup>36</sup> See 81 FR at 81295–8.

<sup>37</sup> The EPA's prior guidance concerning the use of IPT to satisfy the NNSR requirements for emissions offsets was contained in a 2001 EPA document titled "Improving Air Quality with Economic Incentive Programs" (January 2001). The EPA's policy on IPT for ozone, as finalized through this rulemaking, supersedes the information contained in that earlier document specifically with respect to IPT.

<sup>38</sup> In the proposal, the EPA did not propose to change or seek comment on any existing NNSR emissions offsets requirements contained in the NNSR regulations at 40 CFR 51.165 and part 51 Appendix S. Existing NNSR emissions offset requirements are based largely on part D of title I of the CAA's nonattainment requirements. These

The proposal noted the EPA's continued interpretation that the CAA accommodates the use of technically supported IPT to satisfy the NNSR offset requirement. As discussed in greater detail in the Comments and Responses section that follows, the EPA stated at proposal that the CAA allows the total annual tonnage of emissions of one ozone precursor to be offset by reductions in total actual annual emissions of another ozone precursor (in units of tons per year (tpy)) pursuant to an IPT ratio that shows the reductions will have an equivalent or greater air quality benefit. The proposal explained that the authority to permit IPT is based on the language of section 173(c)(1) of the CAA and the definition of "air pollutant" in section 302(g) of the CAA, and that ozone is the regulated pollutant at issue (rather than NO<sub>x</sub> or VOC, which are both recognized precursors to the formation of ground-level ozone concentrations).

The EPA proposed that states interested in implementing an ozone IPT program must submit the following to the EPA as part of a plan for approval: (1) IPT provision(s), including area-specific default IPT ratio(s),<sup>39</sup> <sup>40</sup> where applicable; (2) a description of the air quality model(s) used to develop any default IPT ratio(s); and (3) an accompanying modeling demonstration

existing requirements include the statutory offset ratios applicable in specific ozone nonattainment areas (based on an area's classification for ozone), geographic restrictions as to where creditable emissions reductions may be obtained and other criteria concerning the creditability of emissions reductions to be used as offsets.

<sup>39</sup> An IPT ratio sets the appropriate proportion for the amounts of each precursor in tpy of emissions, which is intended to ensure that the substitution of one ozone precursor for another in an offset transaction provides an equivalent or greater air quality benefit with respect to ground level ozone concentrations in the ozone nonattainment area. The IPT ratio is separate and distinct from the statutory offset ratios contained in the CAA that are directly associated with area classifications for ozone nonattainment areas. See e.g., CAA Section 182(b)(5) (establishing an offset ratio of 1.15 to 1 for Moderate areas). Both ratios must be applied in determining the appropriate emissions offset that must be applied for a particular offset transaction if one ozone precursor is being used to offset a different ozone precursor. An example of a simple offset calculation with the application of an IPT ratio would be a major NNSR proposed source in a Moderate area seeking to offset a 200 tpy NO<sub>x</sub> increase with reductions in VOC from another source or the respective SIP approved Emission Reduction Credit Bank. First, the 200 tpy NO<sub>x</sub> offset is subject to the 1.15 Moderate area offset ratio, then the product is multiplied by the IPT ratio (either area-wide or case-specific derived from technical demonstration). If we assume the IPT ratio in this case is 5, the resulting equation is: (200 tpy NO<sub>x</sub>) × (1.15<sup>(Moderate area offset ratio)</sup>) × (5 VOC/NO<sub>x</sub> (IPT ratio applied)) = 1,150 tpy total NO<sub>x</sub> (offset) required for NNSR permitting purposes.

<sup>40</sup> Hereafter referred to as default IPT ratio(s) or default ratio(s).

showing that such ratio(s) provide an equivalent or greater air quality benefit with respect to ground level ozone concentrations in the ozone nonattainment area than an offset of the emitted precursor would achieve.

The EPA recommended that each air agency implementing an IPT program consult with the appropriate EPA Regional office as the air agency develops a modeling protocol to establish a default IPT ratio or ratios<sup>41</sup> for a nonattainment area. The EPA sought comments on the proposed contents of the plan submission and the approach for establishing any default IPT ratios.

When the EPA published our NNSR implementation rules for PM<sub>2.5</sub> in 2008, we indicated that, while the new implementation rules allowed air agencies to adopt IPT programs to satisfy the NNSR offset requirements for PM<sub>2.5</sub>, such IPT was not permissible for netting purposes. See 73 FR 28340 (May 16, 2008). Consistent with that policy, in the proposal the EPA proposed that an IPT program could not be used for purposes of netting under the NNSR program.

The EPA also indicated in the proposal that we have interpreted the CAA to preclude the use of ozone IPT where an air agency chooses to include emissions reductions attributable to the NNSR air permitting in its initial 15 percent ROP plan for those Moderate or higher ozone nonattainment areas that are satisfying this ROP requirement for the first time under CAA section 182(b)(1)(A)(i). This interpretation results from the fact that the CAA requires that a state's initial ROP plan can be satisfied only via reductions in VOC emissions. Hence, the EPA proposed that such a plan could not count emission reductions attributable to a NNSR permitting program utilizing IPT flexibilities, for ROP purposes.<sup>42</sup>

Finally, the EPA in the November 17, 2016, proposal also explained that IPT could be implemented in several ways; the primary variable being the method in which the IPT ratio for ozone precursors is established by an air agency or permit applicant and applied in a particular ozone nonattainment area. That is, the EPA proposed that states be allowed to choose any of the options presented in the proposal. Accordingly, with the goal of providing flexibility to air agencies and sources, the EPA proposed and sought comment

<sup>41</sup> The draft Technical Guidance Document provided in the docket supports the division of a nonattainment area into sub-areas with a technical demonstration substantiating the need for separate ratios in specific portions of a nonattainment area.

<sup>42</sup> See section III.E of this preamble.

on the following implementation options:

*a. Case-specific Permit Ozone IPT Ratios.* Under a case-specific IPT ratio option, state plans would generally require each permit applicant who chooses to use ozone IPT as the means for satisfying the NNSR emissions offset requirement to calculate and submit to the reviewing authority the appropriate IPT ratio. In choosing this option, the state would be required to include for the EPA's approval a plan submission addressing NNSR program provisions that explicitly authorize case-specific IPT ratios for the particular ozone nonattainment area(s). Also, such a plan submission must include the procedures by which permit applicants may use IPT, including a description of the model(s) that will be used, the calculation of the IPT ratio, and a demonstration that such IPT ratio provides an equivalent or greater air quality benefit for ozone concentrations in the ozone nonattainment area. The EPA also proposed that the state's IPT provision must provide that any IPT ratio that an applicant proposes for an individual permit must be approved by both the reviewing authority and the EPA.

*b. Area-specific Default Ozone IPT Ratio.* Under the proposed area-specific default IPT option, the EPA proposed that a state plan could include a default IPT ratio that may be used by permit applicants to obtain IPT offsets for all applicable NNSR permits issued in a particular ozone nonattainment area. Under this proposed option, the state's plan submission would be required to provide a description of the model(s) used, the calculated ratio and the technical demonstration substantiating the equivalent or greater ozone benefit in that nonattainment area. The EPA further proposed that a ratio that has become part of an approved plan and has undergone public comment during the plan approval process would not require further EPA approval or be subject to additional public comment each time that ratio is utilized by individual permit applicants.

*c. Combination of an Area-specific Default Ozone IPT Ratio and Case-specific IPT Ratios.* As explained in the proposed rulemaking, the EPA believes that it is reasonable for air agencies to have the option of implementing as part of their NNSR programs either a case-specific IPT ratio or a default IPT ratio. The EPA also believes that air agencies with EPA-approved NNSR programs should have the option of implementing a combination of the two proposed options. Such a combined program would enable an air agency to develop

a default IPT ratio, while at the same time allowing an individual permit applicant to propose an alternative case-specific IPT ratio (if it can demonstrate to the satisfaction of both the reviewing authority and the EPA that such alternative ratio is appropriate for the proposed offsetting transaction for a specific permit application).

*d. Limitations for Implementing Ozone IPT under Appendix S.* In the specific case where a state lacks an approved NNSR program and issues NNSR permits under the requirements contained in the EPA's Emission Offset Interpretative Ruling at 40 CFR part 51, Appendix S (Appendix S), the EPA proposed that states would be limited to the use of case-specific IPT ratios.

In addition to the four options proposed for implementing the IPT program for ozone, the EPA proposed to require air agencies to review any default IPT ratio(s) that is included in their EPA-approved IPT program at least every 3 years (from the air agency's prior plan submission containing any such area-specific default IPT ratio(s)) to ensure that the ratio continues to be valid for IPT offsets in the area. To meet this proposed requirement an air agency would need to submit new modeling to confirm that the ratio still defines an equivalent or greater air quality benefit relationship between VOC and NO<sub>x</sub> emissions regarding ozone formation in the particular ozone nonattainment area.

At proposal, the EPA included a draft TGD in the docket. The purpose of this TGD was to provide air agencies with guidance on a technical approach to determine ozone impacts from precursor emissions for a specific nonattainment area or for case-by-case determinations.

## 2. Final Rule and Rationale

In this final rule, the EPA is promulgating a discretionary IPT program for ozone with changes from the proposed rulemaking based on comments received. The final rule allows states to implement their IPT program using any of the proposed implementation options as follows: (1) Default IPT ratios, (2) case-specific IPT ratios or (3) a combination of the two options, whereby a proposed source may, at the approval of the reviewing authority, propose a case-specific ratio in lieu of an available default IPT ratio. The following changes are being made in response to comments received: (1) Air agencies will not be required to obtain EPA approval of IPT ratios when implementing a case-specific IPT program or when applying default IPT ratios that are not included in the state regulations and the SIP; and (2) the required periodic review of any default

IPT ratio must be conducted every 5 years, rather than every 3 years as proposed.

The EPA acknowledges, based on comments received, that the requirement of EPA approval of IPT ratios could impose additional burdens and result in permit delays. Hence, in the final rule, the EPA is eliminating this approval requirement for the case-specific ratios and for default ratios that are not included in state regulations and the SIP. In the spirit of cooperative federalism, the EPA encourages air agencies to both work with the EPA in the development of IPT ratios and notify the EPA after the development of any initial or revised area-specific default IPT ratio for a particular ozone nonattainment area. Finally, the EPA will, of course, also have an opportunity to review and comment on the application of any IPT ratio (default or case-specific) to a particular source or location during the public comment period afforded as part of the NNSR permitting process.

An air agency may choose to include a numerical default ratio in its NNSR regulations and the SIP to make that ratio controlling. Alternatively, if an air agency chooses not to include any numerical default IPT ratios in its regulations and SIP, EPA approval of the numerical default ratio is no longer required. However, for any such air agency, the final rule still requires the SIP to include (1) the authority to implement IPT; (2) a description of the air quality model(s) that may be used to develop any default IPT ratio; and (3) a description of the approach that the air agency will use to develop any default IPT ratio, which must show that such ratios provide an equivalent or greater ozone air quality benefit in the applicable ozone nonattainment area. The final rule also requires air agencies with IPT programs that authorize case-specific IPT ratios to require permit applicants to include along with the submittal of the proposed case-specific ratio similar information pertaining to the development of the ratio.

A default IPT ratio that is not in a state regulation and an approved SIP would be subject to public comment for each use in individual permits. Therefore, states may want to include numerical default IPT ratios in their regulations and submit them to the EPA for approval as part of the SIP. In such an instance, the regulation containing the area-specific default IPT ratio would be reviewed by the EPA as part of the SIP submission and, if approved, would provide states and other stakeholders with greater certainty that the IPT ratio will be applicable to all permit

applications. The validity of a default IPT ratio that has become part of an approved plan and has undergone public comment during the plan approval process would not be subject to additional public comment with regard to its numerical value each time that ratio is utilized by individual permit applicants.

On the other hand, default ratios that are not included in a state regulation and SIP, and, therefore, are not subject to the EPA's approval, may be replaced more rapidly in situations where the ratio is no longer valid, *e.g.*, as a result of a periodic review. An air agency can replace such a ratio with a revised value that will not have to be processed through rulemaking and a plan revision. Also, if an air agency determines through a periodic review that an existing default ratio is no longer valid and must be revised, the air agency may decide not to revise it but to rely solely on case-specific permit ratios to continue implementing IPT provided that the SIP contains the necessary authority to implement case-specific ratios as part of the NNSR program for ozone. Unlike the default IPT ratios, case-specific IPT ratios will not require periodic review because the ratio used for each individual permit will be based on the most current data representing the ozone chemistry for the area of concern.

This final rule does not discourage or preclude an air agency desiring EPA approval from electing to either submit numerical default IPT ratio(s) to EPA for review and approval into its SIP, seek EPA approval of any case-specific IPT ratio or to simply seek consultation with the EPA on the development of any IPT ratio for ozone.

For any state that lacks an approved NNSR program for ozone, the state may issue an NNSR permit pursuant to the NNSR requirements for ozone contained in 40 CFR part 51 Appendix S, which includes an IPT program. The final rule provides that the IPT program under Appendix S may be implemented only by using case-specific IPT ratios. In addition, the final rule includes a provision in Appendix S that requires permit applicants to include along with the submittal of the proposed case-specific ratio information pertaining to the development of that ratio. Moreover, each case-specific permit IPT ratio would not require EPA approval but only the approval of the air agency.

The EPA is including a revised final TGD in the docket for this rulemaking. The purpose of this TGD is to provide air agencies and source owners or operators, where applicable, with guidance on a technical approach to

determine ozone impacts from precursor emissions for a specific nonattainment area or for case-specific determinations. The TGD provides a framework and associated general methodology to apply existing or new empirical relationships between ground level ozone concentrations and the two precursors—NO<sub>x</sub> emissions and VOC emissions—to develop the required IPT ratios.<sup>43</sup> Air agencies may use existing modeling analyses or generate their own modeling analyses to provide the basis for the development of IPT ratios.<sup>44</sup>

In addition, recent changes to the EPA's Guideline for Air Quality Models, published as Appendix W to 40 CFR part 51, provides greater clarity regarding the use of chemical transport modeling to estimate single-source ozone impacts from precursors. Appendix W provides guidelines for area-specific assessments of precursor emissions impacts on ozone and these guidelines may also support the development of case-specific IPT ratios or area-specific IPT ratios for ozone precursors.

Finally, the final rule attempts to strike a balance between providing flexibility for the offset requirement in NNSR permitting and compliance with the CAA's air quality protections. While EPA approval of ratios is no longer required, the EPA believes that the SIP requirements for air agencies to comply with the criteria for development of default IPT ratios and to conduct periodic reviews of each default ratio, along with the opportunity for the EPA to review the application of a ratio for a specific permit during the public comment period, afford adequate safeguards. In particular, the mandatory periodic review conducted by the air agency will ensure that each area-specific ratio either continues to adequately reflect the correct relationship between VOC and NO<sub>x</sub> emissions with respect to the formation of ground level ozone in a particular ozone nonattainment area or will result in such ratio being eliminated (and revised if so desired).

### 3. Comments and Responses

*Comment:* Six commenters expressed concerns about the administrative burden associated with the proposed requirement for the EPA to approve all IPT ratios for ozone. These commenters

<sup>43</sup> Please refer to the TGD included in this final rule docket and the section of the Response to Comments document related to the proposed TGD for further information.

<sup>44</sup> The EPA has not added any regulatory provisions in the NNSR regulations to require permitting authorities to use the data or methods described in the TGD.

believed that the EPA's approval of the SIP containing the authority to use IPT and the methodology for developing an IPT ratio would be sufficient. The commenters claimed that the EPA's approval of SIPs containing rules authorizing IPT is sufficient for compliance with the CAA requirements for EPA approval of SIPs, while the specific ratios applied to IPT should be a matter of NNSR permitting. The commenters stated that the CAA assigns the EPA a substantive role in approving SIPs but generally reserves NNSR permitting decisions to states. They thereby concluded that the determination of specific IPT ratios should be considered the province of the air agency and should not require EPA approval. One commenter, while generally opposing the proposed IPT provisions, argued that EPA approval of ratios would provide minimal, if any, benefit and that the EPA lacked the resources sufficient for such a process to be successful.

*Response:* The EPA has considered the commenters' concerns about the proposed requirement for EPA approval of all IPT ratios for ozone. As a result, we have concluded that it would be appropriate to eliminate the proposed EPA approval requirement as part of the final rule while retaining the following safeguards: The final rule requires the SIP to include (1) the authority to implement IPT; (2) a description of the air quality model(s) that may be used to develop any default ratio; and (3) a description of the approach that the air agency will use to develop any default IPT ratio, which will show that such ratio(s) provide an equivalent or greater ozone air quality benefit in the applicable ozone nonattainment area. Accordingly, the final rule does not require EPA approval of any IPT ratio. The EPA agrees that the process of EPA approval could lengthen the time required for SIP approval (in the case of default IPT ratios) and for individual permit processing (in the case of case-specific IPT ratios).

However, the EPA also believes that SIP approved default IPT ratios have great potential in burden reduction for both proposed projects as well as the state through an initial up-front effort in providing the technical demonstration supporting the desired default ratio with an equivalent or greater air quality benefit for such ratio's use in NNSR permitting. A SIP approved default IPT ratio could be used to provide a greater degree of certainty for projects each time it is used in an NNSR permit, since it would be presumed to be appropriate for each individual NNSR permit in that nonattainment area. To avail this greater



certainty of default IPT ratios, an air agency could choose to obtain formal approval of any default ratio by including it in its SIP submission.

The EPA recommends that air agencies consult with the EPA and refer to the TGD for assistance in developing the technical demonstration supporting IPT as providing an equivalent or greater air quality benefit in the nonattainment area, whether implementing a case-specific or area-specific default ratio. The EPA also offers direct assistance to air agencies in the development of default IPT ratios upon request.

*Comment:* Seven commenters advocated that the EPA take greater responsibility for the development of default IPT ratios. Five of the seven specifically recommended that the EPA provide the area-specific IPT ratios for ozone nonattainment areas to the air agencies. Two of the commenters, supporting a greater EPA responsibility, called upon the EPA to provide assistance to the states in developing default IPT ratios. All seven commenters generally agreed that the process to develop default IPT ratios is too burdensome for the states to conduct on their own. A state air agency commenter recommended that the EPA provide a mechanism to establish an alternative ratio “that does not rely upon overly burdensome modeling exercises.” The same commenter suggested that the EPA could instead rely upon a ratio of NO<sub>x</sub> and VOC inventories rather than photochemical modeling.

*Response:* While the EPA continues to support the concept of a default ratio for a particular ozone nonattainment area, primarily for resource reasons it is not feasible at this time for the EPA to assume the responsibility for establishing ratios for all ozone nonattainment areas across the country. Additionally, it is not clear whether all states will adopt the discretionary IPT provisions or whether they will prefer default or case-specific IPT ratios.

Taking into account these considerations, and the considerable resources required to conduct research and data analyses to establish IPT ratios for every nonattainment area, the EPA believes that it is more appropriate for states to assume the responsibility for developing IPT ratios for nonattainment areas if they decide to implement the voluntary IPT program.

Concerning the commenters' recommendation for a mechanism for an alternative ratio that can be derived without reliance on a modeling demonstration, the EPA is not aware of an alternate methodology to show

equivalent or greater ozone air quality benefit in a nonattainment area, which is an essential component of an acceptable ozone IPT ratio, nor has the commenter provided such methodology for consideration. Moreover, a ratio that relied upon NO<sub>x</sub> and VOC emissions inventories, as recommended by one commenter, would not be based on an air quality relationship between the two ozone precursors and would lack elements of the required technical demonstration to substantiate the required equivalent or greater air quality benefit for the ozone nonattainment area than a reduction (offset) of the emitted precursor would achieve.

*Comment:* One commenter recommended the EPA not allow case-specific IPT ratios because such ratios could not be set in advance of the permitting process, although permit applicants need to know the appropriate amount of the precursor offsets that would be required in order to decide whether to apply for an NNSR permit.

*Response:* Any major NNSR permit applicant would be required to do preliminary analysis to determine the Lowest Achievable Emissions Rate (LAER) and the amount of emissions offsets required. The EPA recognizes the importance of an applicant of knowing, in advance of applying for a permit to construct, the amount of emissions reductions that will be needed to satisfy the NNSR offset requirement. If a state has chosen to provide a default ratio, then that information is readily available to the applicant when contemplating a proposed construction project. If, however, a state also allows case-specific IPT ratios and the applicant believes that a lower, less conservative ratio may be more appropriate for the proposed project at a particular location within a nonattainment area, then the applicant may elect to propose in advance of the submittal of a permit application a case-specific IPT ratio that would apply only to that source project. Thus, the case-specific IPT ratio remains a valid option for permit applicants that find it useful.

*Comment:* Some commenters expressed concern that the final rule would only allow one approach for developing the required IPT ratio. One commenter was concerned that states with more than one ozone nonattainment area would be required to select one approach to apply to all nonattainment areas within the state.

*Response:* These commenters appear to have misunderstood the EPA's proposal concerning the different options described for states to consider in developing or revising IPT ratios for NNSR permitting. The EPA did not

intend to limit the flexibility afforded to states with respect to how they can implement ozone IPT provisions (which includes the approach indicated by these commenters). As previously explained, the EPA proposed three options for states that choose for implementing an IPT program for ozone: (1) Procedures to develop an area-wide IPT ratio; (2) procedures to allow case-specific ozone IPT ratios applicable to single permits; or (3) a combination of the first two options with an area-specific default ratio that can be replaced by a case-specific ratio as proposed by the applicant. The EPA's intent is to maximize flexibility so that air agencies can choose a different option for each nonattainment area, rather than choose one option to apply at the statewide level, which means that two nonattainment areas in the same state could apply different options for ozone IPT ratios. The IPT program for ozone is not a mandatory program for air agencies to adopt. However, air agencies that choose to use any form of IPT program for ozone using the options provided in the final rule will need to revise their SIPs to ensure that their NNSR rules satisfy the minimum requirements contained in the final rule.

*Comment:* Twelve commenters opposed the proposed requirement for a 3-year periodic review of any area-wide IPT ratios. Several of these commenters opposed any review at all unless there is a specific basis (e.g., a new or revised attainment demonstration) to justify the need for review. Most of the remaining commenters recommended that a longer review period (generally 5–10 years) would be more appropriate than the proposed 3-year frequency. The commenters generally indicated that the proposed 3-year review would be overly burdensome and likely not reflect appreciable inventory changes. The commenters further noted that updating an ozone IPT ratio every 3 years after initial SIP approval requires months of modeling along with many weeks to follow public notice requirements and other applicable state requirements.

*Response:* The EPA considered the comments concerning the proposed periodic review and the 3-year review cycle and has concluded that it is appropriate to make certain changes to the proposed approach. Specifically, the requirement for a periodic review of any default ratio is being retained; however, such reviews will be required every 5 years rather than the proposed 3 years. The EPA notes that the requirement for periodic review does not apply to case-specific IPT ratios established for individual permits since each such ratio will be based on the relevant technical

information applicable to that particular permitting situation. The EPA disagrees with those commenters recommending that IPT review only occur at the states' discretion. The EPA is establishing a periodic review requirement for area-wide IPT ratios based on a 5-year review cycle to address the potential for changes in atmospheric conditions in an area, and to ensure that the requirement for equivalent or greater ozone benefits continues to be satisfied.

The increase in the length of the review was supported by commenters in response to the proposal. Commenters supporting a review period specifically noted that the 3-year period was too short. Many of the commenters noted the procedural challenges in their own rulemaking process and that other contributing elements to the nonattainment area air shed do not change significantly enough to justify the effort of the review.<sup>45</sup> They concluded that a 3-year review cycle would be too burdensome to adopt as a provision. Further, recent research suggests ozone formation in an area changes over time but is typically fairly consistent in a given 3 to 5-year period.<sup>46</sup> Therefore, the EPA has decided to increase the proposed 3-year review period to a 5-year review period in order to provide air agencies a more reasonable period of time to satisfy the requirement and to afford sufficient time to reflect inventory changes. It is important to note that the final rule would also not require EPA approval of periodically reviewed ratios that are not included in regulations and the SIP. This will enable an air agency to effectuate an updated default ratio more quickly, but such a default ratio will be subject to public comment as part of the NNSR permitting process. However, similar to the development of the initial default ratio, the EPA encourages air agencies to both work with the EPA in the development of a revised default IPT ratio for a particular ozone nonattainment area and notify the EPA after such a ratio has been developed.

*Comment:* Five commenters advocated that the EPA provide a reasonable transition period for any pre-existing IPT programs that a state may be currently implementing. Some of these commenters explicitly

recommended that states be allowed to continue the implementation of pre-existing ozone IPT programs without including revised IPT provisions as part of any other required revisions to the ozone NNSR regulations.

*Response:* Existing provisions in an EPA-approved SIP remain in effect until any revisions to those provisions are approved by the EPA as a revision to the SIP. Accordingly, states that already implement a SIP-approved ozone IPT program can continue to implement that approved program until the program is revised. States are required to submit a SIP revision regarding the state's NNSR program. Even if a state believes that its pre-existing IPT program is sufficient to meet the requirements established in this rulemaking, the state's SIP submittal must demonstrate this to be so by including information to support the implementation of IPT subject to the requirements of this rule. In the case of any default ratios that are already in a SIP, this includes a technical demonstration supporting an equivalent or greater ozone air quality benefit for the existing default IPT ratio, and a 5-year periodic review.

*Comment:* Two commenters objected to the proposed ozone IPT provisions on the grounds that allowing IPT is unlawful. One of the commenters claims the IPT provision would put human health at risk because it contributes to delays in attaining the standards. The other commenter provides a detailed argument claiming that the proposed ozone IPT provision violates the express terms of the CAA. This commenter interprets the offset requirement under CAA Section 173(c)(1), which specifically refers to an "air pollutant," to apply only to the particular precursor emitted (VOC or NO<sub>x</sub>), rather than to the ambient air pollutant (ozone) for which the region is in nonattainment, noting that the Act establishes VOC-specific offset ratios required for ozone permitting.

*Response:* The EPA disagrees with the commenters' narrow interpretation of "air pollutant" under CAA Section 173(c)(1).<sup>47</sup> CAA section 302(g), which defines "air pollutant," provides that the term includes ". . . any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the

term 'air pollutant' is used." (Emphasis added).<sup>48</sup> Further, CAA section 109(a) directs the Administrator to promulgate NAAQS for "each air pollutant for which air quality criteria have been issued. . . ." The criteria pollutant in this context is ozone—not its precursors. Further, in accordance with CAA section 107(d)(4), the air pollutant for which the area is designated nonattainment is ozone, and there is no mention of NO<sub>x</sub> or VOC.

While an area's attainment designation is made for the criteria air pollutant ozone, the control of ground level concentrations of ozone has occurred largely through regulation of its precursor emissions, which are NO<sub>x</sub> and VOC. Both the CAA and the EPA's NNSR regulations identify emissions of NO<sub>x</sub> and VOC as precursors for ozone, and, as such, NO<sub>x</sub> and VOC are both regulated under NNSR as part of the regulation of ozone (see 40 CFR 51.165(a)(xxxvii)(C)(1)). Thus, when applied to ozone, the term "air pollutant" in section 173 of the Act may be read to describe both NO<sub>x</sub> emissions and VOC emissions. The EPA, therefore, reads the Act to allow the total annual tonnage of emissions of one ozone precursor to be offset by reductions in total annual emissions of another ozone precursor (in tpy) pursuant to an IPT ratio that demonstrates that the reductions will have an equivalent or greater air quality benefit with respect to ground level concentrations of the ambient air pollutant ozone. Further, section 173(a)(1)(A) of the CAA requires an NNSR permitting offset to be consistent with RFP (as defined in CAA section 171(1)). Specifically, this provision requires that the offsetting emissions reductions are such that the total allowable emissions in the area, including the proposed source or modification when the source commences operation, will be sufficiently less than the emissions from the total emissions of existing sources before the permit application, to represent RFP when considered together with the provisions of the nonattainment SIP. Section 171(1) of the CAA defines RFP as "annual incremental reductions in emissions of the relevant air pollutant . . . for the purposes of the applicable NAAQS by the applicable date." This requirement serves as insurance that IPT offsets must not interfere with NAAQS attainment for ozone.

<sup>45</sup> See Section VIII.B of the Response to Comments document for further information.

<sup>46</sup> Evaluating a Space-Based Indicator of Surface Ozone-NO<sub>x</sub>-VOC Sensitivity Over Midlatitude Source Regions and Application to Decadal Trends, Xiaomeng Jin, Arlene M. Fiore, Lee T. Murray, Lukas C. Valin, Lok N. Lamsal, Bryan Duncan, K. Folkert Boersma, Isabelle De Smedt, Gonzalo Gonzalez Abad, Kelly Chance, and Gail S. Tonnesen, *Journal of Geophysical Research: Atmospheres*, October 5, 2017.

<sup>47</sup> Section 173(c)(1) of the CAA states that the NNSR offset requirement shall "assure that the total tonnage of increased emissions of the *air pollutant* from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such *air pollutant* from the same or other sources in the area." (Emphases added.)

<sup>48</sup> See 57 FR 55620, November 25, 1992, at page 55621 and 55624 (PSD and NNSR Applicability), and 1991 Memo "New Source Review Program Transitional Guidance" at page 5.

Additionally, the commenters note that the Act establishes VOC-specific offset ratios required for ozone permitting. The IPT provisions at issue in this rulemaking are for the NNSR permitting offset requirement for ozone and stem from the CAA section 173(c) requirement to offset “increased emissions of any air pollutant” rather than a requirement that specifically identifies the precursor at issue.<sup>49</sup> Of note, the EPA is not suggesting that a VOC-specific SIP requirement where Congress has not permitted NO<sub>x</sub> substitution can be satisfied by utilizing either precursor interchangeably. Specifically, in CAA section 182(b)(1), for newly listed Moderate and higher classified nonattainment areas, there is a requirement that a reduction in VOC emissions of 15 percent be achieved. In the case of a nonattainment area (Moderate and higher classified) that has not previously achieved the 15 percent VOC ROP reduction and is seeking to utilize NNSR permitting as one of the methods by which it will achieve the required VOC reductions, the state is not allowed to utilize IPT in its NNSR program.

*Comment:* One commenter argued that the IPT provision for ozone violates the CAA’s anti-backsliding requirements because “[a] rule that allows a new major source to be constructed and emit increased levels of a pollutant that would have been barred under prior rules is by definition less stringent.” Additionally, the commenter asserted that the IPT provision would put human health at risk and fails to assure equivalent or greater ozone reduction benefit.

*Response:* The commenter did not identify any specific CAA requirements in their comments with regard to anti-backsliding. Based on the commenter’s statement that the proposed rulemaking “unlawfully and arbitrarily authorize[s] controls for that pollutant that are less stringent than required under the pre-existing NAAQS,” the commenter appears to be referencing the EPA’s application of section 172(e); however, this provision applies to relaxation of a prior NAAQS. The EPA is not relaxing

a prior NAAQS in this action, and thus section 172(e) does not apply.

As the EPA has stated, the IPT approach outlined in the proposal and being finalized here represents the longstanding policy of the EPA.<sup>50</sup> Therefore, it is not “less stringent” than the agency’s prior approach. Moreover, the commenter provided no analysis or support for the assertion that this rule would allow “a new major source to be constructed and emit increased levels of a pollutant that would have been barred under prior rules.”

The EPA also disagrees with commenter’s claims that the proposed rulemaking would put human health at risk and that IPT fails to assure equivalent or greater ozone reduction benefits. In both the proposed and final rule, the use of any IPT ratio is predicated on a demonstration that assures exactly that. *See, e.g.*, 40 CFR 51.165(a)(11)(i)(B)(I) and (C). The commenter claimed that the “proposal nowhere finds or demonstrates that any specific trading ratios will be sufficient to assure equivalent or greater ozone reductions in any particular ozone nonattainment areas, nor does it specify with precision the methods and supporting data required to make such a demonstration.” These critiques are premature and would only be germane if the commenter sought to dispute the approval of a specific IPT ratio. As discussed earlier in response to comments requesting that the EPA directly develop ratios for each nonattainment area as part of this final rule, the EPA maintains that we cannot, and will not endeavor to, identify all possible specific trading ratios for all areas. Rather, the EPA has defined three different procedural approaches for implementing IPT and provided technical guidance to assist air agencies (and permit applicants, where applicable) in the establishment of such ratios.

Furthermore, the ability of an IPT ratio to assure equivalent or greater ozone reductions has been acknowledged by Congress. CAA section 182(c)(2)(C) permits air agencies to demonstrate that substituting NO<sub>x</sub> emissions for VOC emissions to satisfy the VOC-specific requirements of CAA section 182(c)(2)(B) “would result in a reduction in ozone concentrations at least equivalent to that which would result from the amount of VOCs emission reductions required.” In that

context, Congress specifically authorized the substitution because it related to a VOC-specific requirement. The IPT provisions in this final rule, relate to the ambient air pollutant ozone, and, thus, as discussed previously, specific authorization to substitute precursors is not necessary as part of the section 173(c) offset requirement because, as discussed earlier, CAA section 302(g) defines “air pollutant” to include “any precursors to the formation of any air pollutant.” However, section 182(c)(2)(C) is noteworthy because it formalizes Congress’ acknowledgement that, contrary to the commenter’s assertions, IPT can be implemented in a manner which assures equivalent or greater ozone reductions.

#### *E. Emissions Inventory and Emissions Statement Requirements*

The EPA proposed to clarify our emissions inventory and emissions statement requirements for purposes of the 2015 ozone NAAQS by adding 40 CFR 51.1315. CAA sections 182(a)(1) and 182(a)(3)(A) require states to submit emissions inventories to the EPA. To clarify these statutory requirements within the context of implementing the 2008 ozone NAAQS, the EPA added 40 CFR 51.1115 (80 FR 12264, 12314; March 6, 2015). For purposes of the 2015 ozone NAAQS, we proposed to add 40 CFR 51.1315, to clarify requirements for the emissions inventories required by CAA sections 182(a)(1) and 182(a)(3)(A). We also provided a preamble discussion in the proposed rulemaking to clarify the emissions statement requirements of 182(a)(3)(B), and are finalizing 40 CFR 51.1315 consistent with that discussion in this final rule.

#### 1. Emissions Inventories

*a. Summary of Proposal.* The EPA proposed to retain our existing approach to the general emissions inventory requirements for purposes of the 2015 ozone NAAQS, as articulated in the final 2008 Ozone NAAQS SIP Requirements Rule.<sup>51</sup> We also proposed revisions to point source reporting thresholds in the AERR (codified in 40 CFR 51, subpart A) to be consistent with the major source thresholds for ozone nonattainment areas.

The emissions inventory requirements for the 2008 ozone NAAQS, found at 40 CFR 51.1115, describe the criteria and timing for base year and periodic

<sup>49</sup> If anything, the statement in section 182(c)(2)(C) permitting NO<sub>x</sub> substitution that “would result in a reduction in ozone concentrations at least equivalent to that which would result from the amount of VOC emission reductions required under subparagraph (B)” evidences Congress’s understanding that NO<sub>x</sub> reductions, when properly calculated, can be utilized to result in equivalent ozone reductions as VOC emissions; a contention which the commenters dispute and is discussed below in addressing the commenters’ “anti-backsliding” comments.

<sup>50</sup> *See* Louisiana; Final Rule: 67 FR 61260, September 30, 2002 (proposed at 67 FR 48090, July 23, 2002); Texas; Final Rule: 71 FR 52664, September 6, 2006 (proposed at: July 23, 2001); Mass Emissions Cap and Trade Program proposal (66 FR 38240; July 23, 2001).

<sup>51</sup> The preamble to the final 2008 Ozone NAAQS SIP Requirements Rule provides an extensive discussion of the EPA’s rationale and approach for emissions inventories (80 FR 12289; March 6, 2015).

inventories required under CAA sections 182(a)(1) and 182(a)(3)(A), respectively. To support the periodic emissions inventory requirement, the EPA proposed revisions to the AERR point source reporting thresholds in AERR Table 1 (40 CFR 51, subpart A, appendix A) to be consistent with the major source thresholds for ozone nonattainment areas. These reporting thresholds are in tons of potential emissions per year. The existing AERR Table 1 includes Moderate area thresholds of 100 tpy for NO<sub>x</sub> and VOC, which are the same as the triennial thresholds for all areas. The existing AERR table also includes lower VOC thresholds for Serious, Severe and Extreme areas of 50, 25 and 10 tpy. With the proposed revision, the AERR table would be updated to also explicitly include these same Serious, Severe and Extreme area thresholds for NO<sub>x</sub>. The same thresholds as have existed for VOC also apply for NO<sub>x</sub>, consistent with definition of “major source” in both 40 CFR 70.2 and 40 CFR 71.2. In addition, the emission thresholds also depend on whether the source is within an OTR in accordance with CAA 184(b)(2). The EPA proposed to include in the AERR table a 50 tpy potential-to-emit (PTE) VOC threshold for sources within an OTR and a 50 tpy PTE NO<sub>x</sub> threshold for sources both within an OTR and within a Moderate ozone nonattainment area, proposing to apply the same definition noted earlier in 40 CFR 70.2 and 40 CFR 71.2. Finally, the proposal removed the 100 tpy PTE CO threshold from the AERR tables in Appendix A for ozone nonattainment areas because there is no corresponding major source threshold for CO in the existing or proposed implementing regulations for the ozone NAAQS.

*b. Final Rule.* The EPA is finalizing the proposed emissions inventory requirements, with the exception of the proposed AERR Table 1 reporting threshold for NO<sub>x</sub> sources within an OTR, as explained more fully later. In general, we are providing that air agencies may rely, when appropriate, on their 3-year cycle inventory as described by the AERR to meet the 182(a)(3)(A) periodic inventory obligations, with additional requirements for the reporting of ozone season day emissions and treatment of partial-county inventories.<sup>52</sup> For all of the mobile

source inventories used for 2015 ozone NAAQS implementation, states should use the latest emissions models available at the time that the attainment plan inventory is developed.<sup>53</sup> In general, for states other than California that choose to fulfill various modeling requirements by using the latest EPA emissions model, the latest approved version of the MOtor Vehicle Emissions Simulator (MOVES) model should be used to estimate emissions from onroad and certain nonroad transportation sources. States should use the latest available planning emission inputs including, but not limited to, vehicle miles traveled, speeds, fleet mix, SIP control measures and fuels. The current version of MOVES is available at: <https://www.epa.gov/moves>. Other appropriate methods should be used to estimate emissions of nonroad sources not included in the model. For California, consult with the EPA Region 9 for information on the latest approved version of the EMFAC (EMission FACtors) model. EMFAC2014 is the most recently approved model.<sup>54</sup>

The EPA is finalizing the proposed updates to AERR Table 1 that explicitly include the same Serious, Severe and Extreme area thresholds for NO<sub>x</sub> as currently exist for VOC. We are also removing the 100 tpy PTE CO threshold from Appendix A for ozone nonattainment areas, as proposed.

We are not finalizing our proposal to revise the NO<sub>x</sub> reporting threshold for sources within an OTR from 100 tpy to 50 tpy. This revision would have aligned the NO<sub>x</sub> reporting threshold with that for VOC sources in an OTR, which is established as 50 tpy in CAA section 184(b)(2) and in subsection 3(ii) of the definition of “major source” in 40 CFR 70.2 and 40 CFR 71.2. For nonattainment areas, CAA section 182(f)(1) applies the planning requirements for major stationary sources of VOC to NO<sub>x</sub> sources within nonattainment areas classified Serious and higher. Major stationary sources of NO<sub>x</sub> for nonattainment areas are thus defined by the same corresponding emissions thresholds for VOC sources under CAA sections 182(c) (Serious areas, 50 tpy), 182(d) (Severe areas, 25

tpy) and 182(e) (Extreme areas, 10 tpy). Section 184 of the CAA does not include NO<sub>x</sub> requirements for major stationary sources of VOC in an OTR, while CAA section 184(b)(2) specifically provides that major stationary sources of VOC (*i.e.*, at least 50 tpy VOC) would be subject to requirements applicable to major stationary sources in a Moderate nonattainment area. The EPA’s proposed revision of the OTR NO<sub>x</sub> reporting threshold was intended to establish a parallel, consistent basis for emissions reporting requirements for VOC and NO<sub>x</sub> sources in an OTR. However, after considering comments received (see later), the EPA has determined that our proposal incorrectly interpreted the interaction between CAA sections 182 and 184 as requiring a NO<sub>x</sub> reporting threshold of 50 tpy in the OTR. CAA section 182(f) states that the *planning requirements* for ozone nonattainment areas that apply to major stationary sources of VOCs will also apply to major stationary sources of NO<sub>x</sub>, but it does not say the major stationary source definition for VOCs (such as the 50 tpy threshold contained in 184(b)(2)) for stationary sources in the OTR shall also apply to determining major stationary sources of NO<sub>x</sub>. Instead, section 182(f) specifically defines major stationary sources of NO<sub>x</sub> with reference to the general definition contained in CAA section 302, which applies a 100 tpy emission threshold (*see* 42 U.S.C. 7602(j)), and the thresholds for Serious, Severe and Extreme nonattainment areas contained in CAA section 182(c), (d) and (e) (*i.e.*, 50, 25 and 10 tpy, respectively). Interpreting CAA section 182(f) as establishing a 100 tpy threshold for major stationary sources of NO<sub>x</sub> in the OTR is consistent with the EPA’s longstanding position regarding the interaction between section 182 and 184.<sup>55</sup> We are therefore not finalizing our proposal to revise the NO<sub>x</sub> reporting threshold for sources within an OTR, and are retaining the existing general NO<sub>x</sub> reporting threshold of 100 tpy. Major stationary sources within an OTR that are also located in ozone nonattainment areas classified Serious and higher would be subject to the

*emissions-inventory-guidance-implementation-ozone-and-particulate-matter.*

<sup>52</sup> Section 172(c)(3) of the CAA requires that emissions inventories be based on the most comprehensive, accurate and current information available. To do so, air agencies should use the most up-to-date method for estimating emissions.

<sup>54</sup> The EPA is aware that EMFAC2017 has been made available by the California Air Resources Board and is currently reviewing that model. However, EMFAC2017 should not be used for any conformity analyses until the EPA officially approves the model for that purpose.

<sup>55</sup> *See* 57 FR 55620, 55622 (November 25, 1992) (stating that section 184(b)(2) “is specifically limited to VOC sources because section 182(f) does not refer to the section 184 definition in describing the major stationary source definitions applicable for NO<sub>x</sub> purposes”); Region 1 EPA New England NO<sub>x</sub> RACT Summary (stating that for “Marginal and Moderate nonattainment areas and attainment areas in the OTR, a major NO<sub>x</sub> source is one with the potential to emit 100 tpy or more of NO<sub>x</sub>”), <https://www3.epa.gov/region1/airquality/noxract.html>.

<sup>52</sup> States should consult the guidance document titled “Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,” EPA-454/B-17-003, July 2017, and any subsequent updates to that guidance that the EPA may make available at: <https://www.epa.gov/air-emissions-inventories/>

corresponding major source thresholds for those area classifications.

*c. Comments and Responses.*

*Comment:* Two commenters did not support the EPA's proposed revision of the NO<sub>x</sub> reporting threshold for sources within an OTR from 100 tpy to 50 tpy. The commenters contended that any changes to reporting thresholds in AERR Table 1 must be consistent with major source definitions established in the CAA and regulation.

*Response:* We agree with the commenters and are not finalizing the proposed revision. As discussed previously, we have determined that CAA section 182(f) does not apply the major stationary source threshold for VOCs contained in 184(b)(2) to major stationary sources of NO<sub>x</sub> in an OTR.

## 2. Emissions Statements

For nonattainment areas, air agencies must develop, and include in their SIPs, emission reporting programs for certain VOC and NO<sub>x</sub> sources in accordance with CAA section 182(a)(3)(B).<sup>56</sup> The required state program defines how air agencies obtain emissions data directly from certain facilities, and these data, along with other information, are then reported to the EPA as part of SIP inventories required under CAA sections 182(a)(1) and 182(a)(3)(A). This state program is generally referred to as an emissions statement regulation, and it outlines how certain facilities must report emissions and facility activity data to an air agency, typically a state agency. Reports submitted to air agencies must be accompanied by "a certification that the information contained" in the report is "accurate to the best knowledge" of the facility.<sup>57</sup> To properly implement the emissions reporting requirements, emissions statement regulations should be coordinated carefully with the data

<sup>56</sup>CAA section 182(a)(3)(B)(2) allows that air agencies may waive, with the EPA's approval, the requirement for emission statements for classes or categories of sources with less than 25 tpy of actual plant-wide NO<sub>x</sub> or VOC emissions in nonattainment areas, provided the class or category is included in the base year and periodic inventories required under CAA sections 182(a)(1) and 182(a)(3)(a), respectively. Emissions in this case must be calculated using emission factors established by the EPA, or other methods acceptable to the EPA. We emphasize that the 25 tpy emissions threshold applies separately for purposes of emissions statement requirements, and does not relate to the major stationary source reporting thresholds for emissions inventories in AERR Table 1.

<sup>57</sup> Additional details on developing emissions statement regulations can be found in the guidance document titled "Guidance on the Implementation of an Emission Statement Program (DRAFT)," (July 1992) available at: <https://www.epa.gov/air-emissions-inventories/implementation-emission-statement-program>.

elements that are required by the EPA (the existing requirements at 40 CFR 51.1115 and the requirements finalized in this rule at 40 CFR 51.1315). An air agency must submit the emissions statement regulation required by CAA section 182(a)(3)(B), or a written statement certifying a previously approved regulation, to the EPA as a SIP revision for approval (see Section III.A.2 of this preamble). CAA section 110, in conjunction with 40 CFR 51.102, 51.103 and Appendix V, establishes the procedure for submitting a SIP revision.

## V. Additional Considerations

This section addresses several important SIP-related topics for which the EPA did not propose specific regulatory provisions due to lingering legal issues, scientific unknowns and uncertainties associated with developing and implementing new regulatory requirements and/or policies. The EPA is using this final rule notice, however, to articulate our existing requirements and policies pertaining to these topics and to inform possible future actions.

### A. Managing Emissions From Wildfire and Wildland Prescribed Fire

*a. Proposed Recommendation.* The preamble to the proposal for this rule recognized both that prescribed fires are a source of emissions that can have a greater or lesser impact on ozone concentrations depending on how and when the prescribed fire is conducted, and that a prescribed fire program can be a way to reduce emissions from catastrophic wildfires which can impact ozone concentrations. In the preamble to the proposal, the EPA proposed to recommend, as guidance to air agencies, that in their attainment demonstrations they account for emissions from wildfire and wildland prescribed fire as described in the final PM<sub>2.5</sub> SIP Requirements Rule.

*b. Final Recommendation.* The EPA continues to recommend that air agencies use the approach described in the final PM<sub>2.5</sub> SIP Requirements Rule when accounting for emissions from wildfire and wildland prescribed fire. Before explaining this recommendation further, the EPA wishes to emphasize that this recommendation is focused on wildland fire management. There are other uses of prescribed fire and other types of burning that may occur in nonattainment areas, or that may affect downwind nonattainment areas, such as burning of land clearing debris, agricultural burning and burning of logging slash on land where the primary purpose of the logging is for commercial

timber sale.<sup>58</sup> The challenges with applying the traditional nonattainment planning framework discussed here are particular to wildland fire and prescribed fire on wildlands. The EPA believes that addressing these other uses of prescribed fire does not present nearly the same level of challenge as does addressing wildland fire, and, thereby, can still be accommodated within the nonattainment planning framework. For example, where these other types of burning currently contribute to ozone levels in a nonattainment area, air agencies may, with an adequate technical demonstration, be able to take credit for reductions in ozone concentrations resulting from improvement in smoke management techniques for these types of prescribed fire where the improvement results in a demonstrated reduction in impacts in the nonattainment area.

The EPA also wants to clarify that we continue to encourage federal, state, local and tribal agencies and private land owners, to take situation-appropriate steps to minimize impacts from prescribed fire emissions on wildland. The EPA encourages all land owners and managers to apply appropriate basic smoke management practices (BSMP) to reduce emissions from prescribed fires, especially where an air agency has determined that prescribed fires are a significant source affecting air quality. The EPA understands that the federal land managers (FLMs) apply these measures routinely and will be available to consult with other agencies and private land owners interested in doing the same.

However, for several reasons, the EPA does not believe it would be effective policy or technically appropriate to recommend that control measures for wildland fire be adopted into SIPs as enforceable measures and credited for emissions reductions (of ozone and precursors) that would help the area attain the standard.<sup>59</sup> Instead, the EPA

<sup>58</sup>The EPA notes that some wildland logging operations are conducted for the same purposes as prescribed fire (e.g., reducing fuel load, ecosystem benefits). The fact that some of the removed trees may be sold as timber does not make commercial timber sale the primary purpose of such operations.

<sup>59</sup>These reasons include concerns raised by commenters on the PM<sub>2.5</sub> SIP Requirements Rule about the difficulties associated with requiring (or even encouraging) states to incorporate wildland fire emissions into existing nonattainment planning procedures and practices under the CAA; high year-to-year variability and unpredictability with emissions from wildland fires; uncertainty in the amount of credit to give for reduced wildfire within the planning period and in the amount of benefit that exists after accounting for increases in

recommends that ozone nonattainment plans (and in particular the attainment demonstrations) not account for expected air quality changes over the planning period resulting from changes in the use of wildland prescribed fire or other wildland fire management practices to reduce future wildfires, or air quality changes over the planning period resulting from changes in wildland fire emissions due to a program of prescribed fire or due to any other cause, including climate change. In most cases, state attainment demonstration modeling should assume that wildland prescribed fire and wildfire emissions in the attainment year will be equal to, and have the same temporal and geographic pattern as, those assumed in the baseline inventory year.

The EPA acknowledges that some level and temporal and spatial patterns of fire emissions must still be assumed in the attainment demonstration in order to ensure that the required air quality modeling results in a realistic physical and chemical environment and a correspondingly realistic model response against which to analyze the changes from source categories where express accounting of emissions changes is being done. This final rule does not constrain the options for states regarding the appropriate assumptions to make for fire emissions. Rather, the guidance in this preamble simply recommends that once this base level is established, ozone plans should not attempt to project changes over the planning period in emissions from wildfires or prescribed fires on wildland within the nonattainment area, or in upwind areas included in the modeling domain, that are due to variability in wildfire occurrence or changes in the use of wildland prescribed fire or other wildland fire management practices. Moreover, the EPA anticipates that changes in spatial and temporal patterns of wildfire will likewise be too uncertain for them to be allowed to have the effect of reducing or increasing the control requirement on conventional anthropogenic sources. The EPA, therefore, recommends that wildland fire emissions generally should be held constant in the air quality modeling over the planning period, regardless of whether wildland fire management practices by land managers are expected, and possibly encouraged or required, to change.

prescribed fires within the planning period; and the fact that air quality data actually influenced by fire events may ultimately be excluded for regulatory purposes under the provisions of the Exceptional Events Rule (40 CFR 50.14).

Air agencies have flexibility in determining how best to represent wildland fire emissions. As noted earlier, base year emissions inventories for the nonattainment areas should represent the conditions leading to nonattainment and be consistent with inventories used for modeling. For fires, the EPA additionally encourages air agencies to use a representative mix of prescribed fire and wildfire in their inventories. Using ozone as an example, some plans under previous ozone NAAQS have estimated the actual fire emissions and temporal and spatial patterns from a given year and used this same estimate as part of the assumed future baseline inventory for planning, while others have used average emissions over multiple years. Other approaches may be appropriate as well. Moreover, regardless of the approach used, the EPA still encourages air agencies to submit actual wildfire and prescribed fire activity data that are critical to developing emissions estimates to the NEL, as suggested in the AERR.

A consequence of the recommendation of not expressly accounting for changes in wildland fires in attainment demonstrations is that measures to reduce emissions from wildland fires, such as prescribed fire to prevent catastrophic wildfires or smoke management programs and BSMP for prescribed fires in wildland, need not be included as RACM for the respective fire types. This is because the changes in emissions due to such measures would not be accounted for in determining what is necessary for attainment and/or what would advance the attainment date, which is how the EPA is recommending that RACM be determined. So, for example, in an area that can attain in 6 years with measures that do not address wildland fire, the EPA does not recommend that states attempt to quantify whether increased prescribed fire could advance the attainment date by 1 year, due to the aforementioned difficulties associated with such quantification.

To be clear, nothing about this recommendation regarding RACM is intended to suggest that prescribed fires should be ignited in wildland (or elsewhere) without regard to the air quality or public health consequences. As noted earlier, the EPA believes these consequences are important to address, and intends to engage in dialogue with the FLMs, air agencies, tribes, state and private land owners and other stakeholders at appropriate times, such as during the process for the development of land management plans, about how land managers determine

when and where prescribed fire is appropriate for particular wildlands and how to identify and implement appropriate mitigation measures. The guidance in this preamble simply makes clear the EPA's view regarding our recommendation for RACM for wildland fires.

#### c. Comments and Responses

*Comment:* The EPA received comments expressing agreement with the EPA's recommended approach to managing emissions from wildfire and wildland prescribed fires. A few commenters took positions on specifically how to define RACM for wildfires, ranging from suggesting that the EPA require smoke management plans to simply stating that prescribed fires themselves are RACM with no further measures required. Some commenters disagreed with our position that states not take credit in the SIP for emission reductions attributable to a reduced incidence of wildfire if the state can demonstrate that the measures in the SIP can be expected to reduce emissions from wildfire events that would ordinarily not be excluded from the design value for the area. Other commenters disagreed with our recommendation that wildfire emissions be kept constant in projections for the attainment demonstration.

*Response:* In light of the fact that the EPA did not propose specific guidance on defining RACM for wildfires and typically does not define RACM for specific categories, and the fact that the EPA is not recommending that states include RACM for wildland fires, we are not providing further guidance in response to those comments. The basis for recommending that wildfire emissions be kept constant in baseline projections is explained earlier and is driven by the uncertainties (e.g., patterns, timing and variability) in predicting fire emissions that affect ozone levels in nonattainment areas. This recommendation is only guidance, and is not binding on the states or the EPA. In our actions on individual SIPs, the public will have the opportunity to make similar comments and we will consider those comments in the context of those actions.

#### B. Transportation Conformity and General Conformity

##### 1. What is conformity?

Conformity is required under CAA section 176(c) to ensure that federal actions are consistent with ("conform to") the applicable state, tribal or federal implementation plan (collectively referred to as the SIP in the remainder

of this section). Conformity to the applicable implementation plan means that federal activities will not cause or contribute to new violations of the standards, worsen existing violations or delay timely attainment of the relevant NAAQS or interim reductions and milestones. Conformity applies to areas that are designated nonattainment and nonattainment areas redesignated to attainment that are required to have a CAA section 175A maintenance plan after 1990 ("maintenance areas").

Because certain provisions of section 176(c) apply only to highway and mass transit funding and approval actions, the EPA published two sets of regulations to implement section 176(c).

The EPA's Transportation Conformity Rule (40 CFR 51.390 and part 93, subpart A) establishes the criteria and procedures for determining whether transportation activities conform to the SIP. These activities include adopting, funding or approving transportation plans, transportation improvement programs and federally supported highway and transit projects. The EPA first promulgated the Transportation Conformity Rule on November 24, 1993 (58 FR 62188), and subsequently published several amendments. We subsequently restructured the Transportation Conformity Rule so that existing transportation conformity requirements apply for any new or revised NAAQS (77 FR 14979; March 14, 2012). The Transportation Conformity Rule, therefore, does not need to be updated to reflect the 2015 ozone NAAQS. The EPA in June 2018 issued an update to existing transportation conformity guidance related to the implementation of the revised ozone NAAQS. The guidance is available at: <https://www.epa.gov/state-and-local-transportation/policy-and-technical-guidance-state-and-local-transportation>. For further information on transportation conformity rulemakings, policy guidance and outreach materials, see the EPA's website at <https://www.epa.gov/state-and-local-transportation>.

The EPA's general conformity regulations (40 CFR part 51, subpart W and 40 CFR part 93, subpart B) establish the criteria and procedures for determining whether activities not addressed by the transportation conformity rule conform to the appropriate implementation plan. The EPA first promulgated general conformity regulations in November 1993 (58 FR 63214; November 30, 1993). Subsequently, the EPA finalized revisions to the general conformity regulations on April 5, 2010 (75 FR 17254). The general conformity program

ensures that federal actions not related to highway and transit funding and approval actions will not interfere with the appropriate implementation plan. General conformity also fosters communications between federal agencies and state and local air quality agencies, provides for public notification of and access to federal agency general conformity determinations and allows for air quality review of individual federal actions. More information on the general conformity program is available at <https://www.epa.gov/general-conformity>.

2. Why is the EPA discussing transportation and general conformity in this final rulemaking?

The EPA is discussing transportation and general conformity in this rulemaking in order to provide affected parties with information on when conformity must be implemented after areas are designated nonattainment for the 2015 ozone NAAQS. The information presented here is consistent with existing conformity regulations and statutory provisions that are not addressed by this ozone implementation rulemaking. Affected parties include state, local and tribal transportation and air quality agencies, metropolitan planning organizations and federal agencies including the U.S. Department of Transportation (DOT), the U.S. Department of Defense (DOD), the U.S. Department of Interior (DOI) and the U.S. Department of Agriculture (USDA).

3. When would transportation and general conformity apply to areas designated nonattainment for the 2015 ozone NAAQS?

Transportation and general conformity will apply 1 year after the effective date of nonattainment designations for the 2015 ozone NAAQS. CAA section 176(c)(6) provides a 1-year grace period from the effective date of initial designations for any new or revised NAAQS before transportation and general conformity apply in nonattainment areas. The grace period applies even if the area had been designated nonattainment for a prior ozone NAAQS. For additional information on transportation conformity requirements and the 1-year grace period please refer to the EPA's transportation conformity guidance for the 2015 ozone NAAQS available at: <https://www.epa.gov/state-and-local-transportation/policy-and-technical-guidance-state-and-local-transportation>.

As discussed in Section II of this preamble, the EPA proposed and sought comment on two alternative approaches

for revoking the 2008 ozone NAAQS for all purposes and, where applicable, establishing anti-backsliding requirements. We are not taking any final action regarding an approach for revoking a prior ozone NAAQS and establishing anti-backsliding requirements; the EPA intends to address any revocation of the 2008 ozone NAAQS and any potential anti-backsliding requirements in a separate future rulemaking. We note here that the CAA requires transportation and general conformity determinations in areas that are designated nonattainment or maintenance for a given pollutant and standard, which at this time includes the 2008 ozone NAAQS.

4. Are there any other impacts related to general conformity based on implementation of the 2015 ozone NAAQS?

As air agencies develop SIP revisions for the 2015 and future ozone NAAQS, the agency recommends that state and local air quality agencies work with federal agencies with large facilities (e.g., commercial airports, ports and large military bases) that might take actions subject to the general conformity regulations to establish an emissions budget in the SIP for those facilities in order to facilitate future general conformity determinations. Such a budget could be used by federal agencies in determining conformity or identifying mitigation measures for particular projects at those facilities, but only if the budget level is included and identified in the SIP.

In a few cases, tracts of land under federal management may also be included in nonattainment and maintenance area boundaries. The role of prescribed fire in these areas should be assessed in concert with those federal land management agencies. In such areas the EPA encourages air agencies to consider including, in any baseline, modeling and SIP attainment inventory used and/or submitted, emissions expected from projects subject to general conformity, including emissions from wildland fire that may be reasonably expected in the area. Where appropriate, air agencies may consider developing plans for addressing wildland fires in collaboration with land managers and owners. Information is available from DOI and USDA Forest Service on the ecological role of fire and on smoke management programs and BSMP.<sup>60</sup>

<sup>60</sup> USDA Forest Service and Natural Resources Conservation Service, Basic Smoke Management Practices Tech Note, October 2011, available at:

*C. Requirements for Contingency Measures in the Event of Failure To Meet a Milestone or To Attain*

1. Summary of Proposal

For purposes of the 2015 ozone NAAQS, the EPA proposed no changes to the requirements for contingency measures articulated in the final 2008 Ozone NAAQS SIP Requirements Rule (80 FR 12285; March 6, 2015). As required by the CAA, states must include in their nonattainment area SIPs contingency measures that are consistent with CAA section 172(c)(9). For areas classified Serious or higher, states must also include contingency measures that are also consistent with CAA section 182(c)(9), with a limited exception for Extreme nonattainment areas relying on plan provisions approved under CAA section 182(e)(5).

2. Final Rule

The EPA is finalizing the proposed requirements. Contingency measures required under CAA sections 172(c)(9) and 182(c)(9) must be fully adopted rules or measures that can take effect without further action by the state or the EPA upon failure to meet milestones or attain by the attainment deadline. Per the EPA guidance,<sup>61</sup> these measures should provide 1 year's worth of emissions reductions, or approximately 3 percent of the baseline emissions inventory. Once triggered, if these adopted contingency measures are insufficient to attain the standard, an air agency must conduct additional control measure development and implementation for the area as necessary to correct the shortfall.

Regarding content of the 1 year's worth of reductions covered by the contingency measures, the EPA is continuing to allow contingency measure emissions reductions to be based entirely or in part on NO<sub>x</sub> controls if the area has completed the initial 15 percent ROP VOC reduction required by CAA section 182(b)(1)(A)(i) and an air agency's analyses have demonstrated that NO<sub>x</sub> substitution (entirely or in part) would be effective in bringing the area into attainment.

With respect to Extreme ozone nonattainment areas, CAA section 182(e)(5) allows the agency to exercise discretion in approving Extreme area

attainment plans that rely, in part, on the future development of new control technologies or improvements of existing control technologies, where certain conditions are met. This discretion can be applied as long as an air agency has demonstrated that: All RACM, including RACT, have been included in the plan; the area's RFP demonstration during the first 10 years after designation does not rely on anticipated future technologies; and the air agency has submitted enforceable commitments to timely develop and adopt contingency measures to be implemented if the anticipated future technologies do not achieve planned reductions. The EPA is continuing to allow air agencies to submit, for Extreme nonattainment areas, enforceable commitments to develop and adopt contingency measures meeting the requirements of 182(e)(5) to satisfy the requirements for attainment contingency measures in CAA sections 172(c)(9) and 182(c)(9). These enforceable commitments must obligate the air agency to submit the required contingency measures to the EPA no later than 3 years before any applicable implementation date, in accordance with CAA section 182(e)(5).<sup>62</sup> We note that this does not, however, relieve air agencies from obligations to submit contingency measures as required by CAA sections 172(c)(9) and 182(c)(9) for periods in the first 10 years after designation.

As noted in the November 17, 2016, proposed rulemaking, the EPA acknowledges that the U.S. Court of Appeals for the Ninth Circuit issued an opinion in *Bahr v. EPA*, 836 F.3d 1218 (9th Cir. 2016), *cert. denied*, 199 L. Ed. 2d 525, 2018 U.S. LEXIS 58 (Jan. 8, 2018), which rejected the EPA's longstanding interpretation of CAA section 172(c)(9) in the context of a SIP for particulate matter standards that allowed states to rely on control measures that are already in effect as a valid means to meet the contingency measure requirement. The EPA does not currently plan to alter the agency's longstanding interpretation outside of the Ninth Circuit, especially in light of a prior decision from the U.S. Court of Appeals for the Fifth Circuit upholding that interpretation. *See Louisiana Env'tl Action Network v. EPA*, 382 F.3d 575

(5th Cir. 2004) (*LEAN*); see also 40 CFR 56.5(b).

3. Comments and Responses

*Comment:* A commenter noted that the EPA acknowledges the *Bahr v. EPA* decision, but declines to abide by it. The commenter asserts that *Bahr* was properly decided, and the EPA must follow it with regards to contingency measures required under CAA sections 172(c)(9), 182(c)(9) and 182(e)(5).

*Response:* The appropriateness of relying on already-implemented reductions to meet the contingency measures requirement has been addressed in two federal circuit court decisions. *See LEAN*, 382 F.3d at 586; *Bahr*, 836 F.3d 1218. The EPA believes that the language of sections 172(c)(9) and 182(c)(9) is ambiguous with respect to this issue, and that it is reasonable for the agency to interpret the statutory language to allow approval of already implemented measures as contingency measures, so long as they meet other parameters such as providing excess emissions reductions that the state has not relied upon to make RFP or for attainment in the nonattainment plan for the NAAQS at issue. Until the *Bahr* decision, under the EPA's longstanding interpretation of CAA section 172(c)(9) and 182(c)(9), states could rely on control measures that were already implemented (so called "early triggered" contingency measures) as a valid means to meet the Act's contingency measures requirement. The Ninth Circuit decision in *Bahr* has created a split among the federal circuit courts, with the Fifth Circuit upholding the agency's interpretation of section 172(c)(9) to allow early triggered contingency measures and the Ninth Circuit rejecting that interpretation.

States located in circuits other than the Ninth may elect to rely on the EPA's longstanding interpretation of section 172(c)(9) allowing early triggered measures to be approved as contingency measures, in appropriate circumstances. The EPA's revised Regional Consistency regulations pertaining to SIP provisions authorize the agency to follow this interpretation of section 172(c)(9) in circuits other than the Ninth. *See* 40 CFR part 56. To ensure that early triggered contingency measures appropriately satisfy all other relevant CAA requirements, the EPA will carefully review each such measure contained in an air agency's submission, and intends to consult with air agencies considering such measures early in the attainment plan development process.

[http://www.nrcs.usda.gov/internet/FSE\\_DOCUMENTS/stelprdb1046311.pdf](http://www.nrcs.usda.gov/internet/FSE_DOCUMENTS/stelprdb1046311.pdf).

<sup>61</sup> "Guidance on Issues Related to 15 Percent Rate-of-Progress Plans," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, to Regional Air Directors (August 23, 1993), available at: [http://www3.epa.gov/ttn/naaqs/aqmguides/collection/cp2/19930823\\_shapiro\\_15pct\\_rop\\_guidance.pdf](http://www3.epa.gov/ttn/naaqs/aqmguides/collection/cp2/19930823_shapiro_15pct_rop_guidance.pdf).

<sup>62</sup> For example, where a state intends to rely on CAA section 182(e)(5) commitments to satisfy the CAA section 182(c)(9) contingency measure requirement for an RFP milestone in year 2027, the commitments must obligate the state to submit adopted contingency measures to the EPA no later than 2024 (*i.e.*, 3 years before RFP contingency measures for 2027 would be implemented).



#### D. Background Ozone

With respect to the larger issue of background ozone (or U.S. background (USB)), the EPA has solicited input from air agencies, tribes and interested stakeholders on aspects of USB that are relevant to attaining the 2015 ozone NAAQS in a manner consistent with the provisions of the CAA.<sup>63</sup> To establish a common understanding and foundation for discussion, the EPA released a white paper titled, "Implementation of the 2015 Primary Ozone NAAQS: Issues Associated with Background Ozone" in December 2015, and held a workshop in February 2016 to discuss information in the white paper.<sup>64</sup> Workshop attendees included representatives of state, local and tribal air agencies and other interested stakeholders. General concerns expressed by attendees that commented were that the EPA is underestimating the magnitude and effects of USB, that available policy solutions do not provide meaningful relief from nonattainment designations in affected areas, and that USB can make meeting nonattainment area requirements unreasonably difficult or costly.<sup>65</sup>

The EPA continues to engage with stakeholders and the academic community to refine and conduct national and global model simulations to better characterize USB, and is actively evaluating the need for further guidance and/or rules to address USB based on feedback received and new understandings that may emerge from ongoing research and analysis. In 2017 and 2018, the EPA activities include participation in the Background Ozone Science Assessment organized by the Western States Air Resources Council, the Western Regional Air Partnership and the American Petroleum Institute,<sup>66</sup> the United Nations' Hemispheric Transport of Air Pollutants task force<sup>67</sup> and the U.S. National Air and Space

Administration's Health and Air Quality Applied Sciences Team.<sup>68</sup> Each of these efforts includes workshops for stakeholders and development of scientific products that inform the EPA's understanding of USB. However, the EPA is not adopting requirements regarding background ozone with this rulemaking.

The EPA also in 2016 recently finalized revisions to the Exceptional Events Rule to further facilitate review and approval of exceptional events that contribute to USB, such as stratospheric ozone intrusions and wildfires (81 FR 68216; October 3, 2016). Guidance is currently available for demonstrations of exceptional events for high wind dust, and the EPA finalized guidance for ozone associated with wildfire events in September 2016.<sup>69</sup> The EPA expects to make available similar guidance for stratospheric ozone intrusions by the end of 2018. However, the EPA is not revising the Exceptional Events Rule or guidance with this rulemaking.

#### E. Additional Policies and Programs for Achieving Emissions Reductions

##### 1. Multi-Pollutant Planning

Increasingly, state air agencies are considering multi-pollutant emission reduction strategies. States have expressed interest in a number of those strategies, ranging from energy efficiency and renewable energy (EE/RE) programs to land use planning and travel efficiency programs. This section discusses EE/RE, and Sections E.2 and E.3 that follow discuss the latter programs.

In recent years, states have expressed increased interest in EE/RE programs when assessing compliance options for ozone RFP and attainment demonstration SIPs. Many states are already implementing cost-effective EE/RE requirements that reduce all types of power generation-related emissions (including NAAQS-related air pollutants such as NO<sub>x</sub>, PM<sub>2.5</sub>, and sulfur dioxide (SO<sub>2</sub>) and other air pollutants, such as hazardous air pollutants). Effectively assessing these approaches will require strong working relationships between state energy and environmental officials. As state public utility commissions (PUCs) and state energy offices implement, increase the stringency of or adopt new EE/RE requirements, their expertise can assist

air agencies to incorporate the NO<sub>x</sub> emission impacts into ozone RFP and attainment demonstration SIPs.

States and other authorities have requested the EPA's assistance in accounting for the emissions reductions achieved through EE/RE programs in NAAQS SIPs and tribal implementation plans (TIPs), and the EPA has responded to those requests by developing several resources, including the "Roadmap for Incorporating EE/RE Programs and Policies in NAAQS SIPs/TIPs" (released August 2012)<sup>70</sup> and the AVOIDed Emissions geneRation Tool (AVERT), a tool for quantifying NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> avoided emissions (released February 2014).<sup>71</sup> The Roadmap describes four pathways (baseline emissions projection, control strategy, emerging/voluntary measures and weight of evidence determination) by which EE/RE policies and programs could be included in a SIP. Each pathway is appropriate in certain circumstances (existing vs. new EE/RE, control vs. voluntary measures etc.) and the Roadmap can help decision-makers consider their options as they decide which pathway(s) to pursue for incorporating EE/RE policies and programs into SIP/TIP demonstrations. The Roadmap's Appendix I also presents several methods available for quantifying the avoided NO<sub>x</sub> emissions from fossil fuel generation as a result of electricity savings from EE/RE policy/program implementation.<sup>72</sup>

The EPA's tool, AVERT, can help planners in quantifying the emissions reductions that result from EE/RE policies and programs. AVERT outputs are readily available for Sparse Matrix Operator Kernel Emissions formatting to incorporate the emission impacts into air quality models.

The EPA recognizes that states may now have at their disposal other quantification tools. An update of the "Air Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations" (released July 2017) provides examples of tools that states can use to quantify the power sector emissions and EE/RE.<sup>73</sup> In this guidance, the EPA does not limit the types of tools states can use, so long as

<sup>63</sup> For purposes of NAAQS implementation, the EPA considers USB to be any ozone formed from sources or processes other than U.S. manmade emissions of NO<sub>x</sub>, VOCs, methane and CO.

<sup>64</sup> The white paper and other workshop details are available at: <https://www.epa.gov/ozone-pollution/background-ozone-workshop-and-information>.

<sup>65</sup> A high-level summary of workshop feedback is available at: <https://www.epa.gov/sites/production/files/2016-03/documents/bgo3-high-level-summary.pdf>. Additional written comments from interested parties are located in a separate EPA docket available at <http://www.regulations.gov> (Docket ID No. EPA-HQ-OAR-2016-0097).

<sup>66</sup> A summary of this Background Ozone Science Assessment workshop is available at: [https://www.wrapair2.org/pdf/BOSA\\_March\\_28-29\\_workshop\\_agenda.pdf](https://www.wrapair2.org/pdf/BOSA_March_28-29_workshop_agenda.pdf). A related journal article is currently undergoing peer review.

<sup>67</sup> A work plan and list of publications is available on the website: [www.htap.org](http://www.htap.org).

<sup>68</sup> Details about these Health and Air Quality Applied Sciences Team workshops and projects are available on the website: <https://haqast.org>.

<sup>69</sup> Guidance documents and more information about exceptional events can be found at: <https://www.epa.gov/air-quality-analysis/exceptional-events-rule-and-guidance>.

<sup>70</sup> Roadmap for Incorporating EE/RE Programs and Policies in NAAQS SIPs/TIPs available at: [https://www.epa.gov/sites/production/files/2016-05/documents/eeemanual\\_0.pdf](https://www.epa.gov/sites/production/files/2016-05/documents/eeemanual_0.pdf).

<sup>71</sup> AVERT available at: <http://www3.epa.gov/avert/>.

<sup>72</sup> Available at [https://www.epa.gov/sites/production/files/2016-05/documents/appendixi\\_0.pdf](https://www.epa.gov/sites/production/files/2016-05/documents/appendixi_0.pdf).

<sup>73</sup> Available at: <https://www.epa.gov/air-emissions-inventories/air-emissions-inventory-guidance-implementation-ozone-and-particulate>.

states appropriately document their assumptions.

State PUCs, primarily through their utilities, have in recent years been rapidly increasing resources devoted to EE programs. In the 5 years spanning 2006 to 2011, budgets for EE programs more than tripled, from \$1.6 billion to \$5.9 billion. Additionally, EE spending is projected to continue to grow at a substantial rate.<sup>74</sup> As of March 2015, 23 states have mandatory energy efficiency requirements, two states have voluntary targets, and two states allow energy efficiency as a compliance option for their renewable portfolio standard (RPS).<sup>75</sup>

Also, state-level RE requirements have been implemented in 29 states plus Washington, DC, representing all regions of the country.<sup>76</sup> Between the years 2020 and 2030, many state-level RPS programs require electric utilities to serve from 15 to 40 percent of their retail sales with renewable power.<sup>77</sup>

To further help states assess the effects of these programs, the EPA developed a counterfactual EE/RE scenario for two areas that were nonattainment for the 2008 ozone NAAQS, including the New York-New Jersey-Connecticut area.<sup>78</sup> In these illustrative examples the EPA used AVERT to approximate the potential emissions that would have been emitted into the atmosphere without current state-level EE/RE requirements. For the New York-New Jersey-Connecticut area, the EPA estimated that the current state-level RE requirements<sup>79</sup> will avoid over 24 tons per summer day of NO<sub>x</sub> in 2020, and the current state-level EE

<sup>74</sup> American Council for an Energy-Efficient Economy (ACEEE) 2013 State Energy Efficiency Scorecard (November 2013), available at: <http://www.aceee.org/state-policy/scorecard/>.

<sup>75</sup> U.S. EPA 2015. Energy and Environmental Guide to Action, Chapter 4 available at: <https://www.epa.gov/statelocalenergy/energy-and-environment-guide-action-chapter-4-energy-efficiency-policies>.

<sup>76</sup> RE requirements include Renewable Portfolio Standards or state-enacted RE requirements on a Mega-Watt (MW) basis. Database of State Incentives for Renewables and Efficiency, March 2013, available at: <http://www.dsireusa.org>.

<sup>77</sup> U.S. EPA. 2015 Energy and Environment Guide to Action, Chapter 5 available at: <https://www.epa.gov/statelocalenergy/energy-and-environment-guide-action-chapter-5-renewable-portfolio-standards>.

<sup>78</sup> This area encompasses eight counties in New York, 12 counties in New Jersey and three counties in Connecticut. The EPA's analysis is described in the Technical Support Document "Demonstrating NO<sub>x</sub> Emission Reduction Benefits of State-Level Renewable Energy and Energy Efficiency Policies," available in the docket for this rulemaking.

<sup>79</sup> The 2020 RE requirements in each state are different and range from 20 percent to 30 percent.

programs<sup>80</sup> will avoid nearly 17 tons per summer day of NO<sub>x</sub> in 2020.<sup>81</sup>

## 2. Land Use Planning

Air agencies may also wish to consider strategies that foster more efficient urban and regional development patterns as a long-term air pollution control measure. Resources include the U.S. Department of Housing and Development–DOT–EPA Partnership for Sustainable Communities, as well as the policy and technical guidance documents on land use and related travel efficiency available on the EPA's Office of Transportation and Air Quality website.<sup>82</sup> These documents provide communities with the information they need to better understand the link between air quality, transportation and land use, and how certain land use policies have the potential to help local areas achieve and maintain healthy air quality. The documents also include methods to help communities account for the air quality benefits of their local land use in their air quality plans.

If wildfire impacts are significant in a particular area, air agencies and communities may be able to lessen the impacts of wildfires by working collaboratively with land managers and land owners to employ various mitigation measures including taking steps to minimize fuel loading in areas vulnerable to fire.

## 3. Travel Efficiency

Areas may also consider incorporating in their SIPs travel efficiency strategies, such as new or expanded mass transit options, commuter strategies, system operations (e.g., ramp metering), pricing (e.g., parking fees, congestion pricing, roadway tolls), real-time travel information and multimodal freight strategies. The EPA has released several documents that could be useful to air agencies that want to evaluate emissions reductions from travel efficiency strategies. These documents provide information on analysis methods and the potential effectiveness of different combinations of travel efficiency measures for reducing emissions. Additionally, the EPA has compiled a

<sup>80</sup> The EE programs used in each state are different. Connecticut's estimated annual efficiency savings is 2.8 percent, New York's target was 15 percent savings from baseline by 2015 and New Jersey incentivized efficiency improvements through a funding program of \$265 million in FY2014.

<sup>81</sup> For context, the RFP plan for the New York-New Jersey-Connecticut 1997 ozone NAAQS nonattainment area included a 2008 NO<sub>x</sub> emissions projection of 269 tons per summer day.

<sup>82</sup> See [http://www.epa.gov/otaq/stateresources/policy/pag\\_transp.htm](http://www.epa.gov/otaq/stateresources/policy/pag_transp.htm).

report about transportation control measures that have been implemented across the country for a variety of purposes, including reducing emissions related to criteria pollutants. All of these documents are available on the EPA's Office of Transportation and Air Quality website.<sup>83</sup>

## F. Additional Requirements Related to Enforcement and Compliance

CAA section 172(c)(6) requires nonattainment SIPs to "include enforceable emission limitations, and such other control measures, means or techniques . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment . . ." The EPA's "Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans" (EPA-452/R-93-005, June 1993)<sup>84</sup> is still relevant to rules adopted for SIPs under the 2015 ozone NAAQS and should be consulted for purposes of developing appropriate enforceable nonattainment plan provisions under CAA section 172(c)(6). The EPA did not propose, and is not adopting, any additional specific regulatory provisions related to compliance and enforcement for implementing the 2015 ozone NAAQS, and received no adverse comments on the existing recommended approach and related guidance.

## G. Applicability of Final Rule to Tribes

Section 301(d) of the CAA authorizes the EPA to approve eligible Indian tribes to implement provisions of the CAA on Indian reservations and other areas within the tribes' jurisdiction.<sup>85</sup> The Tribal Authority Rule (TAR) (40 CFR part 49.1-49.11), which implements CAA section 301(d), sets forth the criteria and process for tribes to apply to the EPA for eligibility to administer CAA programs (40 CFR 49.6, 49.7). As discussed in detail in the proposed 2008

<sup>83</sup> See <https://www.epa.gov/state-and-local-transportation/policy-and-technical-guidance-state-and-local-transportation>.

<sup>84</sup> Available at: <http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=00002TCM.txt>.

<sup>85</sup> On January 17, 2014, the United States Court of Appeals for the District of Columbia Circuit issued a decision vacating the EPA's 2011 rule titled "Review of New Sources and Modifications in Indian Country" (76 FR 38748) with respect to non-reservation areas of Indian country (See, *Oklahoma Department of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014)). Under the court's reasoning, with respect to CAA SIPs, a state has primary regulatory jurisdiction in non-reservation areas of Indian country (i.e., Indian allotments located outside of reservations and dependent Indian communities) within its geographic boundaries unless the EPA or a tribe has demonstrated that a tribe has jurisdiction over a particular area of non-reservation Indian country within the state.

Ozone NAAQS SIP Requirements Rule (78 FR 34209; June 6, 2013), tribes are not required to submit TIPs under the TAR. However, should a tribe choose to develop a TIP, this rule is intended to serve as a guide for addressing key implementation issues for areas of Indian country, particularly for any areas of Indian country that may be designated as nonattainment areas separate from surrounding state areas.

It is important for state and local air agencies and tribes to work together to coordinate planning efforts where nonattainment areas include both Indian country and state land. States need to incorporate Indian country emissions in their base emissions inventories if Indian country is part of an attainment or nonattainment area. Tribes and states should coordinate their planning activities as appropriate to ensure that neither is adversely affecting attainment of the NAAQS in the area as a whole. Coordinated planning in these areas will help ensure that the planning decisions made by the state and local air agencies and tribes complement each other and that the nonattainment area makes reasonable progress toward attainment and ultimately attains the 2015 ozone NAAQS. In reviewing and approving individual TIPs and SIPs, we will determine if together they are consistent with the overall air quality needs of an area.

States have an obligation to notify other states in advance of any public hearing(s) on their state plans if such plans will significantly impact such other states. 40 CFR 51.102(d)(5). Under CAA section 301(d) and the TAR, tribes may become eligible to be treated in a manner similar to states (TAS) for this purpose (40 CFR 49.6–49.9). Affected states and tribes with approved TAS must also be informed of the contents of such state plans and given access to the documentation supporting these plans. In addition to this mandated process, we encourage states to extend the same notice to all affected tribes, regardless of their TAS status.

Executive Orders and the EPA's Indian policies generally call for the EPA to coordinate and consult with tribes on matters that affect tribes. Executive Order 13175, titled, "Consultation and Coordination with Indian Tribal Governments" requires the EPA to develop a process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have Tribal implications." In addition, the EPA's policies include the agency's 1984 Indian Policy relating to Indian tribes

and implementation of federal environmental programs, the February 2014 "OAR Handbook for Interacting with Tribal Governments" and the "EPA Policy on Consultation and Coordination with Indian Tribes."<sup>86</sup>

Consistent with these policies, the EPA intends to meet with tribes on activities potentially affecting the attainment and maintenance of the 2015 ozone NAAQS in Indian country, including our actions on SIPs. As such, it would be helpful for states to work with tribes whose land that is part of the same general air quality area during the SIP development process and to coordinate with tribes as they develop their SIPs, regardless of whether the tribe's area of Indian country is separately designated.

## VI. Environmental Justice Considerations

The EPA believes this action does not have disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not negatively affect the level of protection provided to human health or the environment under the 2015 ozone NAAQS, which are set at levels to protect sensitive populations with an adequate margin of safety.<sup>87</sup> These regulations help clarify the SIP requirements and the NNSR permitting requirements to be met by air agencies in order to attain the 2015 ozone NAAQS as expeditiously as practicable. These requirements are designed to protect all segments of the general population and do not adversely affect the health or safety of minority, low-income or indigenous populations.

*Comment:* One commenter on the proposed rulemaking stated that the implementation rule must identify specific measures directed to minority, low-income and/or indigenous people. The commenter noted that the EPA identified such measures in the PM<sub>2.5</sub> SIP Requirement Rule. The commenter

<sup>86</sup> Tribal guidance documents are available at: [https://www.epa.gov/sites/production/files/2018-01/documents/oar\\_handbook\\_updated\\_1.24.18\\_.pdf](https://www.epa.gov/sites/production/files/2018-01/documents/oar_handbook_updated_1.24.18_.pdf) and <http://www.epa.gov/tribal/forms/consultation-and-coordination-tribes>.

<sup>87</sup> The EPA conducted a regulatory impact analysis (RIA) of its final action establishing the 2015 ozone NAAQS. The demographic analysis conducted as part of the RIA found that in areas with poor air quality relative to the revised standards, the representation of minority populations was slightly greater than in the U.S. as a whole (see Chapter 9, section 9.10 and Appendix 9A of the RIA). Because the air quality in these areas does not currently meet the revised standards, populations in these areas would be expected to benefit from implementation of the strengthened standards. The RIA is available at <https://www3.epa.gov/ttn/ecas/docs/20151001ria.pdf> and in the RIA docket (EPA-HQ-OAR-2013-0169).

requests that the EPA require states to utilize specific measures when developing attainment plans, updating yearly monitoring plans and initiating the permitting process for overburdened communities.

*Response:* The EPA is not making any changes to its proposed approach in response to the commenter's request that the EPA require states to utilize specific measures directed to minority, low-income and indigenous people to help address ground-level ozone. In the CAA's framework of cooperative federalism, states are primarily responsible for developing plans for achieving NAAQS in areas within their jurisdiction, based on planning rules and guidance promulgated by the EPA. These planning requirements include (but are not limited to) provisions for implementing emissions controls, tracking progress toward attainment and monitoring and reporting air quality data, with the overarching goal of attaining and maintaining the NAAQS as expeditiously as practical, but no later than the CAA's maximum attainment date. In the PM<sub>2.5</sub> SIP Requirements Rule, the EPA encouraged states to consider various tools to help users identify areas with minority and/or low-income populations, potential environmental quality issues, a combination of environmental and demographic indicators that is greater than usual and other factors that may be of interest. The EPA included these tools in the PM<sub>2.5</sub> SIP Requirements Rule because areas designated nonattainment for the PM<sub>2.5</sub> standards can contain sources of directly emitted pollutants that can have adverse impacts on a local neighborhood scale. By contrast, elevated levels of ambient ozone are the result of secondary urban-scale atmospheric formation involving emissions from ubiquitous sources of ozone precursors (VOC and NO<sub>x</sub>) including motor vehicles, large and small industrial processes and consumer products which result in more regional scale impacts further down wind. The EPA encourages states to work with communities to develop ozone-related control strategies that most effectively reduce emissions that contribute to elevated ozone levels.

## VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

*B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not subject to Executive Order 13771 because this final rule is expected to result in no more than *de minimis* costs.

*C. Paperwork Reduction Act (PRA)*

The information collection activities in this final rule have been submitted for approval to OMB under the PRA. The ICR document that the EPA prepared has been assigned the EPA ICR No. 2347.03 and OMB Reference No. 2060–0695. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The EPA is finalizing these implementing regulations for the 2015 ozone NAAQS so that air agencies will know what CAA requirements apply to their nonattainment areas when the air agencies develop their SIPs or SIP revisions for attaining and maintaining the NAAQS. The intended effect of these implementing regulations is to provide certainty to air agencies regarding their planning obligations. For purposes of analysis of the estimated paperwork burden,<sup>88</sup> the EPA assumed 57 nonattainment areas,<sup>89</sup> some of which must prepare an attainment demonstration as well as submit an RFP and RACT SIP. The attainment demonstration requirement appears in 40 CFR 51.1308, which implements CAA subsections 172(c)(1), 182(b)(1)(A) and 182(c)(2)(B). The RFP SIP submission requirement appears in 40 CFR 51.1310, and the RACT SIP

submission requirement appears in 40 CFR 51.1312, which implements CAA subsections 172(c)(1) and 182(b)(2), (c), (d), and (e).

Air agencies with areas that have been previously designated nonattainment should already have information from many emission sources, as facilities should have provided this information to meet 1-hour, 1997 and/or 2008 ozone NAAQS SIP requirements, operating permit program requirements and/or emissions reporting requirements.

The annual burden for information collection averaged over the first 3 years of the ICR is estimated to be a total of 41,800 labor hours per year at an annual labor cost of \$2.5 million (present value) or approximately \$107,000 per state for the estimated 23 state air agency respondents. The ICR Supporting Statement for the 2015 8-hour Ozone NAAQS Implementation Rule, EPA ICR No. 2347.03, provided in the docket, provides the details for the 23 state air agencies that would be required to provide the estimated 66 SIP revisions for the 57 hypothetical areas designated nonattainment for the 2015 ozone standard. The average annual reporting burden is 633 hours per response, with approximately 2.87 responses per state for 66 state responses from the state air agencies. There are no capital or operating and maintenance costs associated with the proposed rulemaking requirements.

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 for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

*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. Entities potentially affected directly by this rule include state and local governments and none of these governments are small governments. Other types of small entities are not directly subject to the requirements of this rule because this action only addresses how a SIP will provide for adequate attainment and maintenance of the NAAQS and meet the obligations of the CAA. Although some states may

ultimately decide to impose economic impacts on small entities, that is not required by this rule and would only occur at the discretion of the state.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. The CAA imposes the obligation for states to submit attainment plans to implement the ozone NAAQS. In this rule, the EPA is clarifying those requirements. Therefore, this action is not subject to the requirements of sections 202, 203 and 205 of the UMRA.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. It would not have a substantial direct effect on one or more Indian tribes, since no tribe is required to develop a TIP under these regulatory revisions. Furthermore, these regulation revisions do not affect the relationship or distribution of power and responsibilities between the federal government and tribes. The CAA and the TAR establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

Although there were no substantial direct impacts on tribes, consistent with the February 2014 “OAR Handbook for Interacting with Tribal Governments,” and the “EPA Policy on Consultation and Coordination with Indian Tribes,” the EPA briefed tribal officials during the development of this action.

*H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that

<sup>88</sup> Burden is defined at 5 CFR 1320.3(b).

<sup>89</sup> The EPA developed a hypothetical list of nonattainment areas for estimating the burden for states to meet their 2015 ozone nonattainment area requirements. The hypothetical nonattainment areas were based on the preliminary 2013–2015 air quality data available. The hypothetical nonattainment areas include multiple counties for most areas based on the existing 2008 and 1997 8-hour ozone nonattainment areas, Combined Statistical Area, or Core Based Statistical Area boundary associated with a violating monitor. Note that these areas are used for analytical purposes only. Actual nonattainment areas and boundaries are determined through the designations process.

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 implements a previously promulgated health or safety-based federal standard established pursuant to the CAA.

*I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use*

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

*J. National Technology Transfer and Advancement Act (NTTA)*

This rulemaking does not involve technical standards.

*K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous populations as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in Section VI of this preamble.

*L. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*M. Judicial Review*

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have

venue for petitions of review of final agency actions by the EPA under the CAA. This section provides, in part, that petitions for review must be filed in the U.S. Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator” or (ii) when such action is locally or regionally applicable, if “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.”

The EPA is determining that this rule for the 2015 ozone NAAQS SIP requirements is “nationally applicable” within the meaning of CAA section 307(b)(1). First, the rulemaking addresses implementation of the NAAQS that applies to all states and territories in the U.S. Second, the rulemaking addresses planning requirements for potential nonattainment areas in states across the U.S. that are located in various EPA regions and numerous federal circuits. Third, the rulemaking addresses a common core of knowledge and analysis involved in formulating the decisions and a common interpretation of the requirements of the CAA being applied to potential nonattainment areas in states across the country. Courts have found similar implementation rulemaking actions to be nationally applicable.<sup>90</sup>

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by February 4, 2019. Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. 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. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings to enforce these requirements.

**VIII. Statutory Authority**

The statutory authority for this action is provided by sections 109; 110; 172; 181 through 185B; 301(a)(1) and 501(2)(B) of the CAA, as amended (42 U.S.C. 7409; 42 U.S.C. 7410; 42 U.S.C. 7502; 42 U.S.C. 7511–7511f; 42 U.S.C. 7601(a)(1); 42 U.S.C. 7661(2)(B)).

**List of Subjects in 40 CFR Part 51**

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: November 7, 2018.

**Andrew R. Wheeler,**  
*Acting Administrator.*

For the reasons stated in the preamble, Title 40, Chapter I of the Code of Federal Regulations is amended as follows:

**PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS**

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. In Appendix A to subpart A of part 51: revise Table 1 to read as follows:

**Appendix A to Subpart A of Part 51—Tables**

**TABLE 1 TO APPENDIX A OF SUBPART A—EMISSION THRESHOLDS<sup>1</sup> BY POLLUTANT FOR TREATMENT AS POINT SOURCE UNDER 40 CFR 51.30**

Pollutant	Every-year	Triennial	
	Type A sources <sup>2</sup>	Type B sources	NAA sources <sup>3</sup>
(1) SO <sub>2</sub> .....	≥2500	≥100 .....	≥100. PM <sub>2.5</sub> (Serious) ≥70.
(2) VOC .....	≥250	≥100 .....	≥100.
.....	.....	within OTR <sup>4</sup> ≥50 .....	within OTR ≥50.
.....	.....	.....	O <sub>3</sub> (Serious) ≥50.
.....	.....	.....	O <sub>3</sub> (Severe) ≥25.
.....	.....	.....	O <sub>3</sub> (Extreme) ≥10.
.....	.....	.....	PM <sub>2.5</sub> (Serious) ≥70.

<sup>90</sup> See, e.g., *Texas v. EPA*, 2011 U.S. App. LEXIS 5654 (5th Cir. 2011) (finding SIP call to 13 states

to be nationally applicable and thus transferring the

case to the U.S. Court of Appeals for the D.C. Circuit in accordance with CAA section 307(b)(1)).

TABLE 1 TO APPENDIX A OF SUBPART A—EMISSION THRESHOLDS <sup>1</sup> BY POLLUTANT FOR TREATMENT AS POINT SOURCE UNDER 40 CFR 51.30—Continued

Pollutant	Every-year	Triennial	
	Type A sources <sup>2</sup>	Type B sources	NAA sources <sup>3</sup>
(3) NO <sub>x</sub> .....	≥2500	≥100 .....	≥100. O <sub>3</sub> (Serious) ≥50. O <sub>3</sub> (Severe) ≥25. O <sub>3</sub> (Extreme) ≥10. PM <sub>2.5</sub> (Serious) ≥70. ≥1000.
(4) CO .....	≥2500	≥1000 .....	CO (all areas) ≥100. ≥0.5 (actual).
(5) Lead .....	.....	≥0.5 (actual) .....	≥100.
(6) Primary PM <sub>10</sub> .....	≥250	≥100 .....	PM <sub>10</sub> (Serious) ≥70. ≥100.
(7) Primary PM <sub>2.5</sub> .....	≥250	≥100 .....	PM <sub>2.5</sub> (Serious) ≥70. ≥100.
(8) NH <sub>3</sub> .....	≥250	≥100 .....	PM <sub>2.5</sub> (Serious) ≥70.

<sup>1</sup> Thresholds for point source determination shown in tons per year of potential to emit as defined in 40 CFR part 70, with the exception of lead. Reported emissions should be in actual tons emitted for the required time period.

<sup>2</sup> Type A sources are a subset of the Type B sources and are the larger emitting sources by pollutant.

<sup>3</sup> NAA = Nonattainment Area. The point source reporting thresholds vary by attainment status for SO<sub>2</sub>, VOC, NO<sub>x</sub>, CO, PM<sub>10</sub>, PM<sub>2.5</sub>, and NH<sub>3</sub>.

<sup>4</sup> OTR = Ozone Transport Region (see 40 CFR 51.1300(k)).

\* \* \* \* \*

■ 3. In § 51.165, revise paragraph (a)(11) to read as follows:

**§ 51.165 Permit requirements.**

(a) \* \* \*

(11) Interpollutant offsetting, or interpollutant trading or interprecursor trading or interprecursor offset substitution—The plan shall require that in meeting the emissions offset requirements of paragraph (a)(3) of this section, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this paragraph. (a)(3) of this section, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this paragraph.

(i) The plan may allow the offset requirement in paragraph (a)(3) of this section for emissions of the ozone precursors NO<sub>x</sub> and VOC to be satisfied, where appropriate, by offsetting reductions of actual emissions of either of those precursors, if all other requirements contained in this section for such offsets are also satisfied.

(A) The plan shall indicate whether such precursor substitutions for ozone precursors are to be based on an area-specific default ratio (default ratio) for the applicable ozone nonattainment area, established in regulations as part of the approved plan, or default IPT ratios for an applicable ozone nonattainment area established in advance by an air agency that are

presumed to be appropriate for each permit application in the area, absent contrary information in the record of an individual permit application, or case-specific ratios established for individual permits.

(B)(1) Where a state seeks to use a default IPT ratio that is not part of the approved plan, the plan shall include the following to authorize the development of a default ratio for a particular ozone nonattainment area, including a revised default ratio resulting from the periodic review required under paragraph (a)(11)(i)(B)(2) of this section:

(i) A description of the model(s) that will be used to develop any default ratio;

(ii) A description of the approach that will be used to analyze modeling data, ambient monitoring data, and emission inventory data to determine the sensitivity of an area to emissions of ozone precursors in the formation of ground-level ozone; and

(iii) A description of the modeling demonstration that will be used to show that the default ratio provides an equivalent or greater air quality benefit with respect to ground level concentrations in the ozone nonattainment area than an offset of the emitted precursor would achieve.

(2) The plan shall require that for any default ratio for ozone, the reviewing authority shall evaluate that ratio at least every 5 years to determine whether current conditions support the continued use of such ratio.

(C) The plan shall require that, for any case-specific permit ratio for ozone

proposed by a permit applicant to be used for a particular permit, the following information shall be submitted to the reviewing authority to support approval of the ratio:

(1) The description of the air quality model(s) used to propose a case-specific ratio; and

(2) the proposed ratio for the precursor substitution and accompanying calculations; and

(3) a modeling demonstration showing that such ratio(s) as applied to the proposed project and credit source will provide an equivalent or greater air quality benefit with respect to ground level concentrations in the ozone nonattainment area than an offset of the emitted precursor would achieve.

(ii) The plan may allow the offset requirements in paragraph (a)(3) of this section for direct PM<sub>2.5</sub> emissions or emissions of precursors of PM<sub>2.5</sub> to be satisfied by offsetting reductions in direct PM<sub>2.5</sub> emissions or emissions of any PM<sub>2.5</sub> precursor identified under paragraph (a)(1)(xxxvii)(C) of this section if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area.

\* \* \* \* \*

■ 4. In § 51.1300 add paragraphs (f) through (q) to read as follows:

**§ 51.1300 Definitions.**

\* \* \* \* \*

(f) 2008 ozone NAAQS means the 2008 8-hour primary and secondary ozone NAAQS codified at 40 CFR 50.15.

(g) Attainment year ozone season shall mean the ozone season

immediately preceding a nonattainment area's maximum attainment date.

(h) *Initially designated* means the first designation that becomes effective for an area for a specific NAAQS and does not include a redesignation to attainment or nonattainment for that specific NAAQS.

(i) *Nitrogen Oxides* (NO<sub>x</sub>) means the sum of nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(j) *Ozone season* means for each state (or portion of a state), the ozone monitoring season as defined in 40 CFR part 58, appendix D, section 4.1(i) for that state (or portion of a state).

(k) *Ozone transport region* (OTR) means the area established by CAA section 184(a) or any other area established by the Administrator pursuant to CAA section 176A for purposes of ozone.

(l) *Reasonable further progress* (RFP) means the emissions reductions required under CAA sections 172(c)(2), 182(c)(2)(B), 182(c)(2)(C), and § 51.1310. The EPA interprets RFP under CAA section 172(c)(2) to be an average 3 percent per year emissions reduction of either VOC or NO<sub>x</sub>.

(m) *Rate-of-progress* (ROP) means the 15 percent progress reductions in VOC emissions over the first 6 years after the baseline year required under CAA section 182(b)(1).

(n) *I/M* refers to the inspection and maintenance programs for in-use vehicles required under the 1990 CAA Amendments and defined by subpart S of 40 CFR part 51.

(o) *Current ozone NAAQS* means the most recently promulgated ozone NAAQS at the time of application of any provision of this subpart.

(p) *Base year inventory* for the nonattainment area means a comprehensive, accurate, current inventory of actual emissions from sources of VOC and NO<sub>x</sub> emitted within the boundaries of the nonattainment area as required by CAA section 182(a)(1).

(q) *Ozone season day emissions* means an average day's emissions for a typical ozone season work weekday. The state shall select, subject to EPA approval, the particular month(s) in the ozone season and the day(s) in the work week to be represented, considering the conditions assumed in the development of RFP plans and/or emissions budgets for transportation conformity.

■ 5. Adding §§ 51.1304 through 51.1319 to subpart CC to read as follows: Sec.

**Subpart CC—Provisions for Implementation of the 2015 Ozone National Ambient Air Quality Standards**

- \* \* \* \* \*
- 51.1304–51.1305 [Reserved]
- 51.1306 Redesignation to nonattainment following initial designations.
- 51.1307 Determining eligibility for 1-year attainment date extensions for an 8-hour ozone NAAQS under CAA section 181(a)(5).
- 51.1308 Modeling and attainment demonstration requirements.
- 51.1309 [Reserved]
- 51.1310 Requirements for reasonable further progress (RFP).
- 51.1311 [Reserved]
- 51.1312 Requirements for reasonably available control technology (RACT) and reasonably available control measures (RACM).
- 51.1313 Section 182(f) NO<sub>x</sub> exemption provisions.
- 51.1314 New source review requirements.
- 51.1315 Emissions inventory requirements.
- 51.1316 Requirements for an Ozone Transport Region.
- 51.1317 Fee programs for Severe and Extreme nonattainment areas that fail to attain.
- 51.1318 Suspension of SIP planning requirements in nonattainment areas that have air quality data that meet an ozone NAAQS.
- 51.1319 [Reserved]

**Subpart CC—Provisions for Implementation of the 2015 Ozone National Ambient Air Quality Standards**

- \* \* \* \* \*
- §§ 51.1304–51.1305 [Reserved]

**§ 51.1306 Redesignation to nonattainment following initial designations.**

For any area that is initially designated attainment for the 2015 ozone NAAQS and that is subsequently redesignated to nonattainment for the 2015 ozone NAAQS, any absolute, fixed date applicable in connection with the requirements of this part other than an attainment date is extended by a period of time equal to the length of time between the effective date of the initial designation for the 2015 ozone NAAQS and the effective date of the redesignation, except as otherwise provided in this subpart. The maximum attainment date for a redesignated area would be based on the area's classification, consistent with Table 1 in § 51.1303.

**§ 51.1307 Determining eligibility for 1-year attainment date extensions for an 8-hour ozone NAAQS under CAA section 181(a)(5).**

(a) A nonattainment area will meet the requirement of CAA section 181(a)(5)(B) pertaining to 1-year extensions of the attainment date if:

(1) For the first 1-year extension, the area's 4th highest daily maximum 8-hour average in the attainment year is no greater than the level of that NAAQS.

(2) For the second 1-year extension, the area's 4th highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, is no greater than the level of that NAAQS.

(b) For purposes of paragraph (a)(1) of this section, the area's 4th highest daily maximum 8-hour average for a year shall be from the monitor with the highest 4th highest daily maximum 8-hour average for that year of all the monitors that represent that area.

(c) For purposes of paragraph (a)(2) of this section, the area's 4th highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, shall be from the monitor in each year with the highest 4th highest daily maximum 8-hour average of all monitors that represent that area.

**§ 51.1308 Modeling and attainment demonstration requirements.**

(a) An area classified Moderate under § 51.1303(a) shall submit an attainment demonstration that provides for such specific reductions in emissions of VOCs and NO<sub>x</sub> as necessary to attain the primary NAAQS by the applicable attainment date, and such demonstration is due no later than 36 months after the effective date of the area's designation for the 2015 ozone NAAQS.

(b) An area classified Serious or higher under § 51.1303(a) shall be subject to the attainment demonstration requirement applicable for that classification under CAA section 182(c), and such demonstration is due no later than 48 months after the effective date of the area's designation for the 2015 ozone NAAQS.

(c) An attainment demonstration due pursuant to paragraph (a) or (b) of this section must meet the requirements of Appendix W of this part and shall include inventory data, modeling results, and emission reduction analyses on which the state has based its projected attainment date; the adequacy of an attainment demonstration shall be demonstrated by means of a photochemical grid model or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.

(d) *Implementation of control measures.* For each nonattainment area for which an attainment demonstration is required pursuant to paragraph (a) or (b) of this section, the state must provide for implementation of all

control measures needed for attainment as expeditiously as practicable. All control measures in the attainment plan and demonstration must be implemented no later than the beginning of the attainment year ozone season, notwithstanding any alternate RACT and/or RACM implementation deadline requirements in § 51.1312.

#### § 51.1309 [Reserved]

#### § 51.1310 Requirements for reasonable further progress (RFP).

(a) *RFP for nonattainment areas classified pursuant to § 51.1303.* The RFP requirements specified in CAA section 182 for that area's classification shall apply.

(1) *Submission deadline.* For each area classified Moderate or higher pursuant to § 51.1303, the state shall submit a SIP revision no later than 36 months after the effective date of designation as nonattainment for the 2015 ozone NAAQS that provides for RFP as described in paragraphs (a)(2) through (4) of this section.

(2) *RFP requirements for areas with an approved prior ozone NAAQS 15 percent VOC ROP plan.* An area classified Moderate or higher that has the same boundaries as an area, or is entirely composed of several areas or portions of areas, for which the EPA fully approved a 15 percent plan for a prior ozone NAAQS is considered to have met the requirements of CAA section 182(b)(1) for the 2015 ozone NAAQS and instead:

(i) If classified Moderate, the area is subject to the RFP requirements under CAA section 172(c)(2) and shall submit a SIP revision that:

(A) Provides for a 15 percent emission reduction from the baseline year within 6 years after the baseline year; and

(B) Relies on either NO<sub>x</sub> or VOC emissions reductions (or a combination) to meet the requirements of paragraph (a)(2)(i)(A) of this section. Use of NO<sub>x</sub> emissions reductions must meet the criteria in CAA section 182(c)(2)(C).

(ii) If classified Serious or higher, the area is subject to RFP under CAA sections 172(c)(2) and 182(c)(2)(B), and shall submit a SIP revision no later than 48 months after the effective date of designation providing for an average emissions reduction of 3 percent per year:

(A) For the first 6-year period after the baseline year and all remaining 3-year periods until the year of the area's attainment date; and

(B) That relies on either NO<sub>x</sub> or VOC emissions reductions (or a combination) to meet the requirements of (a)(2)(ii)(A). Use of NO<sub>x</sub> emissions reductions must

meet the criteria in CAA section 182(c)(2)(C).

(3) *RFP requirements for areas for which an approved 15 percent VOC ROP plan for a prior ozone NAAQS exists for only a portion of the area.* An area that contains one or more portions for which the EPA fully approved a 15 percent VOC ROP plan for a prior ozone NAAQS (as well as portions for which the EPA has not fully approved a 15 percent plan for a prior ozone NAAQS) shall meet the requirements of either paragraph (a)(3)(i) or (ii) of this section.

(i) The state shall not distinguish between the portion of the area with a previously approved 15 percent ROP plan and the portion of the area without such a plan, and shall meet the requirements of paragraph (a)(4) of this section for the entire nonattainment area.

(ii) The state shall treat the area as two parts, each with a separate RFP target as follows:

(A) For the portion of the area without an approved 15 percent VOC ROP plan for a prior ozone NAAQS, the state shall submit a SIP revision as required under paragraph (a)(4) of this section.

(B) For the portion of the area with an approved 15 percent VOC ROP plan for a prior ozone NAAQS, the state shall submit a SIP as required under paragraph (a)(2) of this section.

(4) *ROP Requirements for areas without an approved prior ozone NAAQS 15 percent VOC ROP plan.* (i) For each area, the state shall submit a SIP revision consistent with CAA section 182(b)(1). The 6-year period referenced in CAA section 182(b)(1) shall begin January 1 of the year following the year used for the baseline emissions inventory.

(ii) For each area classified Serious or higher, the state shall submit a SIP revision consistent with CAA section 182(c)(2)(B). The final increment of progress must be achieved no later than the attainment date for the area.

(5) *Creditability of emission control measures for RFP plans.* Except as specifically provided in CAA section 182(b)(1)(C) and (D), CAA section 182(c)(2)(B), and 40 CFR 51.1310(a)(6), all emission reductions from SIP-approved or federally promulgated measures that occur after the baseline emissions inventory year are creditable for purposes of the RFP requirements in this section, provided the reductions meet the requirements for creditability, including the need to be enforceable, permanent, quantifiable, and surplus.

(6) *Creditability of out-of-area emissions reductions.* For purposes of meeting the RFP requirements in § 51.1310, in addition to the restrictions

on the creditability of emission control measures listed in § 51.1310(a)(5), creditable emission reductions for fixed percentage reduction RFP must be obtained from emissions sources located within the nonattainment area.

(7) *Calculation of non-creditable emissions reductions.* The following four categories of control measures listed in CAA section 182(b)(1)(D) are no longer required to be calculated for exclusion in RFP analyses because the Administrator has determined that due to the passage of time the effect of these exclusions would be *de minimis*:

(i) Measures related to motor vehicle exhaust or evaporative emissions promulgated by January 1, 1990;

(ii) Regulations concerning Reid vapor pressure promulgated by November 15, 1990;

(iii) Measures to correct previous RACT requirements; and

(iv) Measures required to correct previous I/M programs.

(b) *Baseline emissions inventory for RFP plans.* For the RFP plans required under this section, at the time of designation as nonattainment for an ozone NAAQS the baseline emissions inventory shall be the emissions inventory for the most recent calendar year for which a complete triennial inventory is required to be submitted to the EPA under the provisions of subpart A of this part. States may use an alternative baseline emissions inventory provided that the year selected corresponds with the year of the effective date of designation as nonattainment for that NAAQS. All states associated with a multi-state nonattainment area must consult and agree on using the alternative baseline year. The emissions values included in the inventory required by this section shall be actual ozone season day emissions as defined by § 51.1300(q).

(c) *Milestones—(1) Applicable milestones.* Consistent with CAA section 182(g)(1) for each area classified Serious or higher, the state shall determine at specified intervals whether each area has achieved the reduction in emissions required under paragraphs (a)(2) through (4) of this section. The initial determination shall occur 6 years after the baseline year, and at intervals of every 3 years thereafter. The reduction in emissions required by the end of each interval shall be the applicable milestone.

(2) *Milestone compliance demonstrations.* For each area subject to the milestone requirements under paragraph (c)(1) of this section, not later than 90 days after the date on which an applicable milestone occurs (not including an attainment date on which



a milestone occurs in cases where the ozone standards have been attained), each state in which all or part of such area is located shall submit to the Administrator a demonstration that the milestone has been met. The demonstration under this paragraph must provide for objective evaluation of RFP toward timely attainment of the ozone NAAQS in the area, and may take the form of:

(i) Such information and analysis as needed to quantify the actual reduction in emissions achieved in the time interval preceding the applicable milestone; or

(ii) Such information and analysis as needed to demonstrate progress achieved in implementing the approved SIP control measures, including RACM and RACT, corresponding with the reduction in emissions achieved in the time interval preceding the applicable milestone.

**§ 51.1311 [Reserved]**

**§ 51.1312 Requirements for reasonably available control technology (RACT) and reasonably available control measures (RACM).**

(a) *RACT requirement for areas classified pursuant to § 51.1303.* (1) For each nonattainment area classified Moderate or higher, the state shall submit a SIP revision that meets the VOC and NO<sub>x</sub> RACT requirements in CAA sections 182(b)(2) and 182(f).

(2) *SIP submission deadline.* (i) For a RACT SIP required pursuant to initial nonattainment area designations, the state shall submit the RACT SIP for each area no later than 24 months after the effective date of designation for a specific ozone NAAQS.

(ii) For a RACT SIP required pursuant to reclassification, the SIP revision deadline is either 24 months from the effective date of reclassification, or the deadline established by the Administrator in the reclassification action.

(iii) For a RACT SIP required pursuant to the issuance of a new Control Techniques Guideline (CTG) under CAA section 183, the SIP revision deadline is either 24 months from the date of CTG issuance, or the deadline established by the Administrator in the action issuing the CTG.

(3) *RACT implementation deadline.* (i) For RACT required pursuant to initial nonattainment area designations, the state shall provide for implementation of such RACT as expeditiously as practicable, but no later than January 1 of the fifth year after the effective date of designation.

(ii) For RACT required pursuant to reclassification, the state shall provide

for implementation of such RACT as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier; or the deadline established by the Administrator in the final action issuing the area reclassification.

(iii) For RACT required pursuant to issuance of a new CTG under CAA section 183, the state shall provide for implementation of such RACT as expeditiously as practicable, but either no later than January 1 of the third year after the associated SIP submission deadline or the deadline established by the Administrator in the final action issuing the CTG.

(b) *Determination of major stationary sources for applicability of RACT provisions.* The amount of VOC and NO<sub>x</sub> emissions are to be considered separately for purposes of determining whether a source is a major stationary source as defined in CAA section 302.

(c) *RACM requirements.* For each nonattainment area required to submit an attainment demonstration under § 51.1308(a) and (b), the state shall submit with the attainment demonstration a SIP revision demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements. The SIP revision shall include, as applicable, other control measures on sources of emissions of ozone precursors located outside the nonattainment area, or portion thereof, located within the state if doing so is necessary or appropriate to provide for attainment of the applicable ozone NAAQS in such area by the applicable attainment date.

**§ 51.1313 Section 182(f) NO<sub>x</sub> exemption provisions.**

(a) A person or a state may petition the Administrator for an exemption from NO<sub>x</sub> obligations under CAA section 182(f) for any area designated nonattainment for a specific ozone NAAQS and for any area in a CAA section 184 ozone transport region.

(b) The petition must contain adequate documentation that the criteria in CAA section 182(f) are met.

(c) A CAA section 182(f) NO<sub>x</sub> exemption granted for a prior ozone NAAQS does not relieve the area from any NO<sub>x</sub> obligations under CAA section 182(f) for a current ozone NAAQS.

**§ 51.1314 New source review requirements.**

The requirements for nonattainment NSR for the ozone NAAQS are located in § 51.165. For each nonattainment area, the state shall submit a nonattainment NSR plan or plan revision for a specific ozone NAAQS no later than 36 months after the effective date of the area's designation of nonattainment or redesignation to nonattainment for that ozone NAAQS.

**§ 51.1315 Emissions inventory requirements.**

(a) For each nonattainment area, the state shall submit a base year inventory as defined by § 51.1300(p) to meet the emissions inventory requirement of CAA section 182(a)(1). This inventory shall be submitted no later than 24 months after the effective date of designation. The inventory year shall be selected consistent with the baseline year for the RFP plan as required by § 51.1310(b).

(b) For each nonattainment area, the state shall submit a periodic emissions inventory of emissions sources in the area to meet the requirement in CAA section 182(a)(3)(A). With the exception of the inventory year and timing of submittal, this inventory shall be consistent with the requirements of paragraph (a) of this section. Each periodic inventory shall be submitted no later than the end of each 3-year period after the required submission of the base year inventory for the nonattainment area. This requirement shall apply until the area is redesignated to attainment.

(c) The emissions values included in the inventories required by paragraphs (a) and (b) of this section shall be actual ozone season day emissions as defined by § 51.1300(q).

(d) In the inventories required by paragraphs (a) and (b) of this section, the state shall report emissions from point sources according to the point source emissions thresholds of the Air Emissions Reporting Requirements, 40 CFR part 51, subpart A.

(e) The data elements in the emissions inventories required by paragraphs (a) and (b) of this section shall be consistent with the detail required by 40 CFR part 51, subpart A. Since only emissions within the boundaries of the nonattainment area shall be included as defined by § 51.1300(q), this requirement shall apply to the emissions inventories required in this section instead of any total county requirements contained in 40 CFR part 51, subpart A.

**§ 51.1316 Requirements for an Ozone Transport Region.**

(a) *In general.* CAA sections 176A and 184 apply for purposes of the 2015 ozone NAAQS.

(b) *RACT requirements for certain portions of an ozone transport region.*

(1) The state shall submit a SIP revision that meets the RACT requirements of CAA section 184(b) for all portions of the state located in an ozone transport region.

(2) *SIP submission deadline.* (i) For a RACT SIP required pursuant to initial nonattainment area designations, the state shall submit the RACT SIP revision no later than 24 months after the effective date of designation for a specific ozone NAAQS.

(ii) For a RACT SIP required pursuant to reclassification, the SIP revision deadline is either 24 months from the effective date of reclassification, or the deadline established by the Administrator in the reclassification action.

(iii) For a RACT SIP required pursuant to the issuance of a new CTG under CAA section 183, the SIP revision deadline is either 24 months from the date of CTG issuance, or the deadline established by the Administrator in the action issuing the CTG.

(3) *RACT implementation deadline.* (i) For RACT required pursuant to initial nonattainment area designations, the state shall provide for implementation of RACT as expeditiously as practicable, but no later than January 1 of the fifth year after the effective date of designation.

(ii) For RACT required pursuant to reclassification, the state shall provide for implementation of such RACT as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier; or the deadline established by

the Administrator in the final action issuing the area reclassification.

(iii) For RACT required pursuant to issuance of a new CTG under CAA section 183, the state shall provide for implementation of such RACT as expeditiously as practicable, but either no later than January 1 of the third year after the associated SIP submission deadline or the deadline established by the Administrator in the final action issuing the CTG.

**§ 51.1317 Fee programs for Severe and Extreme nonattainment areas that fail to attain.**

For each area classified Severe or Extreme for a specific ozone NAAQS, the state shall submit a SIP revision within 10 years of the effective date of designation for that ozone NAAQS that meets the requirements of CAA section 185.

**§ 51.1318 Suspension of SIP planning requirements in nonattainment areas that have air quality data that meet an ozone NAAQS.**

Upon a determination by the EPA that an area designated nonattainment for a specific ozone NAAQS has attained that NAAQS, the requirements for such area to submit attainment demonstrations and associated RACM, RFP plans, contingency measures for failure to attain or make reasonable progress, and other planning SIPs related to attainment of the ozone NAAQS for which the determination has been made, shall be suspended until such time as: The area is redesignated to attainment for that NAAQS, at which time the requirements no longer apply; or the EPA determines that the area has violated that NAAQS, at which time the area is again required to submit such plans.

**§ 51.1319 [Reserved]**

■ 6. In appendix S to part 51, revise paragraphs IV.G.5. introductory, and IV.G.5(i) and remove and reserve section VII.

The revisions read as follows:

**Appendix S to Part 51—Emission Offset Interpretative Ruling**

\* \* \* \* \*

IV. \* \* \*

G. \* \* \*

5. *Interpollutant offsetting, or interpollutant trading or interprecursor trading or interprecursor offset substitution.* In meeting the emissions offset requirements of paragraph IV.A, Condition 3 of this Ruling, the emissions offsets obtained shall be for the same regulated nonattainment NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this paragraph IV.G.5 and the reviewing authority chooses to review such trading on a case by case basis as described in this section.

(i) A reviewing authority may choose to satisfy the offset requirements of paragraph IV.A, Condition 3 of this Ruling for emissions of the ozone precursors NO<sub>x</sub> and VOC by offsetting reductions of emissions of either precursor, if all other requirements contained in this Ruling for such offsets are also satisfied. For a specific permit application, if the implementation of IPT is acceptable by the reviewing authority, the permit applicant shall submit to the reviewing authority for approval a case-specific permit IPT ratio for determining the required amount of emissions reductions to offset the proposed emissions increase when considered along with the applicable offset ratio as specified in paragraphs IV.G.2 through 4 of this Ruling. As part of the ratio submittal, the applicant shall submit the proposed permit-specific ozone IPT ratio to the reviewing authority, accompanied by the following information:

(a) A description of the air quality model(s) that were used to propose a case-specific ratio; and

(b) The proposed ratio for the precursor substitution and accompanying calculations; and

(c) A modeling demonstration showing that such ratio(s) as applied to the proposed project and credit source will provide an equivalent or greater air quality benefit with respect to ground level concentrations in the ozone nonattainment area than an offset of the emitted precursor would achieve.

\* \* \* \* \*

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# FEDERAL REGISTER

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December 6, 2018

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Part IV

The President

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Proclamation 9830—Announcing the Death of George Herbert Walker Bush



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**Presidential Documents**

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Title 3—

**Proclamation 9830 of December 1, 2018****The President****Announcing the Death of George Herbert Walker Bush****By the President of the United States of America****A Proclamation****TO THE PEOPLE OF THE UNITED STATES:**

It is my sorrowful duty to announce officially the death of George Herbert Walker Bush, the forty-first President of the United States, on November 30, 2018.

President Bush led a great American life, one that combined and personified two of our Nation's greatest virtues: an entrepreneurial spirit and a commitment to public service. Our country will greatly miss his inspiring example.

On the day he turned 18, 6 months after the attack on Pearl Harbor, George H.W. Bush volunteered for combat duty in the Second World War. The youngest aviator in United States naval history at the time, he flew 58 combat missions, including one in which, after taking enemy fire, he parachuted from his burning plane into the Pacific Ocean. After the war, he returned home and started a business. In his words, "the big thing" he learned from this endeavor was "the satisfaction of creating jobs."

The same unselfish spirit that motivated his business pursuits later inspired him to resume the public service he began as a young man. First, as a member of Congress, then as Ambassador to the United Nations, Chief of the United States Liaison Office in China, Director of Central Intelligence, Vice President, and finally President of the United States, George H.W. Bush guided our Nation through the Cold War, to its peaceful and victorious end, and into the decades of prosperity that have followed. Through sound judgment, practical wisdom, and steady leadership, President Bush made safer the second half of a tumultuous and dangerous century.

Even with all he accomplished in service to our Nation, President Bush remained humble. He never believed that government—even when under his own leadership—could be the source of our Nation's strength or its greatness. America, he rightly told us, is illuminated by "a thousand points of light," "ethnic, religious, social, business, labor union, neighborhood, regional and other organizations, all of them varied, voluntary and unique" in which Americans serve Americans to build and maintain the greatest Nation on the face of the Earth. President Bush recognized that these communities of people are the true source of America's strength and vitality.

It is with great sadness that we mark the passing of one of America's greatest points of light, the death of President George H.W. Bush.

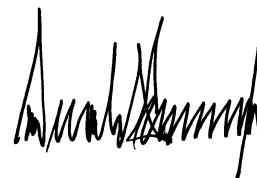
NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, in honor and tribute to the memory of President George H.W. Bush, and as an expression of public sorrow, do hereby direct that the flag of the United States be displayed at half-staff at the White House and on all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions for a period of 30 days from the day of his death. I also direct that, for the same length of time, the representatives of the United

States in foreign countries shall make similar arrangements for the display of the flag at half-staff over their embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

I hereby order that suitable honors be rendered by units of the Armed Forces under orders of the Secretary of Defense.

I do further appoint December 5, 2018, as a National Day of Mourning throughout the United States. I call on the American people to assemble on that day in their respective places of worship, there to pay homage to the memory of President George H.W. Bush. I invite the people of the world who share our grief to join us in this solemn observance.

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



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