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Title 3—

The President

Proclamation 9723 of April 10, 2018

Maintaining Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats

By the President of the United States of America

A Proclamation

In Proclamation 9645 of September 24, 2017 (Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats), I recognized that the United States has ''developed a baseline for the kinds of information required from foreign governments to support the United States Government's ability to confirm the identity of individuals seeking entry into the United States as immigrants and nonimmigrants, as well as individuals applying for any other benefit under the immigration laws, and to assess whether they are a security or public-safety threat.'' That baseline is designed to allow the United States to assess adequately whether foreign nationals from a particular country seeking to enter or apply for an immigration benefit from the United States pose a national security or public-safety threat. It also includes an assessment of any national security or public-safety risks that may emanate from a country's territory.

After evaluating a comprehensive worldwide assessment of the performance of more than 200 countries against the baseline criteria, I placed entry suspensions and limitations on nationals of countries that failed to meet the baseline or whose nationals otherwise posed a significant threat. I also directed the Secretary of Homeland Security (Secretary), in consultation with the Secretary of State, to develop and implement a process to review whether countries have met the baseline criteria described in Proclamation 9645; develop recommendations regarding whether the suspensions and limitations should be continued, modified, terminated, or supplemented; and submit to me a report detailing these recommendations every 180 days. I further directed the Secretary of State to engage with countries subject to these entry restrictions in order to improve their performance against the baseline criteria, as practicable and appropriate, and consistent with the foreign policy, national security, and public-safety objectives of the United States. In taking these steps, I strengthened U.S. immigration vetting capabilities and processes, making our country safer. More work remains to be done, especially in light of evolving modern global threats, but we have made important progress.

On March 30, 2018, the Secretary transmitted to me the first of the required reports. In the report, the Secretary recommended that the suspensions and limitations on the entry of foreign nationals from one country be terminated. The Secretary based this recommendation on the results of the review and engagement process developed with the Secretary of State. The review process consisted of three phases: (1) country data collection; (2) data review, analysis, and engagement; and (3) consultation with executive departments and agencies (agencies).

During the data collection phase, the Department of State (State) surveyed all U.S. diplomatic missions worldwide on the performance of each country in meeting the baseline. For countries with deficiencies previously identified in the summer of 2017, missions provided their perspective on any steps

taken to improve. The Department of Homeland Security (DHS) simultaneously collected and reviewed relevant diplomatic, law enforcement, and intelligence reporting, along with data from other authoritative sources within the United States Government, intergovernmental organizations, and the public domain.

During the data review, analysis, and engagement phase, DHS and State reviewed the information gathered, including survey responses from missions covering more than 200 countries, to determine whether each country's performance against the baseline criteria had improved, worsened, or remained the same. The review focused on any observed changes during the review period in a country's cooperation with the United States, as well as any indicators of potential deficiencies in satisfying the baseline. In cases in which survey responses from the U.S. missions required follow-up, DHS and State engaged with the missions and requested additional information. DHS and State also, as practicable and appropriate, verified each country's implementation of the criteria against other diplomatic, law enforcement, and intelligence reporting, and through authoritative sources of information external to the United States Government.

DHS and State prioritized and, as practicable and appropriate, actively engaged those countries currently subject to travel restrictions in an effort to address and correct any deficiencies. U.S. missions abroad routinely engaged with their host governments, and DHS and State engaged with the pertinent foreign embassies in Washington, D.C. When a foreign government expressed interest in cooperating with the United States to address deficiencies, such discussions were supplemented by high-level meetings with appropriate U.S. officials and subject-matter experts. Through this process, for example, DHS and State organized a site visit to the Republic of Chad (Chad) in December 2017 to discuss specific deficiencies and potential remedies with relevant officials. Additionally, DHS met with the Libyan Foreign Minister to discuss Libya's ongoing efforts to comply with the baseline.

Based on the information collected, DHS evaluated whether each country in the world is meeting the baseline criteria. If the information indicated a potential change in a country's performance, but the information was not sufficiently concrete, that country's compliance status was not adjusted. In such instances, DHS and State have treated such indicators as the basis for further evaluation during the next review period.

DHS and State also identified certain developments or contextual indicators that would trigger further review of a country's performance to assess whether the country continues to meet information-sharing and identity-management criteria in a manner that mitigates any emerging risk, threat, or vulnerability. The goal of this evaluation was to ensure any recommendation to adjust current travel restrictions, either positively or negatively, would be grounded in articulable information and observations that demonstrate improved or degraded performance.

The Secretary's review concluded that, while more work must be done, identity-management and information-sharing practices are improving globally. Countries have revived partnership negotiations with the United States that were long dormant; improved the fraud-deterring aspects of their passports; established new protocols for cooperating with U.S. visa-issuing consulates; and shared information on criminals, known or suspected terrorists, and lost and stolen passports.

In Proclamation 9645, I imposed entry suspensions and limitations on the nationals of Chad. The Secretary has concluded that Chad has made marked improvements in its identity-management and information-sharing practices. Shortly after I signed the Proclamation, Chad made additional efforts to cooperate with the United States to help it satisfy the baseline. The United States worked closely with Chad to discuss the identity-management and information-sharing criteria. This endeavor included U.S. officials engaging with the Government of Chad to understand its domestic operations in

significant detail in order to develop advice and guidance on how Chad could satisfy the baseline.

Chad was receptive to this engagement and has made notable improvements. Specifically, Chad has improved its identity-management practices by taking concrete action to enhance travel document security for its nationals, including taking steps to issue more secure passports and sharing updated passport exemplars to help detect fraud. The Government of Chad also improved handling of lost and stolen passports, the sharing of which helps the United States and other nations prevent the fraudulent use of such documents. Additionally, the United States has confirmed that Chad shares information about known or suspected terrorists in a manner that makes that information available to our screening and vetting programs and has created a new, standardized process for processing requests for relevant criminal information. Chad has proven its commitment to sustaining cooperation with the United States through a regular review and coordination working group. This working group, which has met twice since Proclamation 9645 was issued, allows for regular tracking of the progress summarized above. In sum, Chad has made improvements and now sufficiently meets the baseline. I am therefore terminating the entry restrictions and limitations previously placed on the nationals of Chad.

The Secretary determined that, despite our engagement efforts, other countries currently subject to entry restrictions and limitations did not make notable or sufficient improvements in their identity-management and information-sharing practices. Though remaining deficient, the State of Libya (Libya) is taking initial steps to improve its practices. DHS and State are currently working with the Government of Libya, which has designated a senior official in its Ministry of Foreign Affairs to serve as a central focal point for working with the United States. DHS and State presented Libya with a list of measures it can implement to rectify its deficiencies, and it has committed to do so. Despite this progress, Libya remains deficient in its performance against the baseline criteria, and the Secretary recommends at this time against removal of the entry restrictions and limitations on that country and the other countries currently subject to them.

Finally, the Secretary found insufficient information that other countries' performance against the baseline criteria had degraded during the review period. In addition, DHS identified contextual indicators suggesting closer review of a country's practice was warranted in only one instance, and on closer examination, DHS determined that the country's practice did not warrant imposition of additional restrictions or limitations at this time.

During the interagency consultation and recommendation phase, the Secretary presented to the Secretary of State, the Attorney General, the Director of National Intelligence, and other appropriate heads of agencies a preliminary recommendation that the suspensions and limitations of entry of foreign nationals from Chad be terminated, while the other suspensions and limitations remain unaltered. Following this consultation, the Secretary finalized her recommendations and submitted the report to me.

I have decided, on the basis of the Secretary's recommendations, to modify Proclamation 9645.

NOW, THEREFORE, I, DONALD J. TRUMP, by the authority vested in me by the Constitution and the laws of the United States, including sections 212(f) and 215(a) of the Immigration and Nationality Act, 8 U.S.C. 1182(f) and 1185(a), and section 301 of title 3, United States Code, find that the entry into the United States of the nationals of Chad, as immigrants, and as nonimmigrants on business (B–1), tourist (B–2), and business/tourist (B–1/B–2) visas, no longer would be detrimental to the interests of the United States, and therefore hereby proclaim the following:

Section 1. *Removal of Restrictions and Limitations on Chad*. Section 2 of Proclamation 9645 is amended by striking subsection (a).

Sec. 2. *Effective Date*. This proclamation is effective at 12:01 a.m., eastern daylight time on April 13, 2018.

Sec. 3. *General Provisions*. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

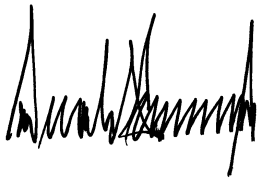
(i) the authority granted by law to an executive department or agency, or the head thereof; or

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

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

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

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



[FR Doc. 2018–07864
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Presidential Documents

Executive Order 13828 of April 10, 2018

Reducing Poverty in America by Promoting Opportunity and Economic Mobility

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to promote economic mobility, strong social networks, and accountability to American taxpayers, it is hereby ordered as follows:

Section 1. *Purpose*. The United States and its Constitution were founded on the principles of freedom and equal opportunity for all. To ensure that all Americans would be able to realize the benefits of those principles, especially during hard times, the Government established programs to help families with basic unmet needs. Unfortunately, many of the programs designed to help families have instead delayed economic independence, perpetuated poverty, and weakened family bonds. While bipartisan welfare reform enacted in 1996 was a step toward eliminating the economic stagnation and social harm that can result from long-term Government dependence, the welfare system still traps many recipients, especially children, in poverty and is in need of further reform and modernization in order to increase self-sufficiency, well-being, and economic mobility.

Sec. 2. *Policy*. (a) In 2017, the Federal Government spent more than $700 billion on low-income assistance. Since its inception, the welfare system has grown into a large bureaucracy that might be susceptible to measuring success by how many people are enrolled in a program rather than by how many have moved from poverty into financial independence. This is not the type of system that was envisioned when welfare programs were instituted in this country. The Federal Government's role is to clear paths to self-sufficiency, reserving public assistance programs for those who are truly in need. The Federal Government should do everything within its authority to empower individuals by providing opportunities for work, including by investing in Federal programs that are effective at moving people into the workforce and out of poverty. It must examine Federal policies and programs to ensure that they are consistent with principles that are central to the American spirit—work, free enterprise, and safeguarding human and economic resources. For those policies or programs that are not succeeding in those respects, it is our duty to either improve or eliminate them.

(b) It shall be the policy of the Federal Government to reform the welfare system of the United States so that it empowers people in a manner that is consistent with applicable law and the following principles, which shall be known as the Principles of Economic Mobility:

(i) Improve employment outcomes and economic independence (including by strengthening existing work requirements for work-capable people and introducing new work requirements when legally permissible);

(ii) Promote strong social networks as a way of sustainably escaping poverty (including through work and marriage);

(iii) Address the challenges of populations that may particularly struggle to find and maintain employment (including single parents, formerly incarcerated individuals, the homeless, substance abusers, individuals with disabilities, and disconnected youth);

(iv) Balance flexibility and accountability both to ensure that State, local, and tribal governments, and other institutions, may tailor their public assistance programs to the unique needs of their communities and to ensure that welfare services and administering agencies can be held accountable for achieving outcomes (including by designing and tracking measures that assess whether programs help people escape poverty);

(v) Reduce the size of bureaucracy and streamline services to promote the effective use of resources;

(vi) Reserve benefits for people with low incomes and limited assets;

(vii) Reduce wasteful spending by consolidating or eliminating Federal programs that are duplicative or ineffective;

(viii) Create a system by which the Federal Government remains updated on State, local, and tribal successes and failures, and facilitates access to that information so that other States and localities can benefit from it; and

(ix) Empower the private sector, as well as local communities, to develop and apply locally based solutions to poverty.

(c) As part of our pledge to increase opportunities for those in need, the Federal Government must first enforce work requirements that are required by law. It must also strengthen requirements that promote obtaining and maintaining employment in order to move people to independence. To support this focus on employment, the Federal Government should:

(i) review current federally funded workforce development programs. If more than one executive department or agency (agency) administers programs that are similar in scope or population served, they should be consolidated, to the extent permitted by law, into the agency that is best equipped to fulfill the expectations of the programs, while ineffective programs should be eliminated; and

(ii) invest in effective workforce development programs and encourage, to the greatest extent possible, entities that have demonstrated success in equipping participants with skills necessary to obtain employment that enables them to financially support themselves and their families in today's economy.

(d) It is imperative to empower State, local, and tribal governments and private-sector entities to effectively administer and manage public assistance programs. Federal policies should allow local entities to develop and implement programs and strategies that are best for their respective communities. Specifically, policies should allow the private sector, including community and faith-based organizations, to create solutions that alleviate the need for welfare assistance, promote personal responsibility, and reduce reliance on government intervention and resources.

(i) To promote the proper scope and functioning of government, the Federal Government must afford State, local, and tribal governments the freedom to design and implement programs that better allocate limited resources to meet different community needs.

(ii) States and localities can use such flexibility to devise and evaluate innovative programs that serve diverse populations and families. States and localities can also model their own initiatives on the successful programs of others. To achieve the right balance, Federal leaders must continue to discuss opportunities to improve public assistance programs with State and local leaders, including our Nation's governors.

(e) The Federal Government owes it to Americans to use taxpayer dollars for their intended purposes. Relevant agencies should establish clear metrics that measure outcomes so that agencies administering public assistance programs can be held accountable. These metrics should include assessments of whether programs help individuals and families find employment, increase earnings, escape poverty, and avoid long-term dependence. Whenever possible, agencies should harmonize their metrics to facilitate easier cross-

programmatic comparisons and to encourage further integration of service delivery at the local level. Agencies should also adopt policies to ensure that only eligible persons receive benefits and enforce all relevant laws providing that aliens who are not otherwise qualified and eligible may not receive benefits.

(i) All entities that receive funds should be required to guarantee the integrity of the programs they administer. Technology and innovation should drive initiatives that increase program integrity and reduce fraud, waste, and abuse in the current system.

(ii) The Federal Government must support State, local, and tribal partners by investing in tools to combat payment errors and verify eligibility for program participants. It must also work alongside public and private partners to assist recipients of welfare assistance to maximize access to services and benefits that support paths to self-sufficiency.

Sec. 3. *Review of Regulations and Guidance Documents*. (a) The Secretaries of the Treasury, Agriculture, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, and Education (Secretaries) shall:

(i) review all regulations and guidance documents of their respective agencies relating to waivers, exemptions, or exceptions for public assistance program eligibility requirements to determine whether such documents are, to the extent permitted by law, consistent with the principles outlined in this order;

(ii) review any public assistance programs of their respective agencies that do not currently require work for receipt of benefits or services, and determine whether enforcement of a work requirement would be consistent with Federal law and the principles outlined in this order;

(iii) review any public assistance programs of their respective agencies that do currently require work for receipt of benefits or services, and determine whether the enforcement of such work requirements is consistent with Federal law and the principles outlined in this order;

(iv) within 90 days of the date of this order, and based on the reviews required by this section, submit to the Director of the Office of Management and Budget and the Assistant to the President for Domestic Policy a list of recommended regulatory and policy changes and other actions to accomplish the principles outlined in this order; and

(v) not later than 90 days after submission of the recommendations required by section 3(a)(iv) of this order, and in consultation with the Director of the Office of Management and Budget and the Assistant to the President for Domestic Policy, take steps to implement the recommended administrative actions.

(b) Within 90 days of the date of this order, the Secretaries shall each submit a report to the President, through the Director of the Office of Management and Budget and the Assistant to the President for Domestic Policy, that:

(i) states how their respective agencies are complying with 8 U.S.C. 1611(a), which provides that an alien who is not a ''qualified alien'' as defined by 8 U.S.C. 1641 is, subject to certain statutorily defined exceptions, not eligible for any Federal public benefit as defined by 8 U.S.C. 1611(c);

(ii) provides a list of Federal benefit programs that their respective agencies administer that are restricted pursuant to 8 U.S.C. 1611; and

(iii) provides a list of Federal benefit programs that their respective agencies administer that are not restricted pursuant to 8 U.S.C. 1611.

Sec. 4. *Definitions*. For the purposes of this order:

(a) the terms ''individuals,'' ''families,'' and ''persons'' mean any United States citizen, lawful permanent resident, or other lawfully present alien who is qualified to or otherwise may receive public benefits;

(b) the terms ''work'' and ''workforce'' include unsubsidized employment, subsidized employment, job training, apprenticeships, career and technical education training, job searches, basic education, education directly related to current or future employment, and workfare; and

(c) the terms ''welfare'' and ''public assistance'' include any program that provides means-tested assistance, or other assistance that provides benefits to people, households, or families that have low incomes (i.e., those making less than twice the Federal poverty level), the unemployed, or those out of the labor force.

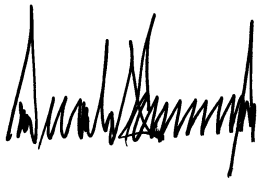
Sec. 5. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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



THE WHITE HOUSE,
April 10, 2018.

[FR Doc. 2018–07874
Filed 4–12–18; 8:45 am]
Billing code 3295–F8–P

Rules and Regulations

Federal Register
Vol. 83, No. 72
Friday, April 13, 2018

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 27

[Docket No.FAA–2017–1130; Notice No. 27–043–SC]

Special Conditions: Airbus Helicopters Model AS350B2 and AS350B3 Helicopters; Installation of Garmin International, Inc., Autopilot System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Airbus Helicopters Model AS350B2 and AS350B3 helicopters. These helicopters as modified by Garmin International, Inc., (Garmin) will have a novel or unusual design feature associated with the Garmin Flight Control (GFC) 600H autopilot with stability and control augmentation system (AP/SCAS). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is April 13, 2018.

FOR FURTHER INFORMATION CONTACT: George Harrum, Aerospace Engineer, FAA, Rotorcraft Standards Branch, Policy and Innovations Division, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–4087; email *George.Harrum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On October 10, 2016, Garmin applied for a supplemental type certificate (STC) to install a GFC 600H AP/SCAS in Airbus Helicopters Model AS350B2 and AS350B3 helicopters. The Model AS350B2 and AS350B3 helicopters are 14 CFR part 27 normal category, single turbine engine, conventional helicopters designed for civil operation. These helicopter models are capable of carrying up to five passengers with one pilot and have a maximum gross weight of up to 5,220 pounds, depending on the model configuration. The major design features include a 3-blade, fully articulated main rotor, an anti-torque tail rotor system, a skid landing gear, and a visual flight rule basic avionics configuration.

Garmin proposes to modify these model helicopters by installing a SCAS with autopilot functions in 2 or 3 axes, depending on the number of servos installed. The possible failure conditions for this system, and their effect on the continued safe flight and landing of the helicopter, are more severe than those envisioned by the present rules. The present 14 CFR 27.1309(b) and (c) regulations do not adequately address the safety requirements for systems whose failures could result in ''catastrophic'' or ''hazardous/severe-major'' failure conditions, or for complex systems whose failures could result in ''major'' failure conditions. When these rules were promulgated, it was not envisioned that a normal category rotorcraft would use systems that are complex or whose failure could result in ''catastrophic'' or ''hazardous/severe-major'' effects on the rotorcraft. This is particularly true with the application of new technology, new application of standard technology, or other applications not envisioned by the rule that affect safety. The Garmin AP/SCAS controls rotorcraft flight control surfaces. Possible failure modes exhibited by this system could result in a catastrophic event.

Type Certification Basis

Under 14 CFR 21.101 and 21.115, Garmin must show that the Airbus Helicopters Model AS350B2 and AS350B3 helicopters, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. H9EU or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. H9EU are as follows:

14 CFR 21.29 and part 27 effective February 1, 1965, plus Amendments 27–1 through 27–10.

For aircraft incorporating mod. OP3369 (2370 kg/5225 lb mass extension), the following 14 CFR part 27 Amendments 27–1 through 27–40 are replacing the same requirement from the certification basis above: §§ 27.1; 27.21; 27.25; 27.27; 27.33; 27.45; 27.51; 27.65; 27.71; 27.73; 27.75; 27.79; 27.141; 27.143; 27.173; 27.175; 27.177; 27.241; 27.301; 27.303; 27.305; 27.307; 27.309; 27.321; 27.337; 27.339; 27.341; 27.351; 27.471; 27.473; 27.501; 27.505; 27.521; 27.547; 27.549; 27.563(b); 27.571; 27.602; 27.661; 27.663; 27.695; 27.723; 27.725; 27.727; 27.737; 27.751; 27.753; 27.801(b)(d); 27.927(c); 27.1041; 27.1043; 27.1045; 27.1301; 27.1501; 27.1519; 27.1529; 27.1581; 27.1583; 27.1585; 27.1587; 27.1589.

For AS350B3 aircraft incorporating mod. OP–4605 (installation of a fuel system improving crashworthiness), 14 CFR 27.561(c) at Amendment 27–32 replaces the same requirement from the certification basis above for the following elements of the fuel tank lower structure affected by this modification: cradles, longitudinal beams, X-stops and rods.

Additionally, Garmin must comply with the equivalent level of safety findings, exemptions, and special conditions prescribed by the Administrator as part of the certification basis.

The Administrator has determined the applicable airworthiness regulations (that is, 14 CFR part 27), as they pertain to this STC, do not contain adequate or appropriate safety standards for the Airbus Helicopters Model AS350B2 and AS350B3 helicopters because of a novel or unusual design feature. Therefore, we propose to prescribe these special conditions under § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for an STC to change any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, Garmin must show that the

Airbus Helicopters Model AS350B2 and AS350B3 helicopters, as changed, comply with the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38 and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Airbus Helicopters Model AS350B2 and AS350B3 helicopter incorporates the following novel or unusual design features: A GFC 600H AP/SCAS. This GFC 600H AP/SCAS performs non-critical control functions. The GFC 600H AP/SCAS is a two or three axis system with the following novel functions: Limit cueing, level mode, and hover assist.

Discussion

These special conditions clarify the requirement to perform a proper failure analysis and also recognizes that the severity of failures can vary. Current industry standards and practices recognize five failure condition categories: Catastrophic, Hazardous, Major, Minor, and No-Safety Effect. These special conditions address the safety requirement for systems whose failures could result in catastrophic or hazardous/severe-major failure conditions and for complex systems whose failures could result in major failure conditions.

To comply with the provisions of the special conditions, we require that Garmin provide the FAA with a systems safety assessment (SSA) for the final GFC 600H AP/SCAS installation configuration that adequately address the safety objectives established by a functional hazard assessment (FHA) and a preliminary system safety assessment (PSSA), including the fault tree analysis (FTA). This ensures that all failure conditions and their resulting effects are adequately addressed for the installed GFC 600H AP/SCAS. The SSA process, FHA, PSSA, and FTA are all parts of the overall safety assessment process discussed in FAA Advisory Circular 27–1B, *Certification of Normal Category Rotorcraft,* and Society of Automotive Engineers document Aerospace Recommended Practice 4761, *Guidelines and Methods for Conducting the Safety Assessment Process on Civil Airborne Systems and Equipment.*

These special conditions require that the GFC 600H AP/SCAS installed on Airbus Helicopters Model AS350B2 and Model AS350B3 helicopters meet the requirements to adequately address the failure effects identified by the FHA, and subsequently verified by the SSA, within the defined design integrity requirements.

Comments

No comments were received in response to the Notice of proposed special conditions No. 27–043–SC (82 FR 57685, December 7, 2017). The closing date for comments was January 22, 2018. Accordingly, the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to Airbus Helicopters Model AS350B2 and AS350B3 helicopters. Should Garmin apply at a later date for an STC to modify any other model included on Type Certificate Number H9EU to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on two model helicopters. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features.

List of Subjects in 14 CFR Part 27

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

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 Airbus Helicopters Model AS350B2 and AS350B3 helicopters modified by Garmin International, Inc. (Garmin).

Instead of the requirements of 14 CFR 27.1309(b) and (c), the following must be met for certification of the Garmin Flight Control 600H autopilot with stability and control augmentation system:

(a) The equipment and systems must be designed and installed so that any equipment and system does not adversely affect the safety of the rotorcraft or its occupants.

(b) The rotorcraft systems and associated components considered separately and in relation to other systems, must be designed and installed so that:

(1) The occurrence of any catastrophic failure condition is extremely improbable;

(2) The occurrence of any hazardous failure condition is extremely remote; and

(3) The occurrence of any major failure condition is remote.

(c) Information concerning an unsafe system operating condition must be provided in a timely manner to the crew to enable them to take appropriate corrective action. An appropriate alert must be provided if immediate pilot awareness and immediate or subsequent corrective action is required. Systems and controls, including indications and annunciations, must be designed to minimize crew errors which could create additional hazards.

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

Jorge Castillo,

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

[FR Doc. 2018–07655 Filed 4–12–18; 8:45 am]

BILLING CODE 4910–13–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in May 2018. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective May 1, 2018.

FOR FURTHER INFORMATION CONTACT: Hilary Duke (*duke.hilary@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, 202–326–4400 ext. 3839. (TTY users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4400, ext. 3839.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits

under terminated single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's website (*http://www.pbgc.gov*).

PBGC uses the interest assumptions in appendix B to part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for May 2018.[1]

The May 2018 interest assumptions under the benefit payments regulation will be 1.00 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for April 2018, these assumptions are unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during May 2018, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 295 is added at the end of the table to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*		*		*
295	5–1–18	6–1–18	1.00	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 295 is added at the end of the table to read as follows:

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*		*		*
295	5–1–18	6–1–18	1.00	4.00	4.00	4.00	7	8

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2018–07466 Filed 4–12–18; 8:45 am]

BILLING CODE 7709–02–P

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0146]

RIN 1625–AA87

Security Zones; Port Canaveral Harbor, Cape Canaveral Air Force Station, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising a security zone to extend the geographical boundaries of the permanent security zone at Port Canaveral Harbor. This action is necessary to ensure the security of vessels, facilities, and the surrounding areas within this zone. This regulation prohibits persons and vessels from entering, transiting through, anchoring in, or remaining within the security zone unless authorized by the Captain of the Port (COTP) Jacksonville or a designated representative.

DATES: This rule is effective May 14, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0146 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Allan Storm, Sector Jacksonville, Waterways Management Division, U.S. Coast Guard; telephone (904) 714–7616, email *Allan.H.Storm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On October 3, 1988, the Coast Guard published a final rule creating a permanent security zone at Port Canaveral Harbor, Cape Canaveral, Florida, entitled, ''Security Zone; Port Canaveral Harbor, Cape Canaveral, FL'' (53 FR 38718) to safeguard the waterfront and military assets along the U.S. Navy's Poseidon Wharf inside the southeast portion of Port Canaveral Harbor's Middle Basin. This waterfront area is located on Cape Canaveral Air Force Station (CCAFS), a U.S. Air Force military installation. Additionally, the northern and northeast portion of the Middle Basin's waterfront is located almost entirely on CCAFS property, and within this area are piers utilized by the U.S. Air Force and U.S. Army. CCAFS routinely conducts operations critical to national security.

The U.S. Navy requested an amendment to the current regulation in 33 CFR 165.705(b) to expand the geographical boundaries to include the northern and northeastern portion of the Middle Basin of Port Canaveral Harbor in order to ensure the safety and security of military assets and infrastructure along the entire CCAFS waterfront. In response, on October 3, 2017, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled, ''Security Zones; Port Canaveral Harbor, Cape Canaveral Air Force Station, FL'' (82 FR 46007). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to revising the security zone. During the comment period that ended November 3, 2017, we received 3 comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 1231. The COTP Jacksonville has determined it is necessary to expand the security zone in the Middle Basin of Port Canaveral Harbor to ensure the security of military assets and waterfront facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents or other causes of a similar nature.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received 3 comments on our NPRM published October 3, 2017. One comment was in support of the rule. The other two comments provided recommendations and feedback to the rule. One comment provided a recommendation to conduct a safety study to ensure that the likelihood for a collision has not increased. The Coast Guard does not intend to conduct a safety study for the revised security zone, as there have been no safety concerns raised during discussions within the port community; including the Canaveral Pilots Association, the Canaveral Port Authority, U.S. Navy, and Brevard County Sheriff's Office. The other comment inquired about the inclusion of the U.S. Army Corps of Engineers (USACE) to revise the restricted area outlined in 33 CFR 334.530 to match the Coast Guard's expanded security zone. The Coast Guard intends to make a recommendation to USACE to revise the restricted area in 33 CFR 334.530. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule expands the geographical boundaries of the current regulated area in 33 CFR 165.705(b) to include the navigable waters of the Port Canaveral Harbor's Middle Basin. This revision redesignates § 165.705(b) to new § 165.705(a)(2).

The rule also made the following amendments: (1) Changed the title of the existing regulation in 33 CFR 165.705 from ''Port Canaveral Harbor, Cape Canaveral, Florida'' to ''Security Zones: Port Canaveral Harbor, Cape Canaveral Air Force Station, FL;'' (2) added a new paragraph (c) and changed the title to ''Regulations;'' (3) redesignated existing paragraph (d) as new paragraph (c)(1) with minor non-substantive changes; (4) redesignated existing paragraph (c) as new paragraph (c)(2) with minor non-substantive changes; (5) and added a new paragraph (c)(3). Lastly, we added a new paragraph (b), entitled ''Definitions'' to define the term ''designated representative.''

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the fact that although persons and vessels may not enter, transit through, anchor in, or remain within the security zone without authorization from the COTP Jacksonville or a designated representative, they may operate in the navigable water adjacent to the security zone and the Federal channel.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves expanding the geographical boundaries of a permanent security zone that prohibit entry within certain navigable waters of the Port of Canaveral Harbor's Middle Basin. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.705 to read as follows:

§ 165.705 Security Zones: Port Canaveral Harbor, Cape Canaveral Air Force Station, FL.

(a) *Regulated areas*—(1) *Security Zone A.* East (Trident) Basin, Port Canaveral Harbor, at Cape Canaveral Air Force Station, Brevard County, Florida: All waters of the East Basin north of latitude 28°24′36″ N.

(2) *Security Zone B.* Middle Basin, Port Canaveral Harbor, at Cape Canaveral Air Force Station, Brevard County, Florida: All waters within the following coordinates inside the Middle Basin: Starting at Point 1 in position 28°24′54.49″ N, 080°36′39.13″ W; thence south to Point 2 in position 28°24′53.27″ N, 080°36′39.15″ W; thence east to Point 3 in position 28°24′53.25″ N, 080°36′30.41″ W; thence south to Point 4 in position 28°24′50.51″ N, 080°36′30.41″ W; thence southeast to Point 5 in position 28°24′38.15″ N, 080°36′17.18″ W; thence east to Point 6 in position 28°24′38.16″ N, 080°36′14.92″ W; thence northeast to Point 7 in position 28°24′39.36″ N,

080°36′13.37″ W; thence following the land based perimeter boundary to the point of origin. These coordinates are based on North American Datum 1983.

(b) *Definitions.* The term ''designated representative'' means personnel designated by or assisting the Captain of the Port (COTP) Jacksonville in the enforcement of the security zone. This includes Coast Guard Patrol Commanders, Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels and federal, state, and local law officers designated by or assisting the COTP Jacksonville in the enforcement of regulated navigation areas and security zones.

(c) *Regulations.* (1) The general regulations governing security zones found in § 165.33 apply to the security zones described in paragraph (a) of this section.

(2) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the security zone unless authorized by the COTP Jacksonville or a designated representative.

(3) Persons desiring to enter, transit through, anchor in, or remain within the security zone may request permission from the COTP Jacksonville by telephone at 904–714–7557, or a designated representative via VHF–FM radio on channel 16. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Jacksonville or the designated representative.

Dated: March 29, 2018.

Todd C. Wiemers,

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

[FR Doc. 2018–07694 Filed 4–12–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0260]

RIN 1625–AA00

Safety Zone; Cumberland River, Canton, KY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a one-half mile of the US 68/KY 80 Lake Barkley Bridge—Henry R. Lawrence Memorial Bridge in Canton, KY. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the demolition of the bridge. Entry of vessels or persons into this zone is prohibited unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

DATES: This rule is effective without actual notice from April 13, 2018 through 6 a.m. on April 14, 2018. For the purposes of enforcement, actual notice will be used from 6 a.m. on April 11, 2018 through April 13, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2018–0260 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Joseph Stranc, Marine Safety Unit Paducah Waterways Division, U.S. Coast Guard; telephone 270–442–1621 ext. 2124, email *Joseph.B.Stranc@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable. On March 21, 2018, the Coast Guard was notified of the need for bridge demolition operations on the Cumberland River. This safety zone must be established by April 11, 2018 and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule. The NPRM process would delay the establishment of the safety zone until after the dates of the bridge demolition and compromise public safety.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Delaying the effective date of this rule would be impracticable and contrary to public interest because immediate action is needed to ensure safety of persons and vessels during the bridge demolition.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with bridge demolition beginning on April 11, 2018 will be a safety concern for anyone within a one-half mile radius of the bridge. The purpose of this rule is to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being demolished.

IV. Discussion of the Rule

This rule establishes a safety zone from 6 a.m. on April 11, 2018 through 6 a.m. on April 14, 2018. The safety zone will cover all navigable waters of the Cumberland River between miles 62.6 and 63.6. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the bridge is being demolished. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. They may be contacted via VHF–FM marine channel 16 or by telephone at 270–217–0959. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or a designated representative. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs) via VHF–FM marine channel 16 about the enforcement period for the safety zone, as well as any changes in the dates and times of enforcement.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the zone. This rule establishes a temporary safety zone, limiting access to a one-mile section of the Cumberland River, miles 62.6 to 63.6, during bridge demolition and clean-up operations occurring over a 3-day period.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting three days that will prohibit entry within one-mile stretch of the Cumberland River. It is categorically excluded from further review under paragraph L 60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0260 to read as follows:

§ 165.T08–0260 Safety Zone; Cumberland River, Canton, KY.

(a) *Location.* The following area is a safety zone: all navigable waters of the Cumberland River between miles 62.6 and 63.6, extending the entire width of the river.

(b) *Enforcement period.* This section will be enforced from 6 a.m. on April 11, 2018 through 6 a.m. on April 14, 2018, or until the bridge demolition operation and cleanup of the main

navigable channel is complete, whichever occurs first.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into this zone is prohibited unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

(2) Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted via VHF–FM marine channel 16 or by telephone at 270–217–0959.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs) of the enforcement period for this safety zone as well as any changes in the dates and times of enforcement.

Dated: April 9, 2018.

M.B. Zamperini

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2018–07717 Filed 4–12–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–1058]

RIN 1625–AA00

Safety Zone; Mississippi River, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones for navigable waters of the Mississippi River, New Orleans, LA. These actions are necessary to protect persons and vessels from potential safety hazards associated with fireworks displays on or over this navigable waterway. Entry into these zones is prohibited unless authorized by the Captain of the Port Sector New Orleans (COTP) or a designated representative.

DATES: This rule is effective from 8:00 p.m. on May 6, 2018 through 8:45 p.m. on May 25, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2017–1058 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander (LCDR) Howard Vacco, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2281, email *Howard.K.Vacco@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

AHP Above Head of Passes
CFR Code of Federal Regulations
COTP Captain of the Port Sector New Orleans
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard received notification of the following fireworks displays that require safety zones:

(1) On November 7, 2017, the New Orleans Tourism and Marketing Corporation notified the Coast Guard that it would be conducting a fireworks display from 7:45 p.m. through 8:45 p.m. on May 25, 2018. The fireworks will be launched from a barge on the Lower Mississippi River at approximate mile marker (MM) 95.9 above Head of Passes (AHP), New Orleans, LA.

(2) On March 14, 2018, the NOLA 2018 Foundation notified the Coast Guard that it would be conducting a fireworks display from 8 p.m. through 8:20 p.m. on May 6, 2018. The fireworks will be launched from a barge on the Lower Mississippi River at approximate MM 95.4 AHP, New Orleans, LA.

In response to these notifications, on January 17, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Lower Mississippi River, New Orleans, LA (83 FR 2394). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended March 19, 2018, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Sector New Orleans (COTP) has determined that potential hazards associated with the fireworks to be used in the May 6, 2018 and May 25, 2018 displays present a hazard to anyone within a one-mile stretch of the launch barges. The purpose of this rule is to ensure safety of persons and vessels on the navigable waters in the safety zone before, during, and after the scheduled events.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published January 17, 2018.

The changes in the regulatory text from the proposed rule in the NPRM include minor editorial changes where we refer to the time of enforcement as the enforcement period, rather than the effective period.

This rule establishes two temporary safety zones on the following dates and locations:

1. Bayou Country Music Fest: A safety zone from 7:45 p.m. through 8:45 p.m. on May 25, 2018. The safety zone will cover all navigable waters of the Lower Mississippi River between mile marker (MM) 95.4 and MM 96.4 AHP.

2. NOLA Tricentennial 2018 Jazz and Heritage Fest: A safety zone from 8 p.m. through 9 p.m. on May 6, 2018. This safety zone will encompass all navigable waters of the Lower Mississippi River between MMs 95 and 96 AHP.

Both safety zones encompass a one mile stretch of river with a duration lasting no more than one hour. The duration of the zones is intended to ensure the safety of persons and vessels on these navigable waters before, during, and after the scheduled fireworks displays.

No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans. They may be contacted on VHF–FM Channel 16 or 67. Persons and vessels permitted to enter these safety zones must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners of any changes in the planned schedule.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on these zones lasting one hour and encompassing a one-mile stretch of the Lower Mississippi River. In addition, vessel traffic seeking to transit the areas can seek permission to enter from the COTP or his designated representative.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves two safety zones lasting less than one hour each that will prohibit entry within a one-mile stretch of the Lower Mississippi River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–1058 to read as follows:

§ 165.T08–1058 Safety Zones; Lower Mississippi River, New Orleans, LA.

(a) *Safety zones.* The following areas are safety zones:

(1) *Bayou Country Music Fest, New Orleans, LA*—(i) *Location.* All navigable waters of the Lower Mississippi River between mile marker (MM) 95.4 and MM 96.4, above Head of Passes.

(ii) *Enforcement period.* This rule will be enforced from 7:45 p.m. through 8:45 p.m. on May 25, 2018.

(2) *NOLA Tricentennial 2018 Jazz and Heritage Fest*—(i) *Location.* All navigable waters of the Lower Mississippi River between mile marker (MM) 94 and MM 95, above Head of Passes.

(ii) *Enforcement period.* This rule will be enforced from 8 p.m. through 9 p.m. on May 6, 2018.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into these zones is prohibited unless specifically authorized by the Captain of the Port Sector New Orleans (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of U.S. Coast Guard Sector New Orleans.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or 67.

(3) Persons and vessels permitted to enter these safety zones must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(c) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners of any changes in the planned schedule.

Dated: April 9, 2018.

Wayne R. Arguin,

Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.

[FR Doc. 2018–07716 Filed 4–12–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Institutes of Standards and Technology

37 CFR Parts 401 and 404

[Docket No.: 160311229–8347–02]

RIN 0693–AB63

Rights to Federally Funded Inventions and Licensing of Government Owned Inventions

AGENCY: National Institute of Standards and Technology (NIST), United States Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule reduces regulatory burdens by clarifying electronic reporting, updating certain sections to conform with changes in the patent laws, and streamlining the licensing application process for some Federal laboratory collaborators, makes technical corrections, clarifies the role of provisional patent application filing, explains a unique situation that may be appropriate for a Determination of Exceptional Circumstances, clarifies the role of funding agencies in the Bayh-Dole process, and addresses subject inventions as to which a Federal laboratory employee is a co-inventor.

DATES: This rule is effective May 14, 2018.

FOR FURTHER INFORMATION CONTACT: Courtney Silverthorn, via email: *courtney.silverthorn@nist.gov* or by telephone at 301–975–4189.

SUPPLEMENTARY INFORMATION: These rule revisions are promulgated under the University and Small Business Patent Procedures Act of 1980, Public Law 96–517 (as amended), codified at title 35 of the United States Code (U.S.C.) 200 *et seq.,* commonly known as the ''Bayh-Dole Act'' or simply ''Bayh-Dole,'' which governs rights in inventions made with Federal assistance. The Bayh-Dole Act obligates nonprofit organizations and small business firms (''contractors''), and large businesses, as directed by Executive Order 12591 and to the extent permitted by law, to disclose each ''subject invention'' (that is, each invention conceived or first actually reduced to practice in the performance of work under a funding agreement, 35 U.S.C. 201(e)) within a reasonable time after the invention becomes known to the contractor, 35 U.S.C. 202(c)(1), and permits contractors to elect, within a reasonable time after disclosure, to retain title to a subject invention, 35 U.S.C. 202(a). Under certain defined ''exceptional'' circumstances, Bayh-Dole permits the Government to restrict or eliminate the contractor's right to elect to retain title, 35 U.S.C. 202(a), 202(b).

The Secretary of Commerce has delegated to the Director of NIST the authority to promulgate implementing regulations. Regulations implementing 35 U.S.C. 202 through 204 are codified at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Co-operative Agreements,'' and apply to all Federal agencies, 37 CFR 401.1(b). These regulations govern all ''subject inventions,'' as defined in 37 CFR 401.2(d), even if the Federal government is not the sole source of funding for either the conception or the reduction to practice, 37 CFR 401.1(a). Regulations implementing 35 U.S.C. 208, specifying the terms and conditions upon which federally owned inventions, other than inventions owned by the Tennessee Valley Authority, may be licensed on a nonexclusive, partially exclusive, or exclusive basis, are codified at 37 CFR part 404, ''Licensing of Government Owned Inventions.''

Bayh-Dole and its implementing regulations require Federal funding agencies to employ certain ''standard clauses'' in funding agreements awarded to contractors, except under certain specified conditions, 37 CFR 401.3. Through these standard clauses, set forth at 37 CFR 401.14(a), contractors are obligated to take certain actions to properly manage subject inventions. These actions include, but are not limited to, disclosing each subject invention to the Federal agency within two months after the contractor's inventor discloses it in writing to contractor personnel responsible for patent matters, paragraph (c)(1) of the clause; electing in writing whether or not to retain title to any subject invention by notifying the Federal agency within two years of disclosure to the Federal agency, paragraph (c)(2) of the clause; filing an initial patent application on a subject invention as to which the contractor elects to retain title within one year after election, paragraph (c)(3) of the clause; executing and promptly delivering to the Federal agency all instruments necessary to establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, paragraph (f)(1) of the clause; requiring, by written agreement, the contractor's employees to disclose promptly in writing each subject invention made under contract, paragraph (f)(2) of the clause; notifying the Federal agency of any decision not to continue the prosecution of a patent application, paragraph (f)(3) of the clause; and including in the specification of any U.S. patent applications and any patent issuing thereon covering a subject invention, a statement that the invention was made with Government support under the grant or contract awarded by the Federal agency, and that the Government has certain rights in the invention, paragraph (f)(4) of the clause.

In addition, a contractor is obligated to include the requirements of the standard clauses in any subcontracts under the contractor's award, paragraph (g) of the clause; to submit periodic reports as requested on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees, paragraph (h) of the clause;

and to agree that neither the contractor nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States, paragraph (i) of the clause, subject to waiver.

Bayh-Dole and its implementing regulations also specify certain conditions applicable to licenses granted by Federal agencies in any federally owned invention. The implementing regulations include 37 CFR 404.5, which sets forth restrictions and conditions applicable to all Federal agency licenses, 37 CFR 404.6, which addresses requirements pertaining to nonexclusive licenses, and 37 CFR 404.7, which addresses requirements pertaining to exclusive and partially exclusive licenses.

This rulemaking reduces regulatory burdens on large and small businesses, universities, non-profit organizations, and other recipients of federal funding in several ways. The rule provides greater clarity to large businesses by codifying the applicability of Bayh-Dole as directed in Executive Order 12591 which has been in effect since 1987, and provides greater clarity to all federal funding recipients by updating regulatory provisions to align with provisions of the Leahy-Smith America Invents Act in terms of definitions, required time frames, and use of royalty funds, which will reduce compliance burdens on recipients of federal funding. The rule also clarifies electronic reporting processes, simplifying the burden of the statutorily required reporting process. Finally, the rule provides for automatic extensions of the requirement to file non-provisional patent applications, and removes the requirement for a business, university, or other collaborator to submit a separate license application for a federal invention being used under a cooperative research and development agreement.

Pursuant to authority delegated to it by the Secretary of Commerce, NIST is revising parts 401 and 404 of title 37 of the Code of Federal Regulations (CFR) which address rights to inventions made under Government grants, contracts, and co-operative agreements, and licensing of government owned inventions. The rule shall apply to all new funding agreements as defined in 37 CFR 401.2(a) that are executed after the effective date of the rule. The rule shall not apply to a funding agreement in effect on or before the effective date of the rule, provided that if such existing funding agreement is thereafter amended, the funding agency may, in its discretion, make the amended funding agreement subject to the rule prospectively.

Response to Comments

NIST received 17 comment submissions during the public comment period for the notice of proposed rulemaking published November 7, 2016, 81 FR 78090. NIST thanks the public for its careful review and submissions. The comments received and NIST's responses are summarized below.

1. One comment requested clarification about the revised definition of *statutory period* in §§ 401.2(o) and 401.14(a)(7). NIST has revised the definition to clarify that the statutory period refers to the one-year period in 35 U.S.C. 102(b)(1) as amended by the Leahy-Smith America Invents Act.

2. Several comments suggested a revision to § 401.3(a)(1) permitting foreign collaborators to receive standard Bayh-Dole rights. NIST declines to revise this provision of the regulations. NIST notes that the language of § 401.3(a)(1) closely tracks that of 35 U.S.C. 202(a)(i). Both the statute and the regulation accord a funding agency discretion in crafting the terms and conditions of a funding agreement ''when the contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government.''

3. Several comments noted the removal of the appeals process in § 401.3(a)(5). This was not NIST's intent. Accordingly, NIST has added reference to § 401.3(a)(5) in § 401.3(b), requiring an agency exercising that exception to use the standard clause at § 401.14 with only such modifications as are necessary to address the exceptional circumstances or concerns which led to the use of the exception. In addition, the first sentence of § 401.4(a) of the final rule makes clear that each of the exceptions at § 401.3(a)(1) through (6) of the final rule is subject to a contractor right to an administrative review.

4. Several comments objected to the addition of the exception, recited in § 401.3(a)(6), which authorizes a funding agency to use alternative provisions if the contract provides for services and the contractor is not a nonprofit organization and does not promote the commercialization and public availability of subject inventions. This exception is intended to address the scenario in which a services contractor, whose business model by design does not promote the commercialization or public availability of subject inventions, can, by simply neglecting to waive title for as long as two years, delay (at best) efforts to achieve commercialization or public availability. In reciting the § 401.3(a)(6) exception, the final rule also provides that it is subject to an administrative review right.

5. Several comments objected to provisions in § 401.5 allowing Federal agencies to request additional invention reporting. NIST notes that the alternative reporting set forth in § 401.5(f)(1) through (3) is neither new language nor obligatory upon funding agencies. The suggestion of several commenters, that this is new language, is incorrect.

6. Several comments objected to the proposed revisions to §§ 401.7 and 401.14(k) (by reference to § 401.7), regarding the small business preference requirement of 35 U.S.C. 202(c)(7)(D). The proposed revision to § 401.7(b) provides that small business firms that believe a nonprofit organization is not according appropriate preference to small business firms may report their concerns in the first instance to the funding agency, rather than to the Secretary of Commerce as previously provided. It is believed that this change will in many instances facilitate resolution of concerns, given the funding agency's familiarity with the subject matter and purpose of its award. Where a small business firm is dissatisfied with the funding agency response, or receives none within 90 days, the proposed revision provides that it may thereafter report its concerns, together with any response from the funding agency, to the Secretary of Commerce. NIST declines to remove these proposed changes.

7. One comment suggested revisions to §§ 401.7 and 401.14(k) to address licensing to what were characterized by the commenter as ''non-practicing entities.'' NIST declines to make the suggested revisions, and notes that under § 401.14(k)(4), a nonprofit contractor must give a licensing preference to a small business firm with a marketing plan for the invention which is as likely to bring the invention to practical application as the plans of other firms, however those other firms might be characterized. At the same time, § 401.14(k)(4) does not prescribe the type of license (exclusive, non-exclusive, or partially exclusive) to be granted, the result of which is that a nonprofit contractor is accorded the flexibility, through its licensing policies, procedures and practices, to promote

the practical application and public availability of subject inventions, while according to small business firms the preference required under 35 U.S.C. 202(7)(D).

8. Comments generally supported revisions to § 401.10 on the management of subject inventions when there is a Federal employee who is a co-inventor of the subject invention, and NIST appreciates the suggestions for additional clarification. NIST has required consultation with the contractor in § 401.10(a)(2), but declines the suggestion that it should restrict the scope of the required consultation. In addition, NIST has clarified that paragraphs (ii) through (vi) of § 401.10(a)(3) all apply only after a contractor has elected not to retain title, and has added a paragraph (c) to clarify that the regulation will not supersede inter-institutional agreements for the management of jointly-owned subject inventions. As appropriate, NIST has also revised § 401.10(a)(3) to recite ''title'' rather than ''rights'' for consistency and clarity.

9. Several comments pertained to priority of patent applications and prosecution or abandonment of an initial patent application filed by the Government per § 401.10(a)(2). Priority of applications is an individual determination made by the U.S. Patent and Trademark Office and is outside the scope of this rulemaking. With regard to prosecution or abandonment of an initial patent application filed by the Government on a jointly-owned subject invention, NIST notes that it is within the discretion of the funding agency to determine, in consultation with the contractor as required by this paragraph, the appropriate course of action for a particular subject invention, which could include abandoning an initial patent application or transferring the prosecution of an initial patent application to the contractor under an inter-institutional or other appropriate agreement. In all cases, NIST observes that actions taken by a funding agency should not operate to preclude a contractor from electing title to a subject invention.

10. One comment requested clarification as to whether the ''team exception'' of post-AIA 35 U.S.C. 102(b)(2)(C) may be invoked for filings on joint subject inventions. That provision of the patent statute provides that subject matter disclosed 1 year or less before the effective filing date of a claimed invention shall not be prior art to the claimed invention under 35 U.S.C. 102(a)(2), where that subject matter and the claimed invention, not later than the effective filing date of the claimed invention, were owned by the same person or subject to an obligation of assignment to the same person. The present rulemaking is not intended to affect the prosecution strategy of a sole or joint applicant for patent. At the same time, NIST notes that prior art determinations, including the applicability of the ''team exception,'' are made by the U.S. Patent and Trademark Office, and so are outside the scope of this rulemaking.

11. One comment noted that § 401.14 does not contain a definition of the term *contractor.* NIST has made this addition in § 401.14(a)(8) to recite the revised definition found in § 401.2(b).

12. A number of comments objected to the proposed revision to § 401.14(c)(2), providing that a Federal agency may shorten the two-year period for election of title by a contractor if ''necessary to protect the Government's interests.'' NIST has removed this revision from the final rulemaking.

13. A number of comments objected to the proposed revision to § 401.14(d)(1), which would remove the 60-day time limit within which a Federal agency must make written request to a contractor to convey title, after learning of the failure of the contractor to disclose an invention or elect title within the specified times. While NIST appreciates the concerns of commenters, the proposed revision will be maintained in the final rule. A contractor's failure to timely disclose or elect title to a subject invention, both as required by its funding agreement, can work to deny the Federal government any rights in the funded invention, through no fault of the funding agency.

14. A number of comments urged clarification of proposed revisions relating to the increased use by contractors of provisional applications under the Leahy-Smith America Invents Act and the Government's ability to request conveyance of rights in abandoned provisional applications. NIST acknowledges the increased use of provisional applications, and that a contractor may reasonably decide, as a matter of prosecution strategy, not to convert a provisional application under appropriate circumstances, without abandoning the subject invention itself or foreclosing the contractor's ability to file one or more additional applications directed to that invention. NIST has revised § 401.14(d)(3) to make clear that this section applies to abandoned non-provisional applications, and has made an analogous revision to § 401.14(f)(3). NIST expects that a contractor making a strategic decision such as described above will communicate its decision, and its intent not to abandon the subject invention itself, to the funding agency.

15. A number of comments objected to the proposed revision in § 401.14(f)(3) to extend the required notification period for decisions not to continue patent prosecution from 30 days before the expiration of the response period to 120 days. NIST aims to balance the needs of contractors to have sufficient time to respond to actions, and the needs of Federal agencies to receive information in sufficient time to evaluate whether to request conveyance and assume prosecution of an application. NIST appreciates comments reflecting appreciation of these competing needs. NIST has shortened the notification period from the proposed 120 days to 60 days in the final rule.

16. One comment requested clarification of references to Patent Trial and Appeals Board proceedings in § 401.14(f)(3). NIST has revised this paragraph to clarify that the list of decisions requiring the contractor to notify the Federal agency pertain to a subject invention.

17. Several comments requested revisions to the Government support clause in § 401.14(f)(4) to allow flexibility in the statement required by the contractor rather than the precise language recited. NIST declines to do so, and notes that, apart from the requirement to identify the contract and the funding agency, the language of the statement required by the rule tracks almost *verbatim* that of 35 U.S.C. 202(c)(6). NIST will not invite departure from these two clear, concise sentences, which notify readers of the Federal government's rights in a subject invention.

18. Several comments suggested revision to § 401.14(i) to permit automatic waivers from the requirement for substantial U.S. manufacture. NIST declines to make such a change, noting that § 401.14(i) tracks very closely the language of 35 U.S.C. 204, which itself makes clear that waivers from the requirement may be granted by the funding agency ''in individual cases,'' upon a showing.

19. Several comments were directed towards electronic filing and the Interagency Edison (iEdison) system, and noted the proposed changes in §§ 401.16 and 401.17. While NIST strongly supports the use of iEdison by funding agencies, it cannot mandate or compel agency use. Accordingly, revisions to § 401.16, which provides that written notices may be electronically delivered to the agency or the contractor through an electronic database, do not mandate the use of

iEdison or any other system. NIST also notes comments directed to compliance and training, and is pleased to note that it is collaborating with the National Institutes of Health to develop a series of iEdison training modules expected to be available to agencies and contractors after publication of this final rule.

20. A number of comments noted specific challenges and error messages relating to the iEdison reporting system. NIST is pleased to note that it is working with the National Institutes of Health to evaluate the iEdison messaging system and identify opportunities for updates and improvements. Contractors and agencies are encouraged to contact the National Institutes of Health to report specific errors in the system so these can be flagged for evaluation.

21. One comment concerned the publication process for patent applications, which NIST notes is unrelated to this rulemaking.

22. Several comments were submitted regarding the management and licensing of federally owned inventions with regard to transparency and availability to the public. NIST notes that 35 U.S.C. 209 and 37 CFR 404.7 direct agencies in the criteria to be applied and the public notification processes to be followed in exercising the authority to grant exclusive and partially exclusive licenses to federally owned inventions, and provide for administrative appeals from agency licensing decisions, which appeals are also subject to review by the United States Court of Federal Claims.

23. One comment stated that the notice of proposed rulemaking was not as widely publicized as other regulation changes, and suggested that more time should be provided ''if few comments are received.'' NIST published its notice of proposed rulemaking in the **Federal Register**, in which it announced a public meeting/webinar, which took place during the 30-day period set in the **Federal Register** notice of proposed rulemaking for public comment. In addition to the **Federal Register**, NIST utilized multiple communications media to publicize the notice of proposed rulemaking, the public meeting, and the request for comments. NIST was pleased to receive 17 comments through *Regulations.gov*, which NIST has taken into account in this final rule.

Changes From the Proposed Rule

1. Revise the scope in § 401.1(e) to include the alternate provisions in § 401.3(a)(5) and (6) in the list of deviations that do not require the Secretary's approval.

2. Revise the proposed definition of the term *initial patent application* in § 401.2(n) to include Patent Cooperative Treaty applications and applications for Plant Variety Protection certificates, when applicable.

3. Revise the proposed definition of the term *statutory period* in § 401.2(o) and in § 401.14(a)(7) to clarify that it refers to the one-year period in 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act.

4. Revise § 401.3(b) to include the exception at § 401.3(a)(5) in the list of exceptions where an agency must use only the modifications necessary to address the exceptional circumstances.

5. Correct formatting error to retain § 401.3(e) through (g).

6. Re-insert the small business certification requirement in § 401.3(h).

7. Revise § 401.4(a) to include the exceptions at § 401.3(a)(5) and (6) in the list of exceptions as to which a contractor has the right to an administrative review.

8. Revise § 401.5 to make technical clarifications.

9. Revise the proposed addition at § 401.10(a)(2) to require a Federal agency to consult with a contractor before submitting an initial patent application.

10. Revise the proposed additions at § 401.10(a)(3)(iv) and (vi) to clarify that they apply after a contractor has waived title to the subject invention.

11. Add a paragraph at § 401.10(c) to allow other inter-institutional agreements for the management of jointly-owned subject inventions to supersede § 401.10.

12. Revise § 401.10 to align regulatory language with statute language.

13. Revise § 401.13(c)(2) to remove the time limit under which agencies shall not disclose patent applications, and state that the prohibition on agency release does not apply to documents published by the U.S. Patent and Trademark Office.

14. Add a paragraph at § 401.14(a)(8) to define the term *contractor* as defined in § 401.2(b).

15. Remove the proposed revision at § 401.14(c)(2) which would allow an agency to shorten the two-year period for election of title if necessary to protect the Government's interest.

16. Revise § 401.14(c)(3) to require a contractor to file a non-provisional application 10 months after filing a provisional application.

17. Revise the proposed addition at § 401.14(c)(4) to clarify that the Federal agency employing a co-inventor may file an initial patent application, provided that the contractor retains the ability to elect title, in accordance with the revisions at § 401.10.

18. Revise § 401.14(c)(5) to state that a request to extend the 10-month deadline for filing a non-provisional application after first filing a provisional application will be automatically granted for one year unless an agency notifies the contractor within 60 days of the request.

19. Revise § 401.14(d)(3) to state that the section only applies to non-provisional applications and update the conditions under which a contractor will convey title to the Federal agency to be consistent with the Leahy-Smith America Invents Act provisions.

20. Revise the proposed revision at § 401.14(f)(3) to change the notification period to 60 days prior to the expiration of the statutory deadline and clarify that only decisions pertaining to the subject invention made under contract require the contractor to provide notification to the Federal agency.

21. Correct formatting error to retain § 401.14(f)(4) and (g)(1).

22. Revise the proposed revisions at § 401.14(k)(4) to reference § 401.7.

23. Revise § 404.7(a)(1)(i) and (b)(1)(i) to allow prospective exclusive, co-exclusive, or partially exclusive licenses to be advertised in places other than the **Federal Register**.

Classification

NIST has determined that the final rule is consistent with the Bayh-Dole Act of 1980 and other applicable law.

Executive Order 12866

This rulemaking is a significant regulatory action under sections 3(f)(3) and 3(f)(4) of Executive Order 12866, as it raises novel policy issues. This rulemaking, however, is not an ''economically significant'' regulatory action under section 3(f)(1) of the Executive order, as it does not have an effect on the economy of $100 million or more in any one year, and it does not have a material adverse effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

Executive Order 13771

This final rule is considered to be an E.O. 13771 deregulatory action. Details on the cost savings can be found in the rule's Estimated Cost Savings section.

Executive Order 13132

This rule does not contain policies with Federalism implications as defined in Executive Order 13132.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires the preparation and availability for public comment of ''an initial regulatory flexibility analysis'' which will ''describe the impact of the rule on small entities.'' (5 U.S.C. 603(a).) Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification and NIST has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis was not required and none was prepared.

Estimated Cost Savings

Cost savings are anticipated from this rule by streamlining the licensing process for licensees that are already partnering with a Federal agency under a Cooperative Research and Development Agreement (CRADA). Federal agency collaborators include members from industry, academia, state and local governments, and individuals from the public. Costs to enter into a license with a Federal agency include the labor time on the part of the non-government collaborator to negotiate and execute the license with the Federal agency. NIST subject matter experts utilized annual technology transfer data reported by several Federal agencies to determine that the average Federal license takes approximately 5 months to execute.[1] Assuming 5 hours of effort per month, approximately 25 hours of effort is invested by the non-Federal collaborator in executing a license with a Federal agency. Based on NIST database information, NIST subject matter experts estimate approximately one in five invention licenses is associated with a CRADA research plan, and Federal agencies report approximately 446 new invention licenses each year.[2]

For the purposes of estimating opportunity costs, NIST subject matter experts deemed it reasonable to use the average of a lawyer's mean hourly wage ($67.25) and a legal support worker's hourly wage ($31.81), as informed by the Bureau of Labor and Statistics,[3] to approximate an hourly wage for the average Federal license negotiator. That rate is $49.52/hour.

Eliminating the need to negotiate a separate license document from CRADA collaborators is estimated to save Federal agency collaborators approximately $110,430 annually, as reflected in the chart below.

New invention licenses/ year	Percent of licenses associated with a CRADA	Number of licenses associated with a CRADA	Negotiation time/license (hours)	Hourly wage of non-Federal negotiator	Projected cost savings to the public
446	20	92	25	$49.52	−$110,430

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

List of Subjects in 37 CFR Parts 401 and 404

Inventions and patents, Laboratories, Research and development, Science and technology, Technology transfer.

For the reasons stated in the preamble, the National Institute of Standards and Technology amends 37 CFR parts 401 and 404 as follows:

PART 401—RIGHTS TO INVENTIONS MADE BY NONPROFIT ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS

■ 1. The authority citation for 37 CFR part 401 continues to read as follows:

Authority: 35 U.S.C. 206; DOO 30–2A.

■ 2. Section 401.1 is amended as follows:

■ a. Revise the second sentence of paragraph (b); and

■ b. Revise the fourth and fifth sentences of paragraph (e).

The revisions read as follows:

§ 401.1 Scope.

* * * * *

(b) * * * It applies to all funding agreements with business firms regardless of size (consistent with section 1, paragraph (b)(4) of Executive Order 12591, as amended by Executive Order 12618) and to nonprofit organizations, except for a funding agreement made primarily for educational purposes. * * *

* * * * *

(e) * * * Modifications or tailoring of clauses as authorized by § 401.5 or § 401.3, when alternate provisions are used under § 401.3(a)(1) through (6), are not considered deviations requiring the Secretary's approval. Three copies of proposed and final agency regulations supplementing this part shall be submitted to the Secretary at the office set out in § 401.17 for approval for consistency with this part before they are submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866 or, if no submission is required to be made to OMB, before their submission to the **Federal Register** for publication.

* * * * *

■ 3. Section 401.2 is amended as follows:

■ a. Revise paragraphs (b) and (n); and

■ b. Add paragraph (o).

[1] DOC average time over last five years to execute a license is 5 months: *https://www.nist.gov/sites/default/files/documents/2017/09/08/fy2016-doc-tech-trans-report-final-9-5-17.pdf;* DOE average time to execute a license is 98 business days; 22 business days per month averages 4.5 months: *https://www.nist.gov/sites/default/files/documents/2017/04/19/technologytransferreporttocongressfy14.pdf;* USDA average time over last five years to execute a license is 4.6 months: *https://www.usda.gov/sites/default/files/documents/usda-fy16-tech-transfer-report.pdf.*

[2] Average over the last five years: *https://www.nist.gov/sites/default/files/documents/2016/10/26/fy2014_federal_tech_transfer_report.pdf.*

[3] Bureau of Labor and Statistics May 2016 wage data: *https://www.bls.gov/oes/current/oes_nat.htm.*

The revisions and additions read as follows:

§ 401.2 Definitions.

* * * * *

(b) The term *contractor* means any person, small business firm or nonprofit organization, or, as set forth in section 1, paragraph (b)(4) of Executive Order 12591, as amended, any business firm regardless of size, which is a party to a funding agreement.

* * * * *

(n) The term *initial patent application* means, as to a given subject invention, the first provisional or non-provisional U.S. national application for patent as defined in 37 CFR 1.9(a)(2) and (3), respectively, the first international application filed under the Patent Cooperation Treaty as defined in 37 CFR 1.9(b) which designates the United States, or the first application for a Plant Variety Protection certificate, as applicable.

(o) The term *statutory period* means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112–29.

■ 4. Section 401.3 is amended as follows:

■ a. Revise the first sentence of paragraph (a) introductory text;

■ b. In paragraph (a)(4), remove the period at the end of the paragraph and add in its place ''; or'';

■ c. Revise paragraph (a)(5);

■ d. Add paragraph (a)(6);

■ e. In paragraph (b), revise the first sentence, remove ''§ 401.14(b)'' and add in its place ''paragraph (c) of this section'', remove ''§ 401.3(a)(2)'' and add in its place ''paragraph (a)(2) of this section'', remove ''§ 401.14(a)'' and add in its place ''§ 401.14'', and remove ''this paragraph'' and add in its place ''this paragraph (b)'';

■ f. Revise paragraph (c);

■ g. Revise the first sentence of paragraph (d);

■ h. Revise paragraph (h); and

■ i. Add paragraph (i).

The revisions and additions read as follows:

§ 401.3 Use of the standard clauses at § 401.14.

(a) Each funding agreement awarded to a contractor (except those subject to 35 U.S.C. 212) shall contain the clause found in § 401.14 with such modifications and tailoring as authorized or required elsewhere in this part. * * *

* * * * *

(5) If any part of the contract may require the contractor to perform work on behalf of the Government at a Government laboratory under a Cooperative Research and Development Agreement (CRADA) pursuant to the statutory authority of 15 U.S.C. 3710a; or

(6) If the contract provides for services and the contractor is not a nonprofit organization and does not promote the commercialization and public availability of subject inventions pursuant to 35 U.S.C. 200.

(b) When an agency exercises the exceptions at paragraph (a)(2), (3), (5), or (6) of this section, it shall use the standard clause at § 401.14 with only such modifications as are necessary to address the exceptional circumstances or concerns which led to the use of the exception. * * *

(c) When the Department of Energy (DOE) determines to use alternative provisions under paragaph (a)(4) of this section, the standard clause at § 401.14 shall be used with the following modifications, or substitute thereto with such modification and tailoring as authorized or required elsewhere in this part:

(1) The title of the clause shall be changed to read as follows: Patent Rights to Nonprofit DOE Facility Operators.

(2) Add an ''(A)'' after ''(1)'' in paragraph (c)(1) of the clause in § 401.14 and add paragraphs (B) and (C) to paragraph (c)(1) of the clause in § 401.14 as follows:

(B) If the subject invention occurred under activities funded by the naval nuclear propulsion or weapons related programs of DOE, then the provisions of this paragraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3) of this clause. In such cases the contractor agrees to assign the government the entire right, title, and interest thereto throughout the world in and to the subject invention except to the extent that rights are retained by the contractor through a greater rights determination or under paragraph (e) of this clause. The contractor, or an employee-inventor, with authorization of the contractor, may submit a request for greater rights at the time the invention is disclosed or within a reasonable time thereafter. DOE will process such a request in accordance with procedures at 37 CFR 401.15. Each determination of greater rights will be subject to paragraphs (h) through (k) of this clause and such additional conditions, if any, deemed to be appropriate by the Department of Energy.

(C) At the time an invention is disclosed in accordance with paragraph (c)(1)(A) of this clause, or within 90 days thereafter, the contractor will submit a written statement as to whether or not the invention occurred under a naval nuclear propulsion or weapons-related program of the Department of Energy. If this statement is not filed within this time, paragraph (c)(1)(B) of this clause will apply in lieu of paragraphs (c)(2) and (3) of this clause. The contractor statement will be deemed conclusive unless, within 60 days thereafter, the Contracting Officer disagrees in writing, in which case the determination of the Contracting Officer will be deemed conclusive unless the contractor files a claim under the Contract Disputes Act within 60 days after the Contracting Officer's determination. Pending resolution of the matter, the invention will be subject to paragraph (c)(1)(B) of this clause.

(3) Paragraph (k)(3) of the clause in § 401.14 will be modified as prescribed at § 401.5(g).

(d) When a funding agreement involves a series of separate task orders, an agency may apply the exceptions at paragraph (a)(2) or (3) of this section to individual task orders, and it may structure the contract so that modified patent rights provisions will apply to the task order even though either the standard clause at § 401.14 or the modified clause as described in paragraph (c) of this section is applicable to the remainder of the work. * * *

* * * * *

(h) A prospective contractor may be required by an agency to certify that it is either a small business firm or a nonprofit organization. If the agency has reason to question the status of the prospective contractor, it may require the prospective contractor to furnish evidence to establish its status.

(i) When an agency exercises the exception at paragraph (a)(5) of this section, replace paragraph (b) of the basic clause in § 401.14 with the following paragraphs (b)(1) and (2):

(b) *Allocation of principal rights.* (1) The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause, including paragraph (b)(2) of this clause, and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) If the Contractor performs services at a Government owned and operated laboratory or at a Government owned and contractor operated laboratory directed by the Government to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA) authorized by 15 U.S.C. 3710a, the Government may require the Contractor to negotiate an agreement with the CRADA collaborating party or parties regarding the allocation of rights to any subject invention the Contractor makes, solely or jointly, under the CRADA. The agreement shall be negotiated prior to the Contractor

undertaking the CRADA work or, with the permission of the Government, upon the identification of a subject invention. In the absence of such an agreement, the Contractor agrees to grant the collaborating party or parties an option for a license in its inventions of the same scope and terms set forth in the CRADA for inventions made by the Government.

■ 5. In § 401.4, revise the first sentence of paragraph (a) to read as follows:

§ 401.4 Contractor appeals of exceptions.

(a) In accordance with 35 U.S.C. 202(b)(4) a contractor has the right to an administrative review of a determination to use one of the exceptions at § 401.3(a)(1) through (6) if the contractor believes that a determination is either contrary to the policies and objectives of this chapter or constitutes an abuse of discretion by the agency. * * *

* * * * *

■ 6. Revise § 401.5 to read as follows:

§ 401.5 Modification and tailoring of clauses.

(a) Agencies should complete the blank in paragraph (g)(2) of the clauses at § 401.14 in accordance with their own or applicable government-wide regulations such as the Federal Acquisition Regulation. In funding agreements, agencies wishing to apply the same clause to all subcontractors as is applied to the contractor may delete paragraph (g)(2) of the clause in § 401.14 and delete the words ''to be performed by a small business firm or domestic nonprofit organization'' from paragraph (g)(1). Also, if the funding agreement is a grant or cooperative agreement, paragraph (g)(3) of the clause may be deleted. When either paragraph (g)(2) of the clause in § 401.14 or paragraphs (g)(2) and (3) of the clause in § 401.14 are deleted, the remaining paragraph or paragraphs should be renumbered appropriately.

(b) Agencies should complete paragraph (l), ''Communications'', at the end of the clauses at § 401.14 by designating a central point of contact for communications on matters relating to the clause. Additional instructions on communications may also be included in paragraph (l) of the clause in § 401.14.

(c) Agencies may replace the italicized words and phrases in the clause at § 401.14 with those appropriate to the particular funding agreement. For example, ''contractor'' could be replaced by ''grantee.'' Depending on its use, ''agency'' or ''Federal agency'' can be replaced either by the identification of the agency or by the specification of the particular office or official within the agency.

(d)(1) When the agency head or duly authorized designee determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments, their nationals, or international organizations in accordance with any existing treaty or international agreement, a sentence may be added at the end of paragraph (b) of the clause at § 401.14 as follows:

This license will include the right of the government to sublicense foreign governments, their nationals, and international organizations, in accordance with the following treaties or international agreements: ____.

(2) The blank in the added text in paragraph (d)(1) of this section should be completed with the names of applicable existing treaties or international agreements, including agreements of cooperation, and military agreements relating to weapons development and production. The added language is not intended to encompass treaties or other agreements that are in effect on the date of the award but which are not listed. Alternatively, agencies may use substantially similar language relating the government's rights to specific treaties or other agreements identified elsewhere in the funding agreement. The language may also be modified to make clear that the rights granted to the foreign government, and its nationals or an international organization may be for additional rights beyond a license or sublicense if so required by the applicable treaty or other international agreement. For example, in some cases exclusive licenses or even the assignment of title to the foreign country involved might be required. Agencies may also modify the added language to provide for the direct licensing by the contractor of the foreign government or international organization.

(e) If the funding agreement involves performance over an extended period of time, such as the typical funding agreement for the operation of a government-owned facility, the following language may also be added:

The *agency* reserves the right to unilaterally amend this *funding agreement* to identify specific treaties or international agreements entered into or to be entered into by the government after the effective date of this *funding agreement* and effectuate those license or other rights which are necessary for the government to meet its obligations to foreign governments, and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

(f) Agencies may add additional paragraphs to paragraph (f) of the clauses at § 401.14 to require the contractor to do one or more of the following:

(1) Provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.

(2) Provide, upon request, the filing date, patent application number and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the contractor has applied for a patent.

(3) Provide periodic (but no more frequently than annual) listings of all subject inventions which were disclosed to the agency during the period covered by the report.

(g) If the contract is with a nonprofit organization and is for the operation of a government-owned, contractor-operated facility, the following will be substituted for the text of paragraph (k)(3) of the clause at § 401.14:

After payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, the balance of any royalties or income earned and retained by the contractor during any fiscal year on subject inventions under this or any successor contract containing the same requirement, up to any amount equal to five percent of the budget of the facility for that fiscal year, shall be used by the contractor for scientific research, development, and education consistent with the research and development mission and objectives of the facility, including activities that increase the licensing potential of other inventions of the facility. If the balance exceeds five percent, 15 percent of the excess above five percent shall be paid by the contractor to the Treasury of the United States and the remaining 85 percent shall be used by the contractor only for the same purposes as described in the preceding sentence. To the extent it provides the most effective technology transfer, the licensing of subject inventions shall be administered by contractor employees on location at the facility.

(h) If the contract is for the operation of a government-owned facility, agencies may add paragraph (f)(5) to the clause at § 401.14 with the following text:

The contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed and shall submit a description of the procedures to the *contracting officer* so that the *contracting officer* may evaluate and determine their effectiveness.

■ 7. In § 401.7, revise paragraph (b) to read as follows:

§ 401.7 Small business preference.

* * * * *

(b) Small business firms that believe a nonprofit organization is not meeting its obligations under the clause may report their concerns to the funding agency identified at § 401.14(l), and following receipt of the funding agency's initial response to their concerns or, if no initial funding agency response is received within 90 days from the date their concerns were reported to the funding agency, may thereafter report their concerns, together with any response from the funding agency, to the Secretary. To the extent deemed appropriate, the Secretary, in consultation with the funding agency, will undertake informal investigation of the concern, and, if appropriate, enter into discussions or negotiations with the nonprofit organization to the end of improving its efforts in meeting its obligations under the clause. However, in no event will the Secretary intervene in ongoing negotiations or contractor decisions concerning the licensing of a specific subject invention. All investigations, discussions, and negotiations of the Secretary described in this paragraph (b) will be in coordination with other interested agencies, including the funding agency and the Small Business Administration. In the case of a contract for the operation of a government-owned, contractor operated research or production facility, the Secretary will coordinate with the agency responsible for the facility prior to any discussions or negotiations with the contractor.

§ 401.9 [Amended]

■ 8. In § 401.9, remove ''§ 401.14(a)'' and add in its place ''§ 401.14''.

■ 9. Revise § 401.10 to read as follows:

§ 401.10 Government assignment to contractor of rights in invention of government employee.

(a) In any case when a Federal employee is a co-inventor of any invention made under a funding agreement with a contractor:

(1) If the Federal agency employing such co-inventor transfers or reassigns to the contractor the right it has acquired in the subject invention from its employee as authorized by 35 U.S.C. 202(e), the assignment will be made subject to the patent rights clause of the contractor's funding agreement.

(2) The Federal agency employing such co-inventor, in consultation with the contractor, may submit an initial patent application, provided that the contractor retains the right to elect to retain title pursuant to 35 U.S.C. 202(a).

(3) When a Federal employee is a co-inventor of a subject invention developed with contractor-employed co-inventors under a funding agreement from another agency:

(i) The funding agency will notify the agency employing a Federal co-inventor of any report of invention and whether the contractor elects to retain title.

(ii) If the contractor does not elect to retain title to the subject invention, the funding agency must promptly provide notice to the agency employing a Federal co-inventor, and to the extent practicable, at least 60 days before any statutory bar date.

(iii) Upon notification by the funding agency of a subject invention in which the contractor has not elected to retain title, the agency employing a Federal co-inventor must determine if there is a government interest in patenting the invention and will notify the funding agency of its determination.

(iv) If the agency employing a Federal co-inventor determines there is a government interest in patenting the subject invention in which the contractor has not elected to retain title, the funding agency must provide administrative assistance (but is not required to provide financial assistance) to the agency employing a Federal co-inventor in acquiring rights from the contractor in order to file an initial patent application.

(v) The agency employing a Federal co-inventor has priority for patenting over funding agencies that do not have a Federal co-inventor when the contractor has not elected to retain title.

(vi) When the contractor has not elected to retain title, the funding agency and the agency employing a Federal co-inventor shall consult in order to ensure that the intent of the programmatic objectives conducted under the funding agreement is represented in any patenting decisions. The agency employing a Federal co-inventor may transfer patent management responsibilities to the funding agency.

(4) Federal agencies employing such co-inventors may enter into an agreement with a contractor when an agency determines it is a suitable and necessary step to protect and administer rights on behalf of the Federal Government, pursuant to 35 U.S.C. 202(e).

(5) Federal agencies employing such co-inventors will retain all ownership rights to which they are otherwise entitled if the contractor elects to retain title to the subject invention.

(b) Agencies may add additional conditions as long as they are consistent with 35 U.S.C. 201–206.

(c) Nothing in this section shall supersede any existing inter-institutional agreements between a contractor and a Federal agency for the management of jointly-owned subject inventions.

■ 10. Section 401.13 is amended as follows:

■ a. Revise the second sentence of paragraph (c)(1);

■ b. Revise paragraph (c)(2); and

■ c. Revise the second sentence of paragraph (c)(3).

The revisions read as follows:

§ 401.13 Administration of patent rights clauses.

* * * * *

(c) * * *

(1) * * * With respect to subject inventions of contractors that are small business firms or nonprofit organizations, a reasonable time shall be the time during which an initial patent application may be filed under paragraph (c) of the standard clause found at § 401.14 or such other clause may be used in the funding agreement. * * *

(2) In accordance with 35 U.S.C. 205, agencies shall not disclose or release, pursuant to requests under the Freedom of Information Act or otherwise, copies of any document which the agency obtained under the clause in § 401.14 which is part of an application for patent with the U.S. Patent and Trademark Office or any foreign patent office filed by the contractor (or its assignees, licensees, or employees) on a subject invention to which the contractor has elected to retain title. This prohibition does not extend to disclosure to other government agencies or contractors of government agencies under an obligation to maintain such information in confidence. This prohibition does not apply to documents published by the U.S. Patent and Trademark Office or any foreign patent office.

(3) * * * In recognition of the fact that such publication, if it included descriptions of a subject invention could create bars to obtaining patent protection, it is the policy of the executive branch that agencies will not include in such publication programs copies of disclosures of inventions submitted by small business firms or nonprofit organizations, pursuant to paragraph (c) of the standard clause found at § 401.14, except under the same circumstances under which agencies are authorized to release such information pursuant to FOIA requests under paragraph (c)(1) of this section agencies may publish such disclosures.

* * * * *

■ 11. Amend § 401.14 as follows:

■ a. Redesignate paragraph (a) introductory text as undesignated

introductory text and republish the introductory text;
■ b. Remove the heading ''Patent Rights (Small Business Firms and Nonprofit Organizations)'' and add in its place the heading ''Standard Patent Rights'';
■ c. In ''Standard Patent Rights'':
■ i. Add paragraphs (a)(7) and (8);
■ ii. Revise paragraphs (c)(2) and (3);
■ iii. Redesignate paragraph (c)(4) as paragraph (c)(5);
■ iv. Add a new paragraph (c)(4);
■ v. Revise newly redesignated paragraph (c)(5);
■ vi. Revise paragraphs (d)(1) through (3), (f)(2) and (3), (g)(1) first sentence, and (k)(4); and
■ vii. Revise the undesignated text after the heading of paragraph (l); and
■ d. Remove paragraphs (b) and (c) at the end of the section.

The additions and revisions read as follows:

§ 401.14 Standard patent rights clauses.

The following is the standard patent rights clause to be used as specified in § 401.3(a):

* * * * *

(a) * * *

(7) The term *statutory period* means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112–29.

(8) The term *contractor* means any person, small business firm or nonprofit organization, or, as set forth in section 1, paragraph (b)(4) of Executive Order 12591, as amended, any business firm regardless of size, which is a party to a funding agreement.

* * * * *

(c) * * *

(2) The *contractor* will elect in writing whether or not to retain title to any such invention by notifying the *Federal agency* within two years of disclosure to the *Federal agency*. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the *agency* to a date that is no more than 60 days prior to the end of the statutory period.

(3) The *contractor* will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. If the *contractor* files a provisional application as its initial patent application, it shall file a non-provisional application within 10 months of the filing of the provisional application. The *contractor* will file patent applications in additional countries or international patent offices within either ten months of the first filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) For any subject invention with *Federal agency* and *contractor* co-inventors, where the *Federal agency* employing such co-inventor determines that it would be in the interest of the government, pursuant to 35 U.S.C. 207(a)(3), to file an initial patent application on the subject invention, the *Federal agency* employing such co-inventor, at its discretion and in consultation with the *contractor,* may file such application at its own expense, provided that the *contractor* retains the ability to elect title pursuant to 35 U.S.C. 202(a).

(5) Requests for extension of the time for disclosure, election, and filing under paragraphs (1), (2), and (3) of this clause may, at the discretion of the *Federal agency,* be granted. When a *contractor* has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the *Federal agency* notifies the *contractor* within 60 days of receiving the request.

(d) * * *

(1) If the *contractor* fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title.

(2) In those countries in which the *contractor* fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the *contractor* has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the *Federal agency,* the *contractor* shall continue to retain title in that country.

(3) In any country in which the *contractor* decides not to continue the prosecution of any non-provisional patent application for, to pay a maintenance, annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a subject invention.

* * * * *

(f) * * *

(2) The *contractor* agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the *contractor* each subject invention made under contract in order that the *contractor* can comply with the disclosure provisions of paragraph (c) of this clause, to assign to the *contractor* the entire right, title and interest in and to each subject invention made under contract, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The *contractor* shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) For each subject invention, the *contractor* will, no less than 60 days prior to the expiration of the statutory deadline, notify the *Federal agency* of any decision: Not to continue the prosecution of a non-provisional patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, *inter partes* review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a post-issuance submission, and supplemental examination.

* * * * *

(g) * * *

(1) The *contractor* will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a subcontractor. * * *

* * * * *

(k) * * *

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it

will give a preference to a small business firm when licensing a subject invention if the *contractor* determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the *contractor* is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the *contractor* agrees that the *Federal agency* may review the *contractor's* licensing program and decisions regarding small business applicants, and the *contractor* will negotiate changes to its licensing policies, procedures, or practices with the *Federal agency* when the *Federal agency's* review discloses that the *contractor* could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4). In accordance with 37 CFR 401.7, the *Federal agency* or the *contractor* may request that the Secretary review the *contractor's* licensing program and decisions regarding small business applicants.

(l) * * *

[Complete according to instructions at § 401.5(b)]

§ 401.15 [Amended]

■ 12. In § 401.15:

■ a. In paragraph (b), remove ''§ 401.14(a)'' and add in its place ''§ 401.14''; and

■ b. In paragraph (d), remove ''§ 401.14(a)'' and add in its place ''§ 401.14'' and remove ''of this part''.

■ 13. In § 401.16:

■ a. In paragraphs (a) and (b), remove ''§ 401.14(a) may'' and add in its place ''§ 401.14 shall'';

■ b. In paragraph (c), remove ''(f)(1)'' and add in its place ''paragraph (f)(1)'', remove ''(f)(2) and (f)(3)'' and add in its place ''paragraphs (f)(2) and (3)'', and remove ''may'' and add in its place ''shall''; and

■ c. Add paragraph (d).

The addition reads as follows:

§ 401.16 Electronic filing.

* * * * *

(d) Other written notices required in the clause in § 401.14 may be electronically delivered to the agency or the contractor through an electronic database used for reporting subject inventions, patents, and utilization reports to the funding agency.

■ 14. Revise § 401.17 to read as follows:

§ 401.17 Submissions and inquiries.

All submissions or inquiries should be directed to the Chief Counsel for NIST, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1052, Gaithersburg, Maryland 20899–1052; telephone: (301) 975–2803; email: *nistcounsel@nist.gov.* Information about and procedures for electronic filing under this part are available at the Interagency Edison website and service center, *http://www.iedison.gov,* telephone (301) 435–1986.

PART 404—LICENSING OF GOVERNMENT OWNED INVENTIONS

■ 15. The authority citation for 37 CFR part 404 continues to read as follows:

Authority: 35 U.S.C. 207–209, DOO 30–2A.

■ 16. Amend § 404.7 by revising paragraphs (a)(1)(i) and (b)(1)(i) to read as follows:

§ 404.7 Exclusive, co-exclusive and partially exclusive licenses.

(a)(1) * * *

(i) Notice of a prospective license, identifying the invention and the prospective licensee, has been published in the **Federal Register** or other appropriate manner, providing opportunity for filing written objections within at least a 15-day period;

* * * * *

(b)(1) * * *

(i) Notice of a prospective license, identifying the invention and the prospective licensee, has been published in the **Federal Register** or other appropriate manner, providing opportunity for filing written objections within at least a 15-day period and following consideration of such objections received during the period;

* * * * *

■ 17. Revise § 404.8 to read as follows:

§ 404.8 Application for a license.

(a) An application for a license should be addressed to the Federal agency having custody of the invention and shall normally include:

(1) Identification of the invention for which the license is desired including the patent application serial number or patent number, title, and date, if known;

(2) Identification of the type of license for which the application is submitted;

(3) Name and address of the person, company, or organization applying for the license and the citizenship or place of incorporation of the applicant;

(4) Name, address, and telephone number of the representative of the applicant to whom correspondence should be sent;

(5) Nature and type of applicant's business, identifying products or services which the applicant has successfully commercialized, and approximate number of applicant's employees;

(6) Source of information concerning the availability of a license on the invention;

(7) A statement indicating whether the applicant is a small business firm as defined in § 404.3(c);

(8) A detailed description of applicant's plan for development or marketing of the invention, or both, which should include:

(i) A statement of the time, nature and amount of anticipated investment of capital and other resources which applicant believes will be required to bring the invention to practical application;

(ii) A statement as to applicant's capability and intention to fulfill the plan, including information regarding manufacturing, marketing, financial, and technical resources;

(iii) A statement of the fields of use for which applicant intends to practice the invention; and

(iv) A statement of the geographic areas in which applicant intends to manufacture any products embodying the invention and geographic areas where applicant intends to use or sell the invention, or both;

(9) Identification of licenses previously granted to applicant under federally owned inventions;

(10) A statement containing applicant's best knowledge of the extent to which the invention is being practiced by private industry or Government, or both, or is otherwise available commercially; and

(11) Any other information which applicant believes will support a determination to grant the license to applicant.

(b) An executed CRADA which provides for the use for research and development purposes by the CRADA collaborator under that CRADA of a Federally-owned invention in the Federal laboratory's custody (pursuant to 35 U.S.C. 209 and 15 U.S.C. 3710a(b)(1)), and which addresses the information in paragraph (a) of this section, may be treated by the Federal laboratory as an application for a license.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2018–07532 Filed 4–12–18; 8:45 am]

BILLING CODE 3510–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[EPA–R06–OAR–2016–0091; FRL–9975–94—Region 6]

New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; delegation of authority.

SUMMARY: The New Mexico Environment Department (NMED) has submitted updated regulations for receiving delegation and approval of a program for the implementation and enforcement of certain New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) for all sources (both Title V and non-Title V sources). These updated regulations apply to certain NSPS promulgated by the EPA at part 60, as amended between September 24, 2013 and January 15, 2017; certain NESHAP promulgated by the EPA at part 61, as amended between January 1, 2011 and January 15, 2017; and other NESHAP promulgated by the EPA at part 63, as amended between August 30, 2013 and January 15, 2017, as adopted by the NMED. The EPA is providing notice that it is updating the delegation of certain NSPS to NMED, and taking direct final action to approve the delegation of certain NESHAP to NMED. The delegation of authority under this action does not apply to sources located in Bernalillo County, New Mexico, or to sources located in Indian Country.

DATES: This rule is effective on June 12, 2018 without further notice, unless the EPA receives relevant adverse comment by May 14, 2018. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that the updated NESHAP delegation will not take effect; however, the NSPS delegation will not be affected by such action.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2016–0091, at *http://www.regulations.gov* or via email to *barrett.richard@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Rick Barrett, 214–665–7227, *barrett.richard@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Rick Barrett (6MM–AP), (214) 665–7227; email: *barrett.richard@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Mr. Rick Barrett or Mr. Bill Deese at (214) 665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

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I. What does this action do?

The EPA is providing notice that it is approving NMED's request to update the delegation for the implementation and enforcement of certain NSPS. The EPA is also taking direct final action to approve NMED's request updating the delegation of certain NESHAP. With this delegation, NMED has the primary responsibility to implement and enforce the delegated standards. See sections V and VI, below, for a discussion of which standards are being delegated and which are not being delegated.

II. What is the authority for delegation?

Upon the EPA's finding that the procedures submitted by a State for the implementation and enforcement of standards of performance for new sources located in the State are adequate, Section 111(c)(1) of the Clean Air Act (CAA) authorizes the EPA to delegate its authority to implement and enforce such standards. The new source performance standards are codified at 40 CFR part 60.

Section 112(l) of the CAA and 40 CFR part 63, subpart E, authorize the EPA to delegate authority for the implementation and enforcement of emission standards for hazardous air pollutants to a State that satisfies the statutory and regulatory requirements in subpart E. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63.

III. What criteria must New Mexico's programs meet to be approved?

In order to receive delegation of NSPS, a State must develop and submit to the EPA a procedure for implementing and enforcing the NSPS in the state, and their regulations and resources must be adequate for the implementation and enforcement of the NSPS. The EPA initially approved New Mexico's program for the delegation of NSPS on June 6, 1986 (51 FR 20648). The EPA reviewed the laws of the State and the rules and regulations of the New Mexico Environmental Improvement Division (now the NMED) and determined the State's procedures, regulations and resources were adequate for the implementation and enforcement of the Federal standards. The NSPS delegation was most recently updated on February 2, 2015 (80 FR 5475). This action notifies the public that the EPA is updating NMED's delegation to implement and enforce certain additional NSPS.

Section 112(l)(5) of the CAA requires the EPA to disapprove any program submitted by a State for the delegation of NESHAP standards if the EPA determines that:

(A) The authorities contained in the program are not adequate to assure compliance by the sources within the

State with respect to each applicable standard, regulation, or requirement established under section 112;

(B) adequate authority does not exist, or adequate resources are not available, to implement the program;

(C) the schedule for implementing the program and assuring compliance by affected sources is not sufficiently expeditious; or

(D) the program is otherwise not in compliance with the guidance issued by the EPA under section 112(l)(2) or is not likely to satisfy, in whole or in part, the objectives of the CAA.

In carrying out its responsibilities under section 112(l), the EPA promulgated regulations at 40 CFR part 63, subpart E, setting forth criteria for the approval of submitted programs. For example, in order to obtain approval of a program to implement and enforce Federal section 112 rules as promulgated without changes (straight delegation), a State must demonstrate that it meets the criteria of 40 CFR 63.91(d). Title 40 CFR 63.91(d)(3) provides that interim or final title V program approval will satisfy the criteria of 40 CFR 63.91(d).[1]

The NESHAP delegation was most recently approved on February 2, 2015 (80 FR 5475).

IV. How did NMED meet the NSPS and NESHAP program approval criteria?

As to the NSPS standards in 40 CFR part 60, NMED adopted the Federal standards via incorporation by reference. The NMED regulations are, therefore, at least as stringent as the EPA's rules. *See* 40 CFR 60.10(a). Also, in the EPA initial approval of NSPS delegation, we determined that the State developed procedures for implementing and enforcing the NSPS in the State, and that the State's regulations and resources are adequate for the implementation and enforcement of the Federal standards. *See* 51 FR 20648 (June 6, 1986).

As to the NESHAP standards in 40 CFR parts 61 and 63, as part of its Title V submission NMED stated that it intended to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 standards into its regulations. This commitment applied to both existing and future standards as they applied to part 70 sources. The EPA's final interim approval of New Mexico's Title V operating permits program delegated the authority to implement certain NESHAP, effective December 19, 1994 (59 FR 59656). On November 26, 1996, the EPA promulgated final full approval of the State's operating permits program, effective January 27, 1997 (61 FR 60032). These interim and final title V program approvals satisfy the upfront approval criteria of 40 CFR 63.91(d). Under 40 CFR 63.91(d)(2), once a state has satisfied the up-front approval criteria, it needs only to reference the previous demonstration and reaffirm that it still meets the criteria for any subsequent submittals for delegation of the section 112 standards. NMED has affirmed that it still meets the up-front approval criteria. With respect to non-Title V sources, the EPA has previously approved delegation of NESHAP authorities to NMED after finding adequate authorities to implement and enforce the NESHAP for non-Title V sources. *See* 68 FR 69036 (December 11, 2003).

V. What is being delegated?

By letter dated January 22, 2016, the EPA received a request from NMED to update its NSPS delegation and NESHAP delegation. With certain exceptions noted in section VI below, NMED's request included NSPS in 40 CFR part 60, as amended between September 24, 2013 and September 15, 2015; NESHAP in 40 CFR part 61, as amended between January 1, 2011 and September 15, 2015; and NESHAP in 40 CFR part 63, as amended between August 30, 2013 and September 15, 2015.

By letter dated June 9, 2017, the EPA received a request from NMED to update its NSPS delegation and NESHAP delegation. With certain exceptions noted in section VI below, NMED's request included NSPS in 40 CFR part 60, as amended between September 15, 2015 and January 15, 2017; NESHAP in 40 CFR part 61, as amended between September 15, 2015 and January 15, 2017; and NESHAP in 40 CFR part 63, as amended between September 15, 2015 and January 15, 2017. This action is being taken in response to NMED's requests noted above.

VI. What is not being delegated?

All authorities not affirmatively and expressly delegated by this action are not delegated. These include the following part 60, 61 and 63 authorities listed below:

- 40 CFR part 60, subpart AAA (Standards of Performance for New Residential Wood Heaters);
- 40 CFR part 60, subpart QQQQ (Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces);
- 40 CFR part 61, subpart B (National Emission Standards for Radon Emissions from Underground Uranium Mines);
- 40 CFR part 61, subpart H (National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities);
- 40 CFR part 61, subpart I (National Emission Standards for Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H);
- 40 CFR part 61, subpart K (National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants);
- 40 CFR part 61, subpart Q (National Emission Standards for Radon Emissions from Department of Energy facilities);
- 40 CFR part 61, subpart R (National Emission Standards for Radon Emissions from Phosphogypsum Stacks);
- 40 CFR part 61, subpart T (National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings);
- 40 CFR part 61, subpart W (National Emission Standards for Radon Emissions from Operating Mill Tailings); and
- 40 CFR part 63, subpart J (National Emission Standards for Polyvinyl Chloride and Copolymers Production).

In addition, the EPA regulations provide that we cannot delegate to a State any of the Category II authorities set forth in 40 CFR 63.91(g)(2). These include the following provisions: § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. Also, some part 61 and part 63 standards have certain provisions that cannot be delegated to the States. Furthermore, no authorities are delegated that require rulemaking in the **Federal Register** to implement, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112. Finally, this action does not delegate any authority under section 112(r), the accidental release program.

[1] Some NESHAP standards do not require a source to obtain a title V permit (*e.g.,* certain area sources that are exempt from the requirement to obtain a title V permit). For these non-title V sources, the EPA believes that the State must assure the EPA that it can implement and enforce the NESHAP for such sources. *See* 65 FR 55810, 55813 (Sept. 14, 2000).

All of the inquiries and requests concerning implementation and enforcement of the excluded standards in the State of New Mexico should be directed to the EPA Region 6 Office.

In addition, this delegation to NMED to implement and enforce certain NSPS and NESHAP authorities does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. Under this definition, the EPA treats as reservations, trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Consistent with previous federal program approvals or delegations, the EPA will continue to implement the NSPS and NESHAP in Indian country because NMED has not submitted information to demonstrate authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

VII. How will statutory and regulatory interpretations be made?

In approving the NSPS delegation, NMED will obtain concurrence from the EPA on any matter involving the interpretation of section 111 of the CAA or 40 CFR part 60 to the extent that implementation or enforcement of these provisions have not been covered by prior EPA determinations or guidance. *See* 51 FR 20649 (June 6, 1986).

In approving the NESHAP delegation, NMED will obtain concurrence from the EPA on any matter involving the interpretation of section 112 of the CAA or 40 CFR parts 61 and 63 to the extent that implementation or enforcement of these provisions have not been covered by prior EPA determinations or guidance.

VIII. What authority does the EPA have?

We retain the right, as provided by CAA section 111(c)(2), to enforce any applicable emission standard or requirement under section 111.

We retain the right, as provided by CAA section 112(l)(7) and 40 CFR 63.90(d)(2), to enforce any applicable emission standard or requirement under section 112. In addition, the EPA may enforce any federally approved State rule, requirement, or program under 40 CFR 63.90(e) and 63.91(c)(1)(i). The EPA also has the authority to make decisions under the General Provisions (subpart A) of parts 61 and 63. We are delegating to NMED some of these authorities, and retaining others, as explained in sections V and VI above. In addition, the EPA may review and disapprove State determinations and subsequently require corrections. *See* 40 CFR 63.91(g)(1)(ii). EPA also has the authority to review NMED's implementation and enforcement of approved rules or programs and to withdraw approval if we find inadequate implementation or enforcement. *See* 40 CFR 63.96.

Furthermore, we retain any authority in an individual emission standard that may not be delegated according to provisions of the standard. Also, listed in footnote 2 of the part 63 delegation table at the end of this rule are the authorities that cannot be delegated to any State or local agency which we therefore retain.

Finally, we retain the authorities stated in the original delegation agreement. *See* 51 FR 20648–20650 (June 6, 1986).

IX. What information must NMED provide to the EPA?

NMED must provide any additional compliance related information to EPA, Region 6, Office of Enforcement and Compliance Assurance, within 45 days of a request under 40 CFR 63.96(a). In receiving delegation for specific General Provisions authorities, NMED must submit to EPA Region 6, on a semi-annual basis, copies of determinations issued under these authorities. *See* 40 CFR 63.91(g)(1)(ii). For 40 CFR part 63 standards, these determinations include: § 63.1, Applicability Determinations; § 63.6(e), Operation and Maintenance Requirements—Responsibility for Determining Compliance; § 63.6(f), Compliance with Non-Opacity Standards—Responsibility for Determining Compliance; § 63.6(h), Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance; § 63.7(c)(2)(i) and (d), Approval of Site-Specific Test Plans; § 63.7(e)(2)(i), Approval of Minor Alternatives to Test Methods; § 63.7(e)(2)(ii) and (f), Approval of Intermediate Alternatives to Test Methods; § 63.7(e)(2)(iii), Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors; § 63.7(e)(2)(iv) and (h)(2) and (3), Waiver of Performance Testing; § 63.8(c)(1) and (e)(1), Approval of Site-Specific Performance Evaluation (Monitoring) Test Plans; § 63.8(f), Approval of Minor Alternatives to Monitoring; § 63.8(f), Approval of Intermediate Alternatives to Monitoring; §§ 63.9 and 63.10, Approval of Adjustments to Time Periods for Submitting Reports; § 63.10(f), Approval of Minor Alternatives to Recordkeeping and Reporting; § 63.7(a)(4), Extension of Performance Test Deadline.

X. What is the EPA's oversight role?

The EPA oversees NMED's decisions to ensure the delegated authorities are being adequately implemented and enforced. We will integrate oversight of the delegated authorities into the existing mechanisms and resources for oversight currently in place. If, during oversight, we determine that NMED made decisions that decreased the stringency of the delegated standards, then NMED shall be required to take corrective actions and the source(s) affected by the decisions will be notified. *See* 40 CFR 63.91(g)(1)(ii) and (b). We will initiate withdrawal of the program or rule if the corrective actions taken are insufficient. *See* 51 FR 20648 (June 6, 1986).

XI. Should sources submit notices to the EPA or NMED?

Sources located outside the boundaries of Bernalillo County and outside of Indian country should submit all of the information required pursuant to the delegated authorities in the Federal NSPS and NESHAP (40 CFR parts 60, 61 and 63) directly to the NMED at the following address: New Mexico Environment Department, 525 Camino de los Marquez, Suite I, Santa Fe, New Mexico 87505. The NMED is the primary point of contact with respect to delegated NSPS and NESHAP authorities. Sources do not need to send a copy to the EPA. The EPA Region 6 waives the requirement that notifications and reports for delegated authorities be submitted to the EPA in addition to NMED in accordance with 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii).[2] For those authorities not delegated, sources must continue to submit all appropriate information to the EPA.

XII. How will unchanged authorities be delegated to NMED in the future?

In the future, NMED will only need to send a letter of request to update their delegation to EPA, Region 6, for those NSPS which they have adopted by reference. The EPA will amend the relevant portions of the Code of Federal Regulations showing which NSPS standards have been delegated to NMED. Also, in the future, NMED will only need to send a letter of request for approval to EPA, Region 6, for those NESHAP regulations that NMED has adopted by reference. The letter must reference the previous up-front approval demonstration and reaffirm that it still

[2] This waiver only extends to the submission of *copies* of notifications and reports; EPA does not waive the requirements in delegated standards that require notifications and reports be submitted to an electronic database (*e.g.,* 40 CFR part 63, subpart HHHHHHH).

meets the up-front approval criteria. We will respond in writing to the request stating that the request for delegation is either granted or denied. A **Federal Register** action will be published to inform the public and affected sources of the delegation, indicate where source notifications and reports should be sent, and to amend the relevant portions of the Code of Federal Regulations showing which NESHAP standards have been delegated to NMED.

XIII. Final Action

The public was provided the opportunity to comment on the proposed approval of the program and mechanism for delegation of section 112 standards, as they apply to part 70 sources, on May 19, 1994, for the proposed interim approval of NMED's Title V operating permits program; and on November 26, 1996, for the proposed final approval of NMED's Title V operating permits program. In the EPA's final full approval of New Mexico's Operating Permits Program on November 26, 1996, the EPA discussed the public comments on the delegation of the NESHAP authorities. In today's action, the public is given the opportunity to comment on the approval of NMED's request for delegation of authority to implement and enforce certain section 112 standards for all sources (both Title V and non-Title V sources) which have been adopted by reference into New Mexico's state regulations. However, the Agency views the approval of these requests as a noncontroversial action and anticipates no relevant adverse comments. Therefore, the EPA is publishing this rule without prior proposal. However, in the proposed rules section of this issue of the **Federal Register**, the EPA is publishing a separate document that will serve as the proposal to approve the NESHAP delegation described in this action if relevant adverse comments are received. This action will be effective June 12, 2018 without further notice unless we receive relevant adverse comment by May 14, 2018.

If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public the rule will not take effect with respect to the updated NESHAP delegation. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of a relevant adverse comment.

XIV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). 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).

The delegation is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

This action also does not have Federalism implications because it does 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state request to receive delegation of certain Federal standards, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing delegation submissions, EPA's role is to approve submissions, provided that they meet the criteria of the Clean Air Act. This action is not subject to the 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 12, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 61

Environmental protection, Administrative practice and procedure, Air pollution control, Arsenic, Benzene, Beryllium, Hazardous substances, Intergovernmental relations, Mercury, Reporting and recordkeeping requirements, Vinyl chloride.

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: March 22, 2018.

Wren Stenger,

Director, Multimedia Division, Region 6.

40 CFR parts 60, 61, and 63 are amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

■ 2. Section 60.4 is amended by revising paragraphs (b)(33) introductory text and (e)(1) to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(33) State of New Mexico: New Mexico Environment Department, 525 Camino de los Marquez, Suite I, Santa Fe, New Mexico, 87505. Note: For a list of delegated standards for New Mexico (excluding Bernalillo County and Indian country), see paragraph (e)(1) of this section.

* * * * *

(e) * * *

(1) *New Mexico.* The New Mexico Environment Department has been delegated all part 60 standards promulgated by the EPA, except subpart AAA—Standards of Performance for New Residential Wood Heaters; and subpart QQQQ—Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces, as amended in the **Federal Register** through January 15, 2017.

* * * * *

PART 61—[AMENDED]

■ 1. The authority citation for part 61 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Section 61.04 is amended by revising paragraphs (b)(33) introductory text and (c)(6)(iii) to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(33) *State of New Mexico:* New Mexico Environment Department, 525 Camino de los Marquez, Suite I, Santa Fe, New Mexico 87505. For a list of delegated standards for New Mexico (excluding Bernalillo County and Indian country), see paragraph (c)(6) of this section.

* * * * *

(c) * * *

(6) * * *

(iii) *New Mexico.* The New Mexico Environment Department (NMED) has been delegated the following part 61 standards promulgated by the EPA, as amended in the **Federal Register** through January 15, 2017. The (X) symbol is used to indicate each subpart that has been delegated. The delegations are subject to all of the conditions and limitations set forth in Federal law and regulations.

DELEGATION STATUS FOR NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (PART 61 STANDARDS) FOR NEW MEXICO

[Excluding Bernalillo County and Indian Country]

Subpart	Source Category	NMED [1]
A	General Provisions	X
B	Radon Emissions From Underground Uranium Mines	
C	Beryllium	X
D	Beryllium Rocket Motor Firing	X
E	Mercury	X
F	Vinyl Chloride	X
G	(Reserved)	
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities	
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.	
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X
K	Radionuclide Emissions From Elemental Phosphorus Plants	
L	Benzene Emissions From Coke By-Product Recovery Plants	X
M	Asbestos	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants	X
O	Inorganic Arsenic Emissions From Primary Copper Smelters	X
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities	X
Q	Radon Emissions From Department of Energy Facilities	
R	Radon Emissions From Phosphogypsum Stacks	
S	(Reserved)	
T	Radon Emissions From the Disposal of Uranium Mill Tailings	
U	(Reserved)	
V	Equipment Leaks (Fugitives Emission Sources)	X
W	Radon Emissions From Operating Mill Tailings	
X	(Reserved)	
Y	Benzene Emissions From Benzene Storage Vessels	X
Z–AA	(Reserved)	
BB	Benzene Emissions From Benzene Transfer Operations	X
CC–EE	(Reserved)	
FF	Benzene Waste Operations	X

[1] Program delegated to New Mexico Environment Department (NMED).

* * * * *

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 2. Section 63.99 is amended by revising paragraph (a)(32)(i) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(32) * * *

(i) The following table lists the specific part 63 standards that have been delegated unchanged to the New Mexico Environment Department for all sources. The ''X'' symbol is used to indicate each subpart that has been delegated. The delegations are subject to all of the conditions and limitations set forth in Federal law and regulations. Some authorities cannot be delegated and are retained by the EPA. These include certain General Provisions authorities and specific parts of some standards. Any amendments made to these rules after January 15, 2017 are not delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF NEW MEXICO

[Excluding Indian Country]

Subpart	Source category	NMED [1 2]	ABCAQCB [1 3]
A	General Provisions	X	X
D	Early Reductions	X	X
F	Hazardous Organic NESHAP (HON)—Synthetic Organic Chemical Manufacturing Industry (SOCMI).	X	X
G	HON—SOCMI Process Vents, Storage Vessels, Transfer Operations and Wastewater	X	X
H	HON—Equipment Leaks	X	X
I	HON—Certain Processes Negotiated Equipment Leak Regulation	X	X
J	Polyvinyl Chloride and Copolymers Production	[4]	[4]
K	(Reserved)		
L	Coke Oven Batteries	X	X
M	Perchloroethylene Dry Cleaning	X	X
N	Chromium Electroplating and Chromium Anodizing Tanks	X	X
O	Ethylene Oxide Sterilizers	X	X
P	(Reserved)		
Q	Industrial Process Cooling Towers	X	X
R	Gasoline Distribution	X	X
S	Pulp and Paper Industry	X	X
T	Halogenated Solvent Cleaning	X	X
U	Group I Polymers and Resins	X	X
V	(Reserved)		
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X	X
X	Secondary Lead Smelting	X	X
Y	Marine Tank Vessel Loading	X	X
Z	(Reserved)		
AA	Phosphoric Acid Manufacturing Plants	X	X
BB	Phosphate Fertilizers Production Plants	X	X
CC	Petroleum Refineries	X	X
DD	Off-Site Waste and Recovery Operations	X	X
EE	Magnetic Tape Manufacturing	X	X
FF	(Reserved)		
GG	Aerospace Manufacturing and Rework Facilities	X	X
HH	Oil and Natural Gas Production Facilities	X	X
II	Shipbuilding and Ship Repair Facilities	X	X
JJ	Wood Furniture Manufacturing Operations	X	X
KK	Printing and Publishing Industry	X	X
LL	Primary Aluminum Reduction Plants	X	X
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfide, and Stand-Alone Semichemical Pulp Mills.	X	X
NN	Wool Fiberglass Manufacturing Area Sources	X	
OO	Tanks-Level 1	X	X
PP	Containers	X	X
QQ	Surface Impoundments	X	X
RR	Individual Drain Systems	X	X
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	X	X
TT	Equipment Leaks—Control Level 1	X	X
UU	Equipment Leaks—Control Level 2 Standards	X	X
VV	Oil–Water Separators and Organic–Water Separators	X	X
WW	Storage Vessels (Tanks)—Control Level 2	X	X
XX	Ethylene Manufacturing Process Units Heat Exchange Systems and Waste Operations	X	X
YY	Generic Maximum Achievable Control Technology Standards	X	X
ZZ–BBB	(Reserved)		
CCC	Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration	X	X
DDD	Mineral Wool Production	X	X
EEE	Hazardous Waste Combustors	X	X

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF NEW MEXICO—Continued

[Excluding Indian Country]

Subpart	Source category	NMED [1 2]	ABCAQCB [1 3]
FFF	(Reserved)		
GGG	Pharmaceuticals Production	X	X
HHH	Natural Gas Transmission and Storage Facilities	X	X
III	Flexible Polyurethane Foam Production	X	X
JJJ	Group IV Polymers and Resins	X	X
KKK	(Reserved)		
LLL	Portland Cement Manufacturing	X	X
MMM	Pesticide Active Ingredient Production	X	X
NNN	Wool Fiberglass Manufacturing	X	X
OOO	Amino/Phenolic Resins	X	X
PPP	Polyether Polyols Production	X	X
QQQ	Primary Copper Smelting	X	X
RRR	Secondary Aluminum Production	X	X
SSS	(Reserved)		
TTT	Primary Lead Smelting	X	X
UUU	Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Plants.	X	X
VVV	Publicly Owned Treatment Works (POTW)	X	X
WWW	(Reserved)		
XXX	Ferroalloys Production: Ferromanganese and Silicomanganese	X	X
AAAA	Municipal Solid Waste Landfills	X	X
CCCC	Nutritional Yeast Manufacturing	X	X
DDDD	Plywood and Composite Wood Products	X [5]	X [5]
EEEE	Organic Liquids Distribution	X	X
FFFF	Misc. Organic Chemical Production and Processes (MON)	X	X
GGGG	Solvent Extraction for Vegetable Oil Production	X	X
HHHH	Wet Formed Fiberglass Mat Production	X	X
IIII	Auto & Light Duty Truck (Surface Coating)	X	X
JJJJ	Paper and other Web (Surface Coating)	X	X
KKKK	Metal Can (Surface Coating)	X	X
MMMM	Misc. Metal Parts and Products (Surface Coating)	X	X
NNNN	Surface Coating of Large Appliances	X	X
OOOO	Fabric Printing Coating and Dyeing	X	X
PPPP	Plastic Parts (Surface Coating)	X	X
QQQQ	Surface Coating of Wood Building Products	X	X
RRRR	Surface Coating of Metal Furniture	X	X
SSSS	Surface Coating for Metal Coil	X	X
TTTT	Leather Finishing Operations	X	X
UUUU	Cellulose Production Manufacture	X	X
VVVV	Boat Manufacturing	X	X
WWWW	Reinforced Plastic Composites Production	X	X
XXXX	Rubber Tire Manufacturing	X	X
YYYY	Combustion Turbines	X	X
ZZZZ	Reciprocating Internal Combustion Engines (RICE)	X	X
AAAAA	Lime Manufacturing Plants	X	X
BBBBB	Semiconductor Manufacturing	X	X
CCCCC	Coke Ovens: Pushing, Quenching and Battery Stacks	X	X
DDDDD	Industrial/Commercial/Institutional Boilers and Process Heaters	X [6]	X [6]
EEEEE	Iron Foundries	X	X
FFFFF	Integrated Iron and Steel	X	X
GGGGG	Site Remediation	X	X
HHHHH	Miscellaneous Coating Manufacturing	X	X
IIIII	Mercury Cell Chlor-Alkali Plants	X	X
JJJJJ	Brick and Structural Clay Products Manufacturing	X [7]	([7])
KKKKK	Clay Ceramics Manufacturing	X [7]	([7])
LLLLL	Asphalt Roofing and Processing	X	X
MMMMM	Flexible Polyurethane Foam Fabrication Operation	X	X
NNNNN	Hydrochloric Acid Production, Fumed Silica Production	X	X
OOOOO	(Reserved).		
PPPPP	Engine Test Facilities	X	X
QQQQQ	Friction Products Manufacturing	X	X
RRRRR	Taconite Iron Ore Processing	X	X
SSSSS	Refractory Products Manufacture	X	X
TTTTT	Primary Magnesium Refining	X	X
UUUUU	Coal and Oil-Fired Electric Utility Steam Generating Units	X [8]	X [8]
VVVVV	(Reserved)		
WWWWW	Hospital Ethylene Oxide Sterilizers	X	X
XXXXX	(Reserved)		
YYYYY	Electric Arc Furnace Steelmaking Area Sources	X	X
ZZZZZ	Iron and Steel Foundries Area Sources	X	X
AAAAAA	(Reserved)		

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF NEW MEXICO—Continued

[Excluding Indian Country]

Subpart	Source category	NMED [1] [2]	ABCAQCB [1] [3]
BBBBBB	Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities	X	X
CCCCCC	Gasoline Dispensing Facilities	X	X
DDDDDD	Polyvinyl Chloride and Copolymers Production Area Sources	X	X
EEEEEE	Primary Copper Smelting Area Sources	X	X
FFFFFF	Secondary Copper Smelting Area Sources	X	X
GGGGGG	Primary Nonferrous Metals Area Source: Zinc, Cadmium, and Beryllium	X	X
HHHHHH	Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources	X	X
IIIIII	(Reserved)		
JJJJJJ	Industrial, Commercial, and Institutional Boilers Area Sources	X	X
KKKKKK	(Reserved)		
LLLLLL	Acrylic and Modacrylic Fibers Production Area Sources	X	X
MMMMMM	Carbon Black Production Area Sources	X	X
NNNNNN	Chemical Manufacturing Area Sources: Chromium Compounds	X	X
OOOOOO	Flexible Polyurethane Foam Production and Fabrication Area Sources	X	X
PPPPPP	Lead Acid Battery Manufacturing Area Sources	X	X
QQQQQQ	Wood Preserving Area Sources	X	X
RRRRRR	Clay Ceramics Manufacturing Area Sources	X	X
SSSSSS	Glass Manufacturing Area Sources	X	X
TTTTTT	Secondary Nonferrous Metals Processing Area Sources	X	X
UUUUUU	(Reserved)		
VVVVVV	Chemical Manufacturing Area Sources	X	X
WWWWWW	Plating and Polishing Operations Area Sources	X	X
XXXXXX	Metal Fabrication and Finishing Area Sources	X	X
YYYYYY	Ferroalloys Production Facilities Area Sources	X	X
ZZZZZZ	Aluminum, Copper, and Other Nonferrous Foundries Area Sources	X	X
AAAAAAA	Asphalt Processing and Asphalt Roofing Manufacturing Area Sources	X	X
BBBBBBB	Chemical Preparation Industry Area Sources	X	X
CCCCCCC	Paints and Allied Products Manufacturing Area Sources	X	X
DDDDDDD	Prepared Feeds Areas Sources	X	X
EEEEEEE	Gold Mine Ore Processing and Production Area Sources	X	X
FFFFFFF–GGGGGGG.	(Reserved)		
HHHHHHH	Polyvinyl Chloride and Copolymers Production Major Sources	X	X

[1] Authorities which may not be delegated include: § 63.6(g), Approval of Alternative Non-Opacity Emission Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting; and all authorities identified in the subparts (*e.g.,* under ''Delegation of Authority'') that cannot be delegated.

[2] Program delegated to New Mexico Environment Department (NMED) for standards promulgated by the EPA, as amended in the **Federal Register** through January 15, 2017.

[3] Program delegated to Albuquerque-Bernalillo County Air Quality Control Board (ABCAQCB) for standards promulgated by the EPA, as amended in the **Federal Register** through September 13, 2013.

[4] The NMED was previously delegated this subpart on February 9, 2004. The ABCAQCB has adopted the subpart unchanged and applied for delegation of the standard. The subpart was vacated and remanded to the EPA by the United States Court of Appeals for the District of Columbia Circuit. See, *Mossville Environmental Action Network* v. *EPA,* 370 F. 3d 1232 (D.C. Cir. 2004). Because of the D.C. Court's holding this subpart is not delegated to NMED or ABCAQCB at this time.

[5] This subpart was issued a partial vacatur by the United States Court of Appeals for the District of Columbia Circuit. See the **Federal Register** of October 29, 2007.

[6] Final rule. See the **Federal Register** of March 21, 2011, as amended at January 31, 2013; November 20, 2015.

[7] Final promulgated rule adopted by the EPA. See the **Federal Register** of October 26, 2015. Note that subpart KKKKK was amended to correct minor typographical errors. See the **Federal Register** of December 4, 2015. Note that the ABCAQCB has not yet applied for updated delegation of these standards.

[8] Final Rule. See the **Federal Register** of February 16, 2012, as amended April 6, 2016. Final Supplemental Finding that it is appropriate and necessary to regulate HAP emissions from Coal- and Oil-fired EUSGU Units. See the FEDERAL REGISTER of April 25, 2016.

* * * * *

[FR Doc. 2018–07325 Filed 4–12–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0169; FRL–9975–76]

Fluensulfone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluensulfone in or on multiple commodities that are identified and discussed later in this document. Makhteshim Agan of North America (MANA) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 13, 2018. Objections and requests for hearings must be received on or before June 12, 2018, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0169, 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) 308–8157; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2017–0169 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 June 12, 2018. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2017–0169, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of September 15, 2017 (82 FR 43352) (FRL–9965–43), 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 6F8538) by Makhteshim Agan of North America (MANA) (d/b/a ADAMA), 3120 Highlands Blvd., Suite 100, Raleigh, NC 27604. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the nematicide fluensulfone, in or on fruit, pome, crop group 11–10 at 0.3 parts per million (ppm); fruit, stone crop group 12–12 at 0.06 ppm; small fruit vine climbing subgroup 13–07D at 0.5 ppm; grape, raisin at 0.8 ppm; nut, tree, crop group 14–12 at 0.02 ppm; almond, hulls at 3.0 ppm; sugarcane at 0.03 ppm; sugarcane and molasses at 0.2 ppm, and for inadvertent residues of fluensulfone, in or on (10-month plant-back interval): Grain, cereal, crop group 15 at 0.03 ppm; forage, fodder and straw of cereal grains, crop group 16 at 2 ppm; (90-day plant-back interval): Wheat, grain at 0.06 ppm; barley, grain at 0.06 ppm; buckwheat, grain at 0.06 ppm; oat, grain at 0.06 ppm; teosinte, grain at 0.06 ppm; wheat, bran at 0.10 ppm; barley, bran at 0.10 ppm; wheat, middlings at 0.07 ppm; wheat, shorts at 0.08 ppm; wheat, germ at 0.07 ppm; wheat, straw at 4 ppm; barley, straw at 4 ppm; oat, straw at 4 ppm; wheat, forage at 4 ppm; oat, forage at 4 ppm; wheat, hay at 8 ppm; barley hay at 8 ppm; and oat, hay at 8 ppm. That document referenced a summary of the petition prepared by MANA, the registrant, which is available in the docket, *http://www.regulations.gov.* A comment was received on 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 has modified the levels at which tolerances are being established in most commodities. 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 fluensulfone including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fluensulfone 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 residue of concern for dietary assessment is the parent compound, fluensulfone. Residues of the metabolites butene sulfonic acid (BSA) and thiazole sulfonic acid (TSA) occur at levels significantly greater than fluensulfone; however, these metabolites are considered non-toxic at levels that may occur from the use of fluensulfone. Based on the available data addressing toxicity of the BSA and TSA metabolites, the Agency has determined that they are not of toxicological concern.

Exposure to fluensulfone results in effects on the hematopoietic system (decreased platelets, increased white blood cells, hematocrit, and reticulocytes), kidneys, and lungs. Body weight and clinical chemistry changes were observed across multiple studies and species. Evidence of qualitative increased susceptibility of infants and children to the effects of fluensulfone was observed in the 2-generation reproduction study in rats, wherein pup death was observed at a dose that resulted in decreased body weight in the dams. There was no evidence of either qualitative or quantitative susceptibility in developmental toxicity studies in rats or rabbits. The most sensitive endpoints for assessing safety of aggregate exposures to fluensulfone under the FFDCA are the increased pup-loss effects for acute dietary exposure; and body weight, hematological and clinical chemistry changes for chronic dietary as well as short/intermediate term dermal exposures. Decreased locomotor activity in females, and decreased spontaneous activity, decreased rearing, and impaired righting response in both sexes were observed in the acute neurotoxicity study at the lowest dose tested. No other evidence for neurotoxicity was observed in the other studies in the toxicity database, including a subchronic neurotoxicity study. The doses and endpoints chosen for risk assessment are all protective of the effects seen in the acute neurotoxicity study. A developmental neurotoxicity study is not required.

Although the mouse carcinogenicity study showed an association with alveolar/bronchiolar adenomas and carcinomas in the female, EPA has determined that quantification of risk using the chronic reference dose (RfD) will account for all chronic toxicity, including carcinogenicity, that could result from exposure to fluensulfone and its metabolites. That conclusion is based on the following considerations: (1) The tumors occurred in only one sex in one species. (2) no carcinogenic response was seen in either sex in the rat. (3) the tumors in the mouse study were observed at a dose that is almost 13 times higher than the dose chosen for risk assessment. (4) fluensulfone and its metabolites are not mutagenic.

Specific information on the studies received and the nature of the adverse effects caused by fluensulfone 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 ''*Fluensulfone—Aggregate Human Health Risk Assessment in Support of Section 3 Registration of New Uses (Sugarcane, Small Vine Climbing Fruits, Pome Fruits, Stone Fruits, and Tree Nuts), Rotational Crop Tolerances, and Label Amendments*'' on pages 37–50 in docket ID number EPA–HQ–OPP–2017–0169.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.* A summary of the toxicological endpoints for fluensulfone used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of June 1, 2016 (81 FR 34898) (FRL–9946–07).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluensulfone, EPA considered exposure under the petitioned-for tolerances as well as all existing fluensulfone tolerances in 40 CFR 180.680. EPA assessed dietary exposures from fluensulfone 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 fluensulfone. In estimating acute dietary exposure, EPA used 2003–2008 food consumption information from the United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, the acute dietary risk assumed tolerance-equivalent residues and 100 percent crop treated (PCT).

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used 2003–2008 food consumption information from the USDA's NHANES/WWEIA. As to residue levels in food, the chronic dietary risk assumed tolerance-equivalent residues and 100 PCT.

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

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue or PCT information in the dietary assessment for fluensulfone. Tolerance-equivalent residue levels and 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 fluensulfone in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluensulfone. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/*

pesticide-science-and-assessingpesticide-risks/about-water-exposuremodels-used-pesticide.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Pesticide Root Zone Model Ground Water (PRZM GW) models, the estimated drinking water concentrations (EDWCs) for acute exposures are estimated to be 11.8 parts per billion (ppb) for surface water and 77.6 ppb for ground water and for chronic exposures are estimated to be 0.173 ppb for surface water and 52.5 ppb for ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the water concentration value of 77.6 ppb was used to assess the contribution to drinking water. For the chronic dietary risk assessment, the water concentration of value 52.5 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).

No residential handler exposure for fluensulfone is expected because the products are not intended for homeowner use. The product label requires that handlers wear specific clothing (*e.g.,* long sleeve shirt/long pants) and/or personal protective equipment (PPE). The Agency has made the assumption that the product is not for homeowner use and is intended for use by professional applicators. As a result, a residential handler assessment has not been conducted.

For adult residential post-application exposure, the Agency evaluated dermal post application exposure only to outdoor turf/lawn applications (high contact activities). The Agency also evaluated residential post-application exposure for children via dermal and hand-to-mouth routes of exposure, resulting from treated outdoor turf/lawn applications (high contact activities). Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticidescience-and-assessing-pesticide-risks/standard-operating-proceduresresidential-pesticide*.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not found fluensulfone to share a common mechanism of toxicity with any other substances, and fluensulfone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluensulfone does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-andassessing-pesticide-risks/cumulativeassessment-risk-pesticides*.

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* No evidence of increased quantitative or qualitative susceptibility was seen in developmental toxicity studies in rats and rabbits. Fetal effects in those studies occurred in the presence of maternal toxicity and were not considered more severe than the maternal effects. However, there was evidence of increased qualitative, but not quantitative, susceptibility of pups in the 2-generation reproduction study in rats. Maternal effects observed in that study were decreased body weight and body weight gain; at the same dose, effects in offspring were decreased pup weights, decreased spleen weight, and increased pup loss (post-natal day 1–4). Although there is evidence of increased qualitative susceptibility in the 2-generation reproduction study in rats, there are no residual uncertainties with regard to pre- and post-natal toxicity following in utero exposure to rats or rabbits and pre- and post-natal exposures to rats. Considering the overall toxicity profile, the clear NOAEL for the pup effects observed in the 2-generation reproduction study, and that the doses selected for risk assessment are protective of all effects in the toxicity database including the offspring effects, the degree of concern for the susceptibility is low.

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 fluensulfone is complete.

ii. Evidence of potential neurotoxicity was only seen following acute exposure to fluensulfone and the current PODs chosen for risk assessment are protective of the effects observed. There is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no indication of quantitative susceptibility in the developmental and reproductive toxicity studies, and there are no residual uncertainties concerning pre- or post-natal toxicity. In addition, the endpoints and doses chosen for risk assessment are protective of the qualitative susceptibility observed in the 2-generation reproduction study.

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

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary

exposure from food and water to fluensulfone will occupy 9.4% of the aPAD for all infants less than 1 year old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluensulfone from food and water will utilize 4.1% of the cPAD for all infants less than 1 year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fluensulfone is not expected.

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).

Fluensulfone is currently registered for uses that could result in short-term post-application residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to fluensulfone.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 5,600 adults and 2,800 for children. Because EPA's level of concern for fluensulfone is a MOE of 100 or below, these MOEs are not 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).

An intermediate-term adverse effect was identified; however, fluensulfone is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for fluensulfone.

5. *Aggregate cancer risk for U.S. population.* EPA assessed cancer risk using a non-linear approach (*i.e.,* RfD) since it adequately accounts for all chronic toxicity, including carcinogenicity, that could result from exposure to fluensulfone. As the chronic dietary endpoint and dose are protective of potential cancer effects, fluensulfone is not expected to pose an aggregate cancer risk.

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 fluensulfone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (acetonitrile/water (1:1, v/v) extraction and analysis by reverse-phase high performance liquid chromatography mass spectrometry (HPLC–MS/MS)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for fluensulfone for commodities covered by this document.

C. Response to Comments

One comment was submitted in response to the September 15, 2017 Notice of Filing. The commenter opposed the petition generally, alleging that there are too many toxic chemicals being used in America without citing any specific human health concerns about fluensulfone itself. The Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops; however, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. The comment appears to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework.

D. Revisions to Petitioned-For Tolerances

Most of the petitioned-for tolerance levels differ from those being established by the Agency. In its petition, the petitioner stated that the proposed tolerances were derived using the Organization for Economic Cooperation and Development (OECD) MRL calculation procedure; however, the petitioner did not provide the OECD MRL calculator's input or output tables for any of the requested tolerances. When EPA ran the OECD MRL calculation procedure on the requested new use commodities (primary crops) using residue values from the field trials, the results obtained did not agree with any of the petitioned-for tolerances, except in pome fruits group 11–10 and molasses. Therefore, EPA is establishing tolerances that differ from those requested in stone fruits group 12–12, small vine climbing fruits subgroup 13–07D, raisins, tree nuts group 14–12, almond hulls, and sugarcane based on available data and the OECD calculation procedure. In the case of tree nuts group 14–12, EPA is establishing the tolerance in tree nuts at 0.01 ppm (the LOQ) because residues in all samples of almonds and pecans were <0.01 ppm.

With respect to tolerances for inadvertent residues, the Agency is establishing a tolerance for residues in/on cereal grains (crop group 15) based on data from the representative commodities for that crop group and reflecting the labeled rotational crop plant-back restriction applicable to the crop group as a whole. Separate tolerances for inadvertent residues are being established for barley, buckwheat, oat, and wheat commodities due to a shorter plant-back restriction, specific to those crops, which results in higher residue levels. A separate tolerance was proposed for inadvertent residues in/on teosinte; however, a separate tolerance listing is not necessary since it is a member of crop group 15 and does not

have a separate, shorter, plant-back restriction. A tolerance in wheat milled byproducts, the preferred term covering wheat shorts and middlings, is being established at 0.08 ppm, rather than separate tolerances in wheat shorts and wheat middlings.

Furthermore, EPA's tolerance levels are expressed to provide sufficient precision for enforcement purposes, and this may include the addition of trailing zeros (such as 0.30 ppm rather than 0.3 ppm). This is in order to avoid the situation where rounding of an observed violative residue to the level of precision of the tolerance expression would result in a residue considered non-violative (such as 0.34 ppm being rounded to 0.3 ppm). This revision has been made for pome fruits group 11–10; molasses; forage, fodder and straw of cereal grains group 16; and straw, forage, and hay of wheat, barley and oats.

V. Conclusion

Therefore, tolerances are established for residues of fluensulfone, in or on almond, hulls at 4.0 ppm; fruit, pome, group 11–10 at 0.30 ppm; fruit, small, vine climbing, subgroup 13–07D at 0.60 ppm; fruit, stone group 12–12 at 0.07 ppm; grape, raisin at 0.90 ppm; nut, tree, group 14–12 at 0.01 ppm; sugarcane, cane at 0.04 ppm; and sugarcane, molasses at 0.20 ppm. In addition, tolerances for indirect or inadvertent residues of fluensulfone are established in or on barley, bran at 0.10 ppm; barley, grain at 0.06 ppm; barley hay at 8.0 ppm; barley, straw at 4.0 ppm; buckwheat, grain at 0.06 ppm; grain, cereal, forage, fodder and straw, group 16 at 2.0 ppm; grain, cereal, group 15 at 0.03 ppm; oat, forage at 4.0 ppm; oat, grain at 0.06 ppm; oat, hay at 8.0 ppm; oat, straw at 4.0 ppm; wheat, bran at 0.10 ppm; wheat, forage at 4.0 ppm; wheat, germ at 0.07 ppm; wheat, grain at 0.06 ppm; wheat, hay at 8.0 ppm; wheat, milled byproducts at 0.08 ppm; and wheat, straw at 4.0 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001); Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997); or Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 4, 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 § 180.680:

■ a. In the table to paragraph (a), add alphabetically the entries ''Almond, hulls''; ''Fruit, pome, group 11–10''; ''Fruit, small, vine climbing, subgroup 13–07D''; ''Fruit, stone, group 12–12''; ''Grape, raisin''; ''Nut, tree, group 14–12''; ''Sugarcane, cane''; and ''Sugarcane, molasses''.

■ b. Revise paragraph (d).

The additions and revisions read as follows:

§ 180.680 Fluensulfone; tolerances for residues.

(a) * * *

Commodity	Parts per million
Almond, hulls	4.0
* * * * *	
Fruit, pome, group 11–10	0.30
Fruit, small, vine climbing, subgroup 13–07D	0.60
Fruit, stone, group 12–12	0.07
Grape, raisin	0.90
Nut, tree, group 14–12	0.01
* * * * *	
Sugarcane, cane	0.04
Sugarcane, molasses	0.20
* * * * *	

* * * * *

(d) *Indirect or inadvertent residues.* Tolerances are established for residues of the nematicide fluensulfone, including its metabolites and degradates, in or on the commodities in

the table below. Compliance with the tolerance levels specified below is to be determined by measuring only 3,4,4-trifluoro-but-3-ene-1-sulfonic acid.

Commodity	Parts per million
Barley, bran	0.10
Barley, grain	0.06
Barley, hay	8.0
Barley, straw	4.0
Buckwheat, grain	0.06
Grain, cereal, forage, fodder and straw, group 16	2.0
Grain, cereal, group 15	0.03
Oat, forage	4.0
Oat, grain	0.06
Oat, hay	8.0
Oat, straw	4.0
Wheat, bran	0.10
Wheat, forage	4.0
Wheat, germ	0.07
Wheat, grain	0.06
Wheat, hay	8.0
Wheat, milled byproducts	0.08
Wheat, straw	4.0

[FR Doc. 2018–07739 Filed 4–12–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0072; FRL–9975–77]

Sulfentrazone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of sulfentrazone in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 13, 2018. Objections and requests for hearings must be received on or before June 12, 2018, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0072, 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.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2017–0072 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 June 12, 2018. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2017–0072, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of June 8, 2017 (82 FR 26641) (FRL–9961–14), 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 6E8532) 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 part 180 be amended by establishing tolerances for residues of the herbicide sulfentrazone in or on Chia, dry seed at 0.15 parts per million (ppm); Teff, forage at 0.50 ppm; Teff, grain at 0.15 ppm; Teff, hay at 0.30 ppm; Teff, straw at 1.5 ppm; Stalk and stem vegetable subgroup 22A at 0.15 ppm; Vegetable, *brassica,* head and stem, group 5–16 at 0.20 ppm; *Brassica,* leafy greens, subgroup 4–16B at 0.60 ppm; and Nut, tree, group 14–12 at 0.15 ppm. The petition also requested to remove the tolerances for Asparagus at 0.15 ppm; *Brassica,* head and stem, subgroup 5A at 0.20 ppm; *Brassica,* leafy greens, subgroup 5B at 0.40 ppm; Nut, tree, group 14 at 0.15 ppm;

Pistachio at 0.15 ppm; and Turnip, tops at 0.60 ppm. That document referenced a summary of the petition prepared by FMC, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

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

Subchronic and chronic toxicity studies in rats, mice, and dogs identified the hematopoietic system as the target of sulfentrazone. Sulfentrazone inhibits the enzyme protoporphyrinogen oxidase (PPO) in target plants, and the results of subchronic and chronic toxicity studies in mammalian systems are consistent with PPO inhibition. Disruption of heme biosynthesis was indicated by signs of anemia, and decreases in hematocrit (Hct), hemoglobin (HGB), and mean corpuscular volume (MCV) in mice, rats, and dogs at comparable dose levels from short- through long-term exposures without a significant increase in severity.

Sulfentrazone caused developmental effects when administered via the oral (rats and rabbits) and dermal (rat only) routes of exposure. Developmental effects in rats and rabbits consisted of reductions in the number of implantations in rats, and increases in early resorptions and reduction in live fetuses per litter in rats and rabbits. Surviving rat fetuses exhibited reduced/delayed skeletal ossifications, and decreased fetal body weights. Developmental effects in rats were seen in the absence of maternal toxicity. In contrast with the rat studies, developmental effects in rabbits were observed at a maternally toxic dose, where clinical signs of toxicity included hematuria (red blood cells in urine), abortions, and decreased body-weight gains. In the 2-generation reproductive toxicity study in rats, developmental effects included an increased duration of gestation, reduced prenatal viability (fetal and litter), reduced litter size, and an increased number of stillborn pups. Pup body-weight deficits, along with reduced pup and litter postnatal survival, were also observed. All of the offspring effects were reported in the presence of mild maternal toxicity (decreased body weight and body-weight gain, particularly in F1 females).

No systemic toxicity was seen via the dermal route up to the limit dose in a 28-day dermal toxicity study in adult non-pregnant rabbits. In a dermal developmental study in rats, there was an increased quantitative fetal susceptibility. While no maternal effects were observed up to the highest dose tested, fetal effects were observed at this dose, and consisted of decreased body weights, increased incidences of fetal variations, hypoplastic or wavy ribs, incompletely ossified lumbar vertebral arches, incompletely ossified ischia or pubis, and a reduced number of thoracic vertebral and rib ossification sites.

In the 26-day inhalation toxicity study, effects that were considered treatment related and adverse occurred only at the highest concentration tested. Systemic effects at this concentration consisted of significant reductions in red blood cell (RBC) parameters in both sexes. Portal-of-entry effects in this study consisted of an increased incidence of minimal nasal respiratory epithelial hyperplasia in both sexes as well as minimal laryngeal epithelial attenuation in all test material exposure groups. The effects on hematological parameters were reversible after 28 days of recovery, while the nasal injury persisted.

In an acute neurotoxicity (ACN) study in rats, effects consisted of an increased incidence of clinical signs of toxicity (staggered gait, splayed hind limbs, and abdominal gripping), changes in functional-observation battery (FOB) parameters, and decreased motor activity at a high dose level. Complete recovery was observed by day 14, and there was no evidence of neuropathology. In a rat subchronic neurotoxicity (SCN) study, clinical signs of toxicity, increased motor activity, and/or decreased body weights, body-weight gain, and food consumption were also observed with no evidence of neuropathology. A published, non-guideline developmental toxicity study in the rat did not conclusively demonstrate developmental neurotoxicity and contained several shortcomings that limit its use for regulatory purposes, including the lack of a no-observed-adverse-effect-level (NOAEL) (DeCastro VL, Destefani CR, Diniz C, Poli P., 2007, *Evaluation of neurodevelopmental effects on rats exposed prenatally to sulfentrazone.* Neurotoxicology 28(6):1249–59). The reported effects involving measures of physical and reflex development are likely secondary effects reflective of the poor general state of the offspring as reported in the rat two-generation reproductive toxicity study at similar dose levels but with a well-defined NOAEL.

In the 28-day rat immunotoxicity study, there were no effects on the immune system and systemic effects consisted of reduced body weight, and increased absolute and relative spleen weights at the highest dose tested. Carcinogenicity studies in rats and mice showed no evidence of increased incidence of tumor formation due to treatment with sulfentrazone, and the EPA has classified sulfentrazone as not likely to be carcinogenic to humans. The available mutagenicity studies indicate that sulfentrazone is weakly clastogenic in the *in vitro* mouse lymphoma assay in the absence of S9 activation. There is no evidence that sulfentrazone is mutagenic in bacterial cells or clastogenic in male or female mice *in vivo.*

Specific information on the studies received and the nature of the adverse effects caused by sulfentrazone 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 the document titled *Sulfentrazone—Human Health Risk Assessment for a Section 3 Registration Request to Add New Uses on Chia and Teff; an Amended Use on Mint; and Crop Group Conversions for Tree Nut Group 14–12, Stalk and Stem Vegetable Subgroup 22A; Vegetable, Brassica, Head and Stem, Group 5–16; and Brassica, Leafy Greens, Subgroup 4–16B* on pages 26–31 in docket ID number EPA–HQ–OPP–2017–0072.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for sulfentrazone used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of September 12, 2014 (79 FR 54620) (FRL–9915–47).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to sulfentrazone, EPA considered exposure under the petitioned-for tolerances as well as all existing sulfentrazone tolerances in 40 CFR 180.498. EPA assessed dietary exposures from sulfentrazone 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 sulfentrazone and EPA performed separate acute risk assessments for females 13 to 49 years old and for the general population, including infants and children, based on different endpoints and acute population-adjusted doses (aPADs). In estimating acute dietary exposures, EPA used the Dietary Exposure Evaluation Model, Food Consumption Intake Database (DEEM–FCID, ver. 3.16), which incorporates consumption data from United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America, NHANES/WWEIA; 2003–2008). As to residue levels in food, EPA assumed tolerance-level residues, 100 percent crop treated (PCT), and DEEM (ver. 7.81) default processing factors.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used DEEM–FCID, ver. 3.16, which incorporated consumption data from the USDA's NHANES/WWEIA; 2003–2008. As to residue levels in food, EPA assumed tolerance-level residues, 100 PCT, and DEEM (ver. 7.81) default processing factors.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that sulfentrazone 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 or PCT information in the dietary assessment for sulfentrazone. Tolerance-level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for sulfentrazone in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of sulfentrazone. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of sulfentrazone for acute exposures are estimated to be 37.3 parts per billion (ppb) for surface water and 134 ppb for ground water; and for chronic exposures for non-cancer assessments are estimated to be 5.3 ppb for surface water and 98 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the water concentration value of 134 ppb was used to assess the contribution to drinking water. For the chronic dietary risk assessment, the water concentration of value 98 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).

Sulfentrazone is currently registered for the following uses that could result in residential exposures: Residential home lawns/turf and recreational turf, such as golf courses. EPA assessed residential exposures using the following assumptions: Adults were assessed for potential short-term dermal and inhalation handler exposures from applying sulfentrazone to residential turf/home lawns and for short-term post-application dermal exposure from contact with treated residential and recreational turf.

Children, ages 11 < 16 years old and 6 < 11 years old, were assessed for post-application dermal exposure from contact with treated residential and recreational turf (home lawns and golf courses). Children, ages 1 < 2 years old, were assessed for post-application short-term dermal and incidental oral exposures (hand-to-mouth, object-to-mouth, and episodic ingestion of granules), as well as short-term incidental oral soil ingestion scenarios from contact with residential turf/home lawns.

The recommended adult residential exposure scenario for use in the aggregate assessment reflects short-term dermal exposure from applications to turf via backpack sprayer. The recommended residential exposure scenario for use in the combined short-term aggregate assessment for children ages 1 < 2 years old reflects dermal and hand-to-mouth exposures from post-application exposure to turf applications. This combination should be considered a protective estimate of children's exposure to pesticides used on turf since the incidental oral

scenarios are considered inter-related, likely occurring interspersed amongst each other across time; therefore, combining these scenarios would be overly conservative because of the conservative nature of each individual assessment. Further, this scenario is considered protective of potential post-application exposures to children, ages 6 < 11 and 11 < 16 years old, as children 1–2 years old represent the population subgroup for children with the greatest exposure, and is therefore considered protective of other children population subgroups. Intermediate-term exposure is not expected.

Chronic exposures are not expected and were not assessed. Finally, residential handler and/or post-application inhalation risk estimates were not combined with dermal or oral risk estimates in the aggregate risk assessment since the toxicological effects in the inhalation toxicological study were portal-of-entry and were different from those seen in the dermal and oral toxicological studies. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found sulfentrazone to share a common mechanism of toxicity with any other substances, and sulfentrazone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that sulfentrazone does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There is evidence of increased quantitative susceptibility following *in utero* exposure in the oral and dermal rat developmental toxicity studies. Developmental effects, including decreased fetal body weights and reduced/delayed skeletal ossifications, were observed at doses that were not maternally toxic. In the 2-generation reproduction study in rats, offspring effects such as decreased body weights and decreased litter survival were observed at a slightly maternally toxic dose (slightly decreased body-weight gain), indicating possible slightly increased 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 sulfentrazone is complete.

ii. In the ACN and SCN studies, observed effects included changes in motor activity and FOB parameters, clinical signs, and body-weight decrements. There is low concern for neurotoxicity since:

1. Effects were seen at relatively high doses;

2. Effects occurred in the absence of neuropathology;

3. There is no evidence of neurotoxicity in other available studies in the toxicity database;

4. Effects are well-characterized with clearly established NOAEL/LOAEL values; and

5. The selected PODs are protective of these effects.

iii. There was evidence for increased quantitative susceptibility following oral and dermal exposures in the developmental toxicity studies in rats. Although developmental toxicity was observed at lower doses than maternal toxicity in both studies in the rat, the concern is low based on the following considerations:

1. The toxicology database for assessing pre- and postnatal susceptibility is complete;

2. There are clear NOAELs and LOAELs for the developmental effects observed via both the oral and dermal routes;

3. The PODs used for assessing dietary and dermal exposure risks are based on developmental and/or offspring toxicity;

4. The portal-of-entry effects seen in the 26-day inhalation study are protective of the developmental toxicity; and

5. There are no residual uncertainties for pre- and/or postnatal toxicity.

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

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to sulfentrazone will occupy 1.1% of the aPAD for all infants less than 1-year-old and 6.7% of the aPAD for females 13–49 years old, the population groups receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to sulfentrazone from food and water will utilize 7.0% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to

residues of sulfentrazone is not expected.

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). Sulfentrazone is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to sulfentrazone. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in an aggregate MOE of 490 for adults. Because EPA's level of concern for sulfentrazone is a MOE of 100 or below, this MOE is not 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). An intermediate-term adverse effect was identified; however, sulfentrazone is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for sulfentrazone.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, sulfentrazone 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 sulfentrazone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, gas chromatography (GC), is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

No Codex MRLs have been established for sulfentrazone on the crops cited in this document.

C. Response to Comments

Two comments were received in response to the notice of filing. One was against the establishment of any tolerances for sulfentrazone and the other stated ''deny this application to change the tolerance on this product.''

Although the Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) authorizes EPA to establish tolerances when it determines that the tolerance is safe. Upon consideration of the validity, completeness, and reliability of the available data as well as other factors the FFDCA requires EPA to consider, EPA has determined that these sulfentrazone tolerances are safe. The commenters have provided no information supporting a contrary conclusion.

V. Conclusion

Therefore, tolerances are established for residues of sulfentrazone in or on *Brassica,* leafy greens, subgroup 4–16B at 0.60 ppm; chia, seed at 0.15 ppm; nut, tree, group 14–12 at 0.15 ppm; stalk and stem vegetable subgroup 22A at 0.15 ppm; teff, forage at 0.50 ppm; teff, grain at 0.15 ppm; teff, hay at 0.30 ppm; teff, straw at 1.5 ppm; and vegetable, *Brassica,* head and stem, group 5–16 at 0.20 ppm. In addition, the following existing tolerances are removed as unnecessary since they are superseded by the new tolerances: asparagus; *Brassica,* head and stem, subgroup 5A; *Brassica,* leafy greens, subgroup 5B; nut, tree, group 14; pistachio; and turnip, tops.

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: April 3, 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 § 180.498, in the table in paragraph (a)(2):
■ i. Remove the entries ''Asparagus''; ''Brassica, head and stem, subgroup 5A''; and ''Brassica, leafy greens, subgroup 5B''.
■ ii. Add alphabetically the entries ''*Brassica,* leafy greens, subgroup 4–16B'' and ''Chia, seed''.
■ iii. Remove the entry ''Nut, tree, group 14''.
■ iv. Add alphabetically the entry ''Nut, tree, group 14–12''.
■ v. Remove the entry ''Pistachio''.
■ vi. Add alphabetically the entries ''Stalk and stem vegetable subgroup 22A''; ''Teff, forage''; ''Teff, grain''; ''Teff, hay''; and ''Teff, straw''.
■ vii. Remove the entry ''Turnip, tops''.
■ viii. Add alphabetically the entry ''Vegetable, *Brassica,* head and stem, group 5–16''.

The additions read as follows:

§ 180.498 Sulfentrazone; tolerances for residues.

(a) * * *

(2) * * *

Commodity	Parts per million
* * * * *	
Brassica, leafy greens, subgroup 4–16B	0.60
Chia, seed	0.15
* * * * *	
Nut, tree, group 14–12	0.15
* * * * *	
Stalk and stem vegetable subgroup 22A	0.15
* * * * *	
Teff, forage	0.50
Teff, grain	0.15
Teff, hay	0.30
Teff, straw	1.5
* * * * *	
Vegetable, *Brassica,* head and stem, group 5–16	0.20
* * * * *	

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[FR Doc. 2018–07740 Filed 4–12–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 14–58, 14–259, AU Docket No. 17–182; FCC 18–5]

Connect America Fund, ETC Annual Reports and Certifications, Rural Broadband Experiments, Connect America Fund Phase II Auction

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission considers the remaining issues raised by parties challenging the Commission's orders implementing the Connect America Phase II (Phase II) auction (Auction 903). Specifically, the Commission resolves petitions challenging the Commission's decisions on the following issues: How to compare bids of different performance levels, standalone voice requirements, Phase II auction deployment and eligibility, and state-specific bidding weights, among other matters. The Commission also adopts a process by which a support recipient that sufficiently demonstrates that it cannot identify enough actual locations on the ground to meet its Phase II obligations can have its total state location obligation adjusted and its support reduced on a pro rata basis. Lastly, the Commission modifies the Commission's letter of credit rules to provide some additional relief for Phase II auction recipients by reducing the costs of maintaining a letter of credit.

DATES: This rule is effective May 14, 2018, except for the amendment to 47 CFR 54.315(c)(1)(ii), which requires approval by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing approval of the information collection requirement and the date the amendment will become effective. For more information, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: The Commission adopted this Order on Reconsideration on January 30, 2018, and the decisions set forth therein for the Phase II auction, along with all associated requirements also set forth therein and the amendment to the heading of § 54.315 of the Commission's rules, 47 CFR 54.315, go into effect May 14, 2018, except for the new or modified information collection requirements related to the location adjustment process contained in paragraphs 12–14 and the amendment to 47 CFR 54.315(c)(1)(ii), that require approval by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing approval of those information collection requirements and the date they will become operative.

This is a summary of the Commission's Order on Reconsideration in WC Docket Nos. 10–90, 14–58, 14–259, AU Docket No. 17–182; FCC 18–5, adopted on January 30, 2018 and released on January 31, 2018. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554, or at the

following internet address: *https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0131/FCC-18-5A1.pdf*

I. Order On Reconsideration

1. *Discussion.* The Commission declines to reconsider the weights it adopted for bids in the Phase II auction for the varying performance tiers and latency levels. In adopting these weights, which the Commission found to be within a reasonable range of the increments proposed in the record, the Commission appropriately recognized the value of higher-speed and lower-latency services to consumers. The Commission sought to balance its preference for higher-quality services with its objective to use the finite universal service budget effectively. Based on its predictive judgment, the Commission concluded that its approach is likely to promote competition within and across areas by giving all service providers the opportunity to place competitive bids, regardless of the technology they intend to use to meet their obligations.

2. The Commission disagrees with Hughes' contention that low-latency, high-speed bids will always necessarily win. Bids will be scored relative to the reserve price and therefore bids placed for lower speeds and high latency will have the opportunity to compete for support, but will have to be particularly cost-effective to compete with higher tier bids.

3. Hughes presents a hypothetical example that only reinforces the conclusion that adopting minimal weights would be inappropriate. Even if the Commission were to adopt Hughes' proposed weights, it is unclear from Hughes' own statements in the record whether Hughes could place winning bids. Hughes argues that the Commission failed to take into account record evidence that ''the lower bound for satellite providers' bids will be above $185 per customer per month in the 25/3 Mbps tier,'' and that there was no data in the record to contradict its showing. Assuming that Hughes could receive from subscribers a reasonably comparable rate of $88 per month for offerings at 25/3 Mbps, Hughes claims that the lower bound for satellite providers' bids in this tier will be above $185 per customer per month. In the example, Hughes compares a fiber-based provider bidding a reserve price of $250 in the Gigabit tier to a satellite provider bidding $187 in the Baseline tier under two scenarios. Under the hypothetical, the Gigabit bid would win using the Commission's adopted weights; using Hughes' proposed weights, the satellite provider would win. If the fiber-based provider and the satellite provider required $250 and $187 in support per location, respectively, neither would win given the Commission's decision to adopt a per location funding cap of $146.10. Notwithstanding the reserve price, the Commission is not convinced that awarding $187 per customer for high-latency, lower-speed satellite service would be the preferred outcome, or particularly cost-effective, if it could fund a Gigabit network for only $63 more per customer. Lowering support amounts is not the Commission's only goal. Rather, the Commission must balance—within a finite budget—its goal of lower support amounts and wider coverage with its goal of service at higher speeds and lower latency.

4. Hughes has not presented any analysis or data that persuades the Commission that it should alter the balance it sought to achieve with the adopted weights. The Commission previously concluded that adopting smaller weight differences between tiers, as Hughes advocates, would be inappropriate. The Commission was concerned that minimal weighting could deprive rural consumers of the higher-speed, lower-latency services that consumers value and that are common in urban areas. The Commission predicted that minimal weight differences would likely result in bids in lower tiers prevailing, leaving all consumers with minimum service even though some service providers might be able to offer increased speeds for marginally more support.

5. The Commission is not persuaded that it should reconsider the weights adopted by the Commission to reflect the consumer preference data cited by Hughes. In the *Phase II Auction FNPRM Order,* 82 FR 14466, March 21, 2017, the Commission concluded that ''establishing weights based on specific data is likely to be a drawn out and complicated process that may further delay the Phase II auction and may not produce an improved outcome in the auction.'' Hughes argues that the Commission adopted weights that provide ''too great of a bidding advantage to high-speed, high-capacity, low-latency services,'' and claims that ''[s]atellite broadband customers are just as satisfied as the customers of other types of broadband providers, notwithstanding the inevitable latency resulting from the data travel time to and from a geostationary satellite.'' Hughes now claims that ''changing the bidding weights would require simply changing numeric values in the Commission's existing auction software and result in no delay.'' Even if it were true that changing the auction software would be easy, there would only be no delay if the Commission simply accepted Hughes values and ignored data cited by other parties. Nothing in Hughes' reply comments fundamentally changes the Commission's prior conclusion.

6. The Commission previously rejected arguments that it should adopt a narrower weight for latency than for speed tiers to account for claims that consumers value higher speed over latency. The Commission emphasized that ''these claims do not address the concerns raised by commenters about the inherent limitations of high latency services—particularly for interactive, real-time applications and voice services given that high latency providers may be the only voice providers in the area.'' Hughes does not address the inherent limitations of satellite voice service, particularly in rural areas, and argues that there is no valid policy reason to provide such an advantage to low-latency bids. The Commission disagrees. In areas where winning bidders begin receiving Phase II support, the incumbent price cap carriers not receiving such support will be immediately relieved of their federal high-cost eligible telecommunications carrier (ETC) obligation to offer voice telephony in those census blocks, and the winning bidder will have the responsibility of providing the supported service: voice telephony. The potential savings to the Fund of supporting non-terrestrial broadband services must be balanced with the fact that providers of such services will have the obligation to provide the supported service—voice telephony—to rural consumers as well.

7. The Commission also is not persuaded by Hughes' argument that it should reduce the speed and latency weights to ''account for satellite broadband systems' more expedited deployment capabilities.'' Hughes argues that satellite service is ''quicker to market'' because it is not affected by obstacles faced by terrestrial broadband providers such as lengthy permitting processes, construction delays, limited consumer demand, or geographical isolation. Although satellite service may theoretically be available sooner in rural areas, it is not clear that satellite providers will be meeting the needs of rural and underserved communities any sooner than other providers. The Commission granted a petition for reconsideration regarding re-auctioning areas served by high-latency service providers, filed by ViaSat and supported by Hughes, because it agreed that it may be difficult for high-latency service providers to obtain enough subscribers

to meet a 35 percent subscription threshold by the end of the third year of support. In doing so, the Commission was persuaded by comments suggesting that many of the factors related to low adoption are likely to be present in more rural high-cost areas of the country. The Commission has no reason to think these factors have changed and decline to modify the weights to account for ''speed to market.''

8. For the reasons stated above, the Commission declines to reconsider the weights the Commission adopted for bids in the Phase II auction for the varying performance tiers and latency levels.

9. *Discussion.* As an initial matter, the Commission clarifies that it has not yet specified which of the methods for subjective determination of transmission quality identified in ITU–T Recommendation P.800 should be used to demonstrate compliance with the second part of the two-part standard (MOS of four or higher). Based on the sparse record before the Commission, it declines to do so at this time. ADTRAN proposes that the Commission specify use of a conversational-opinion test and argues that this is preferable to a listening-opinion test, or the ITU's other recommended option: interview and survey tests. The Commission finds that there is insufficient information in the record to specify which of the ITU's recommended options applicants should be prepared to use to demonstrate an MOS of four or higher. The Commission expects that the specific methodology will be adopted by the Bureaus and Office of Engineering and Technology (OET) by June 2018, consistent with the Commission's previous direction to refine a methodology to measure the performance of ETCs' services subject to general guidelines adopted by the Commission.

10. The Commission also clarifies that recipients of Phase II support awarded through competitive bidding should use the same testing methodologies for measuring peak period roundtrip latency adopted for price cap carriers accepting model-based Phase II support. That is, the same testing methodologies should be used by Phase II recipients whether they are demonstrating compliance with the 100 ms requirement or the 750 ms requirements. As set forth in the *Phase II Service Obligations Order,* 78 FR 70881, November 27, 2013, providers can rely on existing network management systems, ping tests, or other commonly-available measurement tools, or on the alternative Measuring Broadband America (MBA) program results if they have deployed at least 50 white boxes in funded areas throughout the state.

11. *Discussion.* The Commission adopted the standalone voice requirement in 2011. When it adopted the separate standalone broadband reasonable comparability requirement in 2014, the Commission explained that ''high-cost recipients are permitted to offer a variety of broadband service offerings as long as they offer at least one standalone voice service plan and one service plan that provides broadband that meets the Commission's requirements.'' Setting aside the untimeliness of these requests, the Commission would not reconsider the requirement that Connect America Fund recipients offer voice telephony—the supported service—at rates that are reasonably comparable to rates for voice service in urban areas. The Commission is not persuaded by arguments that, because VoIP is provided over broadband networks and over-the-top voice options are available, broadband service providers need only offer broadband as a standalone service. Phase II auction recipients may be the only ETC offering voice in some areas and not all consumers may want to subscribe to broadband service. To comply with Connect America Fund service obligations, support recipients can offer VoIP over their broadband network on a standalone basis, but they must offer the service at the reasonably comparable rate for voice services.

12. *Discussion.* The Commission clarifies that it will permit Phase II auction support recipients to bring to the Commission's attention disparities between the number of locations estimated by the CAM and the number of locations actually on the ground in the eligible census blocks within their winning bid areas in a state. If a support recipient can sufficiently demonstrate that it is unable to identify enough actual locations on the ground across all the eligible census blocks to meet its total state requirement, its obligation will be reduced to the total number of locations it was able to identify in the state and its support will also be reduced on a pro rata basis. Specifically, within one year after release of the Phase II auction closing public notice, a recipient that cannot identify enough actual locations must submit evidence of the total number of locations in the eligible areas in the state, including geolocation data (indicating the latitude/longitude and address of each location), in a format to be specified by the Bureau, for all the actual locations it could identify. The Commission directs the Bureau to establish the procedures and specifications for the submission of this information, such as collecting the data through the Universal Service Administrative Company's (USAC) High Cost Universal Service Broadband (HUBB) online location reporting portal. Relevant stakeholders would have the opportunity to review and comment on the information and to identify other locations, following which the Bureau shall issue an order addressing the recipient's showing and any such comments. The evidence submitted by a support recipient will also be subject to potential audit.

13. The Commission directs the Bureau to implement this process, consistent with the Commission's prior direction to the Bureau concerning model location adjustments. Specifically, in cases where the Bureau has determined by a preponderance of the evidence that there are no additional locations in the relevant eligible census blocks in the state, the Commission directs the Bureau to adjust the support recipient's required state location total and reduce its support on a pro rata basis for that state. The Commission directs the Bureau to specify the types of information that a support recipient should submit to demonstrate that it could not locate additional locations on the ground, specify the types of evidence that commenters should submit to dispute the evidence provided by the support recipients and set the parameters of this review process, set the parameters for the audits, and adopt any other necessary implementation details. The Commission directs the Bureau to issue a public notice or order (following its issuance of a notice and opportunity for comment) detailing instructions, deadlines, and requirements for filing valid geolocation data and evidence for both support recipients and commenters.

14. The Commission adopts this process because it is persuaded that potential bidders may be reluctant to bid on census block groups if the number of locations estimated by the CAM is substantially different from the number of actual locations currently on the ground, leaving those areas without an opportunity to get served through the Phase II auction. While parties claiming that there are discrepancies between the CAM and the facts on the ground have not demonstrated that the data and analyses they are relying on are necessarily more accurate than the CAM, the Commission agrees that support recipients should not be penalized if the actual facts on the ground differ from the CAM's estimates. Accordingly, the Commission has

decided to require support recipients seeking to adjust their required locations to gather and submit geolocation data to demonstrate that they have done the necessary legwork to identify locations within their service areas. By requiring applicants to submit geolocation data and demonstrate that there are no additional locations in the relevant areas, providing an opportunity for relevant stakeholders to comment on the findings, and conducting audits, the Commission also intends to prevent any cherry picking that might occur if support recipients only identify the easiest-to-serve locations and ignore harder-to-serve locations. The Commission also emphasizes that applicants are required to conduct the necessary due diligence prior to submitting their short-form applications, including identifying locations they will serve within the eligible areas, so that they can certify that they will be able to meet the relevant public interest obligations when they submit their applications.

15. The Commission declines to permit support applicants to identify additional locations to serve above their required state total with an accompanying increase in support. The Commission has a finite Phase II budget that will be allocated through the auction. Accordingly, the Commission would be constrained from giving support recipients more support.

16. The Commission is also not convinced that it should take the further step of broadening the Commission's existing definition of locations for all Phase II auction recipients so they have more potential locations that they can serve in their winning census blocks. The focus of Phase II has been on serving housing units and businesses that receive mass market service, with areas being designated as high-cost by the CAM based on the cost to serve these types of locations. Moreover, reserve prices are being set using the CAM, and the Commission proposed awarding no more support than the CAM calculates is needed to serve housing units and businesses receiving mass market services in high-cost areas, with a cap on extremely high-cost locations. Accordingly, the Commission declines to permit *all* recipients to divert Phase II support away from housing units and businesses receiving mass market services to other types of locations because *some* recipients may find it difficult to serve the number of locations identified by the model.

17. Finally, the Commission declines to monitor a support recipient's compliance at a census-block level or to allow a support recipient to count toward meeting its deployment obligation locations that do not exist. In comments filed on specific bidding procedures for this auction, several parties propose allowing recipients that make service available to all actual locations in a census block to receive credit for making service available to all model-indicated locations within that census block. For instance, under this proposal, if a census block had only six actual locations to be served, and the CAM indicated there were 14 locations to be served, a recipient would receive credit for serving 14 locations in that census block after serving only six. Such a system could create perverse incentives to focus deployment on the types of census blocks in the example, leading to fewer consumers receiving broadband overall. The Commission already decided it would monitor compliance at the state-level so that a support recipient would have to serve locations in other eligible census blocks in the state if it cannot locate enough actual eligible locations within a census block, and the opportunity to petition the Commission to reconsider this decision has passed. The commenters' challenge to this statewide approach is untimely. To the extent there are discrepancies between the number of actual locations on the ground and the CAM-estimated statewide location totals, a support recipient can take advantage of the process adopted above.

18. *Discussion.* The Commission denies Verizon's request. The Commission is not persuaded that it should reduce the service obligation to give recipients 90 percent flexibility. The Commission acknowledges that, because costs will be averaged at the census block level, all the locations the CAM identified in each census block in the authorized bids will count towards Phase II auction recipients' funded location total, unless adjusted using the process adopted above. While this differs from the Phase II model-based support requirements, in which some of the locations in some of the census blocks do not count toward the state-required location totals, Phase II auction bidders will have the advantage of choosing which eligible census blocks to include in their bids. Because compliance will be determined on a state-wide basis, the bidder can identify additional locations in the other eligible census blocks within the census block group or choose to bid on additional census block groups where it is able to identify more locations in eligible census blocks than the CAM had identified to meet its statewide total. As the Commission explained above, if a support recipient sufficiently demonstrates that it is unable to identify enough locations to meet its total support obligation statewide, it can also have its location total adjusted with an accompanying reduction in support.

19. If the Commission were to permit Phase II auction recipients to use up to 90 percent flexibility in each state, the result could be as much as an additional five percent of locations potentially remaining unserved in Phase II auction-funded census blocks. Because these unserved locations would be in census blocks where Phase II auction recipients are receiving support, targeting support to these locations through another mechanism could prove difficult. Instead, the Commission concludes that 95 percent flexibility is a more reasonable balance between ensuring that as many locations as possible get served in Phase II auction-funded areas and giving recipients some flexibility in the case of unforeseeable circumstances.

20. The Commission acknowledges that some bidders may bid for more support to compensate for the risk of having to return support if they cannot meet the 100 percent service milestone. But the Commission concludes that this potential increase in costs is outweighed by the benefits of ensuring that at least 95 percent—as opposed to 90 percent—of the required number of locations in Phase II-funded areas are served, particularly given that unserved locations in Phase II-funded areas would be difficult to target with another support mechanism. Additionally, the Commission expects that the competitive pressure imposed by competing for a finite budget in the Phase II auction will help mitigate bid inflation. Finally, any support that is returned by a Phase II recipient that serves less than 100 percent of the required number of locations can be repurposed to support broadband through other universal service mechanisms.

21. For these reasons, the Commission also is not persuaded that it should permit Phase II auction recipients to take advantage of the 95 percent flexibility without returning an associated amount of support. Moreover, the Commission is not convinced by claims that it is unnecessary for such recipients to return support because bids will ''already reflect the cost of building out to the minimum number of locations.'' Instead, the Commission expects that all Phase II auction bidders will bid with the intention of serving 100 percent of funded locations, will factor the cost of serving 100 percent of the locations into their bids, and will take advantage of

the flexibility only if necessary. Indeed, if the Commission lowered the flexibility to 90 percent, under Verizon's logic, the Commission would be conceding that even more locations within eligible blocks could be unserved following the auction. Because Phase II auction bidders are required to conduct due diligence prior to bidding, the Commission explained that it adopted the flexibility to address ''unforeseeable challenges'' that Phase II auction recipients may have in meeting their deployment obligations. If a Phase II auction bidder initially plans to build to only 95 percent of the required number of locations and then later in the support term experiences unforeseeable events, it will be subject to non-compliance measures if it is unable to serve at least 95 percent of locations and is unable to obtain a waiver. The Commission expects it would be difficult for a recipient to meet its burden of demonstrating good cause to grant a waiver of the deployment obligations if it did not plan to build to 100 percent of funded locations at the outset of its support term.

22. *Discussion.* The Commission declines to reconsider the Commission's decision not to adopt an accelerated payment option for recipients of Phase II auction support. The Commission is not convinced that the benefits of an accelerated payment option would outweigh any potential additional burden on rate payers. Moreover, as the Commission explained, service providers already have the incentive to build out their networks more quickly so that they can begin earning revenues to help with their costs. They also have an incentive to meet the final service milestone as soon as possible because once it has been verified that they have met their deployment obligations, they can further reduce costs by no longer maintaining a letter of credit. While Crocker Telecommunications suggests that the requirement that Phase II auction recipients offer the required services at rates that are reasonably comparable to those offered in urban areas means that revenues may not offset the higher costs of building in rural areas, nothing precludes a recipient from securing other funding options that can help with the upfront costs of building out and maintaining its network before it receives its full ten years of support.

23. Additionally, the Commission is concerned about its ability to accurately predict the amount by which the Phase II auction budget could be exceeded and, in turn, the potential impact of an accelerated option. Crocker Telecommunications suggests that, given the size of the Phase II auction budget relative to the entire universal service budget, and taking into consideration the additional contributions from providers that will be offering VoIP over their Phase II-funded networks, an accelerated payment option would not result in ''dramatic swings in the contribution factor'' if the Commission exceeds its annual Phase II auction budget. Whereas in the rural broadband experiments, the Commission had access to the entire $100 million budget at the start of the program, and thus could make an accelerated payment option available because the Commission could cover any upfront payment requests without needing to increase the contribution factor or wait for the following year's budget, here, however, the Commission will have only the annual Phase II auction budget available each year. Too many unknowns remain about the Phase II auction—including the number of bidders that will participate, the number of bidders that would request and qualify for an accelerated support option, the size of those bidders' bids, and the timing for when the bidders would be eligible to receive accelerated support—to predict with any degree of certainty how much the Commission could potentially exceed the annual budget if it were to adopt an accelerated option.

24. Even if the Commission could determine that giving Phase II auction recipients the option of receiving accelerated support would not dramatically increase the contribution factor, the Commission is not convinced that it would serve the public interest to do so. The Phase II auction is one of many universal service programs, and the Commission is responsible for making decisions that balance the objectives of all of the programs with the burdens on the end-user rate payers that fund the programs. The Commission is not persuaded that increasing the contribution factor by even a small margin for the Phase II auction would be justified for the sole purpose of providing more support earlier in the term, given the Commission's efforts to also remain within a budget for other universal service programs.

25. *Discussion.* The Commission dismisses as untimely NRECA and UTC's petition for reconsideration of the Commission's decision to exclude from the Phase II auction RBE census blocks that are served by an unsubsidized competitor with broadband at speeds of 10/1 Mbps. The Commission decided in the *December 2014 Connect America Order,* 80 FR 4446, January 27, 2015, that ''*any area*'' served by an unsubsidized competitor offering 10/1 would be excluded from the Phase II auction. The Commission also stated that shortly before the Phase II auction it expected to ''update the list of census blocks that will be excluded from eligibility'' from the Phase II auction ''based on the most current data'' so as to ''take into account any new deployment that is completed'' prior to the auction. The Commission did not indicate that there would be any exceptions to this decision. The Commission's decision not to offer support in areas served by an unsubsidized competitor is one of the fundamental principles of the Connect America Fund, so it is reasonable to expect that the Commission would make explicit any exceptions to this policy.

26. Because the Commission made the decision to exclude all census blocks served by an unsubsidized competitor from the Phase II auction in the *December 2014 Connect America Order,* NRECA and UTC should have filed a petition for reconsideration of this decision within 30 days of publication of that order in the **Federal Register**. NRECA and UTC failed to do so. Instead, NRECA and UTC filed a petition for reconsideration of this decision after the May 2016 *Phase II Auction Order,* 81 FR 44414, July 7, 2016. In that order, the Commission took steps to implement the decisions it had already made about Phase II auction eligible areas in the *December 2014 Connect America Order,* including its decision to exclude areas served by unsubsidized competitors, by deciding that it would: (1) Rely on the most recent publicly available FCC Form 477 data for identifying eligible Phase II auction census blocks, (2) conduct a limited challenge process, (3) average costs at the census block level, and (4) direct the Bureau to release a preliminary list of eligible census blocks. NRECA and UTC do not take issue with these implementation decisions. Because NRECA and UTC instead seek reconsideration of the Commission's underlying decision in the *December 2014 Connect America Order* to exclude from the Phase II auction census blocks served by unsubsidized competitors, the Commission dismisses this portion of the petition as untimely.

27. Notwithstanding the untimely nature of this portion of the petition, the Commission denies it on the merits. The Commission similarly denies the timely filed portion of the petition asking it to reconsider its decision to exclude from the auction RBE census blocks served by

price cap carriers at broadband speeds of 10/1 Mbps. In both instances, the Commission concludes that its decision to exclude these census blocks reasonably balances the Commission's objectives in furtherance of the public interest. The Commission has repeatedly emphasized that while it has a preference for higher speeds, higher data usage, and lower latency, it must balance these preferences against its objective of maximizing its finite budget to serve as many unserved consumers as possible and not overbuilding locations served by private capital. For this reason, the Commission adopted different performance tiers for the Phase II auction starting with 10/1 Mbps speeds, and for this reason the Commission decided to make ineligible census blocks already served by unsubsidized competitors and price cap carriers at broadband speeds of 10/1 Mbps. Although the decision to exclude these census blocks means that these areas may not have access to higher speeds through the Phase II auction, the Commission found that using the Phase II auction budget to address the digital divide by targeting those areas that lack a provider offering even 10/1 Mbps speeds to at least one residential location was a more effective use of the limited Phase II budget.

28. UTC and NRECA are asking the Commission to use its finite budget to fund census blocks where either an unsubsidized competitor using private capital or a price cap carrier has already deployed broadband at speeds meeting or exceeding the Commission's minimum 10/1 Mbps speeds. The Commission recognizes that all locations in these census blocks may not be served with 10/1 Mbps or higher speeds, as they would have been if the blocks were included in the Phase II auction. Nevertheless, the Commission concludes that, on balance, it better serves the public interest to focus its finite budget on areas that lack *any* broadband provider offering speeds that meet the Commission's requirements than on areas that have such a provider somewhere in the block. This approach will ensure that the Commission's budget will be used to serve consumers that completely lack access to broadband meeting its minimum speed requirements rather than diverting funds to potentially overbuild areas where consumers already have access to such service.

29. The Commission is not convinced by UTC and NRECA's arguments that the ''cost efficiencies that would be gained by removing [the rural broadband experiment] census blocks are greatly outweighed by the public interest benefits that would be lost if [the] census blocks go unfunded.'' Although it is possible that the current provider offering 10/1 Mbps in these areas may cease offering service at these speeds, it also is possible that the current provider could improve its offerings without Connect America support. Similarly, it is possible that some price cap carriers or unsubsidized competitors may target only one location in the RBE census blocks with 10/1 Mbps broadband service to make them ineligible for the Phase II auction. But consumers overall may benefit if such service providers take this opportunity to expand their 10/1 Mbps broadband offerings without Phase II auction support because that support then could be directed to areas that are totally unserved. There is also a possibility that service providers that were interested in bidding in RBE census blocks that are now ineligible may still win support in surrounding eligible areas. Such recipients may be able to leverage their funded networks in eligible areas so that it becomes cost-effective to deploy higher speeds in the ineligible census blocks absent support. Finally, if an area that was excluded from the Phase II auction does subsequently become unserved, either because the provider ceases offering service in that area or the provider does not upgrade its broadband service speeds to meet the Commission's current definition of ''served,'' the Commission could make that area eligible for the Remote Areas Fund or for other future competitive bidding to the extent it remains unserved.

30. The Commission also is not persuaded by NRECA and UTC's claims that potential applicants ''acted in good faith'' in assuming that all RBE census blocks would be made eligible for the Phase II auction or that the Commission's decisions ''penalize[]'' those potential applicants for moving forward and deploying broadband prior to the Phase II auction. As the Commission explains below, all potential bidders have known since at least April 2014 that the Commission contemplated excluding certain census blocks from the Phase II auction, and it had been the Commission's longstanding policy to exclude census blocks served by unsubsidized competitors for its programs since the Connect America Fund was created. But even if the Commission were to agree that it was reasonable for applicants to assume that all RBE census blocks would be included, the Commission is not convinced that applicants that intended to bid on these blocks are worse off than applicants that intend to bid on other census blocks. Any census block that is on the preliminary eligible census block list could subsequently become ineligible if it is reported as served in the most recent publicly available Form 477 when the final list of eligible census blocks is released. This means that any applicant could invest resources to get ready to bid for an area, only to later discover that it is no longer eligible. The Commission took measures to reduce this possibility by directing the Bureau to release the final census block list three months prior to the short-form application filing deadline so that applicants have time to plan and prepare for bidding. The Commission also concludes that the potential costs applicants incur in planning to bid on census blocks that ultimately become ineligible are outweighed by the benefits to consumers of using the Phase II auction budget efficiently.

31. Moreover, the fact that some applicants already deployed networks in the RBE blocks, even though they acknowledge they had no guarantee of winning support through the auction, provides further support for the Commission's decision not to make these census blocks eligible for the auction. The Commission did not adopt the eligibility rules or the public interest obligations for the Phase II auction until the *Phase II Auction Order* in May 2016. Thus, the entities that NRECA and UTC cite in their petition as already having deployed broadband to these areas in July 2016 did not know, when they deployed broadband to these areas, if they could meet the eligibility requirements or what public obligations would be required; whether their applications would ultimately be approved to participate in the auction; whether they would win in the Phase II auction; and, whether they would be authorized to receive support. Given these uncertainties, it seems unlikely that a broadband provider would deploy to an area if it thought it could not sustain the service without support. Because these providers could make a business case to serve these areas, even at the risk that they would not qualify to participate in the auction or win support, the Commission sees no reason why it should use its finite funds to support these areas instead of areas where no provider has been able to make a business case to serve.

32. The Commission also disagrees with NRECA and UTC's claims that its decisions favor price cap carriers. NRECA and UTC claim that price cap carriers were given the ''right of first refusal to model based support without

any removal of census blocks in those areas.'' However, they neglect to acknowledge that census blocks that were served by unsubsidized competitors at 4/1 Mbps and above (the Commission's minimum speed requirement when the decision was made) were removed from the offer of model-based support, as were the RBE census blocks that are the subject of the petition. Moreover, price cap carriers and other competitive bidders are both precluded from receiving Phase II support in ineligible RBE census blocks because they were removed from the offer of model-based support and from the Phase II auction.

33. The Commission also does not find it persuasive to compare its decisions with respect to the offer of model-based support to price cap carriers with its decisions to remove certain census blocks from the Phase II auction. NRECA and UTC claim that the Commission's decisions are ''arbitrary and capricious'' because they ''disparately den[y] competitive providers . . . from being able to receive funding under Phase II in areas where they have deployed broadband networks.'' Price cap carriers were able to receive Phase II funding in areas where they had already deployed 10/1 broadband service. But for the offer of model-based support, the Commission offered price cap carriers a state-wide commitment in high-cost areas so that if they accepted support, they would be required to offer voice and broadband at speeds of 10/1 Mbps to the required number of locations in their service area in the state where they were already an ETC, and in most cases they were already receiving universal service funding in those areas. The Commission decided that it preferred this approach as opposed to one in which the Commission would immediately adopt competitive bidding everywhere because price cap carriers were ''in a unique position to deploy broadband networks rapidly and efficiently'' throughout their ''large service areas.'' The Commission further concluded that, on balance, and in its predictive judgment, its approach ''best serves consumers in these areas in the near term, many of whom are receiving voice services today supported in part by universal service funding and some of whom also receive broadband, and will speed the delivery of broadband to areas where consumers have no access today.''

34. Here, the Commission also used its predictive judgment when deciding how to allocate its finite Phase II auction budget to best serve consumers, but under different conditions. For the Phase II auction, a service provider need not be the incumbent to compete for support; bidders can be selective about which eligible areas they include in their bids; bidders may not have received universal service support in the past to serve the areas for which they intend to bid; and, there are likely more areas eligible for support than there is support available. For the offer of model-based support, the Commission was constrained by the service area of a specific price cap carrier and reliant on only one incumbent carrier to reach its objectives of maximizing coverage. Here, the Commission is constrained by the Phase II auction budget. Therefore, it decided to take a different approach in the Phase II auction by targeting support only to those areas that are unserved by price cap carriers and unsubsidized competitors at 10/1 Mbps minimum broadband speeds. Nothing in the record persuades the Commission that it would better serve the public interest by reconsidering this approach.

35. Nor is the Commission convinced that its decision to exclude certain census blocks from the Phase II auction ''frustrate[s] the fundamental purpose'' of the rural broadband experiments. NRECA and UTC claim that the purpose of the experiments was to ''challenge status quo broadband from the price cap carriers.'' While the Commission may have indicated that it expected the rural broadband experiments to provide the Commission with information about ''which and what types of parties are willing to build networks that will deliver services that exceed'' the performance standards the Commission adopted for the offer of model-based support, the Commission intended to use what it learned to inform the rules it adopted for the Phase II auction. The Commission did not decide to exclude the RBE census blocks from the offer of model-based support to price cap carriers until after rural broadband experiment bidders had placed their bids, suggesting that it was not the fundamental purpose of the program to give losing rural broadband experiment bidders another opportunity to bid for support in the RBE census blocks in the Phase II auction. Instead, the rural broadband experiments served their purpose by giving the Commission valuable experience and data it could use when determining the public interest obligations and eligibility requirements for the Phase II auction. The Commission is under no obligation to ensure that all participants in the rural broadband experiments have the opportunity to bid for their desired census blocks in the auction, particularly when it would conflict with the Commission's overall objectives for the Phase II auction.

36. Finally, the Commission disagrees with NRECA and UTC's claims that applicants had no notice that the Commission might exclude RBE census blocks from the Phase II auction. Consistent with the requirements of Section 553 of the Administrative Procedure Act, interested parties had an opportunity for meaningful comment on the Commission's proposals to exclude certain census blocks from Phase II auction eligibility. The Commission noted in the *April 2014 Connect America FNPRM,* 79 FR 39196, July 9, 2014, that, if its proposal to establish 10 Mbps as the minimum broadband downstream speed was adopted, ''Phase II funds would only be available in a competitive bidding process for any area lacking 10 Mbps/1 Mbps.'' In the *FNPRM,* the Commission sought comment on excluding from the Phase II auction ''*any area*'' that is served by a price cap carrier that offers fixed residential voice and broadband meeting the Commission's requirements, and on excluding from Phase II ''*those census blocks*'' that are served by a facilities-based terrestrial competitor offering voice and broadband services at 10/1 Mbps.

37. Although the Commission did not seek comment on applying these exclusions specifically to the RBE census blocks, such action is a logical outgrowth of the Commission's proposals. Under the ''logical outgrowth'' standard, a notice of proposed rulemaking does not violate notice requirements under the Administrative Procedures Act if it ''provide[s] the public with adequate notice of the proposed rule followed by an opportunity to comment on the rule's content.'' First, the Commission sought comment ''on the broader question of whether universal service funds are ever efficiently used when spent to overbuild areas where another provider has already deployed service.'' Given the broad nature of this question, the parties were on notice that the Commission was contemplating eliminating support for served areas in any universal service context. Second, while the *FNPRM* did not explicitly propose that the RBE census blocks would be made eligible for the Phase II auction if they were removed from the offer of model-based support, both NRECA and UTC filed comments in response to the *FNPRM* requesting that the Commission make the RBE census blocks available for competitive bidding. Because they had the opportunity to urge the Commission

to include the census blocks in the Phase II auction, they also had the opportunity to comment on how the Commission's proposals for the Phase II auction—including whether to exclude areas served by unsubsidized competitors—should or should not apply to the RBE census blocks. In fact, those comments also separately discuss the Commission's proposals to remove from eligibility the Phase II auction census blocks served by price cap carriers and raise similar arguments to those raised in the petition. In the section seeking comment on the interplay between the Phase II offer of model-based support and the rural broadband experiments, the Commission did not suggest that census blocks removed from the offer of model-based support would be exempt from its broader Phase II auction proposals if the removed blocks were considered eligible for the Phase II auction inventory.

38. *Discussion.* The Commission declines to reconsider its Phase II auction eligibility rules and automatically qualify to participate in the Phase II auction those entities that were selected as provisional winning bidders for the rural broadband experiments. The Commission is not persuaded that provisionally-selected bidders that failed to submit all of the required information during the rural broadband experiments are necessarily qualified for the Phase II auction. Because provisionally-selected bidders that were not ultimately authorized to receive support did not submit all of the required technical and financial information at the post-selection review stage, Commission staff did not fully assess their qualifications once they were named as winning bidders.

39. Furthermore, the Commission is not convinced that it should permit provisionally-selected bidders that were ultimately authorized to receive rural broadband experiment support to participate in the Phase II auction without meeting the eligibility requirements for the Phase II auction. Although the Commission acknowledges that such entities underwent more extensive vetting than defaulting provisionally-selected bidders, eligibility requirements for applicants seeking to bid in the rural broadband experiments were not as rigorous as those proposed and adopted for the Phase II auction. As the Commission previously indicated, the eligibility considerations for participation in the rural broadband experiments bidding were different than they are for the Phase II auction. The rural broadband experiments were intended to award support to discrete experiments, and if the bidder defaulted, the area that was included in the bid would be eligible for the Phase II auction if it remained unserved. By contrast, the Commission seeks to balance maximizing coverage with its preference for supporting higher speeds, higher usage allowances, and lower latency through the Phase II auction, and if a bidder defaults, it would thwart these objectives by leaving the relevant area unserved when another qualified bidder may have been able to serve the area if it had won the support.

40. Moreover, because the obligations for the Phase II auction are not the same as those of the rural broadband experiment, the Commission concludes that it serves the public interest to independently assess the qualifications of rural broadband experiment recipients seeking to participate in the Phase II auction. The Commission has adopted different speed, capacity, and latency requirements and a different build-out timeline for the Phase II auction. When the Commission authorized provisionally-selected bidders to receive rural broadband experiment support, it was authorizing those entities based on the specific technologies and networks they intended to use to meet their rural broadband experiment obligations. For the Phase II auction, the Commission has proposed to determine an applicant's eligibility to bid for the performance tier and latency combinations it selects in part based on information regarding how it intends to meet the Phase II obligations, which may differ from how it intended to meet its rural broadband experiment obligations. Finally, the Commission began authorizing rural broadband experiment recipients in 2015, and the last rural broadband experiment recipient was authorized in 2016. Because the Phase II auction will not be held until 2018, an applicant's technical and financial qualifications may have changed since the Commission last had the opportunity to review them.

41. *Discussion.* The Commission grants Broad Valley and Crocker Telecommunications' petition for reconsideration in part by permitting Phase II auction recipients to reduce the value of their letter of credit to 60 percent of the total support already disbursed plus the amount of support that will be disbursed in the coming year once it has been verified that the Phase II auction recipient has met the 80 percent service milestone. However, the Commission also denies Broad Valley and Crocker Telecommunications' petition for reconsideration in part by declining to make further reductions in the value of the letter of credit.

42. The Commission is persuaded by commenters that claim that the Commission's existing letter of credit rules may impose significant costs on Phase II auction recipients, particularly on small providers. The Commission finds that it is reasonable to provide some additional relief from these costs by permitting Phase II recipients to reduce further the amount of support that a letter of credit must cover for Phase II recipients offering the required service to 80 percent of the required number of locations in a state. Because the Commission requires recipients to submit the geocoded locations that count towards their service obligations in an online portal with built-in validations, USAC will be able to quickly verify that a recipient's 80 percent service milestone has been met, thereby enabling the recipient to reduce the value of its letter of credit. As the Commission acknowledged in the *Phase II Auction Order,* the Commission expects that the risk of default will lessen as a Phase II auction recipient makes progress towards meeting its Phase II auction service milestones because, as recipients offer service to more locations, they have the opportunity to offset more of their deployment costs with revenues.

43. The letter of credit requirement applies to all winning bidders, which simplifies the administration of the letter of credit rules. However, the exact costs of obtaining and maintaining a letter of credit will affect each potential bidder in the Phase II auction differently. The letter of credit costs will likely vary based on the amount of support that a Phase II auction winning bidder is authorized to receive, and the impact of those costs is likely to vary based on the size and creditworthiness of the Phase II recipient. Therefore, the Commission cannot reasonably predict the cost of the requirement for each potential bidder relative to the benefit to the public of protecting the funds from default. However, the costs for a letter of credit in the range of several percentage points, when applied to the sizable amounts that may be awarded to bidders here, could well be considerable, particularly for smaller bidders. The Commission concludes on reconsideration that, on balance, the benefits of relieving all Phase II auction recipients of some additional costs of maintaining a letter of credit later in the term of support, after the recipient has met significant deployment milestones, outweigh the risk that the Commission will not be able to recover an additional portion of the support already disbursed

if the recipient is unable to repay the Commission in the event of a default. Moreover, as the Commission discusses below, an applicant that is affected by high letter of credit costs may choose to build out its network more quickly so that it can close out its letter of credit sooner.

44. The Commission is not persuaded by claims that it should take further steps to reduce the cost of a letter of credit for Phase II auction recipients. While Broad Valley and Crocker Telecommunications present new proposals that would further reduce costs for recipients, the Commission is not convinced that these cost reductions would outweigh the associated risks to the public's funds. Under the Commission's rules, the Commission is able to recover the full amount of support that has been disbursed in prior years and support that will be disbursed in the coming year until the fourth year service milestone has been met, with only modest adjustments to the value of the letter of credit after a recipient has met the significant deployment milestones in the fourth and fifth years. In contrast, under Broad Valley's and Crocker Telecommunications' proposals, for the first three years of support, and prior to a recipient significantly deploying its network, the letter of credit would only cover support that had been disbursed in the previous year(s). Accordingly, the Commission would not be able to recover support that is disbursed in the year that a recipient defaults. Moreover, under Broad Valley's and Crocker Telecommunications' proposals, more drastic reductions would be made in the value of the letter of credit earlier in the support term. As a result, throughout the build-out period, the Commission would not be able to recover more than two years of disbursements if a recipient defaults.

45. Under these proposed approaches, the Commission would recover far less support if the recipient stops offering service and could not repay the Commission for the support associated with the locations that remain unserved. The Commission noted that the letter of credit will be drawn only in situations where the Phase II auction recipient does not repay the Commission for the support associated with its compliance gap, and that the recipients unable to repay the support are also more likely to be at risk for going into bankruptcy and ceasing operation of their networks. Without a letter of credit, the Commission has no security to protect itself against the risks of default. Accordingly, the Commission found that it was necessary to ensure it could recover a significant amount of support in such situations. Broad Valley and Crocker Telecommunications do not address these concerns in their petitions.

46. The Commission expects that its decision to make a further modest reduction in the required value of the letter of credit for Phase II auction recipients that have substantially met their obligations will help address some of the cost concerns of potential bidders, including small entities and new entrants. But the Commission is not persuaded that it should address these concerns by further reducing the value of the letter of credit. The Commission acknowledges that each winning bidder will have to certify in its long-form application that it will have available funds for all projects costs that exceed Phase II support. The Commission also recognizes that small entities and new entrants, which often lack the resources of larger and established companies so that letter of credit costs have more of an impact on their budgets, may have to factor more of these letter of credit costs in their bids, potentially leading to less competitive bids. However, all participants in the Phase II auction will have to factor in the various costs of meeting the Phase II auction obligations when deciding whether to participate in the auction and how much to bid to ensure they can cover all of the costs. The Commission took a number of steps at the request of small entities to help lessen these costs, including expanding the number and types of banks eligible to issue letters of credit so that small entities can obtain letters of credit from banks with which they have existing partnerships. Although some entities may still find that participating in the auction is cost-prohibitive or that they are unable to place competitive bids, the Commission is not convinced that it should put its ability to recover a significant amount of support at risk if these same entities were to participate and later discover that they are unable to meet the Phase II auction obligations and unable to repay the Commission for their compliance gap.

47. The Commission is not persuaded that making large reductions in the required value of the letter of credit when a recipient meets its service milestones would encourage recipients to build out their networks faster. Instead, the Commission expects that the letter of credit requirements it adopts today may encourage more rapid deployment. By making only modest adjustments for the fourth- and fifth-year service milestones, and requiring a recipient to maintain a letter of credit only until it has been verified that the recipient has met the final service milestone, the Commission expects that recipients will move faster to meet the final service milestone so that they no longer have to maintain a letter of credit. Indeed, smaller bidders, which might be most affected by letter of credit costs, are also more likely to have winning bids that can be completed in less than the full six-year deployment term. Moreover, if the recipient could instead significantly reduce the value of its letter of credit when it reaches earlier milestones, it may not have as much of an incentive to meet the final service milestone as quickly.

48. *Discussion.* The Commission declines to reconsider the formula it adopted for applying the weights for performance tier and latency combinations to give bids placed in Pennsylvania, in areas where Verizon declined Phase II support, an advantage over other bids by adding an additional negative weight for such bids. The Commission also declines to waive the Phase II auction rules to add such a weight to Pennsylvania bids.

49. Based on the record before the Commission, Pennsylvania has not persuaded the Commission that its proposal would more effectively balance its Phase II objectives in furtherance of its section 254 obligations and the public interest. The Commission balanced its interest in ensuring that consumers in declined states get access to broadband services with its objective of maximizing the finite Phase II budget by deciding to award support to cost-effective and higher service quality bids through the Phase II auction and then prioritize unserved areas in declined states in the Remote Areas Fund. As part of this balancing, the Commission determined that its adopted framework may encourage bidders to bid in declined areas and incentivize states to offer complementary support, so that declined states may still have a strong possibility of being served through the Phase II auction absent a preference. Bidders might be more interested in bidding in the declined areas in the state through the Phase II auction because those areas are lower cost. While the ranking of bids on a bid-to-reserve price basis, rather than on a dollar-per-location basis, may remove a potential bidding advantage for bidders in lower cost areas because those areas tend to have more locations, bidders may nonetheless be more likely to make a business case to serve such areas because they are lower cost. Bidders might also be more attracted to declined areas, and may have a higher likelihood of winning such areas, if a state such as Pennsylvania made available support

that bidders could leverage to reduce the amount of Connect America support they were requesting, therefore making their bids more cost-effective when compared to other bidders nationwide.

50. The Commission is not convinced by Pennsylvania and the National Association of Regulatory Utility Commissioners' (NARUC) claims that Pennsylvania's proposal would ''provide significant cost effectiveness and financial synergies that may not be available absent modification.'' In fact, the Commission finds that adopting a negative weight could actually thwart its objectives of maximizing the Phase II auction budget and incentivizing states to contribute support. First, the negative weight would effectively double count the support that Pennsylvania offers to bidders because bidders would be able to reduce their bids by the amount of Pennsylvania support in addition to a negative weight applied to their Connect America bids in proportion to the amount of Pennsylvania support they receive. This could result in bidders asking for more Connect America support than they might if they could only use Pennsylvania support to reduce their bids (*i.e.,* without the additional negative weight). With the negative weight applied to a Connect America bid that already accounts for Pennsylvania support, they could potentially win even though their bid is not as cost-effective as other bidders. Second, the negative weight could result in Pennsylvania making less support available than it would without this factor because the weight would give Pennsylvania bidders at least some advantage over other bidders, regardless of the amount of support provided by Pennsylvania.

51. The Commission also is not persuaded that the negative weight that Pennsylvania proposes would permit the Commission to effectively leverage the funds that Pennsylvania does make available to meet its Phase II auction objectives. Pennsylvania's petition does not describe with specificity the amount of funding that will be made available, and how the Commission will have assurance that the funding Pennsylvania makes available will actually be provided to the applicant. And although Pennsylvania's proposal would allocate federal support through the Phase II auction rather than establishing a separate allocation mechanism for Pennsylvania, the results of the auction may be skewed in a way that conflicts with Phase II objectives if a preference is given to bidders based on state support that is allocated in a manner that is inconsistent with decisions the Commission made for the Phase II auction. For example, Pennsylvania does not describe what specific restrictions will be placed on its funding to ensure it is used in areas that are eligible for the Phase II auction, how Pennsylvania will ensure that its funding is made available on a technology-neutral basis, and whether Pennsylvania will be using market-based mechanisms to allocate support. Without such information and safeguards, the Commission risks giving Pennsylvania bidders an advantage in the Phase II auction to the detriment of other cost-effective bidders even though state funding may ultimately not be made available, be spent to overbuild areas that already have broadband service, or be allocated in a manner that conflicts with the Commission's Phase II objectives. Unlike New York's NY Broadband Program, where the Commission found it could align its stated Phase II objectives with New York's existing broadband-funding program by adopting specific conditions to its waiver of the Phase II auction rules, here the Commission does not have enough specific information about the various programs Pennsylvania intends to use to allocate support in order to consider any appropriate conditions that might address its concerns.

52. In addition, the Commission is not convinced by Pennsylvania's claims that the negative weight would not ''detract[]'' from the Commission's goals of deploying broadband nationwide and would not ''negatively impact[]'' support that is available to other declined states. Due to the finite Phase II auction budget, there is a potential that not all interested bidders will ultimately be awarded support. Accordingly, any mechanism that would give Pennsylvania bidders an opportunity to make less cost-effective bids than other bidders in other states, but still win, has the potential to unreasonably skew support to the state at the expense of other areas that may be served more cost-effectively. Such a mechanism also could result in fewer consumers receiving broadband. For New York, the Commission knew the *maximum* amount of support that could be allocated through New York's program and it adopted certain measures that could stretch that support beyond the census blocks in New York that were eligible for the Phase II offer of model-based support. Because Pennsylvania has not provided specific information regarding how much support it intends to make available, and the value of the negative weight is based on how much state support a Pennsylvania bidder will receive, the Commission is unable to assess the potential impact of the negative weight on its nationwide broadband deployment objectives.

53. The Commission also disagree with Pennsylvania's claims that such a negative weight will not add complexity to the Phase II auction. First, a process must be created to determine and verify how much support each applicant has received or will receive from Pennsylvania state programs to determine how much negative weight to apply. Second, an auction system must be designed that uses a different formula for calculating bids in only the declined Pennsylvania areas. These steps add a significant layer of complexity to the auction and could potentially lead to a delay in commencing the Phase II auction.

54. The Commission acknowledges that Pennsylvania's proposed approach could reduce the possibility that Pennsylvania will have to wait ''until the finalization of the Remote Areas Fund to make progress on its ''intra-county digital divides,'' may make it more likely that an amount equivalent to the support that Verizon declined is allocated to Pennsylvania through the Phase II auction rather than through the Remote Areas Fund, and would give Pennsylvania recognition for its past and future contributions to broadband deployment. However, the benefits of adopting the approach Pennsylvania recommends are outweighed by the drawbacks the Commission has discussed, and it is not persuaded that altering the balance already achieved by the Commission through its existing Phase II auction and Remote Areas Fund framework would serve the public interest. Pennsylvania is one of a number of states, including other states where Phase II model-based support was declined, that have supported and continue to support broadband deployment. The Commission concludes the most effective way to accomplish its Phase II objectives and leverage these state programs is to have bidders factor any state support that they have received or will receive into their bids so that they can place cost-effective bids within the existing Phase II auction and Remote Areas Fund auction framework.

55. The Commission disagrees with the assumption that states are entitled to receive the amount of support that the price cap carrier declined in the respective states. The Commission has made several decisions that contradict this assumption, including comparing all bids nationwide, making extremely high-cost census blocks nationwide

eligible for the Phase II auction, adopting a limited budget, and deciding to score bids against each other nationwide on a ratio-to-reserve price basis. Instead, the Commission has acknowledged the importance of connecting a similar number of unserved consumers in the states that would have been reached had the Phase II offer been accepted and has committed to provide sufficient support to do so through both the Phase II auction and the Remote Areas Fund, to the extent possible.

56. The Commission also finds that Pennsylvania has not demonstrated good cause for waiving the Phase II auction scoring formula. First, Pennsylvania has not established special circumstances that warrant deviation from the Phase II auction scoring formula. When the Commission waived the Phase II auction program rules for New York, the Commission found that the state was uniquely situated to quickly and efficiently further its goal of broadband deployment. The state had committed a significant portion of its own support as matching support, and demonstrated that there were unique timing considerations given that it had already implemented its own broadband program and had aggressive service deadlines. Such conditions are not present here. As explained above, the Commission already intends to address Pennsylvania's status as a declined state through the existing framework it adopted for the Phase II auction and the Remote Areas Fund, and it is able to leverage any support that Pennsylvania makes available through that same framework. And while the Commission acknowledges and appreciates Pennsylvania's past efforts to encourage broadband deployment in the state, Pennsylvania has not demonstrated why its past state contributions warrant waiver of rules for the future allocation of federal support.

57. Second, even if the Commission were to find that Pennsylvania had established special circumstances, for the reasons explained above, Pennsylvania has not demonstrated the public interest would be served by waiving the Phase II auction formula to add a negative weight for bids placed in declined areas in the state. New York was able to demonstrate that waiver of the Phase II auction program rules would serve the public interest for a number of reasons including that it would result in accelerated broadband deployment, it would enable the Commission to use Phase II support efficiently and effectively by leveraging matching New York support in Connect America Phase II-eligible areas and avoiding overbuilding areas served by New York's program, and support would be awarded in a technology-neutral manner using a market-based mechanism consistent with Phase II auction objectives. Such conditions are not present here. For the reasons the Commission already discussed, although Pennsylvania's proposed approach could result in more declined areas in Pennsylvania being served through the Phase II auction, Pennsylvania has not demonstrated that its requested modification would necessarily further the Commission's objectives of using the finite Phase II auction budget efficiently or fully explained how its request would result in a more effective federal-state partnership. Instead, the Commission concludes that the framework it has adopted for the Phase II auction and the Remote Areas Fund will more effectively balance all of these objectives, while still leading to widespread broadband deployment across Pennsylvania's high-cost areas with complementary state support. Thus, the Commission concludes it would not serve the public interest to grant Pennsylvania a waiver.

II. Procedural Matters

A. Paperwork Reduction Act Analysis

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

B. Congressional Review Act

59. The Commission will send a copy of this Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

60. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *USF/ICC Transformation FNPRM,* 76 FR 78384, December 16, 2011, the *April 2014 Connect America FNPRM,* and the *Phase II Auction FNPRM* (collectively, *Phase II FNPRMs*). The Commission sought written public comment on the proposals in the *Phase II FNPRMs* including comments on the IRFAs. The Commission included Final Regulatory Flexibility Analyses (FRFAs) in connection with the *December 2014 Connect America Order, Phase II Auction Order* and the *Phase II Auction FNPRM Order* (collectively, *Phase II Orders*). This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFAs in the *Phase II Orders* to reflect the actions taken in this Order on Reconsideration and conforms to the RFA.

61. *Need for, and Objectives of, this Order on Reconsideration.* This Order on Reconsideration considers the remaining issues raised by parties challenging the Commission's orders implementing the Phase II auction, in which service providers will compete to receive support of up to $1.98 billion to offer voice and broadband service in unserved high-cost areas. Specifically, the Commission resolves petitions challenging the Commission's decisions on the following issues: How to compare bids of different performance levels, standalone voice requirements, Phase II auction deployment and eligibility, and state-specific bidding weights, among other matters. The Commission also adopts a process by which a support recipient that sufficiently demonstrates that it cannot identify enough actual locations on the ground to meet its Phase II obligations can have its total state location obligation adjusted and its support reduced on a pro rata basis. Additionally, the Commission modifies its letter of credit rules to provide some additional relief for Phase II auction recipients by reducing the costs of maintaining a letter of credit. By resolving these issues, the Commission moves a step closer to holding the Phase II auction and, in turn, to the goal of closing the digital divide for all Americans, including those in rural areas of our country.

62. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made

to the rules as a result of those comments. The Chief Counsel did not file any comments in response to the relevant IRFAs.

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

64. As noted above, FRFAs were incorporated into the *Phase II Orders.* In those analyses, the Commission described in detail the small entities that might be significantly affected. In this Order on Reconsideration, the Commission hereby incorporates into this Supplemental FRFA the descriptions and estimates of the number of small entities from the previous FRFAs in the *Phase II Orders.*

65. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The data, information and document collection required by the *Phase II Orders* as described in the previous FRFAs in this proceeding are hereby incorporated into this Supplemental FRFA. In this Order on Reconsideration, the Commission also adopts a process whereby a support recipient can demonstrate there are not enough actual locations on the ground to meet its state location requirement. The Order on Reconsideration directs the Bureau to implement the specific procedures for this filing.

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

67. The analysis of the Commission's efforts to minimize the possible significant economic impact on small entities as described in the previous *Phase II Orders* FRFAs are hereby incorporated into this Supplemental FRFA. In addition, by making a modest reduction in the required value of the letter of credit for recipients that have substantially met their service obligations, the Commission is further reducing the costs of this requirement for such entities, including small entities. Moreover, the Commission adopted a process by which a support recipient can demonstrate that there are not enough actual locations on the ground to meet its state location requirement. If the support recipient makes a sufficient demonstration, it can have its state location obligation adjusted along with a pro rata reduction in support. This will particularly benefit entities that bid to serve smaller areas, which the Commission expects will include small entities. Such entities might not have otherwise been able to locate enough locations in the areas where the CAM did not overestimate the available locations in their bids to meet their obligation and would potentially have been subject to non-compliance measures. The Commission also expects that the Bureau will factor in the unique challenges faced by small entities in implementing this process.

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

III. Ordering Clauses

69. Accordingly, *it is ordered,* pursuant to the authority contained in sections 4(i), 214, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 214, 254, 303(r), 403, and 405, and §§ 1.1, 1.3, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.3, 1.427, and 1.429, that this Order on Reconsideration *is adopted,* effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**.

70. *It is further ordered* that part 54 of the Commission's rules, 47 CFR part 54, IS *amended* as set forth in the following, and such rule amendment *shall be effective* thirty (30) days after publication of the rule amendment in the **Federal Register**, except to the extent they contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act. The rules that contain new or modified information collection requirements subject to PRA review *shall become effective* after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

71. *It is further ordered* that, pursuant to § 1.429 of the Commission's rules, 47 CFR 1.429 the Petition for Clarification or Reconsideration filed by ADTRAN, Inc. on July 5, 2016 is *denied* to the extent described herein.

72. *It is further ordered* that, pursuant to § 1.429 of the Commission's rules, 47 CFR 1.429 the Petition for Reconsideration filed by Broad Valley Micro Fiber Networks Inc. on July 20, 2016 is *granted in part, dismissed in part, and denied in part* to the extent described herein.

73. *It is further ordered* that, pursuant to § 1.429 of the Commission's rules, 47 CFR 1.429 the Petition for Reconsideration filed by Crocker Telecommunications, LLC on July 18, 2016 is *granted in part, dismissed in part, and denied in part* to the extent described herein.

74. *It is further ordered* that, pursuant to § 1.429 of the Commission's rules, 47 CFR 1.429 the Petition for Reconsideration filed by Hughes Network Systems, LLC on April 20, 2017 is *denied* to the extent described herein.

75. *It is further ordered* that, pursuant to § 1.429 of the Commission's rules, 47 CFR 1.429 the Petition for Reconsideration filed by the National Rural Electric Cooperative Association and the Utilities Technology Council on July 21, 2016 is *dismissed in part and denied in part* to the extent described herein.

76. *It is further ordered* that, pursuant to §§ 1.3 and 1.429 of the Commission's rules, 47 CFR 1.3, 1.429 the Petition for Reconsideration, Modification, or Waiver filed by the Pennsylvania Public Utility Commission and the Pennsylvania Department of Community and Economic Development on April 19, 2017 is *denied* to the extent described herein.

77. *It is further ordered* that, pursuant to § 1.429 of the Commission's rules, 47 CFR 1.429 the Petition for Reconsideration filed by Southern Tier Wireless, Inc. on July 20, 2016 is *granted in part, dismissed in part, and denied in part* to the extent described herein.

78. *It is further ordered* that, pursuant to § 1.429 of the Commission's rules, 47 CFR 1.429 the Petition for Reconsideration filed by Verizon on August 8, 2016 is *denied in part* to the extent described herein.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

■ 2. Amend § 54.315 by revising the section heading and paragraph (c)(1)(ii) to read as follows:

§ 54.315 Application process for Connect America Fund phase II support distributed through competitive bidding.

* * * * *

(c) * * *

(1) * * *

(ii) Once the recipient has met its 80 percent service milestone, it may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 60 percent of the total support that has been disbursed plus the amount that will be disbursed in the coming year.

* * * * *

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202 and 239

[Docket DARS–2018–0013]

RIN 0750–AJ39

Defense Federal Acquisition Regulation Supplement: Definition of ''Information Technology'' (DFARS Case 2017–D033)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to relocate the definition of information technology within the DFARS.

DATES: Effective April 13, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Johnson, telephone 571–372–6100.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is relocating the definition of ''information technology'' from DFARS 202.101 to DFARS 239.7301. This specific definition of ''information technology'' was established in section 806, entitled ''Requirements for Information Relating to Supply Chain Risk,'' of the National Defense Authorization Act for Fiscal Year (FY) 2011 (Pub. L. 111–383). Section 806(b)(6) used the definition of ''information technology'' in 40 U.S.C. 11101(6) to define a ''covered item of supply''. On October 30, 2015, DoD published in the **Federal Register** (80 FR 67244) the final rule for DFARS case 2012–D050, Requirements Relating to Supply Chain Risk, incorporating this ''information technology'' definition into DFARS 202.101, Definitions, as opposed to DFARS 239.7301, Definitions. This rule will align this specific definition of ''information technology'' with DFARS 239.73, Requirements for Information Relating to Supply Chain Risk, as originally intended in Public Law 111–383.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is the Office of Federal Procurement Policy statute (codified at Title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because the rule merely relocates existing text within the DFARS. This rule affects only the internal operating procedures of the Government.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not add any new provisions or clauses or impact existing provisions or clauses. There are no reporting, recordkeeping, or other compliance requirements in this rule.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section II. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility

analysis is required and none has been prepared.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 202 and 239

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 202 and 239 are amended as follows:

■ 1. The authority citation for parts 202 and 239 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

■ 2. Amend section 202.101 by removing the definition of ''Information technology.''

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

■ 3. Amend section 239.7301 by adding the definition of ''Information technology'' in alphabetical order to read as follows:

239.7301 Definitions.

* * * * *

Information technology (see 40 U.S.C 11101(6)) means, in lieu of the definition at FAR 2.1, any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

(1) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency that requires—

(i) Its use; or

(ii) To a significant extent, its use in the performance of a service or the furnishing of a product.

(2) The term ''information technology'' includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.

(3) The term ''information technology'' does not include any equipment acquired by a contractor incidental to a contract.

* * * * *

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 207, 210, and 219

[Docket DARS–2018–0014]

RIN 0750–AJ43

Defense Federal Acquisition Regulation Supplement: Consolidation of Contract Requirements (DFARS Case 2017–D004)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove outdated coverage of consolidation of contract requirements.

DATES: Effective April 13, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, telephone 571–372–6100.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to remove outdated coverage of consolidation of contract requirements, which is defined at DFARS 207.170 as ''the use of a solicitation to obtain offers for a single contract or multiple award contract to satisfy two or more requirements of a department, agency, or activity for supplies or services that previously have been provided to, or performed for, that department, agency, or activity under two or more separate contracts.'' This coverage implemented 10 U.S.C. 2382, which was repealed by section 1671 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239). Section 1671 also amended section 44 of the Small Business Act (15 U.S.C. 657q) to remove the requirement for DoD to comply with 10 U.S.C. 2382. As a result, DoD is now required to comply with 15 U.S.C. 657q.

10 U.S.C. 2382 imposed limitations on the use of acquisition strategies involving consolidation, including requirements to identify alternative approaches that would involve a lesser degree of consolidation and to determine that consolidation is necessary and justified. Section 44 of the Small Business Act (15 U.S.C. 657q) contains similar limitations. The Federal Acquisition Regulation (FAR) addresses consolidation, including the limitations of 15 U.S.C. 657q, at FAR 7.107. By removing the outdated DFARS coverage of consolidation, this rule will reduce confusion among the DoD contracting workforce caused by differing requirements in the FAR and DFARS.

II. Discussion and Analysis

This rule deletes DFARS section 207.170 in its entirety to remove the obsolete text on consolidation of contract requirements. In addition, paragraphs (a)(i)(A) and (a)(ii)(A) of DFARS section 210.001 are also deleted to remove the reference to the deleted text at DFARS 207.170. In paragraph (c)(11)(A) of the DFARS section 219.201, the reference to deleted text at DFARS 207.107 is replaced by a reference to FAR 7.107, where contract consolidate and the limitations of 15 U.S.C. 657q are currently addressed.

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because the rule merely removes obsolete text from the DFARS, which affects only the internal operating procedures of the Government.

IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not create any new provisions or clauses nor impact any existing provisions or clauses.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because the rule relates to agency organization, management, or personnel.

VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 207, 210, and 219

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 207, 210, and 219 are amended as follows:

■ 1. The authority citation for parts 207, 210, and 219 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 207—ACQUISITION PLANNING

207.170 [Removed and Reserved]

■ 2. Remove and reserve section 207.170.

207.170–1 [Removed]

■ 3. Remove section 207.170–1.

207.170–2 [Removed]

■ 4. Remove section 207.170–2.

207.170–3 [Removed]

■ 5. Remove section 207.170–3.

PART 210—MARKET RESEARCH

■ 6. Amend section 210.001 by revising paragraph (a) to read as follows:

210.001 Policy.

(a) In addition to the requirements of FAR 10.001(a), agencies shall—

(i) Conduct market research appropriate to the circumstances before issuing a solicitation with tiered evaluation of offers (section 816 of Pub. L. 109–163); and

(ii) Use the results of market research to determine whether the criteria in FAR part 19 are met for setting aside the acquisition for small business or, for a task or delivery order, whether there are a sufficient number of qualified small business concerns available to justify limiting competition under the terms of the contract. If the contracting officer cannot determine whether the criteria are met, the contracting officer shall include a written explanation in the contract file as to why such a determination could not be made (section 816 of Pub. L. 109–163).

* * * * *

PART 219—SMALL BUSINESS PROGRAMS

219.201 [Amended]

■ 7. Amend section 219.201 in paragraph (c)(11)(A) by removing ''(see 207.170)'' and adding ''(see FAR 7.107)'' in its place.

[FR Doc. 2018–07732 Filed 4–12–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211, 215, 219, 242, and 252

[Docket DARS–2016–0027]

RIN 0750–AJ00

Defense Federal Acquisition Regulation Supplement: Temporary Extension of Test Program for Comprehensive Small Business Subcontracting Plans (DFARS Case 2015–D013)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Acts for Fiscal Years 2015, 2016, and 2017 to provide revisions to the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans.

DATES: Effective April 13, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Johnson, telephone 571–372–6100.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 81 FR 65606 on September 23, 2016, to implement section 821 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113–291) and section 872 of the NDAA for FY 2016 (Pub. L. 114–92), to revise the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans (''the Test Program'').

Section 821 of the NDAA for FY 2015 provides for contractors participating in the Test Program to report, on a semiannual basis, specific information related to their comprehensive subcontracting plans. This information is expected to assist in determining if Test Program participants have achieved cost savings while enhancing opportunities for small businesses.

In addition, section 821—

- Repeals section 402 of Public Law 101–574, which suspended liquidated damages under comprehensive small business subcontracting plans;
- Requires consideration, as part of the past performance evaluation of an offeror, of any failure to make a good

faith effort to comply with its comprehensive subcontracting plan;

- Extends the Test Program from December 14, 2014, through December 31, 2017;
- Increases the threshold for participation in the Test Program from $5 million to $100 million; and
- Prohibits negotiation of comprehensive subcontracting plans with contractors who failed to meet the subcontracting goals of their comprehensive subcontracting plan for the prior fiscal year.

Section 872 of the NDAA for FY 2016 removes the prohibition on negotiation of comprehensive subcontracting plans with contractors who failed to meet the subcontracting goals of their comprehensive subcontracting plan for the prior fiscal year.

This final rule also implements section 826 of the NDAA for FY 2017 (Pub. L. 114–328), which further extends the Test Program through December 31, 2027.

II. Discussion and Analysis

One respondent submitted a public comment in response to the proposed rule. DoD reviewed the public comment in the development of the final rule.

A. Summary of Significant Changes From the Proposed Rule

There are no changes made to the final rule as a result of the public comment; however, other conforming changes are made.

B. Analysis of Public Comment

Comment: The respondent urged DoD to state in its regulations that any civilian injured through exposure to toxic substances at a military installation would be considered a service-disabled veteran for purposes of eligibility for DoD programs.

Response: The comment is outside the scope of this case.

C. Other Changes From the Proposed Rule

The text at DFARS 219.702–70(f) is revised to reflect the expiration date for the Test Program of December 31, 2027, to implement section 826 of the NDAA for FY 2017. References in DFARS clause 252.219–7004 to the ''Data Universal Numbering System (DUNS) number'' are revised to read ''unique entity identifier''. Paragraph headers are added at DFARS 219.702–70(a) and 252.219–7004(b) and (e).

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule applies the requirements of section 821 of the NDAA for FY 2015 to contracts for the acquisition of commercial items, including commercially available off-the-shelf (COTS) items. The rule is not applicable to the contracts at or below the simplified acquisition threshold. Accordingly, the Director, DPAP, has signed a determination and finding to apply this rule to contracts for the acquisition of commercial items, including COTS items, for DFARS clauses 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), and 252.219–7004, Small Business Subcontracting Plan (Test Program).

IV. Expected Cost Savings

This final rule amends the DFARS to implement section 821 of the NDAA for FY 2015, section 872 of the NDAA for FY 2016, and section 826 of NDAA for FY 2017, all of which provide revisions to the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans. Section 826 extended the Test Program through December 31, 2027.

Customarily, an individual small business subcontracting plan is required to be negotiated by large business firms for each contract above $700,000. Under the Test Program, participants negotiate a comprehensive subcontracting plan (CSP) to cover all applicable contacts, in lieu of providing a separate plan for each individual contract. To be eligible for the Test Program, the program participants are required to be accepted into the program and to have at least three DoD contracts during the preceding year with an aggregate value of at least $100 million. There are currently nine large business firms that are currently participating in the Test Program. The CSPs for these nine large businesses cover approximately 8,000 contracts.

This rule revises DFARS clause 252.219–7004, Small Business Subcontracting Plan (Test Program), to require the nine Test Program participants to report, on a semiannual basis, specific information related to their CSPs. This information is expected to assist DoD in determining if the participants have achieved cost savings while enhancing opportunities for small businesses. Contracting officers conduct compliance reviews each year; and, if it is determined that the contractor failed to make a good faith effort to comply with the CSPs, the contracting officer may assess liquidated damages. Any failure to meet negotiated goals will also be considered as part of the evaluation of the participant firm's past performance. However, very few, if any, failures are expected in the Test Program.

Over the next 10 years, significant cost savings are expected to accrue to the public and the Government through use of CSPs by greatly reducing administrative burdens, while also advancing the interests of small business subcontractors. Use of CSPs may also foster an environment that provides visibility to a firm of its overall subcontracting program, thereby potentially providing greater opportunities to ensure equitable consideration on an enterprise-wide basis for business opportunities for all its subcontractors.

DoD has performed a regulatory cost analysis on this rule. The following is a summary of the estimated public annualized cost savings in millions, calculated in 2016 dollars at a 7-percent discount rate in perpetuity:

Annualized at 7%	$2.1
Present Value at 7%	29.8

To access the full Regulatory Cost Analysis for this rule, go to the Federal eRulemaking Portal at *www.regulations.gov,* search for ''DFARS Case 2015–D013,'' click ''Open Docket,'' and view ''Supporting Documents.''

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget, Office of Information and Regulatory Affairs, has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule under 5 U.S.C. 804(2).

VI. Executive Order 13771

This final rule is considered to be an E.O. 13771 deregulatory action. Details on the estimated cost savings can be found in section IV. of this preamble.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 821 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113–291), section 872 of the NDAA for FY 2016 (Pub. L. 114–92), and section 826 of the NDAA for FY 2017 (Pub. L. 114–328). Section 821 of the NDAA for FY 2015 provides several changes to the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans (Test Program), including new reporting and eligibility requirements, an extension of the Test Program, and authority to assess liquidated damages. Section 872 of the NDAA for FY 2016 removes one of the eligibility requirements. Section 826 of the NDAA for FY 2017 extends the Test Program through December 31, 2027. The objectives of this rule are to collect data to assist in assessing the successes or shortcomings of the Test Program and to provide the means to hold Test Program participants accountable for failure to make a good faith effort to comply with their comprehensive subcontracting plans.

There were no issues raised by the public in response to the initial regulatory flexibility analysis provided in the proposed rule.

The rule will not apply to small entities. Therefore, the rule does not impose any reporting or recordkeeping requirements on any small entities.

DoD has not identified any alternatives that are consistent with the stated objectives of the applicable statutes. However, DoD notes that the rule may have a positive economic impact on small entities because the rule encourages Test Program participants to make a good faith effort to comply with their comprehensive subcontracting plans.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35), because the rule does not impose a collection of information on ten or more members of the public.

List of Subjects in 48 CFR Parts 211, 215, 219, 242, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 211, 215, 219, 242, and 252 are amended as follows:

■ 1. The authority citation for parts 211, 215, 219, 242, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

■ 2. Add section 211.500 to subpart 211.5 to read as follows:

211.500 Scope.

This subpart and FAR subpart 11.5 do not apply to liquidated damages for comprehensive subcontracting plans under the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans. See 219.702–70 for coverage of liquidated damages for comprehensive subcontracting plans.

PART 215—CONTRACTING BY NEGOTIATION

■ 3. Amend section 215.305(a)(2) by—
■ a. Designating the text as paragraph (a)(2)(A); and
■ b. Adding paragraph (a)(2)(B).
The addition reads as follows:

215.305 Proposal evaluation.

(a)(2) * * *

(B) Contracting officers shall consider an offeror's failure to make a good faith effort to comply with its comprehensive subcontracting plan under the Test Program described at 219.702–70 as part of the evaluation of the past performance.

PART 219—SMALL BUSINESS PROGRAMS

219.702 [Redesignated as 219.702–70]

■ 4. Redesignate section 219.702 as 219.702–70; and revise it to read as follows:

219.702–70 Statutory requirements for the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans.

(a) *Test Program.* In accordance with 15 U.S.C. 637 note, DoD has established a test program to determine whether comprehensive subcontracting plans on a corporate, division, or plant-wide basis will reduce administrative burdens while enhancing subcontracting opportunities for small and small disadvantaged business concerns. This program is referred to as the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans (Test Program).

(b) *Eligibility requirements.* To become and remain eligible to participate in the Test Program, a business concern is required to have furnished supplies or services (including construction) under at least three DoD contracts during the preceding fiscal year, having an aggregate value of at least $100 million.

(c) *Comprehensive subcontracting plans.* (1) The Defense Contract Management Agency will designate the contracting officer who shall negotiate and approve comprehensive subcontracting plans with eligible participants on an annual basis.

(2) Test Program participants use their comprehensive subcontracting plans, in lieu of individual subcontracting plans, when performing any DoD contract or subcontract that requires a subcontracting plan.

(d) *Assessment.* The contracting officer designated to manage the comprehensive subcontracting plan shall conduct a compliance review during the fiscal year after the close of the fiscal year for which the plan is applicable. The contracting officer shall compare the approved percentage or dollar goals to the total, actual subcontracting dollars covered by the comprehensive subcontracting plan.

(1) If the contractor has failed to meet its approved subcontracting goal(s), the contracting officer shall give the contractor written notice specifying the failure, advising of the potential for assessment of liquidated damages, permitting the contractor to demonstrate what good faith efforts have been made, and providing a period of 15 working days (or longer period at the contracting officer's discretion) within which to respond. The contracting officer may take the contractor's failure to respond to the notice as an admission that no valid explanation exists.

(2) The contracting officer shall review all available information to determine whether the contractor has failed to make a good faith effort to comply with the plan.

(3) If, after consideration of all relevant information, the contracting officer determines that the contractor failed to make a good faith effort to comply with the comprehensive subcontracting plan, the contracting officer shall issue a final decision. The contracting officer's final decision shall include the right of the contractor to appeal under the Disputes clause. The contracting officer shall distribute a

copy of the final decision to all cognizant contracting officers for the contracts covered under the plan.

(e) *Liquidated damages.* The amount of liquidated damages shall be the amount of anticipated damages sustained by the Government, including but not limited to additional expenses of administration, reporting, and contract monitoring, and shall be identified in the comprehensive subcontracting plan. Liquidated damages shall be in addition to any other remedies the Government may have.

(f) *Expiration date.* The Test Program expires on December 31, 2017.

■ 5. Amend section 219.708 by—
■ a. Revising paragraph (b)(1)(B);
■ b. Revising paragraph (b)(2); and
■ c. Removing from paragraph (c)(1) ''test program described in 219.702'' and adding ''Test Program described in 219.702–70'' in its place.

The revisions read as follows:

219.708 Contract clauses.

(b)(1) * * *

(B) In contracts with contractors that have comprehensive subcontracting plans approved under the Test Program described in 219.702–70, including contracts using FAR part 12 procedures for the acquisition of commercial items, use the clause at 252.219–7004, Small Business Subcontracting Plan (Test Program), instead of the clauses at 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), FAR 52.219–9, Small Business Subcontracting Plan, and FAR 52.219–16, Liquidated Damages—Subcontracting Plan.

(2) In contracts with contractors that have comprehensive subcontracting plans approved under the Test Program described in 219.702–70, do not use the clause at FAR 52.219–16, Liquidated Damages—Subcontracting Plan.

* * * * *

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 6. Add subpart 242.15 to read as follows:

Subpart 242.15—Contractor Performance Information

Sec.
242.1502 Policy.

Subpart 242.15—Contractor Performance Information

242.1502 Policy.

(g) Past performance evaluations in the Contractor Performance Assessment Reporting System shall include an assessment of the contractor's performance against, and efforts to achieve, the goals identified in its comprehensive small business subcontracting plan when the contract contains the clause at 252.219–7004, Small Business Subcontracting Plan (Test Program).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 252.219–7003 by—
■ a. Revising the section heading and introductory text;
■ b. Removing the clause date of ''(MAR 2016)'' and adding ''(APR 2018)'' in its place;
■ c. Adding paragraph (g); and
■ d. In Alternate I—
■ i. Revising the introductory text;
■ ii. Removing the clause date of ''(MAR 2016)'' and adding ''(APR 2018)'' in its place; and
■ iii. Adding paragraph (g).

The revision and additions read as follows:

252.219–7003 Small Business Subcontracting Plan (DoD Contracts).

Basic. As prescribed in 219.708(b)(1)(A) and (b)(1)(A)(*1*), use the following clause:

* * * * *

(g) Include the clause at 252.219–7004, Small Business Subcontracting Plan (Test Program), in subcontracts with subcontractors that participate in the Test Program described in DFARS 219.702–70, where the subcontract is expected to exceed $700,000 ($1.5 million for construction of any public facility) and to have further subcontracting opportunities.

* * * * *

Alternate I. As prescribed in 219.708(b)(1)(A) and (b)(1)(A)(*2*), use the following clause, which uses a different paragraph (f) than the basic clause.

* * * * *

(g) Include the clause at 252.219–7004, Small Business Subcontracting Plan (Test Program), in subcontracts with subcontractors that participate in the Test Program described in DFARS 219.702–70, where the subcontract is expected to exceed $700,000 ($1.5 million for construction of any public facility) and to have further subcontracting opportunities.

* * * * *

■ 8. Revise section 252.219–7004 to read as follows:

252.219–7004 Small business subcontracting plan (Test Program).

As prescribed in 219.708(b)(1)(B), use the following clause:

Small Business Subcontracting Plan (Test Program) (APR 2018)

(a) *Definitions.* As used in this clause—

Covered small business concern means a small business concern, veteran-owned small business concern, service-disabled veteran-owned small business concern, HUBZone small business concern, women-owned small business concern, or small disadvantaged business concern, as these terms are defined in FAR 2.101.

Electronic Subcontracting Reporting System (eSRS) means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at *http://www.esrs.gov*.

Failure to make a good faith effort to comply with a comprehensive subcontracting plan means a willful or intentional failure to perform in accordance with the requirements of the Contractor's approved comprehensive subcontracting plan or willful or intentional action to frustrate the plan.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(b) *Test Program.* The Contractor's comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the Test Program of 15 U.S.C. 637 note, as amended, shall be included in and made a part of this contract. Upon expulsion from the Test Program or expiration of the Test Program, the Contractor shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of 15 U.S.C. 637(d).

(c) *Eligibility requirements.* To become and remain eligible to participate in the Test Program, a business concern is required to have furnished supplies or services (including construction) under at least three DoD contracts during the preceding fiscal year, having an aggregate value of at least $100 million.

(d) *Reports.* (1) The Contractor shall report semiannually for the 6-month periods ending March 31 and September 30, the information in paragraphs (d)(1)(i) through (v) of this section within 30 days after the end of the reporting period. Submit the report at *https://www.esrs.gov*.

(i) A list of contracts covered under its comprehensive small business subcontracting plan, to include the Commercial and Government Entity

(CAGE) code and unique entity identifier.

(ii) The amount of first-tier subcontract dollars awarded during the 6-month period covered by the report to covered small business concerns, with the information set forth separately by—

(A) North American Industrial Classification System (NAICS) code;

(B) Major defense acquisition program, as defined in 10 U.S.C. 2430(a);

(C) Contract number, if the contract is for maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment, and the total value of the contract, including options, exceeds $100 million; and

(D) Military department.

(iii) Total number of subcontracts active under the Test Program that would have otherwise required a subcontracting plan.

(iv) Costs incurred in negotiating, complying with, and reporting on its comprehensive subcontracting plan.

(v) Costs avoided through the use of a comprehensive subcontracting plan.

(2) The Contractor shall—

(i) Ensure that subcontractors with subcontracting plans agree to submit an Individual Subcontract Report (ISR) and/or Summary Subcontract Report (SSR) using the Electronic Subcontracting Reporting System (eSRS).

(ii) Provide its contract number, its unique entity identifier, and the email address of the Contractor's official responsible for acknowledging or rejecting the ISR to all first-tier subcontractors, who will be required to submit ISRs, so they can enter this information into the eSRS when submitting their reports.

(iii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own unique entity identifier, and the email address of the subcontractor's official responsible for acknowledging or rejecting the ISRs to its subcontractors with subcontracting plans who will be required to submit ISRs.

(iv) Acknowledge receipt or reject all ISRs submitted by its subcontractors using eSRS.

(3) The Contractor shall submit SSRs using eSRS at *http://www.esrs.gov*. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower-tier subcontractors unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from a member firm of the Alaska Native—Corporations or an Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports.

(i) This report may be submitted on a corporate, company, or subdivision (*e.g.,* plant or division operating as a separate profit center) basis, as negotiated in the comprehensive subcontracting plan with the Defense Contract Management Agency.

(ii) This report encompasses all subcontracting under prime contracts and subcontracts with the Department of Defense, regardless of the dollar value of the subcontracts, and is based on the negotiated comprehensive subcontracting plan.

(iii) The report shall be submitted semiannually for the six months ending March 31 and the twelve months ending September 30. Reports are due 30 days after the close of each reporting period.

(iv) The authority to acknowledge receipt of or reject the SSR resides with the Defense Contract Management Agency.

(e) *Failure to comply.* The failure of the Contractor or subcontractor to comply in good faith with the clause of this contract entitled ''Utilization of Small Business Concerns,'' or an approved plan required by this clause, shall be a material breach of the contract.

(f) *Liquidated damages.* The Contracting Officer designated to manage the comprehensive subcontracting plan will exercise the functions of the Contracting Officer, as identified in paragraphs (f)(1) through (4) of this clause, on behalf of all DoD departments and agencies that awarded contracts covered by the Contractor's comprehensive subcontracting plan.

(1) To determine the need for liquidated damages, the Contracting Officer will conduct a compliance review during the fiscal year after the close of the fiscal year for which the plan is applicable. The Contracting Officer will compare the approved percentage or dollar goals to the total, actual subcontracting dollars covered by the plan.

(2) If the Contractor has failed to meet its approved subcontracting goal(s), the Contracting Officer will provide the Contractor written notice specifying the failure, advising of the potential for assessment of liquidated damages, and permitting the Contractor to demonstrate what good faith efforts have been made. The Contracting Officer may take the Contractor's failure to respond to the notice within 15 working days (or longer period at the Contracting Officer's discretion) as an admission that no valid explanation exists.

(3) If, after consideration of all relevant information, the Contracting Officer determines that the Contractor failed to make a good faith effort to comply with the comprehensive subcontracting plan, the Contracting Officer will issue a final decision to the Contractor to that effect and require the Contractor to pay liquidated damages to the Government in the amount identified in the comprehensive subcontracting plan.

(4) The Contractor shall have the right of appeal under the clause in this contract entitled ''Disputes'' from any final decision of the Contracting Officer.

(g) *Subcontracts.* The Contractor shall include in subcontracts that offer subcontracting opportunities, are expected to exceed $700,000 ($1.5 million for construction of any public facility), and are required to include the clause at 52.219–8, Utilization of Small Business Concerns, the clauses at—

(1) FAR 52.219–9, Small Business Subcontracting Plan, and 252.219–7003, Small Business Subcontracting Plan (DoD Contracts)—Basic;

(2) FAR 52.219–9, Small Business Subcontracting Plan, with its Alternate III, and 252.219–7003, Small Business Subcontracting Plan (DoD Contracts)—Alternate I, to allow for submission of SF 294s in lieu of ISRs; or

(3) 252.219–7004, Small Business Subcontracting Plan (Test Program), in subcontracts with subcontractors that participate in the Test Program described in DFARS 219.702–70.

(End of clause)

[FR Doc. 2018–07730 Filed 4–12–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 213, 219, 237, and 252

[Docket DARS–2016–0034]

RIN 0750–AJ06

Defense Federal Acquisition Regulation Supplement: Competition for Religious-Related Services Contracts (DFARS Case 2016–D015)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2016, clarifying the competition requirements for the acquisition of religious-related services contracts on a United States military installation.

DATES: Effective April 13, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 81 FR 93875 on December 22, 2016, recommending revisions to the DFARS to implement section 898 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92). Section 898 requires that DoD not preclude a nonprofit organization from competing for a contract for religious-related services on a United States military installation. The proposed revisions set forth policy and procedures that allow nonprofit organizations to participate in small business set-asides and directed contracting officers not to use the sole source authorities at FAR 6.302–5(b)(4) through (7) when acquiring religious-related services on a United States military installation. The proposed rule also contained a new provision to ensure that potential offerors are aware that a nonprofit organization will not be precluded from competing for a contract for religious-related services under a small business set-aside, notwithstanding that it is not one of the small business types identified in FAR 19.000(a)(3).

The comment period for the proposed rule closed on February 21, 2017. There were no public comments submitted in response to the proposed rule.

II. Discussion and Analysis

There are no changes made in the final rule from the proposed rule.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule applies the requirements of section 898 of the NDAA for FY 2016 to contracts at or below the simplified acquisition threshold (SAT), and to contracts for the acquisition of commercial items. The rule is not applicable to the contracts for the acquisition of commercially available off-the-shelf (COTS) items. Accordingly, the Director, DPAP, has signed a determination and finding to apply this rule to contracts or subcontracts in amounts not greater than the SAT and the acquisition of commercial items, excluding COTS items, for DFARS clause 252.219–7012, Competition for Religious-Related Services.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771 (82 FR 9339, February 3, 2017), because this rule is not a significant regulatory action.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

The objective of this final is to implement section 898 of the National Defense Authorization Act for Fiscal Year 2016. The rule does so by amending the DFARS to establish the policy and procedures necessary to ensure nonprofit entities, such as religious organizations, are not precluded from participating in acquisitions for religious related services on U.S. military installations. There were no public comments received in response to the initial regulatory flexibility analysis.

This rule may have a significant economic impact on a substantial number of small businesses that typically compete for contracts for the covered services, since most of the contracts awarded for religious-related services fall within the dollar range reserved exclusively for small business participation (over the micro-purchase threshold, but no more than the simplified acquisition threshold (SAT)). The rule may also have a significant economic impact on nonprofit organizations, since these entities are normally precluded from competing for such acquisitions that are reserved for small business concerns. However, the impact is also bounded as this is a small sector in terms of the numbers of purchase orders DoD awards in a year for these requirements, and the dollar value of these orders is relatively low.

According to data obtained from the Federal Procurement Data System (FPDS) for FY 2015, DoD awarded 290 contracts to 232 unique businesses for religious-related services under the product services code for Chaplain Services (G002), the majority of which (95 percent) are valued below the SAT. Of those 290 contracts, approximately 160 contracts were awarded to 130 unique small business concerns (56 percent). The FPDS data further indicates that of the 160 contracts awarded to small business, 137 of the contracts were awarded on the basis of a total small business set-aside, including one total set-aside to women-owned small business concerns. In addition, in order to carry out the Congressional mandate of section 898, this rule restricts the use of the sole source authorities at FAR 6.302–5(b)(4) through (7) when contracting for religious-related services on U.S. military installations; as a result, such solicitations would have to be competed in a manner that allows nonprofit organizations to participate. Analysis of FPDS data for FY 2015 reveals that four contracts were awarded to a HUBZone small business concern on a sole source basis.

Additional FPDS data was obtained for FY 2016, which showed DoD awarded 256 contracts to 212 unique businesses for religious-related services under product service code G002, of which the majority (91 percent) were

valued below the SAT. Of those 256 contracts, 158 contracts (62 percent) were awarded to 130 unique small business concerns (63 percent). 116 contracts were solicited using a total small business set-aside. Again, as a result of this rule, such solicitations could not preclude a nonprofit organization from submitting an offer and being considered for award. Six contracts were awarded on a sole source basis under the Small Business Act 8(a) Business Development Program (8(a) Program); however, this rule restricts DoD contracting officers from using the sole source authority at FAR 6.302–5(b)(4) for the 8(a) Program to procure religious-related services to be performed on a U.S. military installation. In order to comply with section 898, any requirements currently in the 8(a) program would be required, upon renewal, to be solicited in a manner that does not preclude a nonprofit organization from the competition.

There are no reporting, recordkeeping, or compliance requirements associated with this rule.

There are no significant alternative approaches to the rule that would minimize the impact on small entities and meet the stated objectives of the statute.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 212, 213, 219, 237, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 213, 219, 237, and 252 are amended as follows:

■ 1. The authority citation for parts 212, 213, 219, 237, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 212.301 by adding new paragraph (f)(vii)(D) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(vii) * * *

(D) Use the provision at 252.219–7012, Competition for Religious-Related Services, as prescribed in 219.270–3.

* * * * *

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

■ 3. Amend section 213.7001 by—

■ a. Redesignating paragraphs (a)(1) and (2) as paragraphs (a)(1)(i) and (ii), respectively;

■ b. Redesignating the introductory text as paragraph (a)(1);

■ c. Redesignating paragraph (b) as paragraph (a)(2); and

■ d. Adding a new paragraph (b).

The addition reads as follows:

213.7001 Procedures.

* * * * *

(b) To comply with section 898 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92), contracting officers shall not use the sole source authority at FAR 6.302–5(b)(4) to purchase religious-related services to be performed on a U.S. military installation. For competitive purchases under the 8(a) program, contracting officers shall not exclude a nonprofit organization from the competition. See 219.270 for additional procedures.

PART 219—SMALL BUSINESS PROGRAMS

■ 4. Add sections 219.270, 219.270–1, 219.270–2, and 219.270–3 to subpart 219.2 to read as follows:

219.270 Religious-related services—inclusion of nonprofit organizations.

219.270–1 Definition.

As used in this section—

Nonprofit organization means any organization that is—

(1) Described in section 501(c) of the Internal Revenue Code of 1986; and

(2) Exempt from tax under section 501(a) of that Code.

219.270–2 Procedures.

(a) To comply with section 898 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92), when acquiring religious-related services to be performed on a U.S. military installation—

(1) Do not preclude a nonprofit organization from competing, even when the acquisition is set aside for small businesses as identified in FAR 19.000(a)(3); and

(2) Do not use any of the sole source exceptions at FAR 6.302–5(b)(4) through (7) for such acquisitions.

(b) If the apparently successful offeror has not represented in its quotation or offer that it is one of the small business concerns identified in FAR 19.000(a)(3), the contracting officer shall verify that the offeror is registered in the System for Award Management database as a nonprofit organization.

219.270–3 Solicitation provision.

Use the provision 252.219–7012, Competition for Religious-Related Services, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for the acquisition of religious-related services to be performed on U.S. military installations, when the acquisition is set aside for any of the small business concerns identified in FAR 19.000(a)(3).

PART 237—SERVICE CONTRACTING

■ 5. Add new subpart 237.77 to read as follows:

Subpart 237.77—Competition for Religious-Related Services

Sec.

237.7700 Scope of subpart.

237.7701 Definition.

237.7702 Policy.

Subpart 237.77—Competition for Religious-Related Services

237.7700 Scope of subpart.

This subpart provides policy and guidance for the acquisition of religious-related services to be performed on a U.S. military installation in accordance with section 898 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92).

237.7701 Definition.

As used in this subpart—

Nonprofit organization means any organization that is—

(1) Described in section 501(c) of the Internal Revenue Code of 1986; and

(2) Exempt from tax under section 501(a) of that Code.

237.7702 Policy.

(a) A nonprofit organization shall not be precluded from competing for a contract for religious-related services to be performed on a U.S. military installation.

(b) See 219.270 when an acquisition for religious-related services to be performed on a U.S. military installation is set aside for any of the small business concerns identified in FAR 19.000(a)(3).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Add section 252.219–7012 to read as follows:

252.219–7012 Competition for Religious-Related Services.

As prescribed in 219.270–3, use the following provision:

Competition for Religious-Related Services (APR 2018)

(a) *Definition.* As used in this provision—

Nonprofit organization means any organization that is—

(1) Described in section 501(c) of the Internal Revenue Code of 1986; and

(2) Exempt from tax under section 501(a) of that Code.

(b) A nonprofit organization is not precluded from competing for a contract for religious-related services to be performed on a U.S. military installation notwithstanding that a nonprofit organization is not a small business concern as identified in FAR 19.000(a)(3).

(c) If the apparently successful offeror has not represented in its offer or quotation that it is a small business concern identified in FAR 19.000(a)(3), as appropriate to the solicitation, the Contracting Officer will verify that the offeror is registered in the System for Award Management (SAM) database as a nonprofit organization.

(End of provision)

[FR Doc. 2018–07731 Filed 4–12–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

[Docket DARS–2018–D007]

RIN 0750–AJ38

Defense Federal Acquisition Regulation Supplement: Safe Access to Projects in Afghanistan (DFARS Case 2017–D032)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2017 that prohibits use of funds for certain programs and projects of the Department of Defense in Afghanistan that cannot be safely accessed by United States Government personnel.

DATES: Effective April 13, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement section 1216 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328). Section 1216 requires that funding amounts available to the Department of Defense may not be obligated or expended for a construction or other infrastructure program or project of the Department in Afghanistan if military or civilian personnel of the United States Government, or their representatives with authority to conduct oversight of such program or project, cannot safely access such program or project. The prohibition may be waived with an approved determination.

II. Discussion and Analysis

To implement section 1216, this rule adds a new DFARS section 225.7705, Prohibition on use of funds for contracts of certain programs and projects in Afghanistan that cannot be safely accessed. The procedures provided in this new section are strictly internal to the Government, in that they instruct the contracting officer to not obligate funds on the covered contracts, unless (1) Government personnel can safely access the project, or (2) a determination is approved by the appropriate authority to waive this restriction, as outlined in the statute.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not add any new burdens or impact applicability of clauses and provisions at or below the simplified acquisition threshold, or to acquisition of commercial items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because the rule relates to agency organization, management, or personnel.

VI. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation is codified at Title 41 of the United States Code (formerly known as the Office of Federal Procurement Policy Act). Specifically, 41 U.S.C 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only provides procedures for United States Government personnel to follow for certain programs and projects in Afghanistan that cannot be safely accessed. These requirements affect only the internal operating procedures of the Government.

VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section VI. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 225

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend section 225.7700 by adding paragraph (e) to read as follows:

225.7700 Scope.

* * * * *

(e) Section 216 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328).

* * * * *

■ 3. Add sections 225.7705, 225.7705–1, 225.7705–2, and 225.7705–3 to subpart 225.77 to read as follows:

225.7705 Prohibition on use of funds for contracts of certain programs and projects in Afghanistan that cannot be safely accessed.

This section implements section 1216 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328).

225.7705–1 Prohibition.

The contracting officer shall not obligate or expend funds for a construction or other infrastructure program or project of the Department in Afghanistan if military or civilian personnel of the United States Government or their representatives, with authority to conduct oversight of such program or project, cannot safely access such program or project. In limited circumstances, this prohibition may be waived in accordance with section 225.7705–2.

225.7705–2 Waiver of prohibition.

(a) The prohibition in 225.7705–1 may be waived upon issuance of a determination, approved in accordance with paragraph (b) of this section, that—

(1) The program or project clearly contributes to United States national interests or strategic objectives;

(2) The Government of Afghanistan has requested or expressed a need for the program or project;

(3) The program or project has been coordinated with the Government of Afghanistan, and with any other implementing agencies or international donors;

(4) Security conditions permit effective implementation and oversight of the program or project;

(5) Safeguards to detect, deter, and mitigate corruption and waste, fraud, and abuse of funds are in place;

(6) Adequate arrangements have been made for the sustainment of the program or project following its completion, including arrangements with respect to funding and technical capacity for sustainment; and

(7) Meaningful metrics have been established to measure the progress and effectiveness of the program or project in meeting its objectives.

(b) The following officials are authorized to approve the determination described in paragraph (a) of this section:

(1) In the case of a program or project with an estimated lifecycle cost of less than $1 million, by the contracting officer.

(2) In the case of a program or project with an estimated lifecycle cost of $1 million or more, but less than $20 million, by the senior U.S. officer in the Combined Security Transition Command-Afghanistan.

(3) In the case of a program or project with an estimated lifecycle cost of $20 million or more, but less than $40 million, by the Commander of United States Forces-Afghanistan.

(4) In the case of a program or project with an estimated lifecycle cost of $40 million or more, by the Secretary of Defense.

(c) Congressional notification is required within 15 days of issuance of a determination to waive the prohibition for programs or projects valued at $40 million or more in accordance with paragraph (b)(4) of this section.

225.7705–3 Procedures.

(a) The contracting officer shall not obligate or expend funds for contracts for a construction or other infrastructure program or project in Afghanistan, awarded after December 23, 2016, unless the requiring activity provides the following documentation:

(1) Written affirmation that military or civilian personnel of the United States Government or their representatives, with authority to conduct oversight of such program or project, can safely access such program or project; or

(2)(i) For programs or projects valued at less than $1 million, sufficient information upon which to base the determination described in 225.7705–2(a); or

(ii)(A) For programs or projects valued at $1 million or more, a copy of the approved determination described in 225.7705–2(a) and (b); and

(B) For programs or projects valued at $40 million or more, a copy of the Congressional notification described in 225.7705–2(c).

(b) After contract award, the contracting officer shall review the requiring activity's progress reports (*e.g.,* contracting officer's representative reports) that addresses whether access continues to be safe or security conditions continue to permit effective implementation and oversight of the contract. If the requiring activity does not affirm continued safe access or, if a determination to waive the prohibition has been approved, that security conditions continue to permit effective implementation and oversight of the contract, then the contracting officer shall consult with the requiring activity to take any appropriate actions.

[FR Doc. 2018–07733 Filed 4–12–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 237

[Docket DARS–2018–0013]

RIN 0750–AJ49

Defense Federal Acquisition Regulation Supplement: Educational Service Agreements (DFARS Case 2017–D039)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove limiting language related to educational service agreements. This deletion will allow DoD to make agreements that permit payment for Masters of Laws degrees and other legal training programs, in accordance with applicable law, regulation, and policy.

DATES: Effective April 13, 2018.

FOR FURTHER INFORMATION CONTACT: Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DFARS subpart 237.72, Educational Service Agreements, prescribes policies and procedures for acquiring educational services from schools, colleges, universities, or other educational institutions. An educational service agreement (ESA) is an ordering

agreement under which the Government may acquire educational services. DFARS 237.7202(a) prohibits the use of ESAs as a contracting method for training in the legal profession, except when in connection with the detailing of commissioned officers to law schools under 10 U.S.C. 2004.

The limitation at DFARS 237.7202(a) was established at a time when legal training was acquired only for the purpose of obtaining doctorate degrees for military judge advocates. DoD's need for legal training has evolved since the implementation of the text at DFARS 237.7202(a). Since 10 U.S.C. 2004 contains no prohibition against acquiring other training in the legal profession, this rule amends the DFARS to delete the language at DFARS 237.7202(a). Removal of this limitation will allow DoD to make agreements that permit payment for masters of laws degrees and other legal training needs, in accordance with applicable law, regulation, and policy.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is codified at Title 41 of the United States Code (formerly known as the Office of Federal Procurement Policy Act). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it is simply allowing the contracting officer to use an ESA when acquiring training in the legal profession. Contracting officers can already use ESAs for the acquisition of training in any other profession. This requirement affects only the internal operating procedures of the Government.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not add any new provisions or clauses or impact existing provisions or clauses. There are no reporting, recordkeeping, or other compliance requirements in this rule.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because the rule relates to agency organization, management, or personnel.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section II. of this rule), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 237

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer Defense Acquisition Regulations System.

Therefore, 48 CFR part 237 is amended as follows:

PART 237—SERVICE CONTRACTING

■ 1. The authority citation for part 237 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

237.7202 [Amended]

■ 2. Amend section 237.7202 by removing paragraph (a) and redesignating paragraph (b) as an undesignated paragraph.

[FR Doc. 2018–07735 Filed 4–12–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 160808696–7010–02]

RIN 0648–BH86

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2017–18 Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures.

SUMMARY: This final rule announces inseason changes to management measures in the Pacific Coast groundfish fisheries. This action, which is authorized by the Pacific Coast Groundfish Fishery Management Plan, is intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: This final rule is effective April 13, 2018.

FOR FURTHER INFORMATION CONTACT: Karen Palmigiano, phone: 206–526–4491, fax: 206–526–6736, or email: *karen.palmigiano@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are available at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/.*

Background

The Pacific Coast Groundfish Fishery Management Plan (PCGFMP) and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish

off the coasts of Washington, Oregon, and California. The Pacific Fishery Management Council (Council) develops biennial groundfish specifications and management measures. NMFS published the final rule to implement the 2017–18 specifications and management measures for most species of the Pacific coast groundfish fishery on February 7, 2017 (82 FR 9634).

The Council, in coordination with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, recommended the following changes to current groundfish management measures at its March 8–14, 2018 meeting in Rohnert Park, California: (1) Increase the incidental halibut retention in the primary sablefish fishery, (2) increase the recreational sub-bag limit for canary rockfish and add a three flatfish limit through changes to Washington state recreational management measures, and (3) increase the recreational sub-limit for canary rockfish through changes to California recreational management measures.

Increase Incidental Halibut Retention in the Limited Entry Fixed Gear Sablefish Primary Fishery

Under the authority of the Northern Pacific Halibut Act of 1982, the Council developed a Catch Sharing Plan for the International Pacific Halibut Commission Regulatory Area 2A. The Catch Sharing Plan allocates the Area 2A annual total allowable catch (TAC) among fisheries off Washington, Oregon, and California. Pacific halibut is generally a prohibited species for vessels fishing in Pacific coast groundfish fisheries, unless explicitly allowed in groundfish regulations and authorized by the Pacific halibut Catch Sharing Plan. In years where the Pacific halibut TAC is above 900,000 pounds (lb) (408 metric tons (mt)), the Catch Sharing Plan allows the limited entry fixed gear sablefish primary fishery an incidental retention limit for Pacific halibut north of Point Chehalis, WA (46°53.30′ North latitude [N. lat.]). On March 24, 2018, NMFS implemented a 2018 Area 2A TAC of 1,190,000 lb (540 mt)(83 FR 13080; March 26, 2018). Consistent with the provisions of the Catch Sharing Plan, the limited entry fixed gear sablefish primary fishery north of Pt. Chelais, WA has an incidental total catch limit of 50,000 lb (22.7 mt) for 2018.

Current regulations at § 660.231(b)(3)(iv) provide for halibut retention starting on April 1 with a landing ratio of 140 lb (64 kilograms (kg)) dressed weight of halibut, for every 1,000 lb (454 kg) dressed weight of sablefish landed, and up to an additional 2 halibut in excess of this ratio. These limits were based on the 2017 Pacific halibut retention limit of 70,000 lb (32 mt) and resulted in a catch of 35,866 lb (16 mt) of incidental halibut. At the March 2018 Council meeting, based on 2017 catch totals, the number of vessels fishing that participated, and the average number of trips taken, which constitutes the best available information, the Council recommended an increase from 140 lb (64 kg) to 160 lb (73 kg) dressed incidental Pacific halibut retention per 1,000 lb (454 kg) dressed sablefish. This increase would allow total catch of Pacific halibut to approach, but not exceed, the 2018 allocation for the sablefish primary fishery north of Pt. Chelais, WA (50,000 lb or 22.7 mt) and provide greater opportunity for industry to attain a higher percentage of the sablefish primary fishery allocation. This ratio can be adjusted through routine inseason action based on participation and landings in the fishery, if warranted.

In order to allow increased incidental halibut catch in the sablefish primary fishery, the Council recommended and NMFS is revising incidental halibut retention regulations at § 660.231(b)(3)(iv) to increase the catch ratio to ''160 lb dressed weight of halibut for every 1,000 lb dressed weight of sablefish landed and up to 2 additional halibut in excess of the 160 lb per 1,000 lb ratio per landing.''

Washington State Recreational Management Measures

At the Council's March 2018 meeting, the Washington Department of Fish and Wildlife (WDFW) requested changes to their recreational groundfish regulations for the remainder of 2018. Specifically, WDFW proposed an increase to the canary rockfish sub-limit from one to two fish with retention allowed in all marine areas, and proposed to allow the retention of three flatfish in addition to the status quo aggregate daily groundfish limit of nine.

Increase the Canary Rockfish Sub-Limit

In June 2016, the Council recommended the Washington recreational groundfish seasons and regulations for the 2017 and 2018 fishing years. NMFS implemented the regulations through the 2017–18 harvest specifications and management measures, which permitted retention of up to one canary rockfish in Marine Areas 1 and 2 (Columbia River and south coast subareas) and prohibited canary rockfish retention in Marine Areas 3 and 4. Although the canary rockfish stock was declared rebuilt in 2017, retention had been prohibited in previous years due to poor stock condition. Because retention was previously prohibited, there has been uncertainty about angler behavior, including whether they would target canary rockfish. To address this uncertainty, the analysis for the existing landing limits assumed a high level of targeting to ensure management measures remained precautionary. The analysis projected that a two fish sub-limit in all management areas would result in between 66.1 mt and 137.1 mt of recreational canary rockfish landings, however this analysis did not consider the estimated results of the 2017 Washington recreational fishery.

The 2017 final mortality estimate for canary rockfish in the Washington recreational fishery is 4.8 mt out of a 50 mt harvest guideline for 2017 and 2018. Because 2017 landings were much lower than expected, the Council updated the initial analysis to project landings for the 2018 fishing year. The updated analysis did not assume a high level of targeting because the final 2017 estimates suggests that anglers are not actively targeting canary rockfish. The updated analysis projected canary rockfish mortality to be 5.67 mt under a one canary sub-limit and 6.22 mt under a two canary sub-limit. While the two canary rockfish limit does produce slightly higher impacts to canary rockfish than the one canary sub-limit, a difference of about 0.6 mt, the overall projected impacts of either the one- or two-fish limit are well below the 2018 harvest guideline of 50 mt.

Therefore, the Council recommended, and NMFS is amending the regulations at § 660.360(c)(1) to increase in the limit in the Washington recreational fishery from one to two canary rockfish for all marine areas.

Three Flatfish Limit

In March 2017, the Council recommended that NMFS reduce the aggregate groundfish limit from 12 to 9 fish per angler per day, and the daily rockfish sub-limit from 10 to 7 fish per angler per day, resulting in a 7 rockfish sub-limit with two additional groundfish allowed to be kept for a total of 9 fish. The rockfish sub-limit was reduced in response to lower harvest levels in 2017 and 2018, but the aggregate groundfish limit was kept at two fish above the rockfish sub-limit to minimize rockfish bycatch associated with anglers targeting other groundfish, such as lingcod. At the time, Washington did not request excluding flatfish from the aggregate groundfish

limit. Since last year, when these limits went into effect stakeholders that target flatfish reported to WDFW that they have been negatively affected by the reduction in the aggregate limit, which was not the original intent of that reduction.

In response to stakeholder input, WDFW proposed a flatfish limit of three fish per angler per day, which would be in addition to the overall aggregate groundfish limit. The groundfish aggregate limit would remain at nine fish, and the sub-limits for all species, aside from canary rockfish, would all remain unchanged. This change to include a separate flatfish limit of three fish has no impact on the rockfish population given that flatfish prefer soft sand or muddy bottom, which is not the preferred habitat of rockfish. Additionally, flatfish retention would still only be allowed under current open season dates and status quo depth restrictions. Projected impacts to flatfish are expected to be similar to final estimates in 2016 before the aggregate limit was reduced.

Therefore, the Council recommended, and NMFS is amending the regulations at § 660.360(c)(1) to implement a three flatfish limit, not to be counted against the aggregate groundfish limit of nine fish, for the 2018 Washington recreational fishing year.

California Recreational Management Measures

Similar to the canary rockfish limit off Washington, the Council analyzed the current canary rockfish sub-limit in California in the 2017–18 harvest specifications and management measures. During that process, California Department of Fish and Wildlife (CDFW) evaluated a range of sub-bag limits (one to five) for canary rockfish given the stock had recently been declared rebuilt. Much like WDFW, CDFW expressed a need for caution in determining the initial sub-bag limit for canary rockfish due to uncertainty about targeting this newly rebuilt species. Therefore, NMFS implemented a one fish sub-bag limit for California in 2017.

The 2017 canary rockfish mortality in California was lower than expected. Preliminary estimates indicate canary rockfish mortality was 77.4 mt, or 57.3 percent of the California harvest guideline of 135 mt. Seasonal catch trends for canary were similar to other rockfish, with higher catches observed in the spring and summer months when weather is more favorable. Because of the low catch in the preliminary estimates for 2017, CDFW analyzed projected impacts under a two-fish sub-bag limit for 2018, taking into account the most recent fishery performance. Under the two-fish sub-bag limit, projected canary rockfish mortality would be 110.4 mt or 81.8 percent of the 2018 harvest guideline.

Therefore, based on the new preliminary attainment information for 2017, the Council recommended and NMFS is amending the regulations at § 660.360(c)(3) to increase the California recreational canary rockfish sub-bag limit from one fish to two fish.

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures, based on the best available information, consistent with the PCGFMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

The aggregate catch data used to support these regulatory actions is available for public inspection in person at the Office of the Administrator, West Coast Region, NMFS, during normal business hours.

NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b) because notice and comment would be impracticable and contrary to the public interest. The adjustments to management measures in this document affect commercial and recreational fisheries off the coasts of Washington, Oregon and California. No aspect of this action is controversial, and changes of this nature were anticipated in the biennial harvest specifications and management measures established through a notice and comment rulemaking for 2017–18 (82 FR 9634). Accordingly, for the reasons stated below, NMFS finds good cause to waive prior notice and comment.

Increase Incidental Halibut Retention in the Limited Entry Fixed Gear Sablefish Primary Fishery

The Pacific halibut catch limit for Area 2A is large enough in 2018 to provide for incidental halibut retention, per the Pacific halibut Catch Sharing Plan for Area 2A, in the limited entry fixed gear sablefish primary fishery north of Point Chehalis. Therefore, at its March 2018 meeting, the Council recommended an increase from 140 lb (64 kg) to 160 lb (73 kg) of dressed weight halibut per 1,000 lb (454 kg) of dressed weight sablefish. The Council recommended this increased limit be implemented by April 1, 2018, the start of the limited entry fixed gear sablefish primary fishery, or as soon as possible thereafter. Therefore, there was not sufficient time after that meeting to undergo proposed and final rulemaking before this action needs to be implemented to increase Pacific halibut harvest opportunity, to allow Pacific halibut to be retained throughout the limited entry fixed gear sablefish primary season, and to achieve attainment of incidental Pacific halibut quota in this fishery given the most recent Pacific halibut catch data and the Area 2A catch limit.

Washington State Recreational Management Measures

During its March 2018 meeting, the Council recommended an increase to the Washington recreational canary rockfish sub-limit from one fish to two fish in all marine areas. The 2017–18 harvest specifications and management measures implemented precautionary landing limits just as canary rockfish was declared rebuilt. The 2017 Washington recreational fishery catch data show that only 4.8 mt of the 50 mt harvest guideline was landed. Increasing the canary rockfish sub-limit should create additional opportunity to attain the harvest guideline in 2018.

Additionally, WDFW proposed a three fish limit for flatfish that would not count towards the aggregate groundfish limit. WDFW received stakeholder input that the 2017 decrease in the aggregate rockfish limit has constrained anglers targeting flatfish. Excluding flatfish from the aggregate limit eases this constraint.

Therefore, based on the new preliminary data, the input from stakeholders who target flatfish, and the need to provide additional economic opportunities to the recreational fleet while also potentially reducing discards, there was not sufficient time after the March meeting to undergo a full proposed and final rulemaking before this action needs to be in effect. Affording the time necessary for prior notice and opportunity for public comment would prevent NMFS from managing this recreational fishery using the best available science to increase harvesting opportunities of canary rockfish and flatfish, as required by the PCGFMP and applicable law.

California State Recreational Management Measures

During the March 2018 meeting, CDFW proposed an increase to their canary rockfish sub-bag limit. The 2017–18 harvest specifications and management measures implemented precautionary landing limits just as

canary rockfish was declared rebuilt. Preliminary data from CDFW shows that 2017 recreational canary rockfish catch was low in 2017. Increasing the canary rockfish sub-limit should create additional opportunity to attain the harvest guideline in 2018.

There was not sufficient time after the March meeting to undergo proposed and final rulemaking before this action needs to be in effect. The California recreational fishery begins on April 15th. Affording NMFS the time necessary for prior notice and opportunity for the public to comment would prevent NMFS from managing the recreational fishery with the best available information to increase harvest opportunities for recreational anglers in California.

NMFS also finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(1), so that this final rule may become effective April 13, 2018. This inseason action implements a number of increases to incidental and directed landing limits based on updated fishery information and new supporting analyses provided to the Council at its March 2018 meeting. Affording the time necessary for prior notice and opportunity for public comment reduces the time these increased landing limits are available to fishing vessels during the 2018 fishing year, and delays the use of the best available information in managing the fishery.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: April 10, 2018.

Jennifer M. Wallace,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.231, revise paragraph (b)(3)(iv) to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(b) * * *

(3) * * *

(iv) *Incidental Pacific halibut retention north of Pt. Chehalis, WA (46°53.30′ N lat.).* From April 1 through October 31, vessels authorized to participate in the sablefish primary fishery, licensed by the International Pacific Halibut Commission for commercial fishing in Area 2A (waters off Washington, Oregon, California), and fishing with longline gear north of Pt. Chehalis, WA (46°53.30′ N lat.) may possess and land up to the following cumulative limits: 160 pounds (64 kg) dressed weight of Pacific halibut for every 1,000 pounds (454 kg) dressed weight of sablefish landed and up to 2 additional Pacific halibut in excess of the 160-pounds-per-1,000-pound ratio per landing. ''Dressed'' Pacific halibut in this area means halibut landed eviscerated with their heads on. Pacific halibut taken and retained in the sablefish primary fishery north of Pt. Chehalis may only be landed north of Pt. Chehalis and may not be possessed or landed south of Pt. Chehalis.

* * * * *

■ 3. In § 660.360, revise paragraphs (c)(1) introductory text, (c)(1)(ii), and (c)(3)(ii)(B) to read as follows:

§ 660.360 Recreational fishery—management measures.

* * * * *

(c) * * *

(1) *Washington.* For each person engaged in recreational fishing off the coast of Washington, the groundfish bag limit is 9 groundfish per day, including rockfish, cabezon and lingcod. Within the groundfish bag limit, there are sub-limits for rockfish, lingcod, and cabezon outlined in paragraph (c)(1)(i)(D) of this section. In addition to the groundfish bag limit of 9, there will be a flatfish limit of 3 fish, not to be counted towards the groundfish bag limit but in addition to it. The recreational groundfish fishery will open the second Saturday in March through the third Saturday in October for all species in all areas except lingcod in Marine Area 4 as described in paragraph (c)(1)(iv) of this section. In the Pacific halibut fisheries, retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register**. The following seasons, closed areas, sub-limits and size limits apply:

* * * * *

(ii) *Rockfish.* In areas of the EEZ seaward of Washington that are open to recreational groundfish fishing, there is a 7 rockfish per day bag limit. There is a 2 fish sub-bag limit per day for canary rockfish in all Marine Areas. Taking and retaining yelloweye rockfish is prohibited in all Marine areas.

* * * * *

(3) * * *

(ii) * * *

(B) *Bag limits, hook limits.* In times and areas when the recreational season for the RCG Complex is open, there is a limit of 2 hooks and 1 line when fishing for the RCG complex and lingcod. The bag limit is 10 RCG Complex fish per day coastwide. Retention of yelloweye rockfish, bronzespotted rockfish, and cowcod is prohibited. Within the 10 RCG Complex fish per day limit, no more than 3 may be black rockfish, no more than 3 may be cabezon, and no more than 2 may be canary rockfish. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

* * * * *

[FR Doc. 2018–07710 Filed 4–12–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170817779–8161–02]

RIN 0648–XG166

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 Feet (18.3 Meters) Length Overall Using Jig or Hook-and-Line Gear in the Bogoslof Pacific Cod Exemption Area in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the limit of Pacific cod for catcher vessels less than 60 feet (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 10, 2018, through 2400 hrs, A.l.t., December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery

Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.22(a)(7)(i)(C)(*2*), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that 113 metric tons of Pacific cod have been caught by catcher vessels less than 60 feet (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof exemption area described at § 679.22(a)(7)(i)(C)(*1*). Consequently, the Regional Administrator is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishery closure of Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 9, 2018.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.22 and is exempt from review under Executive Order 12866.

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

Dated: April 10, 2018.

Jennifer M. Wallace,

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

[FR Doc. 2018–07706 Filed 4–10–18; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 72
Friday, April 13, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Doc. No. AMS–NOP–14–0079; NOP–14–05]

RIN 0581–AD44

National Organic Program (NOP); Amendments to the National List of Allowed and Prohibited Substances (Crops, Livestock and Handling); Reopening of Comment Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Reopening of the public comment period.

SUMMARY: The Agricultural Marketing Service (AMS) published a proposed rule in the **Federal Register** on January 18, 2018, which describes 35 amendments to the National List of Allowed and Prohibited Substances (Crops, Livestock and Handling). The public comment period closed on March 19, 2018. This document reopens the comment period on the proposed rule for an additional 30 days. Multiple stakeholders requested that AMS extend the comment period to provide more time to develop comments on the proposed rule.

DATES: Comments must be received by May 14, 2018.

ADDRESSES: Interested parties may submit written comments on the Amendments to the National List of Allowed and Prohibited Substances (Crops, Livestock and Handling) proposed rule using one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Robert Pooler, Standards Division, National Organic Program, USDA–AMS–NOP, Room 2646–So., Ag Stop 0268, 1400 Independence Ave. SW, Washington, DC 20250–0268.

Instructions: All submissions received must include the docket number AMS–NOP–14–0079; NOP–14–05PR, and/or Regulatory Information Number (RIN) 0581–AD60 for this rulemaking. Commenters should identify the topic and section of the proposed rule to which their comment refers. All commenters should refer to the GENERAL INFORMATION section in the Notice of Proposed Rulemaking for more information on preparing your comments. All comments received will be posted without change to *http://www.regulations.gov.*

Docket: For access to the docket, including background documents and comments received, go to *http://www.regulations.gov.* Comments submitted in response to this proposed rule will also be available for viewing in person at USDA–AMS, National Organic Program, Room 2642–South Building, 1400 Independence Ave. SW, Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Robert Pooler, Standards Division. Telephone: (202) 720–3252; Fax: (202) 260–9151.

SUPPLEMENTARY INFORMATION: This document reopens the public comment period for the proposed rule published in the **Federal Register** on January 18, 2018 (83 FR 2498), Amendments to the National List of Allowed and Prohibited Substances (Crops, Livestock and Handling). In the proposed rule, AMS solicits public comments generally and requests comments on specific topics. AMS is reopening the comment period, which ended on March 19, 2018, for 30 days based on multiple stakeholder requests that AMS extend the comment period to provide more time to develop comments on the proposed rule.

AMS is proposing to amend the National List of Allowed and Prohibited Substances by: Changing the use restrictions for seventeen substances allowed for organic production or handling; adding sixteen new substances for use in organic production or handling; listing rotenone as a prohibited substance in organic crop production; and removing ivermectin as an allowed parasiticide for use in organic livestock production.

To submit comments, or access the proposed rule docket, please follow the instructions provided under the **ADDRESSES** section. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 6501–6522.

Dated: April 10, 2018.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2018–07719 Filed 4–12–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0273; Product Identifier 2018–NM–017–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD was prompted by several reports of cracks in a certain floor beam lower chord at stop fitting Number 1 of the forward airstair door cutout. This proposed AD would require repetitive inspections for any cracks 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 May 29, 2018.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room

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

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster 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–2018–0273.

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–2018–0273; 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: Galib Abumeri, Aerospace Engineer, Airframe Section, Los Angeles ACO Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5324; fax: 562–627–5210; email: *galib.abumeri@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–2018–0273; Product Identifier 2018–NM–017–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 several reports of cracks in the station (STA) 312 floor beam lower chord at stop fitting No. 1 of the forward airstair door cutout. One operator found multiple cracks in the STA 312 floor beam lower chord in the fillet radii and the two inboard attachment fasteners at stop fitting No. 1 of the forward airstair door cutout. Cracks have also been found in the STA 312 floor beam lower chord fillet radii, with no cracks in the lower chord at the two inboard attach fastener holes common to stop fitting No. 1. In addition, other airplanes have had cracks in the STA 312 floor beam lower chord, at the two inboard attach fastener holes. Cracks in the STA 312 floor beam lower chord supporting the forward airstair stop loads may lead to cracks developing in the adjacent airstair support structure. This condition, if not addressed, could result in the inability of a principal structural element to sustain limit loads and possible rapid decompression.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Requirements Bulletin 737–53A1370 RB, dated December 13, 2017. The service information describes procedures for repetitive high frequency eddy current inspections of the STA 312 floor beam lower chord, and door stop fittings No. 2, No. 5 and No. 8 on the forward airstair door for any cracks and applicable on-condition actions. 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 in Boeing Alert Requirements Bulletin 737–53A1370 RB, dated December 13, 2017, 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–2018–0273.

Explanation of Requirements Bulletin

The FAA worked in conjunction with industry, under the Airworthiness Directives Implementation Aviation Rulemaking Committee (AD ARC), to enhance the AD system. One enhancement is a process for annotating which steps in the service information are ''required for compliance'' (RC) with an AD. Boeing has implemented this RC concept into Boeing service bulletins.

In an effort to further improve the quality of ADs and AD-related Boeing service information, a joint process improvement initiative was worked between the FAA and Boeing. The initiative resulted in the development of a new process in which the service information more clearly identifies the actions needed to address the unsafe condition in the ''Accomplishment Instructions.'' The new process results in a Boeing Requirements Bulletin, which contains only the actions needed to address the unsafe condition (*i.e.,* only the RC actions).

Costs of Compliance

We estimate that this proposed AD affects 67 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	Up to 11 work-hours × $85 per hour = $935 per inspection cycle.	$0	Up to $935 per inspection cycle ...	Up to $62,645 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

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 and associated appliances 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–2018–0273; Product Identifier 2018–NM–017–AD.

(a) Comments Due Date

We must receive comments by May 29, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes with a forward airstair door installed, certificated in any category, as identified in Boeing Alert Requirements Bulletin 737–53A1370 RB, dated December 13, 2017.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors; 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by several reports of cracks in the station (STA) 312 floor beam lower chord at stop fitting No. 1 of the forward airstair door cutout. We are issuing this AD to address such cracking, which could result in the inability of a principal structural element to sustain limit loads and possible rapid decompression.

(f) Compliance

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

(g) Required Actions

(1) For airplanes identified as Group 1 in Boeing Alert Requirements Bulletin 737–53A1370 RB, dated December 13, 2017: Within 120 days after the effective date of this AD, inspect the STA 312 floor beam lower chord and door stop fittings No. 2, No. 5 and No. 8 for any cracks and do applicable on-condition actions, using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(2) Except as required by paragraph (h) of this AD: For airplanes identified as Group 2 in Boeing Alert Requirements Bulletin 737–53A1370 RB, dated December 13, 2017, at the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–53A1370 RB, dated December 13, 2017, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–53A1370 RB, dated December 13, 2017.

Note 1 to paragraph (g)(2) of this AD: Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–53A1370, dated December 13, 2017, which is referred to in Boeing Alert Requirements Bulletin 737–53A1370 RB, dated December 13, 2017.

(h) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Requirements Bulletin 737–53A1370 RB, dated December 13, 2017, uses the phrase ''the original issue date of Requirements Bulletin 737–53A1370 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 737–53A1370 RB, dated December 13, 2017, specifies contacting Boeing, this AD requires repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles 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)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-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, Los Angeles ACO Branch, 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.

(j) Related Information

(1) For more information about this AD, contact Galib Abumeri, Aerospace Engineer, Airframe Section, Los Angeles ACO Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5324; fax: 562–627–5210; email: *galib.abumeri@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster 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 March 29, 2018.

Chris Spangenberg,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–07632 Filed 4–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0274; Product Identifier 2017–NM–128–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., 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 Bombardier, Inc., Model BD–100–1A10 airplanes. This proposed AD was prompted by reports of fire incidents of the auxiliary power unit (APU) inlet, which caused tail cone damage after an initial failed APU start followed by two or more in-flight APU start attempts. This proposed AD would require modification of the APU electronic control unit (ECU) wiring harness. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by May 29, 2018.

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

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

For service information identified in this NPRM, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th Street, 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–2018–0274; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7301; fax 516–794–5531.

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–2018–0274; Product Identifier 2017–NM–128–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2017–26, dated July 31, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model BD–100–1A10 airplanes. The MCAI states:

> APU inlet fire incidents causing tail cone damage have been reported after an initial failed APU start followed by two or more in-flight APU start attempts. Bombardier Inc. (BA) has determined that the in-flight negative pressure differential at the APU inlet allows flash fires of residual fuel in the APU combustor to exit through the APU inlet.
>
> As an interim mitigating action, BA has revised the affected aeroplane Aircraft Flight Manual (AFM) procedure for in-flight APU start to limit the number of APU start attempts.
>
> To further address the safety concerns associated with in-flight APU inlet fire, BA is introducing a modification to the APU Electronic Control Unit (ECU) wiring harness that will prevent a second attempt to start the APU following a failed start in flight. This [Canadian] AD is issued to mandate compliance with BA Service Bulletin (SB) 100–49–04 or SB 350–49–001, as applicable, on affected aeroplanes.

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–2018–0274.

Related Service Information Under 1 CFR Part 51

Bombardier, Inc., has issued Service Bulletin 100–49–04, dated March 29, 2017; and Service Bulletin 350–49–001, dated March 29, 2017. This service information describes a modification of the APU ECU harness. These documents are distinct since they apply to different airplane models in different configurations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 198 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
Modification	3 work-hours × $85 per hour = $255	$120	$375	$74,250

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):

Bombardier, Inc.: Docket No. FAA–2018–0274; Product Identifier 2017–NM–128–AD.

(a) Comments Due Date

We must receive comments by May 29, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–100–1A10 airplanes, certificated in any category, serial numbers (S/Ns) 20003 through 20500 inclusive and 20501 through 20696 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 49, Airborne auxiliary power.

(e) Reason

This AD was prompted by reports of fire incidents of the auxiliary power unit (APU) inlet, which caused tail cone damage after an initial failed APU start followed by two or more in-flight APU start attempts. We are issuing this AD to prevent failure of the APU inlet, which could result in fire during flight.

(f) Compliance

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

(g) Modification

Within 30 months after the effective date of this AD: Modify the APU electronic control unit wiring harness, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–49–04, dated March 29, 2017 (for S/N 20003 to 20500 inclusive); or Bombardier Service Bulletin 350–49–001, dated March 29, 2017 (for S/N 20501 to 20696 inclusive).

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York 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 ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2017–26, dated July 31, 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–2018–0274.

(2) For more information about this AD, contact Assata Dessaline, Aerospace Engineer, Avionics and Administrative Services Section, FAA, New York ACO

Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7301; fax 516–794–5531.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on March 29, 2018.

Chris Spangenberg,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–07633 Filed 4–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0275; Product Identifier 2018–NM–011–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., 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 Bombardier, Inc., Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes; Model CL–600–2D15 (Regional Jet Series 705) airplanes; Model CL–600–2D24 (Regional Jet Series 900) airplanes; and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by reports indicating that corrosion was found on the main landing gear (MLG) retraction actuator brackets and their associated pins. This proposed AD would require an inspection of the retraction actuator brackets, their associated pins and hardware, and the mating lugs on the MLG outer cylinder for any corrosion, and replacement 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 May 29, 2018.

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

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

For service information identified in this NPRM, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com*; internet *http://www.bombardier.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–2018–0275; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dorie Resnik, Aerospace Engineer, Aviation Safety Section AIR–7B1, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; telephone 781–238–7693.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0275; Product Identifier 2018–NM–011–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2017–34, dated October 19, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes; Model CL–600–2D15 (Regional Jet Series 705) airplanes; Model CL–600–2D24 (Regional Jet Series 900) airplanes; and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. The MCAI states:

> There have been in-service reports of corrosion on the main landing gear (MLG) retraction actuator bracket and its associated pins. Bombardier's investigation determined that the corrosion is the consequence of inadequate corrosion protection being applied during production. Undetected corrosion on the MLG retraction actuator bracket and its associated pins could result in a MLG collapse.
>
> This [Canadian] AD mandates the inspection of the MLG retraction actuator bracket, its associated pins and hardware, and the mating lugs on the MLG outer cylinder for corrosion. This [Canadian] AD also mandates the replacement of corroded MLG parts and the application of corrosion protection in order to mitigate the risk of MLG collapse.

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–2018–0275.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 670BA–32–060, Revision B, dated November 10, 2017. The service information describes a detailed visual inspection of the retraction actuator brackets, their associated pins and hardware, and the mating lugs on the MLG outer cylinder for any corrosion, and replacement if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 541 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	16 work-hours × $85 per hour = $1,360	$0	$1,360	$735,760

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed 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
Replacement	1 work-hour × $85 per hour = $85	Up to $75,790	Up to $75,875.

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):

Bombardier, Inc.: Docket No. FAA–2018–0275; Product Identifier 2018–NM–011–AD.

(a) Comments Due Date

We must receive comments by May 29, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10002 and subsequent.

(2) Model CL–600–2D15 (Regional Jet Series 705) airplanes and Model CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 and subsequent.

(3) Model CL–600–2E25 (Regional Jet Series 1000) airplanes, serial numbers 19001 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by reports indicating that corrosion was found on the main landing gear (MLG) retraction actuator brackets and their associated pins. We are issuing this AD to address undetected corrosion on the MLG retraction actuator brackets and their associated pins, which could lead to a MLG collapse.

(f) Compliance

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

(g) Inspection and Replacement

For any MLG dressed shock strut assembly with part numbers and serial numbers specified in paragraph 1.A., ''Effectivity,'' of Bombardier Service Bulletin 670BA–32–060, Revision B, dated November 10, 2017, at the applicable compliance times specified in paragraphs (g)(1), (g)(2), or (g)(3) of this AD, do a detailed visual inspection of the retraction actuator brackets, their associated pins and hardware, and the mating lugs on the MLG outer cylinder for any corrosion, and do all applicable replacements, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–060, Revision B, dated November 10, 2017. Do all applicable replacements before further flight.

(1) For any MLG dressed shock strut assembly that has accumulated less than 10,000 total flight hours on the MLG dressed shock strut assembly and has been in service for less than 60 months since its first installation on an airplane: Within 6,600 flight hours or 39 months, whichever occurs first, after the effective date of this AD.

(2) For any MLG dressed shock strut assembly that has accumulated less than or equal to 14,000 total flight hours on the MLG dressed shock strut assembly, and has been in service for less than 84 months since its first installation on an airplane, and does not meet the criteria in paragraph (g)(1) of this AD: Within 4,400 flight hours or 26 months, whichever occurs first, after the effective date of this AD, but not to exceed 16,600 total flight hours on the MLG dressed shock strut assembly or 99 months since its first installation on an airplane, whichever occurs first.

(3) For any MLG dressed shock strut assembly that has accumulated more than 14,000 total flight hours on the MLG dressed shock strut assembly or 84 months or more since its first installation on an airplane: Within 2,600 flight hours or 15 months, whichever occurs first, after the effective date of this AD.

(h) Parts Exempted From This AD

For any MLG dressed shock strut assembly with part numbers and serial numbers specified in paragraph 1.A., ''Effectivity,'' of Bombardier Service Bulletin 670BA–32–060, Revision B, dated November 10, 2017: The actions specified in paragraph (g) of this AD are not required provided that the actions in paragraphs (h)(1), (h)(2), or (h)(3) of this AD have been done.

(1) The actions in paragraphs (h)(1)(i), (h)(1)(ii), (h)(1)(iii), and (h)(1)(iv) of this AD, as applicable, have been done on the MLG dressed shock strut assembly since its entry-into-service date.

(i) Airplane maintenance manual (AMM) Task 32–32–05–400–803, Installation of the Outboard MLG Retraction Actuator Bracket Pin, or equivalent task in component maintenance manual (CMM) 32–11–05 (for Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes), or CMM 32–11–06 (for Model CL–600–2D15 (Regional Jet Series 705) airplanes and Model CL–600–2D24 (Regional Jet Series 900) airplanes), or CMM 32–11–34 (for Model CL–600–2E25 (Regional Jet Series 1000) airplanes); and

(ii) AMM Task 32–32–05–400–804, Installation of the Inboard MLG Retraction-Actuator Bracket Pin, or equivalent task in CMM 32–11–05 (for Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes), or CMM 32–11–06 (for Model CL–600–2D15 (Regional Jet Series 705) airplanes and Model CL–600–2D24 (Regional Jet Series 900) airplanes), or CMM 32–11–34 (for Model CL–600–2E25 (Regional Jet Series 1000) airplanes); and

(iii) AMM Task 32–32–05–400–805, Installation of the Inboard-MLG Retraction-Actuator Pin, or AMM Task 32–32–05–400–801, Installation of the MLG Retraction-Actuator, or AMM Task 32–11–05–400–801, Installation of the MLG Shock-Strut Assembly; and

(iv) For Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes equipped with MLG auxiliary actuators: AMM Task 32–32–03–400–801, Installation of the MLG Auxiliary Actuator, or AMM Task 32–11–05–400–801, Installation of the MLG Shock-Strut Assembly.

(2) AMM Task 32–32–05–400–806, Installation of the MLG Retraction-Actuator Bracket has been accomplished on the MLG dressed shock strut assembly since its entry-into-service date.

(3) AMM-Tasks 32–11–00–610–801 Restoration (Overhaul) of the MLG Assembly has been accomplished since its entry into service date.

(i) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 670BA–32–060, dated May 2, 2017, or Bombardier Service Bulletin 670BA–32–060, Revision A, dated June 22, 2017.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York 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 ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2017–34, dated October 19, 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–2018–0275.

(2) For more information about this AD, contact Dorie Resnik, Aerospace Engineer, Aviation Safety Section AIR–7B1, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; telephone 781–238–7693.

(3) For information about AMOCs, contact Aziz Ahmed, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7329; fax 516–794–5531.

(4) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com*; internet *http://www.bombardier.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 March 29, 2018.

Chris Spangenberg,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–07631 Filed 4–12–18; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2018–0111; FRL–9976–03—Region 6]

Approval and Promulgation of Implementation Plans; Louisiana; 2008 8-Hour Ozone Maintenance Plan Revision for Baton Rouge

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve a State

Implementation Plan (SIP) revision submitted by the State of Louisiana on January 31, 2018, revising the 2008 8-hour ozone maintenance plan and requesting a relaxation of the Federal Reid Vapor Pressure (RVP) requirements for the five-parish Baton Rouge area. EPA is proposing to determine that the relaxation of the RVP requirement would not interfere with attainment or maintenance of the NAAQS or with any other CAA requirement.

DATES: Written comments must be received on or before May 14, 2018.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2018–0111, at *http://www.regulations.gov* or via email *jacques.wendy@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Ms. Wendy Jacques, (214) 665–7395, *jacques.wendy@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Jacques, (214) 665–7395, *jacques.wendy@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Ms. Wendy Jacques or Mr. Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

A. The Baton Rouge Area and Requirements for Low RVP Gasoline

In 2008 we revised the 8-hour ozone NAAQS from 0.08 part per million (ppm) to 0.075 ppm. (73 FR 16436, March 27, 2008.) The Baton Rouge area, consisting of five parishes (Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge), was designated nonattainment for the 2008 ozone NAAQS (77 FR 30088, May 21, 2012). In 2016 we approved a SIP revision to provide for maintenance of the NAAQS in the area (maintenance plan) and redesignated the area to attainment (81 FR 95051, December 27, 2016). Among the air pollution controls included in the maintenance plan was the continued use of low RVP gasoline in the area.

On April 19, 1987 (52 FR 31274), EPA determined that gasoline nationwide was becoming increasingly volatile, causing an increase in evaporative emissions from gasoline-powered vehicles and equipment. Under CAA section 211(c), EPA promulgated regulations on March 22, 1989 (54 FR 11868) that set maximum limits for the RVP of gasoline sold during the regulatory control periods that were established on a state-by-state basis in the final rule. On June 11, 1990 (55 FR 23658), EPA promulgated more stringent volatility controls establishing maximum RVP standards of 9.0 pounds per square inch (psi) or 7.8 psi (depending on the state, the month, and the area's initial ozone attainment designation with respect to the 1-hour ozone NAAQS).

B. Revision to the Baton Rouge Area Maintenance Plan for the 2008 Ozone NAAQS

The December 12, 1991 (56 FR 64704), Phase II rulemaking explains that EPA believes that relaxation of an applicable RVP standard is best accomplished in conjunction with the redesignation process. In order for an ozone nonattainment area to be redesignated as an attainment area, section 107(d)(3) of the Act requires the state to make a showing, pursuant to section 175A of the Act, that the area is capable of maintaining attainment for the ozone NAAQS for ten years after redesignation. Depending on the area's circumstances, this maintenance plan will either demonstrate that the area is capable of maintaining attainment for ten years without the more stringent volatility standard or that the more stringent volatility standard may be necessary for the area to maintain its attainment with the ozone NAAQS. Therefore, in the context of a request for redesignation, EPA will not relax the volatility standard unless the state requests a relaxation and the maintenance plan demonstrates, to the satisfaction of EPA, that the area will maintain attainment for ten years without the need for the more stringent volatility standard.

Louisiana did not request relaxation of the applicable 7.8 psi federal RVP standard when the Baton Rouge area was initially redesignated to attainment for the 2008 8-hour ozone NAAQS. Louisiana is now requesting that EPA relax the federal 7.8 psi RVP requirement for the Baton Rouge area by approving its revised maintenance plan that includes modeling demonstrating the continuous attainment of the 2008 8-hour ozone NAAQS without the RVP requirement.

II. The EPA's Evaluation

A. Demonstration That the 2008 Ozone NAAQS Will Continue To Be Maintained in the Baton Rouge Area

On January 31, 2018, Louisiana submitted a SIP revision making changes to the maintenance plan for the Baton Rouge area. This revision demonstrates that the relaxation of the 7.8 psi federal RVP requirement would have no impact on maintaining the 2008 8-hour NAAQS. Louisiana's analysis utilized EPA's 2014 Motor Vehicle Emissions Simulator (MOVES2014a) emission modeling system to project revised on-road and non-road mobile source emission inventories for the 2011 base year and future years 2022 and 2027.

Table 1 below is a comparison of daily nitrogen oxide (NO_X) and volatile organic compounds (VOC) emissions in 2011, 2022, and 2027 for on-road, non-road, point, and non-point sectors of the five parish Baton Rouge area. Relative changes are shown for the Maintenance Plan (MP) Inventory from 2011 to 2022 and 2027, the updated inventory (UI) and the relaxed 9.0 psi RVP scenario inventory for the same years.

TABLE 1—COMPARISON OF DAILY NO_X AND VOC EMISSIONS, TONS PER DAY (tpd) IN 2011, 2022, AND 2027

	2011		2022			2027		
	MP	UI/7.8	MP	UI/7.8	UI/9.0	MP	UI/7.8	UI/9.0
NO_X:								
On-road +	38.4	37.5	14.4	10.8	10.8	11.0	6.8	6.8
Non-road +	27.3	28.1	12.6	18.5	18.5	15.2	15.3	15.3
Nonpoint *	17.1	17.1	17.9	17.9	17.9	17.9	17.9	17.9
Point *	74.2	74.2	74.2	74.2	74.2	74.2	74.2	74.2
Total	157.0	156.9	119.1	121.3	121.4	118.3	114.2	114.2
% Difference from 2011	.....	.....	−24.1%	−22.7%	−22.7%	−24.6%	−27.2%	−27.2%
VOC:								
On-road +	19.2	19.0	13.0	10.3	10.5	11.4	7.9	8.1
Non-road +	8.7	10.3	6.5	6.3	6.6	6.1	6.1	6.4
Nonpoint *	82.6	82.6	90.5	90.5	90.5	92.7	92.7	92.7
Point *	33.6	33.6	33.6	33.6	33.6	33.6	33.6	33.6
Total	144.1	145.5	143.6	140.7	141.2	143.8	140.3	140.8
% Difference from 2011	.....	.....	−0.3%	−3.3%	−2.9%	−0.2%	−3.5%	−3.2%

* Average annual day emissions from the Maintenance Plan.
+ Average August day emissions estimated with MOVES; average annual day emissions for non-road ALM and 2011 NEIv2.

Louisiana's analysis shows consistent decreases in the Maintenance Plan inventory from 2011 to both future years for NO_X and VOC. The updated NO_X inventory shows a smaller 2011–2022 reduction of 23 percent, but a larger 2011–2027 reduction of 27 percent than the Maintenance Plan inventory. The updated VOC inventory shows a larger reduction of 3.3–3.5 percent for 2022 and 2027 years than the existing Maintenance Plan inventory. The 9.0 psi RVP scenarios in 2022 and 2027 indicate no change in NO_X and only a small change of 0.2–0.3 percent increase in VOC.

B. Demonstration That Motor Vehicle Emissions Budgets (MVEBs) Are Approvable

The maintenance plan creates MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEB is the amount of emissions allowed in the State Implementation Plan (SIP) for on-road motor vehicles; it establishes an emissions ceiling for the regional transportation network. The previously approved Maintenance Plan established MVEBs for the Baton Rouge area for the years 2022 and 2027. Using the MOVES2014a model and evaluating the 9.0 psi RVP scenarios in 2022 and 2027, the average daily on-road NO_X and VOC tpd emissions are less than the previously approved budgets. Table 2 below is a comparison of these on-road emissions projections.

TABLE 2—COMPARISON OF BATON ROUGE ON-ROAD EMISSIONS

[tpd]

Year	2022		2027	
	7.8	UI/9.0	7.8	UI/9.0
NO_X	*14.37	10.78	*10.95	6.79
VOC	*13.19	10.52	*11.55	8.09

* MVEBs approved 12/27/2016 (81 FR 95051).

The Transportation Conformity Rule at 40 CFR 93.101 defines a ''safety margin'' as an amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance. This would represent emission reductions of a given pollutant in the SIP beyond those needed to demonstrate maintenance. The available safety margin, once quantified, may be allocated towards projected on-road emissions to establish MVEBs for purposes of conformity. The State has demonstrated that the total revised NO_X and VOC emissions in 2022 and 2027 are less than those emissions in the 2011 base year, and has quantified the total available safety margin for each pollutant. The calculated safety margin amounts are as follows: NO_X 35.5 tpd/VOC 4.3 tpd for 2022 and NO_X 42.7 tpd/VOC 4.7 tpd for 2027. Table 3 below summarizes the average daily on-road NO_X and VOC emissions added to the revised 2022 and 2027 on-road inventories to result in the MVEB levels recommended.

TABLE 3—SAFETY MARGIN ALLOCATION

	2022	2027
	UI/9.0 RVP	UI/9.0 RVP
NO_X:		
On-road (tpd)	10.8	6.8

TABLE 3—SAFETY MARGIN ALLOCATION—Continued

	2022	2027
	UI/9.0 RVP	UI/9.0 RVP
Allocated safety margin (tpd)	3.57	4.15
MVEB (tpd)	14.37	10.95
VOC:		
On-road (tpd)	10.5	8.1
Allocated safety margin (tpd)	2.69	3.45
MVEB (tpd)	13.19	11.55

C. Demonstration That the SIP Revision Will Not Interfere With Any Other Clean Air Act Requirement

To support Louisiana's request to relax the federal RVP requirement in the Baton Rouge area, the state must demonstrate that the requested change will satisfy section 110(l) of the CAA. Section 110(l) requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act. EPA's criterion for determining the approvability of the SIP revision is whether the noninterference demonstration associated with the relaxation request satisfies section 110(l). The modeling associated with Louisiana's previously approved maintenance plan for the 2008 8-hour ozone NAAQS is premised upon the 7.8 psi RVP requirements. The revised maintenance plan is based on allowing a relaxed requirement of 9.0 psi RVP. EPA is proposing approval of the revised maintenance plan based on information provided in the revised maintenance plan, modeling results and an evaluation of quality assured air monitoring data previously reviewed as part of the Baton Rouge Nonattainment Area 2008 8-hour Ozone NAAQS Redesignation rulemaking (81 FR 95051, December 27, 2016).

The relaxation of the RVP requirement would not impact emission levels of any pollutant except VOCs which indirectly could impact ozone levels. The updated inventory presented in Table 1 shows that emissions for NO_X and VOC in 2022 and 2027 remain well below the levels of those emissions in 2011 of the approved maintenance plan. Because future emissions are well below the level of emissions that provided for attainment of the 2008 ozone standard, the revised plan continues to provide for maintenance of that standard. Point source and non-point source emissions remain unchanged in the revised demonstration. On-road emission results show that there is virtually no change in the amount of expected NO_X emission reductions in 2022 and 2027 from 2011. Emissions projection modeling indicate a small increase in projected VOC emissions in on-road and nonroad categories due to the higher gasoline RVP and the elimination of Stage II vapor recovery (82 FR 14822). Table 1 shows that the change will result in a less than 1% change in projected area VOC emissions. Due to the Baton Rouge area being NO_X limited, the rate of ozone formation is limited by the amount of NO_X present rather than the amount of VOCs present, it is reasonable to conclude that this small VOC increase should not contribute to additional ozone formation. Therefore, we find that this revision will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act.

III. Proposed Action

We are proposing to approve a revision to the Louisiana SIP that would modify the Baton Rouge area maintenance plan for the 2008 8-hour ozone NAAQS which demonstrates that relaxing the federal RVP requirements for gasoline in the Baton Rouge area would not interfere with the area's maintenance of the 2008 8-hour ozone NAAQS or any applicable requirement of the CAA. We are also proposing to approve the 2022 and 2027 MVEBs included in this maintenance plan revision. The Agency will respond to Louisiana's request to relax the federal RVP requirements for gasoline in the Baton Rouge area in a separate rulemaking.

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 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive 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 proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: April 3, 2018.

Anne Idsal,

Regional Administrator, Region 6.

[FR Doc. 2018–07678 Filed 4–12–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2018–0077; FRL–9976–77—Region 4]

Air Plan Approval and Air Quality Designation; AL; Redesignation of the Pike County Lead Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On January 3, 2018, the State of Alabama, through the Alabama Department of Environmental Management (ADEM), submitted a request for the Environmental Protection Agency (EPA) to redesignate the Troy 2008 lead Nonattainment Area (''Troy Area'' or ''Area'') to attainment for the 2008 lead (Pb) National Ambient Air Quality Standards (NAAQS or standard) and to approve an associated State Implementation Plan (SIP) revision containing a maintenance plan. The Troy Area is comprised of a portion of Pike County in Alabama surrounding the Sanders Lead Company facility (Sanders Lead Facility or Facility). EPA is proposing to determine that the Troy Area is attaining 2008 lead NAAQS; to approve the SIP revision containing the State's maintenance plan for maintaining attainment of the 2008 lead standard; and to redesignate the Troy Area to attainment for the 2008 lead NAAQS.

DATES: Comments must be received on or before May 14, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No EPA–R04–OAR–2018–0077 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ashten Bailey of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Bailey may be reached by phone at (404) 562–9164 or via electronic mail at *bailey.ashten@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What are the actions EPA is proposing to take?

EPA is proposing to take the following three separate but related actions: (1) To determine that the Troy Area is attaining the 2008 lead NAAQS; (2) to approve Alabama's maintenance plan for maintaining the 2008 lead NAAQS in the Area and incorporate the plan into the SIP; and (3) to redesignate the Area to attainment. The Troy Area is comprised of the portion of Pike County, Alabama, bounded by a 0.8 mile radius from a center point at latitude 31.78627106 North and longitude 85.97862228 West, which fully includes the Sanders Lead Facility.

EPA is making the preliminarily determination that the Troy Area is attaining the 2008 lead NAAQS based on recent air quality data, and proposing to approve Alabama's maintenance plan for the Troy Area as meeting the requirements of section 175A (such approval being one of the Clean Air Act (CAA or Act) criteria for redesignation to attainment status). The maintenance plan is designed to keep the Troy Area in attainment of the 2008 lead NAAQS through 2028. As explained in Section V, below, EPA is also proposing to determine that attainment can be maintained through 2028.

EPA is further proposing to determine that the Troy Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. Accordingly, in this action, EPA is proposing to approve a request to change the legal designation of the Troy Area from nonattainment to attainment for the 2008 lead NAAQS.

In summary, this notice of proposed rulemaking is in response to Alabama's January 3, 2018, redesignation request and associated SIP submission that addresses the specific issues summarized above and the necessary elements described in section 107(d)(3)(E) of the CAA for redesignation of the Troy Area to attainment for the 2008 lead NAAQS.

II. What is the background for EPA's proposed actions?

On November 12, 2008 (73 FR 66964), EPA promulgated a revised primary and secondary lead NAAQS of 0.15 micrograms per cubic meter ($\mu g/m^3$). Under EPA's regulations at 40 CFR part 50, the 2008 lead NAAQS are met when the maximum arithmetic 3-month mean concentration for a 3-year period, as determined in accordance with Appendix R of 40 CFR part 50, is less than or equal to 0.15 $\mu g/m^3$. *See* 40 CFR 50.16. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement.

EPA designated the Troy Area as a nonattainment area for the 2008 lead NAAQS on November 22, 2010 (75 FR 71033), effective December 31, 2010, using 2007–2009 ambient air quality data. This established an attainment date five years after the December 31, 2010, effective date for the 2008 lead nonattainment designations pursuant to CAA section 172(a)(2)(A). Therefore, the Troy Area's attainment date was December 31, 2015.

EPA's 2008 lead nonattainment designation for the Area triggered an obligation for Alabama to develop a nonattainment SIP revision addressing certain CAA requirements under title I, part D, subpart 1 (hereinafter ''Subpart 1'') and to submit that SIP revision in accordance with the deadlines in title I, part D, subpart 5 (hereinafter ''Subpart 5''). Subpart 1 contains the general requirements for nonattainment areas for criteria pollutants, including requirements to develop a SIP that provides for the implementation of reasonably available control measures

(RACM), requires reasonable further progress (RFP), includes base-year and attainment-year emissions inventories, and provides for the implementation of contingency measures. On January 28, 2014 (79 FR 4407), EPA published a final rule that approved a SIP revision, comprised of an attainment plan, based on Alabama's attainment demonstration for the Troy Area that included the base year emissions inventory requirements, RACM requirements that include reasonably available control technology (RACT), RFP plan, modeling demonstration of lead attainment, and contingency measures for the Troy Area.

III. What are the criteria for redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereinafter referred to as the ''Calcagni Memorandum'');
2. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and
3. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994.

IV. Why is EPA proposing these actions?

On January 3, 2018, Alabama requested that EPA redesignate the Troy Area to attainment for the 2008 lead NAAQS and submitted an associated SIP revision containing a maintenance plan. EPA's evaluation indicates that the Troy Area is attaining the 2008 lead NAAQS and the Troy Area meets the requirements for redesignation as set forth in section 107(d)(3)(E)(i), including the maintenance plan requirements under section 175A of the CAA. As a result, EPA is proposing to take the three related actions summarized in section I of this notice.

V. What is EPA's analysis of the State's redesignation request and SIP revision?

As stated above, in accordance with the CAA, EPA proposes in this action to: (1) Determine that the Troy Area is attaining the 2008 lead NAAQS; (2) approve the 2008 lead NAAQS maintenance plan for the Area and incorporate the plan into the SIP; and (3) redesignate the Area to attainment for the 2008 lead NAAQS.

A. Redesignation Request and Maintenance Demonstration

The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater detail for the Area in the following paragraphs of this section.

Criteria (1)—The Troy Area Has Attained the 2008 Lead NAAQS

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS. *See* CAA section 107(d)(3)(E)(i). For lead, an area may be considered to be attaining the 2008 lead NAAQS if it meets the 2008 lead NAAQS, as determined in accordance with 40 CFR 50.16 and Appendix R of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain the NAAQS, the maximum arithmetic 3-month mean lead concentration for a 3-year period must not exceed 0.15 μg/m^3 at any monitor within the area. The data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

Monitoring data for the Area shows that the 2008 lead NAAQS was attained. As demonstrated in Table 1, below, the 2014–2016 design value for the area was 0.09 μg/m^3, well below the 2008 lead standard of 0.15 μg/m^3.

TABLE 1—2014–2016 DESIGN VALUE CONCENTRATIONS FOR THE TROY AREA

[μg/m^3] [1]

Monitoring station	2014 annual maximum rolling three month average	2015 annual maximum rolling three month average	2016 annual maximum rolling three month average	Design value
01–109–0003	0.08	0.07	0.09	0.09

Although 2014–2016 data are the most recent quality-assured and certified data, preliminary 2017 data indicate that the Area continues to attain the standard.[2] In this proposed action, EPA is proposing to determine that the Troy Area is attaining the 2008 lead NAAQS. If the Area does not continue to attain the standard before EPA finalizes the redesignation, EPA will not go forward with the redesignation. As discussed in more detail below, Alabama has committed to continue monitoring ambient air lead concentrations in this Area in accordance with 40 CFR part 58.

[1] Air quality design values for all criteria air pollutants are available at: *https://www.epa.gov/air-trends/air-quality-design-values.*

[2] Preliminary 2017 data is available at *https://www.epa.gov/outdoor-air-quality-data/monitor-values-report;* 2017 data will not be certified until May of 2018.

Criteria (2)—Alabama Has a Fully Approved SIP Under Section 110(k) for the Troy Area; and Criteria (5)—Alabama Has Met All Applicable Requirements Under Section 110 and Part D of Title I of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA proposes to find that Alabama has met all applicable SIP requirements for the Troy Area under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, EPA proposes to find that Alabama has met all applicable SIP requirements for purposes of redesignation under part D of title I of the CAA in accordance with section 107(d)(3)(E)(v) and that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under section 110(k). SIPs must be fully approved only with respect to requirements that were applicable prior to submittal of the complete redesignation request.

a. The Troy Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

General SIP requirements. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants. The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, EPA believes that other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.,* for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 2008); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001). Nonetheless, EPA has approved Alabama's SIP revision related to the section 110 requirements for the 2008 lead NAAQS, with the exception of the state board requirements under 110(a)(2)(E)(ii).[3] *See* 80 FR 61111 (October 9, 2015) and 80 FR 14019 (March 18, 2015).

[3] Although not required for redesignation as discussed above, EPA notes that a proposed approval of the section 110(a)(2)(E)(ii) CAA infrastructure requirements applicable to state boards was published on February 8, 2018. *See* 83 FR 5594.

Title I, Part D, applicable SIP requirements. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. All areas that were designated nonattainment for the 2008 lead NAAQS were designated under Subpart 1 in accordance with the deadlines in Subpart 5. For purposes of evaluating this redesignation request, the applicable Subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9) and in section 176. A thorough discussion of the requirements contained in sections 172 and 176 can be found in the General Preamble for Implementation of title I. *See* 57 FR 13498 (April 16, 1992).

Subpart 1 Section 172 Requirements. Section 172 requires states with nonattainment areas to submit attainment plans providing for timely attainment and meeting a variety of other requirements. EPA's longstanding interpretation of the nonattainment planning requirements of section 172 is that once an area is attaining the NAAQS, those requirements are not ''applicable'' for purposes of CAA section 107(d)(3)(E)(ii) and therefore need not be approved into the SIP before EPA can redesignate the area. In the 1992 General Preamble for Implementation of Title I, EPA set forth its interpretation of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard. *See* 57 FR 13498, 13564 (April 16, 1992). EPA noted that the requirements for RFP and other measures designed to provide for attainment do not apply in evaluating redesignation requests because those nonattainment planning requirements ''have no meaning'' for an area that has already attained the standard. *Id.* This interpretation was also set forth in the Calcagni Memorandum. EPA's understanding of section 172 also forms the basis of its Clean Data Policy, which suspends a state's obligation to submit most of the attainment planning requirements that would otherwise apply, including an attainment demonstration and planning SIPs to provide for RFP, RACM, and contingency measures under section 172(c)(9).

As noted above, EPA already approved Alabama's attainment plan for the Area. *See* 79 FR 4407 (January 28, 2014). Among other things, the approved attainment plan satisfied the section 172(c)(1) requirements for RACM; 172(c)(2) requirements related to RFP; 172(c)(3) requirements for an emissions inventory; 172(c)(6)

requirements for enforceable control measures to provide for attainment by the attainment date; and 172(c)(9) requirements for contingency measures.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. Alabama currently has a fully-approved part D NSR program in place. However, EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Alabama has demonstrated that the Area will be able to maintain the NAAQS without part D NSR in effect, and therefore Alabama need not have fully approved part D NSR programs prior to approval of the redesignation request. Alabama's PSD program will become effective in the Area upon redesignation to attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, EPA believes that the Alabama SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Section 172(c)(8) allows a state to use equivalent modeling, emission inventory, and planning procedures if such use is requested by the state and approved by EPA. Alabama has not requested the use of equivalent techniques under section 172(c)(8).

Section 176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability that EPA promulgated pursuant to its authority under the CAA. In light of the elimination of lead additives in gasoline, transportation conformity does not apply to the lead NAAQS. *See* 73 FR 66964 (November 12, 2008).

b. The Troy Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Alabama SIP for the Troy Area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (*see* Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall,* 265 F.3d 426) plus any additional measures it may approve in conjunction with a redesignation action. *See* 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, Alabama has adopted and submitted, and EPA has fully approved at various times, provisions addressing various SIP elements applicable for the 2008 lead NAAQS in the Troy Area. *See* 80 FR 61111 (October 9, 2015); 80 FR 14019 (March 18, 2015); and 79 FR 4407 (January 28, 2014).

As indicated above, EPA believes that the section 110 elements that are neither connected with nonattainment plan submissions nor linked to an area's nonattainment status are not applicable requirements for purposes of redesignation.

Criteria (3)—The Air Quality Improvement in the Troy Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable Federal air pollution control regulations, and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). EPA has preliminarily determined that Alabama has demonstrated that the observed air quality improvement in the Troy Area is due to permanent and enforceable reductions in emissions.

When EPA designated the Troy Area as a nonattainment for the lead NAAQS, EPA determined that operations at the Sanders Lead Facility were the primary cause of the 2008 lead NAAQS violation in the Area.[4] In 2012, the State submitted an attainment plan that contained lead controls needed to attain the NAAQS to satisfy the section 172(c)(1) RACM requirement. EPA approved these controls as RACM/RACT and incorporated them into the SIP, making them permanent and enforceable SIP measures to meet the requirements of the CAA and 2008 Lead NAAQS.[5] *See* 79 FR 4407 (January 28, 2014); 78 FR 54835 (September 6, 2013). In addition, the Facility is subject to the revised secondary lead smelting National Emissions Standards for Hazardous Air Pollutants (NESHAP).[6] Alabama has incorporated the requirements to install and operate controls related to RACM/RACT and the lead NESHAP into the Facility's Title V permit, attached as Appendix A to the January 3, 2018 submittal. EPA considers the emissions reductions from the lead controls at the Sanders Lead Facility to be permanent and enforceable.

Criteria (4)—The Troy Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. *See* CAA section 107(d)(3)(E)(iv). In conjunction with its request to redesignate the Alabama portion of the Troy Area to attainment for the 2008 lead NAAQS, ADEM submitted a SIP revision to provide for maintenance of the 2008 lead NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA believes that this maintenance plan meets the requirements for approval under section 175A of the CAA.

[4] *See Region 4—Final Alabama Technical Support Document For 1st Round of Lead Designations,* available at *regulations.gov*, document ID EPA–HQ–OAR–2009–0443–0327.

[5] These controls include enclosing various sources of emissions, routing emissions to stacks through baghouse and HEPA filters, and maintaining plant and haul roads so that dust will not become airborne. *See* Submitttal at 2–6, 2–7.

[6] *See* 78 FR 54835 (September 9, 2013). The secondary lead NESHAP, codified at 40 CFR part 63, subpart X, sets emissions standards for facilities that recycle lead-bearing scrap material, typically lead acid batteries, into elemental lead or lead alloys. EPA promulgated the standard in 1997 and revised it in 2012 (with amendments in 2014).

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures as EPA deems necessary to assure prompt correction of any future 2008 lead violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, EPA has preliminarily determined that Alabama's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Alabama SIP.

b. Attainment Emissions Inventory

In this action, EPA is proposing to determine that the Troy Area is attaining the 2008 lead NAAQS based on monitoring data from 2014–2016. In its maintenance plan, the State selected 2010 as the base year and 2014 as the attainment emissions inventory year. The attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 2008 lead NAAQS. As noted above, the year 2010 was chosen as the base year for developing a comprehensive emissions inventory for lead. To evaluate maintenance through 2028, Alabama prepared emissions projections for the years 2022 and 2028. Although not required by the CAA, Alabama also provided information for emissions in 2016.

Descriptions of how Alabama developed the emissions inventory are located in Chapter 4 of the January 3, 2018, submittal, which can be found in the docket for this action. The Sanders Lead Facility is the only point source of lead emissions within the Area. For the 2014 attainment year and 2016 inventories, the State relied on actual reported lead emissions from the Sanders Lead Facility for the point source component of the inventory and assumed that the point source emissions would remain at 2016 levels through 2028. Alabama obtained the area source category and non-road source categories inventory from EPA's 2014 NEI v. l database. To estimate lead emissions from area sources in the Troy Area, Alabama apportioned the county-level lead emissions from area sources based on the percentage of the county's land area contained within the Troy Area and determined that lead emissions from area sources total approximately 0.01 pounds per year in the Area. Similarly, to estimate lead emissions from non-road emissions, Alabama apportioned the county-level lead emissions from non-road sources based on land area and determined that lead emissions from non-road sources total approximately 0.68 pounds per year in the Area. The State assumed that these area source and non-road source emissions remain constant from 2014 through 2028. Alabama determined that there are no sources of lead emissions in the Area from on-road sources based on EPA's 2014 NEI v. l. Table 2, below, identifies base year (2010) emissions, attainment year (2014) emissions, interim year (2016 and 2022), and out-year (2028) emissions.

c. Maintenance Demonstration

The maintenance plan associated with the redesignation request includes a maintenance demonstration that:

(i) Shows compliance with and maintenance of the 2008 lead NAAQS by providing information to support the demonstration that current and future emissions of lead remain at or below 2014 emissions levels.

(ii) Uses 2014 as the attainment year and includes future emissions inventory projections for 2022 and 2028.

(iii) Identifies an ''out year'' at least 10 years after the time necessary for EPA to review and approve the maintenance plan.

(iv) Provides actual (2010, 2014, and 2016[7]) and projected (2022 and 2028) emissions inventories, in tons per year (tpy), for the Troy Area, as shown in Table 2, below.

TABLE 2—ACTUAL AND PROJECTED ANNUAL LEAD EMISSIONS FOR THE TROY AREA

[Pounds per year]

2010 Nonattainment base year	2014 Base attainment year	2016 Interim year	2022 Interim year	2028 Maintenance year
7,368.5	1,584.69	950.69	950.69	950.69

In situations where local emissions are the primary contributor to nonattainment, such as the Troy Area, if the future projected emissions in the nonattainment area remain at or below the baseline emissions in the nonattainment area, then the related ambient air quality standards should not be exceeded in the future. Alabama has projected emissions as described previously and determined that emissions in the Troy Area will remain below those in the attainment year inventory for the duration of the maintenance plan.

EPA believes that the Troy Area will continue to maintain the standard at least through the year 2028 because the only point source of lead emissions in the Area has instituted permanent and enforceable controls, which are reflected in the 2014 and later emissions inventories; other sources of lead in the Area contribute only a small portion of the total emissions for the Area, as compared to the single point source (Sanders Lead Facility); and the design values for the Area beginning in 2014–2016 have been well below the NAAQS standard of 0.15 $\mu g/m^3$.

d. Monitoring Network

There are currently two monitors measuring ambient air lead concentrations in the Troy Area, one which is a Federal Reference Method (FRM) (Pb-Total Suspended Particles) monitor meeting the requirements of 40 CFR part 58, and another that is co-

[7] For 2016, Alabama provided projected emissions inventories for the area and nonroad sectors.

located for quality assurance purposes. ADEM has committed to continue operation of its lead monitors in the Troy Area in compliance with 40 CFR part 58 and has thus addressed the requirement for monitoring. EPA approved Alabama's monitoring plan related to the Troy Area on November 7, 2017.

e. Verification of Continued Attainment

Alabama has the legal authority to enforce and implement the maintenance plan for the Area. This includes the authority to adopt, implement, and enforce any subsequent emissions control contingency measures determined to be necessary to correct future lead attainment problems.

Large stationary sources are required to submit an emissions inventory annually to ADEM.[8] ADEM prepares a new periodic inventory for all lead sources every three years. This lead inventory will be prepared for future years as necessary to comply with the inventory reporting requirements established in the CFR. Emissions information will be compared to the 2014 attainment year and the 2028 projected maintenance year inventory to assess emission trends, as necessary, and to assure continued compliance with the lead standard. Additionally, under the Air Emissions Reporting Requirements (AERR), ADEM is required to develop a comprehensive, annual, statewide emissions inventory every three years that is due twelve to eighteen months after the completion of the inventory year. The AERR inventory years match the attainment year, and are within one or two years of the interim and final inventory years of the maintenance plan. Therefore, ADEM commits to compare the AERR inventories as they are developed with the 2014 and 2028 inventories in the maintenance plan to evaluate compliance with the 2008 lead NAAQS in this Area.

f. Contingency Measures in the Maintenance Plan

Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the January 3, 2018, submittal, Alabama commits to maintaining the existing control measures at the Sanders Lead Facility after redesignation. As discussed above, the Sanders Lead Facility is the primary contributor to lead in the nonattainment area, the Facility is subject to the secondary lead NESHAP, and EPA has incorporated the lead control measures for the Facility into the SIP as RACM/RACT. *See* 79 FR 4407 (January 28, 2014).

The contingency plan included in the submittal contains a triggering event to determine when contingency measures will be implemented. Alabama will begin the process to implement contingency measures when, in accordance with 40 CFR part 58, ambient lead monitoring data indicates a future violation of the lead NAAQS. Also, in the event that the 3-month rolling average of lead concentrations in a year at the monitor in the Area records a violation of 0.16 μg/m^3 or higher, the State will evaluate existing control measures to determine whether any further emission reduction measures should be implemented at that time.

Alabama will adopt and implement at least one of the following contingency measures within 18 months of certification of a violation of the lead standard:

- Improvements in existing control devices;
- Addition of secondary control devices or improvements in housekeeping and maintenance; and
- Other measures based on the cause of the elevated lead concentrations.

Any contingency measure implemented for an operating permitted source will require a compliance plan and expeditious compliance from the entity(ies) involved.

EPA has preliminarily concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. Therefore, EPA proposes to determine that the maintenance plan for the Area meets the requirements of section 175A of the CAA and proposes to incorporate the maintenance plan into the Alabama SIP.

VI. Proposed Actions

EPA is proposing to take three separate but related actions regarding the redesignation request and associated SIP revision for the Troy Area.

First, EPA is proposing to determine, based upon review of quality-assured and certified ambient monitoring data for the 2014–2016 period that the Area attains the 2008 lead NAAQS.

Second, EPA proposing to approve the maintenance plan for the Area and to incorporate it into the SIP. As described above, the maintenance plan demonstrates that the Area will continue to maintain the 2008 lead NAAQS through 2028.

Third, EPA is proposing to approve Alabama's request for redesignation of the Area from nonattainment to attainment for the 2008 lead NAAQS. If finalized, approval of the redesignation request for the Troy Area would change the official designation of the portion of Pike County, Alabama, bounded by a 0.8 mile radius from a center point at latitude 31.78627106 North and longitude 85.97862228 West, which fully includes the Sanders Lead Facility, as found at 40 CFR part 81, from nonattainment to attainment for the 2008 lead NAAQS.

VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by

[8] Alabama's January 3, 2018, SIP submittal states that major point sources in all counties are required to submit air emissions information annually, in accordance with U.S. EPA's AERR Rule (40 CFR part 51, subpart A). Although the AERR requirement for reporting of lead-only emissions is triennial, because the Sanders Lead Facility is a ''Type A'' source under the AERR for other criteria pollutants, it is also required to report lead emissions annually. *See* 80 FR 8787 (February 19, 2015).

state law. For this reason, these proposed actions:

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed actions do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: April 2, 2018.

Onis ''Trey'' Glenn, III

Regional Administrator, Region 4.

[FR Doc. 2018–07654 Filed 4–12–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[EPA–R06–OAR–2016–0091; FRL–9975–92–Region 6]

New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The New Mexico Environment Department (NMED has submitted updated regulations for receiving delegation and approval of a program for the implementation and enforcement of certain New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) for all sources (both Title V and non-Title V sources). These updated regulations apply to certain NSPS promulgated by the EPA at part 60, as amended between September 24, 2013 and January 15, 2017; certain NESHAP promulgated by the EPA at part 61, as amended between January 1, 2011 and January 15, 2017; and other NESHAP promulgated by the EPA at part 63, as amended between August 30, 2013 and January 15, 2017, as adopted by the NMED. The delegation of authority under this action does not apply to sources located in Bernalillo County, New Mexico or to sources located in Indian Country. The EPA is providing notice that it is updating the delegation of certain NSPS to NMED and proposing to approve the delegation of certain NESHAP to NMED.

DATES: Written comments should be received on or before May 14, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2016–0091, at *http://www.regulations.gov* or via email to *barrett.richard@epa.gov.* For additional information on how to submit comments see the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Barrett (6MM–AP), (214) 665–7227; email: *barrett.richard@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this issue of the **Federal Register**, the EPA is approving NMED's request for delegation of authority to implement and enforce certain NSPS and NESHAP for all sources (both Title V and non-Title V sources). NMED has adopted certain NSPS and NESHAP by reference into New Mexico's state regulations. In addition, the EPA is waiving certain notification requirements required by the delegated standards so that sources will only need to notify and report to NMED, thereby avoiding duplicative notification and reporting to the EPA.

The EPA is taking direct final action without prior proposal because the EPA views this as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this issue of the **Federal Register**.

Dated: March 22, 2018.

Wren Stenger,

Director, Multimedia Division, Region 6.

[FR Doc. 2018–07326 Filed 4–12–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 170908887–8328–01]

RIN 0648–BH24

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Pier Construction Activities at Naval Submarine Base New London

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

ACTION: Proposed rule; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to the pier construction activities conducted at the Naval Submarine Base New London in Groton, Connecticut, over the course of five years (2018–2023). As required by the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take, and requests comments on the proposed regulations. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than May 14, 2018.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2018–0047, by any of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal eRulemaking Portal, Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0047,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit comments to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS; phone: (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Regulatory Action

This proposed rule would establish a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to the Navy's construction activities related to marine structure maintenance and pile replacement at a facility in Groton, Connecticut.

We received an application from the Navy requesting five-year regulations and authorization to take multiple species of marine mammals. Take would occur by Level A and Level B harassment incidental to impact and vibratory pile driving. Please see ''Background'' below for definitions of harassment.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the ''least practicable adverse impact'' on the affected species or stocks and their habitat (see the discussion below in the ''Proposed Mitigation'' section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this proposed rule containing five-year regulations, and for any subsequent letters of authorization (LOAs). As directed by this legal authority, this proposed rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Proposed Rule

Following is a summary of the major provisions of this proposed rule regarding Navy construction activities. These measures include:

- Required monitoring of the construction areas to detect the presence of marine mammals before beginning construction activities.
- Shutdown of construction activities under certain circumstances to avoid injury of marine mammals.
- Soft start for impact pile driving to allow marine mammals the opportunity to leave the area prior to beginning impact pile driving at full power.

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

National Environmental Policy Act (NEPA)

Issuance of an MMPA authorization requires compliance with NEPA.

In accordance with NEPA (42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, we have

preliminarily determined that issuance of this rule and subsequent LOAs qualifies to be categorically excluded from further NEPA review. Issuance of the rule is consistent with categories of activities identified in CE B4 of the Companion Manual and we have not identified any extraordinary circumstances listed in Chapter 4 of the Companion Manual that would preclude use of this categorical exclusion. We will consider all public comments prior to making a final decision regarding application of CE B4.

We will review all comments submitted in response to this notice as we complete the NEPA process, prior to making a final decision on the incidental take authorization request.

Summary of Request

On March 22, 2017, NMFS received an application from the Navy requesting authorization to incidentally take harbor and gray seals, by Level A and Level B harassment, incidental to noise exposure resulting from conducting pier construction activities at the Navy Submarine Base New London in Groton, Connecticut, from October 2018 to March 2022. These regulations would be valid for a period of five years. On August 31, 2017, NMFS deemed the application adequate and complete.

The use of sound sources such as those described in the application (*e.g.,* piledriving) may result in the take of marine mammals through disruption of behavioral patterns or may cause auditory injury of marine mammals. Therefore, incidental take authorization under the MMPA is warranted.

Description of the Specified Activity

Overview

The Navy is planning to demolish Pier 32 and Pier 10 and construct a new Pier 32 at Naval Submarine Base New London (SUBASE), Groton, Connecticut.

Recent Global Shore Infrastructure Plans and Regional Shore Infrastructure Plans identified a requirement for 11 adequate submarine berths at SUBASE. There are currently six adequate berths available via Piers 6, 17, and 31, leaving a shortfall of five adequate berths. The remaining submarine berthing piers (8, 10, 12, 32, and 33) are classified as inadequate because of their narrow width and short length compared to current SSN (hull classification) berthing design standards (Unified Facilities Criteria 4–152–01, Design Standards for Piers and Wharves).

The Proposed Action is to demolish Pier 32 and Pier 10, and replace them with a new Pier 32 that meets all current Navy SSN pier standards to accommodate Virginia Class submarines. The Proposed Action includes:

- Construction of a new, larger Pier 32 to be located approximately 150 feet (ft) north of the current location;
- Upgrade of the quaywall, north of Pier 32, may be required to accommodate a crane weight test area;
- Demolition of existing Pier 32 and Pier 10;
- Dredging of the sediment mounds beneath the existing Pier 32 (approximately 9,400 cubic yards [cy]) and the existing Pier 10 (approximately 10,000 cy) to a depth of 36 ft below mean lower low water (−36 ft MLLW) plus 2 ft of over dredge (additional dredge depth that allows for varying degrees of accuracy of different types of dredging equipment). Any remaining timber piles beneath the existing piers would be pulled with a strap;
- Dredging of the berthing areas alongside the proposed new Pier 32 (approximately 74,000 sq ft) to a depth of −38 feet MLLW plus 2 feet of over dredge; and
- Dredging of two additional areas (approximately 10,200 cy and 31,100 cy) in the Thames River navigation channel to a depth of −36 ft MLLW plus 2 ft of over dredge.

Two species of marine mammals are expected to potentially be present in the Thames River near SUBASE: Harbor seal (*Phoca vitulina*) and gray seal (*Halichoeris grypus*). Harbor seals and gray seals are more likely to occur at SUBASE from September to May.

Dates and Duration

Pile installation for the new Pier 32 and pile removal associated with the demolition of the existing Piers 32 and 10 is expected to take a total of approximately 3.5 years. Construction and demolition activities are expected to begin in October 2018 and proceed to completion in March 2022.

In-water activities expected to result in incidental takes of marine mammals would occur during approximately 35 non-consecutive months of the project beginning in October 2018. The estimated duration of pile installation and removal, including duration of the vibratory and impact hammer activities, is provided in Table 1 below for each year of construction and demolition. Also included in the Table are the durations for wood piles and steel fender piles to be pulled by a crane using a sling or strap attached to the pile. The durations of proposed pile driving/removal activities are primarily derived from information provided by Naval Facilities Engineering Command (NAVFAC) Mid-Atlantic Public Works Department, Facilities Engineering and Acquisition Department (FEAD) Design Manager and the record of pile driving activities documented during the construction of SUBASE Pier 31 (American Bridge 2010–2011). The proposed new Pier 32 would be comparable to Pier 31 in design and location and would have similar sub-surface geological conditions along this reach of the Thames River.

Specified Geographical Region

SUBASE is located in the towns of Groton and Ledyard in New London County, Connecticut. SUBASE occupies approximately 687 acres along the east bank of the Thames River, 6 mi north of the river's mouth at Long Island Sound (Figure 1–1 in LOA application). The Thames River is the easternmost of Connecticut's three major rivers and is formed by the confluence of the Shetucket and Yantic rivers in Norwich, from which it flows south for 12 mi to New London Harbor. The Thames River discharges freshwater and sediment from the interior of eastern Connecticut into Long Island Sound. It is the main drainage of the Thames River Major Drainage Basin, which encompasses approximately 3,900 square mi of eastern Connecticut and central Massachusetts (USACE 2015). The lower Thames River and New London Harbor sustains a variety of military, commercial, and recreational vessel usage. New London Harbor provides protection to a number of these.

Detailed Description of Specified Activity

1. Construction of New Pier 32

Pile driving would most likely be conducted using a barge and crane. However, the contractor may choose to use a temporary pile-supported work trestle that would be constructed by driving approximately 60 steel 14-inch diameter H-piles.

Structural support piles for Pier 32 would consist of approximately 120 concrete-filled steel pipe piles measuring 36 inches in diameter. The piles would be driven between 40 ft below the mudline near the shore and 150 ft below the mudline at the end of the pier. Fender piles would also be installed and would consist of approximately 194 fiberglass-reinforced plastic piles measuring 16 inches in diameter.

Special construction features would include drilling rock sockets into bedrock in an estimated 60 places to hold the piles. A rotary drill using a rock core barrel and rock muck bucket would be used inside of the steel pipe

piles to drill a minimum of 2 ft down into bedrock to create the rock socket that would be filled with concrete. Sediment would be lifted out and re-deposited within 10 ft of the pipe pile during rock socket drilling. Underwater noise from the rock drill as it is operated inside a steel pipe would be much less than that produced by vibratory and impact pile driving of the steel pipes (Martin *et al.,* 2012).

Impact and vibratory hammers would be used for installing piles where rock sockets are not required. Based on previous construction projects at SUBASE, it is estimated that an average of one 36-inch pile per week (with driving on multiple days) and two plastic piles per day would be installed. The per-pile drive time for each pile type and method will vary based on environmental conditions (including substrate) where each pile is driven. Impact or vibratory pile driving may result in harassment of marine mammals.

Construction of Pier 32 may also require upgrade of the quaywall north of Pier 32 to provide the reinforcement needed to support a crane weight test area. Because there is potential that a work trestle would be used and the requirement for the upgrade will not be determined until final design, the pile driving is included in the analyzed activities. The quaywall upgrade would include up to approximately eighteen 30-inch diameter concrete-filled steel pipe piles that would be installed into rock sockets driven into bedrock adjacent and parallel to the existing steel sheet pile wall. Pile caps and a concrete deck would be installed above the piles. A fender system composed of approximately nine 16-inch diameter plastic piles would also be installed into rock sockets approximately 2 ft in front of the new deck.

2. Demolition and Removal of Pier 32 and Pier 10

When the new Pier 32 is operational, the existing Pier 32 would be demolished using a floating crane and a series of barges. Pier 10 would be demolished after the demolition of existing Pier 32. The concrete decks of the piers would be cut into pieces and placed on the barges. Demolition debris would be sorted and removed by barge and recycled to the maximum extent practicable. Any residual waste would be disposed of offsite in accordance with applicable federal, state, and local regulations. Once the decks are removed, the steel H piles and pipe piles that support the existing pier would be pulled using a vibratory extraction method (hammer). The vibratory hammer would be attached to the pile head with a clamp. Once attached, vibration would be applied to the pile that would liquefy the adjacent sediment allowing the pile to be removed.

Demolition of existing Pier 32 would include the removal by vibratory driver-extractor (hammer) of approximately 60 steel piles from the temporary work trestle, 120 concrete-encased steel H-piles, and 70 steel H-piles. Fifty-six wood piles would be pulled with a sling. Demolition of Pier 10 would include the removal by vibratory hammer of 24 concrete-encased, steel H-piles and 166 cast-in-place, reinforced concrete piles. Eighty-four steel fender piles and 41 wood piles would be pulled with a sling. A total of 440 piles would be removed by vibratory hammer for both piers and the work trestle.

3. Dredging of Pier Areas and Navigation Channel

The Proposed Action would also include dredging of approximately 60,000 cy of sediment in two areas of the Thames River navigation channel near Pier 32, the berthing areas alongside the new Pier 32, and underneath existing Pier 32 and Pier 10 after demolition. All dredging for the Proposed Action would support safe maneuvering for entry and departure of submarines at the proposed new Pier 32 and existing Piers 8, 12, 17, and 31. The proposed design dredge depth in all areas to be dredged is −36 ft relative to MLLW plus 2 ft of over dredge.

Dredging would be conducted in two phases. Dredging of the new Pier 32 area and the northern portion of the channel dredge areas would be conducted in the first construction year. The footprints of the demolished Pier 32 and Pier 10 and the southern portions of the channel dredge areas would be dredged after demolition of the existing piers in the fourth year of construction. Dredging would occur only during the period between October 1 and January 31 to avoid potential impacts on shellfish and fisheries resources in the area. Each dredging and disposal phase would take approximately 2 weeks to complete.

After the demolition of Pier 32, any remnant timber piles present underneath existing Pier 32 would be pulled with a strap. The sediment mound that has formed beneath the pier would be dredged (approximately 9,400 cy) to the design depth. Dredging would also be required immediately west of Piers 31 and 32 (approximately 10,200 cy) and along the eastern edge (approximately 31,100 cy) of the navigation channel to achieve the required minimum depths to maneuver the submarines. Once the existing Pier 10 and any remnant timber piles are removed, the sediment mound beneath the old pier would be dredged (approximately 10,000 cy). Since dredging and disposal activities would be slow moving and conspicuous to marine mammals, they pose negligible risks of physical injury. An environmental bucket would be used for dredging to minimize turbidity compared with the turbidity generated by hydraulic dredging. Noise emitted by dredging equipment is broadband, with most energy below 1 kilohertz (kHz), and would be similar to that generated by vessels and maritime industrial activities that regularly operate within the action area (Clarke *et al.,* 2002; Todd *et al.,* 2015). Due to the low noise output and slow and steady transiting nature of the dredging activity, NMFS does not consider it would result to the level of harassment under the MMPA. Therefore, dredging is not considered further in this document.

TABLE 1—SUMMARY OF CONSTRUCTION ACTIVITIES FOR THE NAVY SUBMARINE BASE NEW LONDON

Activity	Pile number	Pile type	Method	Piles/day	Total driving days	Strike number (impact) or duration(s) per pile	Duration
Year 1							
Pier 32 construction	60	14″ steel H-pile temp. work trestle.	Impact	4	15	1,000 strikes	3 weeks.
	60	36″ x 100′ concrete-filled steel pipe piles.	Vibratory hammer & rock socket drilling.	0.5	120	1,200 seconds	6 months.

TABLE 1—SUMMARY OF CONSTRUCTION ACTIVITIES FOR THE NAVY SUBMARINE BASE NEW LONDON—Continued

Activity	Pile number	Pile type	Method	Piles/day	Total driving days	Strike number (impact) or duration(s) per pile	Duration
	20	36″ x 180′ concrete-filled steel piles.	Vibratory hammer	0.2	100	1,800 seconds	5 months.
	20	36″ x 180′ concrete-filled steel piles.	Impact hammer to last 20–40 ft	2.5	8	1,000 strikes	2 weeks.
Quaywall upgrade	18	30″ x 100′ concrete-filled steel pipe piles.	Rock socket drilling	0.5	36	15,000 seconds	Concurrent with Pier 32.
	9	16″ fiberglass reinforced plastic piles.	Rock socket drilling	0.5	18	7,500 seconds.	
Year 2							
Pier 32 construction	40	36″ x 180′ concrete-filled steel piles.	Vibratory hammer	0.2	200	1,800 seconds	10 months.
	40	36″ x 180′ concrete-filled steel piles.	Impact hammer to drive last 20–40 ft.	2.5	16	1,000 strikes	3.5 weeks.
Year 3							
Pier 32 construction	194	16″ fiberglass reinforced plastic piles.	Vibratory hammer	2	97	1,200 seconds	5 months.
	64	16″ fiberglass reinforced plastic piles.	Impact hammer to drive last 20–40 ft.	2.5	26	1,000 strikes	1.5 months.
Year 4							
Pier 32 demolition	60	14″ steel H-piles temp. work trestle.	Vibratory hammer (removal)	5	14	1,200 seconds	3 weeks.
	24	33″ concrete-encased steel H piles.	Vibratory hammer (removal)	2	12	1,200 seconds	3.5 months.
	96	24″ concrete-encased steel H piles.	Vibratory hammer (removal)	2	48	1,200 seconds.	
	70	14″ steel H piles	Vibratory hammer (removal)	5	14	1,200 seconds.	
Pier 10 demolition	24	24″ concrete-encased steel H piles.	Vibratory hammer (removal)	9.5	2.5	1,200 seconds	0.5 month.
	166	24″ cast-in-place reinforced concrete piles.	Vibratory hammer (removal)	9.5	17.5	1,200 seconds	0.5 month.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'').

Description of Marine Mammals in the Area of the Specified Activities

Marine mammal species that could be present in the Study Area and their associated stocks are presented in Table 2 along with an abundance estimate, an associated coefficient of variation value, and best/minimum abundance estimates. There are other species of marine mammals, including a number of cetaceans, that are known to be present in nearby Long Island Sound. However, since received noise levels from the project are not expected to reach the mouth of the Thames River due to geographical boundaries, these species are excluded from further discussion. The Navy proposes to take individuals of harbor seal and gray seal by Level A and B harassment incidental to pier construction activities. Neither of these marine mammal species is listed as endangered or threatened under the Endangered Species Act (ESA).

Information on the status, distribution, and abundance of these seal species in the Study Area may be viewed in the Navy's LOA application. Additional information on the general biology and ecology of marine mammals are included in the application. In addition, NMFS annually publishes Stock Assessment Reports (SARs) for all marine mammals in U.S. EEZ waters, including stocks that occur within the Study Area—U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessment Reports (Hayes *et al.,* 2017).

TABLE 2—MARINE MAMMALS THAT MAY OCCUR WITHIN NAVY SUBMARINE BASE NEW LONDON AREA

Common name	Scientific name	Stock	ESA/MMPA status	Stock abundance best/minimum population	Occurrence in study area
Order Carnivora					
Suborder Pinnipedia					
Family Phocidae (true seals)					
Gray seal	*Halichoerus grypus*	Western North Atlantic		505,000*	Thames River.
Harbor seal	*Phoca vitulina*	Western North Atlantic		75,834 (0.15)/66,884	Thames River.

*There are an estimated 27,131 seals in U.S. waters; however, gray seals form one population not distinguished on the basis of the U.S./Canada boundary.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2016) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Low-frequency cetaceans (mysticetes): Generalized hearing is estimated to occur between approximately 7 Hz and 35 kHz;
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans (porpoises, river dolphins, and members of the genera *Kogia* and *Cephalorhynchus;* including two members of the genus *Lagenorhynchus,* on the basis of recent echolocation data and genetic data): Generalized hearing is estimated to occur between approximately 275 Hz and 160 kHz;
- Phocidae (true seals): Generalized hearing is estimated to occur between approximately 50 Hz to 86 kHz;
- Otariidae (eared seals): Generalized hearing is estimated to occur between 60 Hz and 39 kHz.

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2016) for a review of available information. Only two marine mammal species (both are phocid species) have the reasonable potential to co-occur with the proposed construction activities. Please refer to Table 2.

Potential Impacts to Marine Mammals

The Navy's Submarine Base New London pier construction using in-water pile driving and pile removal could adversely affect marine mammal species and stocks by exposing them to elevated noise levels in the vicinity of the activity area.

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift (TS)—an increase in the auditory threshold after exposure to noise (Finneran *et al.,* 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of TS just after exposure is the initial TS. If the TS eventually returns to zero (*i.e.,* the threshold returns to the pre-exposure value), it is a temporary threshold shift (TTS) (Southall *et al.,* 2007).

Threshold Shift (noise-induced loss of hearing)—When animals exhibit reduced hearing sensitivity (*i.e.,* sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced TS. An animal can experience TTS or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.,* there is complete recovery), can occur in specific frequency ranges (*i.e.,* an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.,* 2000, 2002, 2003, 2005, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.,* 2009; Mooney *et al.,* 2009a, 2009b; Popov *et al.,* 2011a, 2011b; Kastelein *et al.,* 2012a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.,* 1999, 2005; Kastelein *et al.,* 2012b).

Lucke *et al.* (2009) found a TS of a harbor porpoise after exposing it to airgun noise with a received sound pressure level (SPL) at 200.2 dB (peak-to-peak) re: 1 micropascal (μPa), which corresponds to a sound exposure level of 164.5 dB re: 1 μPa^2 s after integrating exposure. Because the airgun noise is a broadband impulse, one cannot directly determine the equivalent of root mean square (rms) SPL from the reported peak-to-peak SPLs. However, applying a conservative conversion factor of 16 dB for broadband signals from seismic surveys (McCauley, *et al.,* 2000) to correct for the difference between peak-to-peak levels reported in Lucke *et al.* (2009) and rms SPLs, the rms SPL for TTS would be approximately 184 dB re: 1 μPa, and the received levels associated with PTS (Level A harassment) would be higher. Therefore, based on these studies, NMFS recognizes that TTS of harbor porpoises is lower than other cetacean species empirically tested (Finneran & Schlundt, 2010; Finneran *et al.,* 2002; Kastelein and Jennings, 2012).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree

and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so one can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals, which utilize sound for vital biological functions (Clark *et al.,* 2009). Acoustic masking is when other noises such as from human sources interfere with animal detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band that the animals utilize. Therefore, since noise generated from vibratory pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by odontocetes (toothed whales). However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009) and cause increased stress levels (*e.g.,* Foote *et al.,* 2004; Holt *et al.,* 2009).

Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of sound pressure level) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand, 2009). For the Navy's Submarine Base New London pier construction, noises from vibratory pile driving and pile removal contribute to the elevated ambient noise levels in the project area, thus increasing potential for or severity of masking. Baseline ambient noise levels in the vicinity of project area are high due to ongoing shipping, construction and other activities in the Thames River.

Finally, marine mammals' exposure to certain sounds could lead to behavioral disturbance (Richardson *et al.,* 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries).

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.,* 2007). Currently NMFS uses a received level of 160 dB re 1 µPa (rms) to predict the onset of behavioral harassment from impulse noises (such as impact pile driving), and 120 dB re 1 µPa (rms) for continuous noises (such as vibratory pile driving). For the Navy's Submarine Base New London pier construction, both 160- and 120-dB levels are considered for effects analysis because the Navy plans to use both impact pile driving and vibratory pile driving and pile removal.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be biologically significant if the change affects growth, survival, and/or reproduction, which depends on the severity, duration, and context of the effects.

Potential Effects on Marine Mammal Habitat

The primary potential impacts to marine mammal habitat are associated with elevated sound levels produced by vibratory pile removal and pile driving in the area. However, other potential impacts to the surrounding habitat from physical disturbance are also possible.

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.,* 1981) and possibly avoid predators (Wilson and Dill, 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins, 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona, 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.,* 1993). In general, fish react more strongly to pulses of sound (such as noise from impact pile driving) rather than continuous signals (such as noise from vibratory pile driving) (Blaxter *et al.,* 1981), and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

During in-water pile driving only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short-term and fish would return to their pre-disturbance behavior once the pile driving activity ceases. Thus, the proposed construction would have little, if any, impact on marine mammals' prey availability in the area where construction work is planned.

Disposal of dredged material in the confined aquatic disposal (CAD) cell would have a direct impact to the benthos as a result of burial and suffocation. Most, if not all, sessile marine invertebrates are not expected to survive burial. Some motile marine organisms would be buried and unable to survive, while others such as burrowing specialists, may survive. Survival rates would depend primarily on burial depth. From 2010 through 2012, biannual benthic sampling of the CAD cell area was conducted to assess the timeframe for recovery of benthic populations of the CAD cells, in accordance with Water Quality Certificate conditions for the 2010 waterfront maintenance dredging project at the submarine base. The sampling results of the CAD cell were compared to sampling results of an undisturbed reference site located upriver. The degree of similarity of population and community structures was assessed. The results of the three year survey program indicated that a progressive recovery to a stable benthic population was occurring at the CAD cell. As demonstrated by the biannual benthic survey, benthic assemblages are

anticipated to recover within three to five years after the completion of the project, and disposal impacts would not be significant (CardnoTEC 2015).

Project activities would temporarily disturb benthic and water column habitats and change bottom topography to a minor degree, but effects on prey availability and foraging conditions for marine mammals would be temporary and limited to the immediate area of pier demolition/construction, dredging, and disposal. The new surfaces of piles and exposed concrete on the new pier would likely result in establishment of fouling communities on the new structures, and may attract fish and benthic organisms resulting in small scale shifts in prey distribution.

There are no known haulouts within the vicinity of the Proposed Action.

The project activities would not permanently modify existing marine mammal habitat. The activities may kill some fish and cause other fish to leave the area temporarily, thus impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. Therefore, given the consideration of potential impacts to marine mammal prey species and their physical environment, the Navy's proposed construction activity at the submarine base would not adversely affect marine mammal habitat.

Estimated Take

This section provides an estimate of the number of incidental takes proposed to be authorized through this rule, which will inform both NMFS' consideration of whether the number of takes is ''small'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level A and Level B harassments, in the form of mild permanent hearing threshold shift (Level A) and disruption of behavioral patterns (Level B) for individual marine mammals resulting from exposure to noise generated from impact pile driving and vibratory pile driving and removal. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*e.g.,* shutdown measures—discussed in detail below in Mitigation section), serious injury or mortality is neither anticipated nor authorized.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Described in the most basic way, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. Below, we describe these components in more detail and present the take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2011). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 µPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 µPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

Applicant's proposed activity includes the use of continuous (vibratory pile driving and removal) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 µPa (rms) levels are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Technical Guidance, 2016) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Applicant's proposed activity includes the use of non-impulsive (vibratory pile driving and pile removal) sources.

These thresholds were developed by compiling and synthesizing the best available science and soliciting input multiple times from both the public and peer reviewers to inform the final product, and are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2016 Technical Guidance, which may be accessed at: *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

TABLE 3—CURRENT ACOUSTIC EXPOSURE CRITERIA FOR NON-EXPLOSIVE SOUND UNDERWATER

Hearing group	PTS onset thresholds		Behavioral thresholds	
	Impulsive	Non-impulsive	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	$L_{E,LF,24h}$: 199 dB	$L_{rms,flat}$: 160 dB	$L_{rms,flat}$: 120 dB.
Mid-Frequency (MF) Cetaceans	$L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB.	$L_{E,MF,24h}$: 198 dB.		

TABLE 3—CURRENT ACOUSTIC EXPOSURE CRITERIA FOR NON-EXPLOSIVE SOUND UNDERWATER—Continued

Hearing group	PTS onset thresholds		Behavioral thresholds	
	Impulsive	Non-impulsive	Impulsive	Non-impulsive
High-Frequency (HF) Cetaceans	$L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB.	$L_{E,HF,24h}$: 173 dB.		
Phocid Pinnipeds (PW) (Underwater).	$L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB.	$L_{E,PW,24h}$: 201 dB.		
Otariid Pinnipeds (OW) (Underwater).	$L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB.	$L_{E,OW,24h}$: 219 dB.		

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (Lpk) has a reference value of 1 µPa, and cumulative sound exposure level (LE) has a reference value of 1µPa2s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds.

Source Levels

The project includes impact pile driving and vibratory pile driving and removal of various piles. Source levels of pile driving and removal activities are based on reviews of measurements of the same or similar types and dimensions of piles available in the literature (Caltrans, 2015; Martin *et al.,* 2012; Dazey *et al.,* 2012; WSDOT, 2007, 2012; NAVFAC Southwest, 2014). Based on this review, the following source levels are assumed for the underwater noise produced by construction activities:

- Impact driving of 14-inch steel H-piles for the temporary trestle is assumed to generate a peak SPL of 208 dB re 1µPa, and a root-mean-squared (rms) SPL of 187 dB re 1 µPa, based on adding 10 dB to a single-strike SEL of 177 dB re 1 µPa²-sec at 10 m (33 ft) reported by Caltrans (2015). This assumption is based on differences between SEL and rms values of other piles reported by Caltrans (2015).
- Impact driving of 36-inch steel piles would be assumed to generate an instantaneous peak SPL of 209 dB, an rms SPL of 198 dB, and a SEL of 183 dB at the 10 m (33 ft) distance, based on the weighted average of similar pile driving at the Bangor Naval Base, Naval Base Point Loma, Washington State Department of Transportation (WSDOT) Anacortes Ferry Terminal, and WSDOT Mukilteo Ferry Terminal.
- Vibratory driving of 36-inch steel piles would be assumed to generate a 168 dB SPLrms and a 168 dB SEL at 10 m (33 ft), based on the weighted average of similar pile driving measured at Bangor Naval Base, Naval Base Point Loma, and WSDOT Anacortes Ferry Terminal.
- Impact driving of the 16-inch plastic piles, for which no data specific to that size and composition are available, are assumed to be similar to available data on13-inch plastic piles: 177 dB peak SPL and 153 dB rms SPL. No SEL measurements were made, but the SEL at 10 m (33 ft) can be assumed to be 9 dB less than the rms value (based on differences of rms and SEL values of in-water impact pile-driving data of other piles summarized by Caltrans 2015), which would put the SEL value for the plastic piles at 144 dB. For vibratory pile driving of the same plastic piles, the SPL rms of impact driving is used as a proxy due to lack of measurement.
- Vibratory removal of 14-inch steel H-piles is conservatively assumed to have rms and SEL values of 158 dB based on a relatively large set of measurements from the vibratory installation of 14-inch H-piles.
- Drilling the rock sockets is assumed to be an intermittent, non-impulsive, broadband noise source, similar to vibratory pile driving, but using a rotary drill inside a pipe or casing, which is expected to reduce sound levels below those of typical pile driving (Martin *et al.* 2012). Measurements made during a pile drilling project in 1–5 m (3–16 ft) depths at Santa Rosa Island, CA, by Dazey *et al.,* (2012) appear to provide reasonable proxy source levels for the proposed activities. Dazey *et al.* (2012) reported average rms source levels ranging from 151 to 157 dB re 1µPa, normalized to a distance of 1 m (3 ft) from the pile, during activities that included casing removal and installation as well as drilling, with an average of 154 dB re 1µPa during 62 days that spanned all related drilling activities during a single season.
- Since no source level data are available for vibratory extraction of concrete or concrete encased 24-inch and 33-inch steel H-piles, conservative proxy source levels were based on the summary values reported for vibratory driving of 24-inch steel sheet piles by Caltrans (2015). There are two reasons for using 24-in steel sheet pile driving source level as a proxy: (1) In general, pile extraction generates less noise in comparison to pile driving, and (2) piling of concrete or concrete encased piles generated less noise in comparison to steel piles. Since there are no source levels available for extraction of the 24-in concrete or concrete encased piles and 33-in steel H-piles, we defer to the pile driving source level of 24-in steel sheet pile reported by Caltrans (2015). The Caltrans (2015) typical source level of 160 dB rms and SEL was used for vibratory removal of 24-inch concrete piles and 24-inch concrete encased steel H-piles, whereas the loudest source level of 165 dB rms and SEL was used for vibratory removal of 33-inch concrete encased steel piles.

A summary of source levels from different pile driving and pile removal activities is provided in Table 4.

TABLE 4—SUMMARY OF IN-WATER PILE DRIVING SOURCE LEVELS

[At 10 m from source]

Method	Pile type/size	SPL_{pk} (dB re 1 μPa)	SPL_{rms} (dB re 1 μPa)	SEL (dB re 1 μPa^2-s)
Impact driving	14-in steel H pile	208	187	177
Impact driving	36-in concrete-filled steel pile	209	198	183
Vibratory driving	30- and 36-in concrete-filled steel pipe pile; 16-in fiberglass plastic pile.	NA	168	168
Impact driving	16-in fiberglass plastic pile	177	153	144
Vibratory driving	16-in fiberglass plastic pile	NA	153	153
Rock socket drilling	30-in steel pile & 16-in plastic pile	NA	154	154
Vibratory removal	14-in steel H pile	NA	158	158
Vibratory removal	24-in concrete-encased steel H pile	NA	160	160
Vibratory removal	33-in concrete-encased steel H pile	NA	165	165

These source levels are used to compute the Level A injury zones and to estimate the Level B harassment zones. For Level A harassment zones, since the peak source levels for both pile driving methods are below the injury thresholds, cumulative SEL were used to do the calculations using the NMFS acoustic guidance (NMFS 2016).

Estimating Injury Zones

When NMFS' Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which will result in some degree of overestimate of Level A take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate.

For cumulative SEL (L_E), distances to marine mammal injury thresholds were estimated using NMFS' Optional User Spreadsheet based on the noise exposure guidance. For impact pile driving, the single strike SEL/pulse equivalent was used, and for vibratory pile driving, the rms SPL source level was used. Per the NMFS Spreadsheet, default Weighting Factor Adjustments (WFA) were used for calculating PTS from both vibratory and impact pile driving, using 2.5 kHz and 2.0 KHz, respectively. These WFAs are acknowledged by NMFS as conservative. A transmission loss coefficient of 15 is used with reported source levels measured at 10m.

Isopleths to Level B behavioral zones are based on rms SPL (SPL_{rms}) that are specific for non-impulse (vibratory pile driving) sources. Distances to marine mammal behavior thresholds were calculated using practical spreading.

A summary of the measured and modeled harassment zones is provided in Table 5. In modeling transmission loss from the project area, the conventional assumption would be made that acoustic propagation from the source is impeded by natural and manmade features that extend into the water, resulting in acoustic shadows behind such features. While not solid structures, given the density of structural pilings under the many pile-supported piers located south of Piers 32 and 10, coupled with the docking of submarines at these piers, the piers are presumed to disrupt sound propagation southward in the river.

TABLE 5—CALCULATED AREAS OF ZONE OF INFLUENCE AND MAXIMUM DISTANCES

Year	Activity description	Source level @10m, dB (rms/SEL)	Level A distance (m)/area (km^2)	Level B distance (m)/area (km^2)
1	Impact driving 14″ steel H-pile	187/177	536/0.4468	631/0.5468.
	Vibratory & rock socket drilling installation of 36″ concrete-filled steel piles	168	<4/<0.0001	4,642/2.2002.
	Impact driving 36″ concrete-filled steel piles	198/183	984/0.886	3,415/2.037.
	Rocket socket drilling of 30″ concrete-filled steel piles and 16″ fiberglass reinforced plastic piles.	154	Activity will occur concurrently with above activities that have much bigger zones.	
2	Vibratory installation of 36″ concrete-filled steel piles	168	<4/<0.0001	4,642/2.2002.
	Impact pile driving 36″ concrete-filled steel piles	198/183	984/0.886	3,415/2.037.
3	Vibratory installation of 16″ fiberglass plastic piles	153	0.9/<0.0001	1,584/1.1584.
	Impact installation of 16″ fiberglass plastic piles	153/144	2.5/<0.0001	1/<0.000.
4	Vibratory removal of 14″ steel H-piles	158	<4/<0.0001	2,415/1.8372.
	Vibratory removal of 24″ concrete-filled steel piles (Pier 32)	160	2.7/<0.0001	4,334/2.029.
	Vibratory removal of 30″ concrete-filled steel piles (Pier 32)	165	5.9/<0.0001	4,334/2.029.
	Vibratory removal of 24″ concrete-filled steel piles (Pier 10)	160	7.7/<0.0001	4,642/3.317.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

The Navy's Marine Species Density Database (NMSDD) has density estimates for harbor and gray seals that occur in Long Island Sound. The NMSDD density estimates for harbor seals and gray seals are the same, 0.0703/km² during fall, winter, and spring, and 0.0174/km² during summer months. These estimates, however, are based on broad-scale oceanic surveys, which have not extended up the Thames River.

Marine mammal surveys were conducted in fall 2014 and winter, spring, and summer of 2015 as part of a nearshore biological survey at Submarine Base New London. No marine mammals were observed (Tetra Tech 2016). Harbor seals have been sighted in the Thames River near the submarine base by Navy personnel. Both gray and harbor seals have rookeries in Long Island Sound. A two-year detailed, systematic survey of marine mammals in the Thames River began in January 2017. During the first nine months of the survey through September, one pinniped (gray seal) was observed approximately 2¾ miles downstream of SUBASE at a fishing dock near the ferry terminal, approximately 3,000 feet south of the Gold Star Memorial Bridge (I–95).

Based on the repeated sightings at the Submarine Base New London, the average presence of seals (harbor or gray) is estimated to be 4 per week or 0.6 per day from September through May. The majority (75 percent) of these are likely to be harbor seals. There are no areas (haulouts) where seals are known to be concentrated nor have there been contemporary sightings of larger numbers of seals along this stretch of the river, and the animals seen at the submarine base are likely to move up and down as well as across the river. Given that the Thames River is about 500 m (1,640 ft) wide at the Submarine Base New London, and similarly developed areas extend about 1 km (3,280 ft) up and down the river, the Navy believes it is reasonable to extrapolate the observations at the Submarine Base New London to an area of about 1 km² for the purpose of estimating density. This would result in an average density of 0.45 harbor and 0.15 gray seals per km² within the project ZOIs from September through May. Very few animals were sighted outside the September through May time frame. Therefore, the September through May data is used for density estimates to be conservative.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. For both harbor and gray seals, estimated takes are calculated based on ensonified area for a specific pile driving activity multiplied by the marine mammal density in the action area, multiplied by the number of pile driving (or removal) days. Distances to and areas of different harassment zones are listed in Table 4.

For both Level A and Level B harassment, take calculations and assumptions are as follows:

- Number of takes per activity = density (average number of seals per km²) * area of ZOI (km²) * number of days, rounded to the nearest whole number;
- Seal density in the project area is estimated as 0.6/km² from September through May (zero from June through August), consisting of 75 percent harbor seals (0.45/km²) and 25 percent gray seals (0.15/km²);
- Assumes as a worst case that activities will occur up to a maximum of 180 workdays (5 days per week) when seals are present (September through May) during each full construction year;
- Assumes vibratory and impact hammer pile driving would not occur on the same days;
- Level A and Level B takes are calculated separately based on the respective ZOIs for each type of activity, providing a maximum estimate for each type of take which corresponds to the authorization requested under the MMPA; and
- Assumes that the effective implementation of a 10 m shutdown zone will prevent non-acoustic injuries and will prevent animals from entering acoustic harassment ZOIs that extend less than 10 m from the source.

The maximum extent of the potential injury zone (for impact pile driving of steel piles) is 984 m (3,228 ft) from the source for 36-inch concrete-filled steel piles and 536 m (1,758 ft) for 14-inch steel H-piles; other potential acoustic injury ZOIs for vibratory pile extraction and installation are only 1 to 7.7 m (3 to 25 ft) from the source (Table 4). Seals within about 10 m (33 ft) of in-water construction or demolition may also be at risk of injury from interaction with construction equipment. These potential injury zones and the 10 m (33 ft) exclusion distance would be monitored during all in-water construction/demolition activities, and the activities would be halted if a marine mammal were to approach within these distances.

The estimated numbers of instances of acoustic harassment (takes) by year, species and severity (Level A or Level B) are shown in Table 6. Total Level A takes are estimated as 12 harbor seals and 4 gray seals (total 16), and Level B takes are estimated as 504 harbor seals and 168 gray seals (total 672).

TABLE 6—ESTIMATED NUMBERS OF MARINE MAMMALS THAT MAY BE EXPOSED TO RECEIVED NOISE LEVELS THAT CAUSE LEVEL A AND LEVEL B HARASSMENT

Year	Species	Estimated level A take	Estimated level B take	Estimated total take	Abundance	Percentage
1	Harbor seal	6	166	172	75,834	0.23
	Gray seal	2	55	57	27,131	0.21
2	Harbor seal	6	177	183	75,834	0.24
	Gray seal	2	59	61	505,000	0.01
3	Harbor seal	0	51	51	75,834	0.07
	Gray seal	0	17	17	27,131	0.06
4	Harbor seal	0	110	110	75,834	0.15
	Gray seal	0	37	37	27,131	0.14

Proposed Mitigation

In order to issue an LOA under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

Mitigation for Marine Mammals and Their Habitat

1. Time Restriction

Work would occur only during daylight hours, when visual monitoring of marine mammals can be conducted.

2. Establishing and Monitoring Level A and Level B Harassment Zones, and Exclusion Zones

Before the commencement of in-water construction activities, which include impact pile driving and vibratory pile driving and pile removal, the Navy shall establish Level A harassment zones where received underwater SEL_{cum} could cause PTS (see Table 5 above).

The Navy shall also establish Level B harassment zones where received underwater SPLs are higher than 160 dB_{rms} re 1 µPa for impulsive noise sources (impact pile driving) and 120 dB_{rms} re 1 µPa for non-impulsive noise sources (vibratory pile driving and pile removal).

The Navy shall establish a 10-m (33-ft) exclusion zone for all in-water construction and demolition work.

If marine mammals are found within the exclusion zone, pile driving of the segment would be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor would wait 15 minutes. If no marine mammals are seen by the observer in that time it can be assumed that the animal has moved beyond the exclusion zone.

If pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated exclusion zone prior to commencement of pile driving, the observer(s) must notify the pile driving operator (or other authorized individual) immediately and continue to monitor the exclusion zone. Operations may not resume until the marine mammal has exited the exclusion zone or 15 minutes have elapsed since the last sighting.

3. Shutdown Measures

The Navy shall implement shutdown measures if a marine mammal is detected moving towards or entered the 10-m (33-ft) exclusion zone.

Further, the Navy shall implement shutdown measures if the number of authorized takes for any particular species reaches the limit under the LOA (if issued) and such marine mammals are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

4. Soft Start

The Navy shall implement soft start techniques for impact pile driving. The Navy shall conduct an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three strike sets. Soft start shall be required for any impact driving, including at the beginning of the day, and at any time following a cessation of impact pile driving of thirty minutes or longer.

Whenever there has been downtime of 30 minutes or more without impact driving, the contractor shall initiate impact driving with soft-start procedures described above.

Based on our evaluation of the required measures, NMFS has preliminarily determined that the prescribed mitigation measures provide the means effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an LOA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) state that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

• Mitigation and monitoring effectiveness.

Proposed Monitoring Measures

The Navy shall employ trained protected species observers (PSOs) to conduct marine mammal monitoring for its Submarine Base New London pier construction project. The purposes of marine mammal monitoring are to implement mitigation measures and learn more about impacts to marine mammals from the Navy's construction activities. The PSOs will observe and collect data on marine mammals in and around the project area for 15 minutes before, during, and for 30 minutes after all pile removal and pile installation work.

Protected Species Observer Qualifications

NMFS-approved PSOs shall meet the following requirements:

1. Independent observers (*i.e.,* not construction personnel) are required;

2. At least one observer must have prior experience working as an observer;

3. Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience;

4. Where a team of three or more observers are required, one observer should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and

5. NMFS will require submission and approval of observer CVs.

Marine Mammal Monitoring Protocols

The Navy shall conduct briefings between construction supervisors and crews and the PSO team prior to the start of all pile driving activities, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures. All personnel working in the project area shall watch the Navy's Marine Species Awareness Training video. An informal guide shall be included with the monitoring plan to aid in identifying species if they are observed in the vicinity of the project area.

The Navy will monitor the Level A and Level B harassment zones before, during, and after pile driving activities. The Marine Mammal Monitoring Plan would include the following procedures:

• PSOs will be primarily located on boats, docks, and piers at the best vantage point(s) in order to properly see the entire shutdown zone(s);

• PSOs will be located at the best vantage point(s) to observe the zone associated with behavioral impact thresholds;

• During all observation periods, PSOs will use high-magnification (25X), as well as standard handheld (7X) binoculars, and the naked eye to search continuously for marine mammals;

• Monitoring distances will be measured with range finders. Distances to animals will be based on the best estimate of the PSO, relative to known distances to objects in the vicinity of the PSO;

• Bearings to animals will be determined using a compass;

• Pile driving shall only take place when the exclusion and Level A zones are visible and can be adequately monitored. If conditions (*e.g.,* fog) prevent the visual detection of marine mammals, activities with the potential to result in Level A harassment shall not be initiated. If such conditions arise after the activity has begun, impact pile driving would be halted but vibratory pile driving or extraction would be allowed to continue;

• Three (3) PSOs shall be posted to monitor marine mammals during in-water pile driving and pile removal. One PSO will be located on land and two will be located in a boat to monitor the farther locations;

• **Pre-Activity Monitoring**

The exclusion zone will be monitored for 15 minutes prior to in-water construction/demolition activities. If a marine mammal is present within the 10-m exclusion zone, the activity will be delayed until the animal(s) leave the exclusion zone. Activity will resume only after the PSO has determined that, through sighting or by waiting 15 minutes, the animal(s) has moved outside the exclusion zone. If a marine mammal is observed approaching the exclusion zone, the PSO who sighted that animal will notify all other PSOs of its presence.

• **During Activity Monitoring**

If a marine mammal is observed entering the Level A or Level B zones outside the 10-m exclusion zone, the pile segment being worked on will be completed without cessation, unless the animal enters or approaches the exclusion zone, at which point all pile driving activities will be halted. If an animal is observed within the exclusion zone during pile driving, then pile driving will be stopped as soon as it is safe to do so. Pile driving can only resume once the animal has left the exclusion zone of its own volition or has not been re-sighted for a period of 15 minutes.

• **Post-Activity Monitoring**

Monitoring of all zones will continue for 30 minutes following the completion of the activity.

Reporting Measures

The Navy is required to submit an annual report within 90 days after each activity year, starting from the date when the LOA is issued (for the first annual report) or from the date when the previous annual report ended. These reports would detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed during the period of the report. NMFS would provide comments within 30 days after receiving these reports, and the Navy should address the comments and submit revisions within 30 days after receiving NMFS comments. If no comment is received from NMFS within 30 days, the annual report is considered completed.

The Navy is also required to submit a draft monitoring report within 90 days after completion of the construction work or the expiration of the final LOA (if issued), whichever comes earlier. This report would synthesize all data recorded during marine mammal monitoring, and estimate the number of marine mammals that may have been harassed through the entire project. NMFS would provide comments within 30 days after receiving this report, and the Navy should address the comments and submit revisions within 30 days after receiving NMFS comments. If no comment is received from NMFS within 30 days, the monitoring report is considered as final.

In addition, NMFS would require the Navy to notify NMFS' Office of Protected Resources and NMFS' Greater Atlantic Stranding Coordinator within 48 hours of sighting an injured or dead marine mammal in the construction site. The Navy shall provide NMFS and the Stranding Network with the species or description of the animal(s), the condition of the animal(s) (including carcass condition, if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that the Navy finds an injured or dead marine mammal that is not in the construction area, the Navy would report the same information as listed above to NMFS as soon as operationally feasible.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, this introductory discussion of our analyses applies to both of the species listed in Table 2, given that the anticipated effects of the Navy's Submarine Base New London pier construction project activities involving pile driving and pile removal on marine mammals are expected to be relatively similar in nature. There is no information about the nature or severity of the impacts, or the size, status, or structure of any species or stock that would lead to a different analysis by species for this activity, or else species-specific factors would be identified and analyzed.

Although a few individual seals (6 harbor seals and 2 gray seals each in year 1 and year 2) are estimated to experience Level A harassment in the form of PTS if they stay within the Level A harassment zone during the entire pile driving for the day, the degree of injury is expected to be mild and is not likely to affect the reproduction or survival of the individual animals. It is expected that, if hearing impairments occurs, most likely the affected animal would lose a few dB in its hearing sensitivity, which in most cases is not likely to affect its survival and recruitment. Hearing impairment that might occur for these individual animals would be limited to the dominant frequency of the noise sources, *i.e.,* in the low-frequency region below 2 kHz. Nevertheless, as for all marine mammal species, it is known that in general these pinnipeds will avoid areas where sound levels could cause hearing impairment. Therefore it is not likely that an animal would stay in an area with intense noise that could cause severe levels of hearing damage.

Under the majority of the circumstances, anticipated takes are expected to be limited to short-term Level B harassment. Marine mammals present in the vicinity of the action area and taken by Level B harassment would most likely show overt brief disturbance (startle reaction) and avoidance of the area from elevated noise levels during pile driving and pile removal. Given the limited estimated number of incidents of Level A and Level B harassment and the limited, short-term nature of the responses by the individuals, the impacts of the estimated take cannot be reasonably expected to, and are not reasonably likely to, rise to the level that they would adversely affect either species at the population level, through effects on annual rates of recruitment or survival.

There are no known important habitats, such as rookeries or haulouts, in the vicinity of the Navy's proposed Submarine Base New London pier construction project. The project also is not expected to have significant adverse effects on affected marine mammals' habitat, including prey, as analyzed in detail in the ''Anticipated Effects on Marine Mammal Habitat'' section.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under section 101(a)(5)(A) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals.

The estimated takes are below one percent of the population for all marine mammals (Table 6).

Based on the analysis contained herein of the proposed activity (including the prescribed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Subsistence Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Adaptive Management

The regulations governing the take of marine mammals incidental to Navy maintenance construction activities would contain an adaptive management component.

The reporting requirements associated with this proposed rule are designed to provide NMFS with monitoring data from the previous year to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

Endangered Species Act (ESA)

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning the Navy request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare a final rule and make final determinations on whether to issue the requested authorization. This notice and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The U.S. Navy is the sole entity that would be subject to the requirements in these proposed regulations, and the Navy is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

This proposed rule does not contain a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act (PRA) because the applicant is a federal agency. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports.

List of Subjects in 50 CFR Part 218

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: April 10, 2018.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart J to part 217 to read as follows:

Subpart J—Taking and Importing Marine Mammals; U.S. Navy's Submarine Base New London Pier Construction

Sec.

217.90 Specified activity and specified geographical region.
217.91 Effective dates.
217.92 Permissible methods of taking.
217.93 Prohibitions.
217.94 Mitigation requirements.
217.95 Requirements for monitoring and reporting.
217.96 Letters of Authorization.
217.97 Renewals and modifications of Letters of Authorization.
217.98 [Reserved]
217.99 [Reserved]

Subpart J—Taking and Importing Marine Mammals; U.S. Navy's Submarine Base New London Pier Construction

§ 217.90 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy (Navy) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy may be authorized in Letters of Authorization (LOAs) only if it occurs within the Navy Submarine Base New London Study Area, which is located in the towns of Groton and Ledyard in New London County, Connecticut.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the Navy's conducting in-water pier construction or demolition activities.

§ 217.91 Effective dates and definitions.

Regulations in this subpart are effective [EFFECTIVE DATE OF FINAL RULE] through [DATE 5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE].

§ 217.92 Permissible methods of taking.

Under LOAs issued pursuant to § 216.106 of this chapter and § 217.96, the Holder of the LOAs (hereinafter ''Navy'') may incidentally, but not intentionally, take marine mammals within the area described in § 217.90(b) by Level A harassment and Level B harassment associated with in-water pile driving and pile removal activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the applicable LOAs.

§ 217.93 Prohibitions.

Notwithstanding takings contemplated in § 217.92 and authorized by LOAs issued under § 216.106 of this chapter and § 217.96, no person in connection with the activities described in § 217.90 of this chapter may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under § 216.106 of this chapter and § 217.96;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Take a marine mammal specified in such LOAs if NMFS determines such taking results in an unmitigable adverse impact on the availability of such species or stock of marine mammal for taking for subsistence uses.

§ 217.94 Mitigation requirements.

When conducting the activities identified in § 217.90(c), the mitigation measures contained in any LOAs issued under § 216.106 of this chapter and § 217.96 must be implemented. These mitigation measures shall include but are not limited to:

(a) *Time Restriction.* In-water construction and demolition work shall occur only during daylight hours;

(b) Establishment of monitoring and exclusion zones:

(1) For all relevant in-water construction and demolition activity, the Navy shall implement shutdown zones with radial distances as identified in any LOA issued under § 216.106 of this chapter and § 217.96. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease;

(2) For all relevant in-water construction and demolition activity, the Navy shall designate monitoring zones with radial distances as identified in any LOA issued under § 216.106 of this chapter and § 217.96; and

(3) For all in-water construction and demolition activity, the Navy shall implement a minimum shutdown zone of a 10 meter (m) radius around the pile. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease;

(c) *Shutdown Measures.* (1) The Navy shall deploy three protected species observers (PSO) to monitor marine mammals during in-water pile driving and pile removal. One PSO will be located on land and two will be located in a boat to monitor the farther locations.

(2) Monitoring shall take place from 15 minutes prior to initiation of pile driving or removal activity through 30 minutes post-completion of pile driving or removal activity. Pre-activity monitoring shall be conducted for 15 minutes to ensure that the shutdown zone is clear of marine mammals, and pile driving or removal may commence when observers have declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals shall be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior shall be monitored and documented. Monitoring shall occur throughout the time required to drive or remove a pile. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

(3) If a marine mammal approaches or enters the shutdown zone, all pile driving or removal activities at that location shall be halted. If pile driving or removal is halted or delayed due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal.

(4) Monitoring shall be conducted by trained observers, who shall have no other assigned tasks during monitoring periods. Trained observers shall be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. The Navy shall adhere to the following additional observer qualifications:

(i) Independent observers (*i.e.,* not construction personnel) are required;

(ii) At least one observer must have prior experience working as an observer;

(iii) Other observers may substitute education (degree in biological science or related field) or training for experience;

(iv) Where a team of three or more observers are required, one observer shall be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and

(v) The Navy shall submit observer CVs for approval by NMFS;

(5) The Navy shall implement shutdown measures if the number of authorized takes for any particular species reaches the limit under the applicable LOA and if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction or demolition activities.

(c) *Soft Start.* (1) The Navy shall implement soft start techniques for impact pile driving. The Navy shall conduct an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three strike sets.

(2) Soft start shall be required for any impact driving, including at the beginning of the day, and at any time following a cessation of impact pile driving of 30 minutes or longer.

§ 217.95 Requirements for monitoring and reporting.

(a) *Marine Mammal Monitoring Protocols.* The Navy shall conduct briefings between construction supervisors and crews and the observer team prior to the start of all pile driving and removal activities, and when new personnel join the work. Trained observers shall receive a general environmental awareness briefing conducted by Navy staff. At minimum, training shall include identification of marine mammals that may occur in the project vicinity and relevant mitigation and monitoring requirements. All observers shall have no other construction-related tasks while conducting monitoring.

(b) Pile driving or removal shall only take place when the exclusion and Level A zones are visible and can be adequately monitored. If conditions (*e.g.,* fog) prevent the visual detection of marine mammals, activities shall not be initiated. If such conditions arise after the activity has begun, impact pile driving would be halted but vibratory pile driving or removal would be allowed to continue.

(c) *Reporting Measures.*—(1) *Annual Reports.* (i) The Navy shall submit an annual report within 90 days after each activity year, starting from the date when the LOA is issued (for the first annual report) or from the date when the previous annual report ended.

(ii) Annual reports would detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed during the period of the report.

(iii) NMFS would provide comments within 30 days after receiving annual reports, and the Navy shall address the comments and submit revisions within 30 days after receiving NMFS comments. If no comment is received from the NMFS within 30 days, the annual report is considered completed.

(2) *Final Report.* (i) The Navy shall submit a comprehensive summary report to NMFS not later than 90 days following the conclusion of marine mammal monitoring efforts described in this subpart.

(ii) The final report shall synthesize all data recorded during marine mammal monitoring, and estimate the number of marine mammals that may have been harassed through the entire project.

(iii) NMFS would provide comments within 30 days after receiving this report, and the Navy shall address the comments and submit revisions within 30 days after receiving NMFS comments. If no comment is received from the NMFS within 30 days, the final report is considered as final.

(3) Reporting of injured or dead marine mammals:

(i) In the unanticipated event that the construction or demolition activities clearly cause the take of a marine mammal in a prohibited manner, such as an injury, serious injury, or mortality, the Navy shall immediately cease all operations and immediately report the incident to the NMFS Office of Protected Resources, NMFS, and the Greater Atlantic Region Stranding Coordinators. The report must include the following information:

(A) Time, date, and location (latitude/longitude) of the incident;

(B) Description of the incident;

(C) Status of all sound source use in the 24 hours preceding the incident;

(D) Environmental conditions (*e.g.,* wind speed and direction, sea state, cloud cover, visibility, and water depth);

(E) Description of marine mammal observations in the 24 hours preceding the incident;

(F) Species identification or description of the animal(s) involved;

(G) The fate of the animal(s); and

(H) Photographs or video footage of the animal (if equipment is available).

(ii) Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with the Navy to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Navy may not resume their activities until notified by NMFS via letter, email, or telephone.

(iii) In the event that the Navy discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), the Navy will immediately report the incident to the NMFS Office of Protected Resources, NMFS, and the Greater Atlantic Regional Stranding Coordinators. The report must include the same information identified in paragraph (c)(3)(i) of this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the Navy to determine whether modifications in the activities are appropriate.

(iv) In the event that the Navy discovers an injured or dead marine mammal, and the lead protected species observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Navy shall report the incident to the NMFS Office of Protected Resources, NMFS, and the Greater Atlantic Regional Stranding Coordinators, within 24 hours of the discovery. The Navy shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. The Navy can continue its operations under such a case.

§ 217.96 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the Navy must apply for and obtain LOAs in accordance with § 216.106 of this chapter for conducting the activity identified in § 217.90(c) of this subpart.

(b) LOAs, unless suspended or revoked, may be effective for a period of time not to extend beyond the expiration date of these regulations.

(c) If an LOA(s) expires prior to the expiration date of these regulations, the Navy may apply for and obtain a renewal of the LOA(s).

(d) In the event of projected changes to the activity or to mitigation, monitoring, reporting (excluding changes made pursuant to the adaptive management provision of § 217.97(c)(1)) required by an LOA, the Navy must apply for and obtain a modification of LOAs as described in § 217.97.

(e) Each LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, their habitat, and the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA(s) shall be based on a determination that the level of taking shall be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of the LOA(s) shall be published in the **Federal Register** within 30 days of a determination.

§ 217.97 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this subchapter and § 217.96 for the activity identified in § 217.90(c) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA(s) under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting measures (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 217.96 for the activity identified in § 217.90 (c) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—After consulting with the Navy regarding the practicability of the modifications, NMFS may modify (including by adding or removing measures) the existing mitigation, monitoring, or reporting measures if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from the Navy's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies; or

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS shall publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to § 216.106 of this chapter and § 217.96, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§ 217.98 [Reserved]

§ 217.99 [Reserved]

[FR Doc. 2018–07728 Filed 4–12–18; 8:45 am]

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Notices

Federal Register
Vol. 83, No. 72
Friday, April 13, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Application Deadlines and Requirements for Section 313A Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes Loan Program for Fiscal Year (FY) 2018

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Solicitation of Applications (NOSA).

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), announces the application window and requirements for Fiscal Year (FY) 2018 under the Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes Program (the 313A Program) authorized under the Rural Electrification Act of 1936, as amended, and related terms. The Agency will publish the amount of funding received in the appropriations act on its website at *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.* Under the 313A Program, the Federal Financing Bank (FFB) will make loans to the selected applicant(s) and RUS will guarantee the applicant(s)'s repayment of the loans to FFB. Selected applicants may use the proceeds of loan funds made available under the 313A Program to make loans to borrowers for electrification or telecommunications purposes, or to refinance bonds or notes previously issued by applicants for such purposes. The proceeds of the guaranteed bonds and notes are not to be used by applicants to directly or indirectly fund projects for the generation of electricity.

DATES: Completed applications must be received by RUS no later than 5:00 p.m. Eastern Daylight Time (EDT) on May 31, 2018.

ADDRESSES: Applicants are required to submit one original and two copies of their loan applications to the U.S. Department of Agriculture, Rural Utilities Service, Electric Program, ATTN: Amy McWilliams, Management Analyst, 1400 Independence Avenue SW, Stop 1568, Room 0226–S, Washington, DC 20250–1568.

FOR FURTHER INFORMATION CONTACT: For further information contact Amy McWilliams, Management Analyst, 1400 Independence Avenue SW, STOP 1568, Room 0226–S, Washington, DC 20250–1568. Telephone: (202) 205–8663; or email: *amy.mcwilliams@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service, USDA.

Funding Opportunity Title: Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes for Fiscal Year (FY) 2018.

Announcement Type: Guarantees for Bonds and Notes.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.850.

Due Date for Applications: Applications must be received by RUS by 5:00 p.m. Eastern. Daylight Time (EDT) on May 31, 2018.

Items in Supplementary Information

I. Funding Opportunity Description
II. Award Information
III. Eligibility Information
IV. Fiscal Year 2018 Application and Submission Information
V. Application Review Information
VI. Issuance of the Guarantee
VII. Guarantee Agreement
VIII. Reporting Requirements
IX. Award Administration Information
X. National Environmental Policy Act Certification
XI. Other Information and Requirements
XII. Agency Contacts: Website, Phone, Fax, Email, Contact Name
XIII. Non-Discrimination Statement: USDA Non-Discrimination Statement, How To File a Complaint, Persons With Disabilities

I. Funding Opportunity Description

A. Purpose and Objectives of the 313A Program.

The purpose of the 313A Program is to make guaranteed loans to selected applicants (each referred to as ''Guaranteed Lender'' in this NOSA and in the Program Regulations) that are to be used (i) to make loans for electrification or telecommunications purposes eligible for assistance under the RE Act (defined herein) and regulations for the 313A Program located at 7 CFR part 1720 (also referred to as the ''Program Regulations'' in this NOSA), or (ii) to refinance bonds or notes previously issued by the Guaranteed Lender for such purposes. The proceeds of the guaranteed bonds and notes are not to be used by the Guaranteed Lender to directly or indirectly fund projects for the generation of electricity. Each applicant must provide a statement on how it proposes to use the proceeds of the guaranteed bonds, and the financial benefit it anticipates deriving from participating in the program pursuant to 7 CFR 1720.6(a)(3). Objectives may include, but are not limited to the annual savings to be realized by the ultimate borrower(s) as a result of the applicant's use of lower cost loan funds provided by FFB and guaranteed by RUS.

B. Statutory Authority

The 313A Program is authorized by Section 313A of the Rural Electrification Act of 1936, as amended (7 U.S.C. 940c–1) (the RE Act), and is implemented by regulations located at 7 CFR 1720. The Administrator of RUS (the Administrator) has been delegated responsibility for administering the 313A Program.

C. Definition of Terms

The definitions applicable to this NOSA are published at 7 CFR 1720.3.

D. Application Awards

RUS will review and evaluate applications received in response to this NOSA based on the regulations at 7 CFR 1720.7, and as provided in this NOSA.

II. Award Information

Type of Awards: Guaranteed Loans.

Fiscal Year Funds: FY 2018.

Available Funds: https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.

Award Amounts: RUS anticipates making multiple approvals under this NOSA. The number, amount and terms of awards under this NOSA will depend in part on the number of eligible applications and the amount of funds requested. In determining whether or not to make an award, RUS will take overall program policy objectives into account.

Due Date for Applications: See under **SUPPLEMENTARY INFORMATION** section.

Award Date: Awards will be made on or before September 28, 2018.

Preferred Schedule of Loan Repayment: Amortization Method (level debt service).

III. Eligibility Information

A. Eligible Applicants

1. *To be eligible to participate in the 313A Program, a Guaranteed Lender must be:*

a. A bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise organized on a non-profit basis; and

b. Able to demonstrate to the Administrator that it possesses the appropriate expertise, experience, and qualifications to make loans for electrification or telephone purposes.

2. *To be eligible to receive a guarantee, a Guaranteed Lender's bond must meet the following criteria:*

a. The Guaranteed Lender must furnish the Administrator with a certified list of the principal balances of eligible loans outstanding and certify that such aggregate balance is at least equal to the sum of the proposed principal amount of guaranteed bonds to be issued, including any previously issued guaranteed bonds outstanding;

b. The guaranteed bonds to be issued by the Guaranteed Lender would receive an underlying investment grade rating from a Rating Agency, without regard to the guarantee; and

3. A lending institution's status as an eligible applicant does not assure that the Administrator will issue the guarantee sought in the amount or under the terms requested, or otherwise preclude the Administrator from declining to issue a guarantee.

B. Other Eligibility Requirements

Applications will only be accepted from lenders that serve rural areas defined in 7 CFR 1710.2(a) as (i) any area of the United States, its territories and insular possessions (including any area within the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau) other than a city, town, or unincorporated area that has a population of greater than 20,000 inhabitants; and (ii) any area within a service area of a borrower for which a borrower has an outstanding loan as of June 18, 2008, made under titles I through V of the Rural Electrification Act of 1936 (7 U.S.C. 901–950bb). For initial loans to a borrower made after June 18, 2008, the ''rural'' character of an area is determined at the time of the initial loan to furnish or improve service in the area.

IV. Fiscal Year 2018 Application and Submission Information

A. Applications

All applications must be prepared and submitted in accordance with this NOSA and 7 CFR 1720.6 (Application Process). To ensure the proper preparation of applications, applicants should carefully read this NOSA and 7 CFR part 1720 (available online at *http://www.ecfr.gov/cgi-bin/text-idx?SID=9295e45c9a0f6a857d800fbec5dde2fb&mc=true&node=pt7.11.1720&rgn=div5*).

B. Content and Form of Submission

In addition to the required application specified in 7 CFR 1720.6, all applicants must submit the following additional required documents and materials:

1. *Form AD–1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions.* This form contains certain certifications relating to debarment and suspension, convictions, criminal charges, and the termination of public transactions (See 2 CFR part 417, and 7 CFR 1710.123.) This form is available at *http://www.ocio.usda.gov/policy-directives-records-forms/forms-management/approved-computer-generated-forms;*

2. *Restrictions on Lobbying.* Applicants must comply with the requirements relating to restrictions on lobbying activities. (See 2 CFR part 418, and 7 CFR 1710.125.) This form is available at *http://www.rd.usda.gov/publications/regulations-guidelines/electric-sample-documents;*

3. *Uniform Relocation Act assurance statement.* Applicants must comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. (See 7 CFR 1710.124.) This form is available at *http://www.rd.usda.gov/publications/regulations-guidelines/electric-sample-documents;*

4. *Federal debt delinquency requirements.* This report indicates whether or not the applicants are delinquent on any Federal debt (See 7 CFR 1710.126 and 7 CFR 1710.501(a)(13)). This form is available at *http://www.rd.usda.gov/publications/regulations-guidelines/electric-sample-documents;*

5. *RUS Form 266, Compliance Assurance.* Applicants must submit a non-discrimination assurance commitment to comply with certain regulations on non-discrimination in program services and benefits and on equal employment opportunity as set forth in 7 CFR parts 15 and 15b and 45 CFR part 90. This form is available at; *http://www.rd.usda.gov/publications/regulations-guidelines/forms-publications;*

6. *Articles of incorporation and bylaws.* See 7 CFR 1710.501(a)(14). These are required if either document has been amended since the last loan application was submitted to RUS, or if this is the applicant's first application for a loan under the RE Act; and

7. *Form AD–3030, Representations Regarding Felony Conviction and Tax Delinquent Status for Corporation Applications.* Applicants are required to complete this form if they are a corporation. This form is available at *http://www.ocio.usda.gov/policy-directives-records-forms/forms-management/approved-computer-generated-forms.*

C. Supplemental Documents for Submission

1. *Cash flow projections and assumptions:* Each applicant must include five-year pro-forma cash flow projections or business plans and clearly state the assumptions that underlie the projections, demonstrating that there is reasonable assurance that the applicant will be able to repay the guaranteed loan in accordance with its terms (See 7 CFR 1720.6(a)(4)).

2. *Pending litigation statement:* A statement from the applicant's counsel listing any pending litigation, including levels of related insurance coverage and the potential effect on the applicant.

V. Application Review Information

A. Application Evaluation

1. *Administrator Review.* Each application will be reviewed by the Administrator to determine whether it is eligible under 7 CFR 1720.5, the information required under 7 CFR 1720.6 is complete, and the proposed guaranteed bond complies with applicable statutes and regulations. The Administrator can at any time reject an application that fails to meet these requirements.

a. Applications will be subject to a substantive review, on a competitive basis, by the Administrator based upon the evaluation factors listed in 7 CFR 1720.7(b).

2. *Decisions by the Administrator.* The Administrator will approve or deny applications in a timely manner as such applications are received; provided, however, that in order to facilitate competitive evaluation of applications, the Administrator may from time to time defer a decision until more than one application is pending. The Administrator may limit the number of

guarantees made to a maximum of five per year, to ensure a sufficient examination is conducted of applicant requests. RUS will notify the applicant in writing of the Administrator's approval or denial of an application. Approvals for guarantees will be conditioned upon compliance with 7 CFR 1720.4 and 7 CFR 1720.6. The Administrator reserves the discretion to approve an application for an amount less than that requested.

B. Independent Assessment

Before a guarantee decision is made by the Administrator, the Administrator shall request that FFB review the rating agency determination required by 7 CFR 1720.5(b)(2) as to whether the bond or note to be issued would receive an investment grade rating without regard to the guarantee.

VI. Issuance of the Guarantee

The requirements under this section must be met by the applicant prior to the endorsement of a guarantee by the Administrator (See 7 CFR 1720.8.)

VII. Guarantee Agreement

Each Guaranteed Lender will be required to enter into a Guarantee Agreement with RUS that contains the provisions described in 7 CFR 1720.8 (Issuance of the Guarantee), 7 CFR 1720.9 (Guarantee Agreement), and 7 CFR 1720.12 (Reporting Requirements). The Guarantee Agreement will also obligate the Guaranteed Lender to pay, on a semi-annual basis, a guarantee fee equal to 30 basis points (0.30 percent) of the outstanding principal amount of the guaranteed loan (See 7 CFR 1720.10). The ultimate recipients repay the lending utility directly. The utility is responsible for repayment to USDA.

VIII. Reporting Requirements

Guaranteed Lenders are required to comply with the financial reporting requirements and pledged collateral review and certification requirements set forth in 7 CFR 1720.12.

IX. Award Administration Information

Award Notices

RUS will send a commitment letter to an applicant once the loan is approved. Applicants must accept and commit to all terms and conditions of the loan which are requested by RUS and FFB as follows:

1. *Compliance conditions.* In addition to the standard conditions placed on the section 313A Program or conditions requested by the Agency to ensure loan security and statutory compliance, applicants must comply with the following conditions:

a. Each Guaranteed Lender selected under the 313A Program will be required to post collateral for the benefit of RUS in an amount equal to the aggregate amount of loan advances made to the Guaranteed Lender under the 313A Program.

b. The pledged collateral shall consist of outstanding notes or bonds payable to the Guaranteed Lender (the Eligible Securities) and shall be placed on deposit with a collateral agent for the benefit of RUS. To be deemed Eligible Securities that can be pledged as collateral, the notes or bonds to be pledged (i) cannot be classified as non-performing, impaired, or restructured under generally accepted accounting principles, (ii) must be free and clear of all liens other than the lien created for the benefit of RUS, (iii) cannot be comprised of more than 30% of bonds or notes from generation and transmission borrowers, (iv) cannot have more than 5% of notes and bonds be from any one particular borrower and (v) cannot be unsecured notes.

c. The Guaranteed Lender will be required to place a lien on the pledged collateral in favor of RUS (as secured party) at the time that the pledged collateral is deposited with the collateral agent. RUS will have the right, in its sole discretion, within 14 business days to reject and require the substitution of any Pledged Collateral that the Guaranteed Lender deposits as collateral with the collateral agent. Prior to receiving any advances under the 313A Program, the Guaranteed Lender will be required to enter into a pledge agreement, satisfactory to RUS, with a banking institution serving as collateral agent.

d. The Guaranteed Lender will be required to maintain pledged collateral at a level that is sufficient to ensure that in the event of default resources will be available to cover principal, interest, fees and reasonable expenses incurred by RUS as a result of a default or incurred pursuant to RUS's obligation to make related payments to FFB under the RUS Guarantee on all guarantees issued by RUS to FFB for the benefit of the Guaranteed Lender under Section 313A of the RE Act. The Guaranteed Lender will also be required to agree that the pledged collateral can be used for such purposes.

e. The Guaranteed Lender will be required to agree to not to take any action that would have the effect of reducing the value of the Pledged Collateral below the level described above.

f. Applicants must certify to the RUS, the portion of their Eligible Loan portfolio that is:

(1) Refinanced RUS debt;

(2) Debt of borrowers for whom both RUS and the applicants have outstanding loans;

and

(3) Debt of borrowers for whom both RUS and the applicant have outstanding concurrent loans pursuant to Section 307 of the RE Act, and the amount of Eligible Loans.

2. *Compliance with Federal Laws.* Applicants must comply with all applicable Federal laws and regulations.

a. This obligation is subject to the provisions contained in the Consolidated Appropriations Act, 2018, Public Law 115–141, Division E, Title VII, Sections 745 and 746, as amended and/or subsequently enacted for USDA agencies and offices, regarding the prohibition against RUS making awards to applicants having corporate felony convictions within the past 24 months or to applicants having corporate federal tax delinquencies.

b. An authorized official within your organization must execute, date, and return the loan commitment letter and the Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants (Form AD–3031) to RUS within 14 calendar days from the date of the loan commitment letter, or by September 28, 2018, if the loan is approved after September 17, 2018; otherwise, the commitment will be void. This form is available at *http://www.ocio.usda.gov/policy-directives-records-forms/forms-management/approved-computer-generated-forms.*

c. Uniform Commercial Code (UCC) Filing. The Borrower must provide RUS with evidence that the Borrower has filed the UCC financing statement required by 7 CFR 1720.8(a)(2). Upon filing of the appropriate UCC financing statement, the Guaranteed Lender will provide RUS with a perfection opinion by outside counsel which demonstrates that RUS's security interest in the Pledged Collateral under the Pledge Agreement is perfected.

d. Additional conditions may be instituted for future obligations.

X. National Environmental Policy Act Certification

For any proceeds to be used to refinance bonds and notes previously issued by the Guaranteed Lender for the RE Act purposes that are not obligated with specific projects, RUS has determined that these financial actions will not individually or cumulatively have a significant effect on the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR

parts 1500–1508. However, for any new projects funded through the 313A Program, applicants must consult with RUS and comply with the Agency regulations at 7 CFR part 1970.

XI. Other Information and Requirements

Applications must contain all of the required elements of this NOSA and all standard requirements as required by 7 CFR part 1720. Additional supporting data or documents may be required by RUS depending on the individual application or financial conditions. All applicants must comply with all Federal Laws and Regulations.

XII. Agency Contacts

A. Website: http://www.rd.usda.gov/programs-services/all-programs/electric-programs.

B. Phone: (202) 205–8663.

C. Fax: (844) 749–0736.

D. Email: amy.mcwilliams@wdc.usda.gov.

E. Main point of contact: Amy McWilliams, Management Analyst, 1400 Independence Avenue SW, STOP 1568, Room 0226–S, Washington, DC 20250–1568.

XIII. USDA Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027. Individuals wishing to file a discrimination complaint may use the form available at *http://www.ocio.usda.gov/policy-directives-records-forms/forms-management/approved-computer-generated-forms* and at any USDA office, or may write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Authority: 7 U.S.C. 940c–1.

Dated: March 28, 2018.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2018–07720 Filed 4–12–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Kansas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Kansas Advisory Committee (Committee) will hold a meeting on Friday, May 25, 2018 from 12:00 p.m.–1:30 p.m. Central time. The Committee will hear testimony as part of their current study on civil rights and school funding.

DATES: The meeting will take place on Friday, May 25, 2018 from 12:00 p.m.–1:30 p.m. Central time.

Public Call Information: (Audio only) Dial: 877–723–9521, Conference ID: 5606543.

Web Access Information: (visual only): *https://cc.readytalk.com/r/u3i2qctjot19&eom.*

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll free number (audio only) and web access link (visual only). Please use both the call in number and the web access link in order to fully access the meeting.

An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Kansas Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=249*). Click on ''meeting details'' and then ''documents'' to download. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Introduction

Panel Testimony: Civil Rights and School Funding in Kansas

Public Comment

Adjournment

Dated: April 10, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–07712 Filed 4–12–18; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Kansas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Kansas Advisory Committee (Committee) will hold a meeting on Wednesday, May 2, 2018 from 12:00 p.m.–1:30 p.m. Central time. The Committee will hear testimony as part of their current study on civil rights and school funding.

DATES: The meeting will take place on Wednesday, May 2, 2018 from 12:00 p.m.–1:30 p.m. Central time.

Public Call Information: (Audio only) Dial: 877–675–4757, Conference ID: 6971300. Web Access Information: (Visual only): *https://cc.readytalk.com/r/fkz6cxanapl9&eom.*

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll free number (audio only) and web access link (visual only). Please use both the call in number and the web access link in order to fully access the meeting.

An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Kansas Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=249*). Click on ''meeting details'' and then ''documents'' to download. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda:

Welcome and Introduction
Panel Testimony: Civil Rights and School Funding in Kansas
Public Comment
Adjournment

Dated: April 10, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–07711 Filed 4–12–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Kansas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Kansas Advisory Committee (Committee) will hold a meeting on Wednesday, April 25, 2018 from 2:00 p.m.–3:00 p.m. Central time. The Committee will discuss preparations to hear additional testimony as part of their current study on civil rights and school funding.

DATES: The meeting will take place on Wednesday, April 25, 2018 from 2:00 p.m.–3:00 p.m. Central time.

Public Call Information: (audio only) Dial: 888–213–3918, Conference ID: 8956987.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Kansas Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=249*). Click on ''meeting details'' and then ''documents'' to download. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may

contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Introduction
Discussion: Civil Rights and School Funding in Kansas
Public Comment
Adjournment

Dated: April 10, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–07714 Filed 4–12–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Louisiana Advisory Committee To Discuss the Barriers to Voting Report

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Louisiana Advisory Committee (Committee) will hold a meeting on Monday, April 23, 2018, at 1:00:00 p.m. Central for a discussion on the Barriers to Voting in Louisiana report.

DATES: The meeting will be held on Monday, April 23, 2018, at 1:00 p.m. Central.

Public Call Information: Dial: 888–516–2446, Conference ID: 3321856.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–516–2446, conference ID: 3321856. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324 or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Louisiana Advisory Committee link (*http://www.facadatabase.gov/committee/committee.aspx?cid=251&aid=17*). Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Roll Call
Discussion of Barriers to Voting Report
Next Steps
Public Comment
Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstance that this project will inform the Commission's FY2018 statutory enforcement report on voting rights and is therefore under a very tight timeline.

Dated: April 10, 2018,

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–07713 Filed 4–12–18; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Georgia Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Georgia Advisory Committee will hold a meeting on Tuesday, May 1, 2018, for the purpose of reviewing and accepting the public hearing transcript.

DATES: The meeting will be held on Tuesday May 1, 2018 at 1:00 p.m. EST.

ADDRESSES: The meeting will be by teleconference. Toll-free call-in number: 888–554–1430, conference ID: 9151191.

FOR FURTHER INFORMATION CONTACT: Jeff Hinton, DFO, at *jhinton@usccr.gov* or 404–562–7006.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–554–1430, conference ID: 9151191. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office by April 27, 2018. Written comments may be mailed to the Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth Street, Suite 16T126, Atlanta, GA 30303. They may also be faxed to the Commission at (404) 562–7005, or emailed to Regional Director, Jeffrey Hinton at *jhinton@usccr.gov.* Persons who desire additional information may contact the Southern Regional Office at (404) 562–7006.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Georgia Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Southern Regional Office at the above email or street address.

Agenda:

Welcome and Introductions—Jeff Hinton, Regional Director; Jerry Gonzalez, Chair Georgia SAC
Regional Update—Jeff Hinton, Regional Director, SRO, USCCR
Review discuss and accept transcript of the hearing—Jerry Gonzalez, Chair GA SAC
State Advisory Committee (SAC) members
Public comments
Adjournment

Dated: April 10, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–07718 Filed 4–12–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Manufacturers' Unfilled Orders Survey

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before June 12, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *PRAcomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mary Catherine Potter, U.S. Census Bureau, Economic Indicators Division, 4600 Silver Hill Road, Room 7K157, Washington, DC 20233–6913, (301) 763–4207, or (via the internet at *mary.catherine.potter@census.gov*.)

SUPPLEMENTARY INFORMATION:

I. Abstract

The data collected in the Manufacturers' Unfilled Orders (M3UFO) Survey will be used to benchmark the new and unfilled orders information published in the monthly Manufacturers' Shipments, Inventories, and Orders (M3) Survey. The M3 Survey collects monthly data on the value of shipments, inventories, and new and unfilled orders from manufacturing companies. The orders, as well as the shipments and inventory data, are valuable tools for analysts of business cycle conditions. The data are used by the Bureau of Economic Analysis, the Counsel of Economic Advisors, the Federal Reserve Board, the Conference Board, and members of the business community such as trade associations and the media.

The monthly M3 Survey estimates are based on a panel of approximately 5,000 reporting units that represent approximately 3,100 companies and provide an indication of month-to-month change for the Manufacturing Sector. These reporting units may be divisions of diversified large companies, large homogenous companies, or single-unit manufacturers. The M3 estimates are periodically benchmarked to comprehensive data on the manufacturing sector from the Annual Survey of Manufactures (ASM), the Economic Census (shipments and inventories) and the M3UFO Survey, which is the subject of this notice. Unfilled orders data are not collected in the ASM or the Economic Census. To obtain more accurate M3 estimates of unfilled orders, which are also used in deriving M3 estimates of new orders, we conduct the M3UFO Survey annually to be used as the source for benchmarking M3 unfilled orders data. Additionally, the M3UFO data are used to determine which North American Industry Classification System (NAICS) industries continue to maintain unfilled orders; this is done in order to minimize burden, and only request unfilled orders as part of the monthly M3 Survey from industries that still maintain unfilled orders.

There are no changes to the MA–3000 form, which is used to conduct the M3UFO survey.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect the data with online reporting encouraged. Online response for the survey is typically just under 60 percent. Companies are asked to respond to the survey within 30 days of receipt. Letters encouraging participation are mailed to companies that have not responded by the designated time. Telephone follow-up is conducted to obtain response from delinquent companies.

III. Data

OMB Control Number: 0607–0561.
Form Number(s): MA–3000.
Type of Review: Regular submission.
Affected Public: Manufacturing Businesses, large and small, or other for-profit organizations.
Estimated Number of Respondents: 6,000.
Estimated Time per Response: .50 hour.
Estimated Total Annual Burden Hours: 3,000.
Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)
Respondent's Obligation: Mandatory.
Legal Authority: Title 13 U.S.C., Sections 131 and 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–07692 Filed 4–12–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–862]

Certain Uncoated Groundwood Paper From Canada: Amended Preliminary Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is amending the scope of the countervailing duty (CVD) investigation of certain uncoated groundwood paper (UGW paper) from Canada to conform with the scope published in the preliminary determination of the companion antidumping duty (AD) investigation of UGW paper from Canada. The period of investigation is January 1, 2016, through December 31, 2016.

DATES: Applicable April 13, 2018.

FOR FURTHER INFORMATION CONTACT: Andrew Medley, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4987.

SUPPLEMENTARY INFORMATION:

Background

Commerce published its *CVD Preliminary Determination* on January 16, 2018.[1] On March 19, 2018, Commerce published its *AD Preliminary Determination,* and amended the scope to exclude certain products, based upon comments received from interested parties.[2]

Amended Scope of the Investigation

The product covered by this investigation is UGW paper from Canada. We are amending the scope of the CVD investigation to conform with the scope of the companion AD investigation, including the exclusions of: (1) Certain uncoated groundwood paper which has undergone a creping process over the entire surface area of the paper; (2) certain uncoated groundwood construction paper and uncoated groundwood manila drawing paper in sheet or roll format; and (3) certain uncoated groundwood directory paper. These exclusions were first enumerated in the *AD Preliminary Determination.* For a complete description of the amended scope of this investigation, see Appendix I.

Suspension of Liquidation

We have not revised the estimated cash deposit rates published in the *CVD Preliminary Determination.* In accordance with section 703(d)(1)(B) and (d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of entries of subject merchandise as described in the amended scope of the investigation, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to continue to require a cash deposit, pursuant to 19 CFR 351.205(d). Additionally, because certain products are now excluded from the scope of the investigation, Commerce will instruct CBP to terminate suspension of liquidation of those excluded products, and to refund any cash deposits previously posted with respect to them.

Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission of its amended determination. This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: April 9, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Amended Scope of the Investigation

The merchandise covered by this investigation includes certain paper that has not been coated on either side and with 50 percent or more of the cellulose fiber content consisting of groundwood pulp, including groundwood pulp made from recycled paper, weighing not more than 90 grams per square meter. Groundwood pulp includes all forms of pulp produced from a mechanical pulping process, such as thermo-mechanical process (TMP), chemi-thermo mechanical process (CTMP), bleached chemi-thermo mechanical process (BCTMP) or any other mechanical pulping process. The scope includes paper shipped in any form, including but not limited to both rolls and sheets.

Certain uncoated groundwood paper includes but is not limited to standard newsprint, high bright newsprint, book publishing, and printing and writing papers. The scope includes paper that is white, off-white, cream, or colored.

Specifically excluded from the scope are imports of certain uncoated groundwood paper printed with final content of printed text or graphic. Also excluded are papers that otherwise meet this definition, but which have undergone a supercalendering process.[3] Additionally, excluded are papers that otherwise meet this definition, but which have undergone a creping process over the entire surface area of the paper.

Also excluded are uncoated groundwood construction paper and uncoated groundwood manila drawing paper in sheet or roll format. Excluded uncoated groundwood construction paper and uncoated groundwood manila drawing paper: (a) Have a weight greater than 61 grams per square meter; (b) have a thickness greater than 6.1 caliper, *i.e.,* greater than .0061'' or 155 microns; (c) are produced using at least 50 percent thermomechanical pulp; and (d) have a shade, as measured by CIELAB, as follows: L* less than or 75.0 or b* greater than or equal to 25.0.

Also excluded is uncoated groundwood directory paper that: (a) Has a basis weight of 34 grams per square meter or less; and (b) has a thickness of 2.6 caliper mils or 66 microns or less.

Certain uncoated groundwood paper is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) in several subheadings, including 4801.00.0120, 4801.00.0140, 4802.61.1000, 4802.61.2000, 4802.61.3110, 4802.61.3191, 4802.61.6040, 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.6140, 4802.69.1000, 4802.69.2000, and 4802.69.3000. Subject merchandise may also be imported under several additional subheadings including 4805.91.5000, 4805.91.7000, and 4805.91.9000.[4] Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

[FR Doc. 2018–07723 Filed 4–12–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–819]

Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Colakoglu Dis Ticaret A.S. and Colakoglu Metalurji

[1] *See Certain Uncoated Groundwood Paper from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 83 FR 2133 (January 16, 2018) (*CVD Preliminary Determination*).

[2] *See Certain Uncoated Groundwood Paper from Canada: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 83 FR 11960 (March 19, 2018) (*AD Preliminary Determination*) and accompanying Preliminary Decision Memorandum. *See also,* Memorandum ''Certain Uncoated Groundwood Paper from Canada: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated March 12, 2018, which was placed on the record of both the AD and CVD investigations.

[3] Supercalendering imparts a glossy finish produced by the movement of the paper web through a supercalender which is a stack of alternating rollers of metal and cotton (or other softer material). The supercalender runs at high speed and applies pressure, heat, and friction which glazes the surface of the paper, imparting gloss to the surface and increasing the paper's smoothness and density.

[4] The following HTSUS numbers are no longer active as of January 1, 2017: 4801.00.0020, 4801.00.0040, 4802.61.3010, 4802.61.3091, and 4802.62.6040.

A.S. (collectively, Colakoglu), and Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas), producers/exporters of steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey), did not receive countervailable subsidies during the period of review (POR) covering January 1, 2015, through December 31, 2015. This review also covered 11 companies not individually examined, which Commerce determines received net countervailable subsidies during the POR. Additionally, we are rescinding the review for two companies for which reviews were requested.

DATES: Applicable April 13, 2018.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this administrative review on December 6, 2017.[1] Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final results of this review is now April 9, 2018.[2]

Scope of the Order

The scope of the order consists of steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010. The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0015, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.[3]

Analysis of Comments Received

All issues raised in interested parties' briefs are addressed in the Issues and Decision Memorandum. A list of the issues raised by interested parties, and to which we responded in the Issues and Decision Memorandum, is provided in the Appendix to 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 *https://access.trade.gov* and 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.

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a full description of the methodology underlying all of Commerce's conclusions, *see* the Issues and Decision Memorandum.

Partial Rescission of Review

Agir Haddecilik A.S. (Agir)[5] timely filed a no-shipments certification. U.S. Customs and Border Protection (CBP) did not provide to Commerce any information that contradicted this no-shipments certification. Consequently, in the *Preliminary Results,* Commerce announced its intent to rescind the review of Agir. No interested party submitted comments on Commerce's intent to rescind the review of Agir. Because there is no evidence on the record to indicate that Agir had entries, exports, or sales of subject merchandise to the United States during the POR, pursuant to 19 CFR 351.213(d)(3), we are rescinding the review with respect to Agir.

Entries of merchandise produced and exported by Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) are not subject to countervailing duties because the final determination of the investigation with respect to this producer/exporter combination was negative.[6] However, any entries of merchandise produced by any other entity and exported by Habas, or produced by Habas and exported by another entity, are subject to the *Order.*

No interested party submitted comments on Commerce's intent to rescind the review of Habas. Because there is no evidence on the record of entries of merchandise produced by another entity and exported by Habas, or entries of merchandise produced by Habas and exported by another entity, we determine that Habas is not subject to this administrative review. Therefore, pursuant to 19 CFR 351.213(d)(3), we are rescinding the review with respect to Habas.

Final Results of Review

In accordance with 19 CFR 351.221(b)(5), we determine the following net countervailable subsidy rates for the period January 1, 2015, through December 31, 2015:

[1] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind the Review in Part; 2015,* 82 FR 57574 (December 6, 2017) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

[3] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Countervailing Duty Order,* 79 FR 65926 (November 6, 2014) (*Order*). For a full description of the scope of this order *see* Memorandum, ''Decision Memorandum for Final Results of Countervailing Duty 2015 Administrative Review: Steel Concrete Reinforcing Bar from the Republic of Turkey,'' dated concurrently with, and hereby adopted by this notice (Issues and Decision Memorandum).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[5] Agir was previously known as Agir Haddecilik Makina ve Sanayi Ticaret Ltd. Sti. Agir's former name was included in the *Initiation Notice. See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 4294, 4298 (January 13, 2017) (*Initiation Notice*).

[6] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination,* 79 FR 54963, 54964 (September 15, 2014) (*Turkey Rebar Final Determination*).

Company	Subsidy rate ad valorem (percent)
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. and its cross-owned affiliates[7]	*0.02
Colakoglu Dis Ticaret A.S. and Colakoglu Metalurji A.S	*0.18
Acemar International Limited	[8]1.25
As Gaz Sinai ve Tibbi Azlar A.S.[9]	1.25
Asil Celik Sanayi ve Ticaret A.S.[10]	1.25
Ege Celik Endustrisi Sanayi ve Ticaret A.S.[11]	1.25
Izmir Demir Celik Sanayi A.S	1.25
Kaptan Demir Celik Endustrisi ve Ticaret A.S.[12] and Kaptan Metal Dis Ticaret ve Nakliyat A.S.[13]	*[14]0.02
Kocaer Haddecilik Sanayi Ve Ticar L	1.25
Mettech Metalurji Madencilik Muhendislik Uretim Danismanlik ve Ticaret Limited Sirketi	1.25
MMZ Onur Boru Profil A.S	1.25
Ozkan Demir Celik Sanayi A.S	1.25
Wilmar Europe Trading BV	1.25

* *de minimis.*

Disclosure

We will disclose to the parties in this proceeding the calculations performed for these final results within five days of the date of publication of this notice in the **Federal Register**.[15]

Assessment and Cash Deposit Requirements

In accordance with 19 CFR 351.212(b)(2), Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review to liquidate shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 2015, through December 31, 2015, for the above-listed companies at the *ad valorem* assessment rates listed, except for those companies to which a *de minimis* rate is assigned. Concerning those companies with a *de minimis* rate, Commerce intends to issue assessment instructions to CBP to liquidate shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 2015, through December 31, 2015, without regard to countervailing duties.

Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above, except, where the rate calculated in these final results is *de minimis,* no cash deposit will be required on shipments of the subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all others rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

Return or Destruction of Proprietary Information

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these final results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213(d)(4) and 19 CFR 351.221(b)(5).

Dated: April 9, 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. Background
III. Comments
IV. Scope of the Order
V. Partial Rescission of the 2015 Administrative Review
VI. Non-Selected Rate
VII. Subsidies Valuation Information
VIII. Analysis of Programs
A. Programs Determined To Be Countervailable
1. Rediscount Program
2. Deduction From Taxable Income for Export Revenue
B. Programs Determined Not To Confer Countervailable Benefits
1. Provision of Natural Gas for Less Than Adequate Remuneration (LTAR)
2. Inward Processing Regime
3. Assistance To Offset Costs Related to Antidumping/CVD Investigations
4. Investment Incentive Certificates
C. Programs Determined Not To Be Countervailable
1. Payments From the Turkish Employers' Association of Metal Industries (MESS)—Social Security Premium Support
2. Payments From MESS—Occupational Health and Safety Support
D. Programs Determined To Not Be Used

[7] We find the following companies to be cross-owned with Icdas: Mardas Marmara Deniz Isletmeciligi A.S., Oraysan Insaat Sanayi ve Ticaret A.S., Artmak Denizcilik Ticaret ve Sanayi A.S., and Demir Sanayi Demir Celik Ticaret ve Sanayi A.S.

[8] Commerce is assigning the rate of 1.25 percent *ad valorem,* the sole above *de minimis* rate calculated within a segment of this proceeding to the non-selected companies. This rate was calculated for Icdas in the underlying investigation. *See Turkey Rebar Final Determination,* 79 FR at 54964; *see also Preliminary Results* PDM at 6.

[9] The company's name was incorrectly spelled as As Gaz Sinai ve Tibbi Azlar AS. in the *Initiation Notice. See Initiation Notice,* 82 FR at 4298.

[10] The company's name was incorrectly spelled as Asil Celik Sanayi ve Ticaret AS. in the *Initiation Notice. Id.*

[11] The company's name was incorrectly spelled as Ege Celik Endustrisi Sanayi ve Ticaret AS. in the *Initiation Notice. Id.*

[12] The company's name was incorrectly spelled as Kaptan Demir Celik Industrisi ve Ticaret A.S. in the *Initiation Notice. Id.*

[13] In its request for review, the petitioner listed the company name as Kaptan Metal Dis Tic Ve Nak AS. *See* Petitioner's Letter, ''Request for Administrative Review,'' dated November 30, 2016, and *Initiation Notice,* 82 FR at 4298. The petitioner subsequently clarified that the review request was for Kaptan Metal Dis Ticaret ve Nakliyat A.S. *See* Petitioner's Letter, ''Response to Clarification Request,'' dated July 26, 2017.

[14] Consistent with Commerce's practice, we continue to assign the rate of 0.02 percent *ad valorem* to Kaptan Demir Celik Endustrisi ve Ticaret A.S. and Kaptan Metal Dis Ticaret ve Nakliyat A.S., based on their rate calculated in the prior administrative review. *See Preliminary Results* PDM at 5–6; *see also Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2014,* 82 FR 26907, 26908 (June 12, 2017).

[15] *See* 19 CFR 351.224(b).

1. Purchase of Electricity for More Than Adequate Remuneration (MTAR)—Sales *via* Build-Operate-Own, Build-Operate-Transfer, and Transfer of Operating Rights Contracts
2. Purchase of Electricity Generated From Renewable Resources for MTAR
3. Provision of Lignite for LTAR
4. Reduction and Exemption of Licensing Fees for Renewable Resource Power Plants
5. Research and Development Grant Program
6. Export Credits, Loans, and Insurance From Turk Eximbank
7. Regional Investment Incentives
8. Large-Scale Investment Incentives
9. Strategic Investment Incentives
10. Incentives for Research & Development Activities
11. Regional Development Subsidies
IX. Analysis of Comments
Comment: Whether Commerce Should Modify the Natural Gas Benchmark
X. Conclusion

[FR Doc. 2018–07722 Filed 4–12–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843]

Certain Lined Paper Products From India: Final Results of Antidumping Duty Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Navneet Education Ltd. (Navneet) made sales of certain lined paper products (CLPP) from India below normal value during the period of review (POR) September 1, 2015, through August 31, 2016, but SAB International (SAB) did not.

DATES: Applicable April 13, 2018.

FOR FURTHER INFORMATION CONTACT: Samuel Brummitt (for Navneet) and Cindy Robinson (for SAB), AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone (202) 482–7851 or (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 2017, Commerce published the *Preliminary Results.*[1] On November 6, 2017, the petitioners,[2] Navneet, and SAB timely submitted their case briefs.[3] On November 6, 2017, the petitioner submitted a request for a hearing, which it subsequently withdrew on December 8, 2017.[4] On November 13, 2017, the petitioners and Navneet timely submitted their respective rebuttal briefs.[5] On January 19, 2018, Commerce postponed the final results by 60 days, until April 4, 2018.[6]

Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. The revised deadline for the final results of this review is now April 9, 2018.[7]

Scope of the Order

The merchandise covered by the order is certain lined paper products. The merchandise subject to this order is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4811.90.9035, 4811.90.9080, 4820.30.0040, 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description of the scope remains dispositive.[8]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised and to which we responded is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on-file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit (CRU), 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/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made the following company-specific change to Navneet's final margin calculation: (1) We did not make a duty drawback adjustment for duties paid on imported input materials used to produce the subject merchandise; (2) we made certain revisions to Navneet's home market (HM) price to account for excise taxes and local body taxes; and (3) we made changes to Navneet's HM program by converting the variable PRIMEH to '1' to match the format used for the variable PRIMEU. As a result of these changes, we determine that Navneet made sales of subject merchandise below normal value during the POR and have calculated a final weighted-average dumping margin of 1.34 percent. We made no change to SAB's preliminary SAS margin program and, therefore, SAB's preliminary margin remains unchanged for these final results.

Final Results of the Review

As a result of this review, Commerce calculated the following dumping

[1] *See Certain Lined Paper Products from India: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2015–2016,* 82 FR 46764 (October 6, 2017) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] The petitioners are the Association of American School Paper Suppliers and its individual members.

[3] *See* the petitioners' letter titled, ''Certain Lined Paper Products from India: Case Brief of the Association of American School Paper Suppliers,'' dated November 6, 2017; *see also* Navneet's letter titled, ''Certain Lined Paper Products from India: Case Brief of Navneet Education Limited,'' dated November 6, 2017; *see also* SAB's letter titled, ''Certain Lined Paper Products from India: SAB International Case Brief,'' dated November 6, 2017.

[4] *See* the petitioner's letter titled, ''Certain Lined Paper Products from India: Request for Hearing,'' dated November 6, 2017; *see also* Memorandum to the File titled, ''Petitioner's Request for a Meeting in Lieu of a Hearing,'' dated December 8, 2017.

[5] *See* the petitioners' letter titled, ''Certain Lined Paper Products from India: Rebuttal Brief of the Association of American School Paper Suppliers,'' dated November 13, 2017; *see also* Navneet's letter titled, ''Certain Lined Paper Products from India: Rebuttal Brief of Navneet Education Limited,'' dated November 13, 2017.

[6] *See* Memorandum titled ''Certain Lined Paper Products from India: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review,'' dated January 19, 2018.

[7] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding affected by the closure of the Federal Government, including the final results, have been extended by 3 days.

[8] For a complete description of the Scope of the Order, *see* Memorandum titled ''Certain Lined Paper Products from India: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review; 2015–2016,'' dated concurrently with and hereby adopted by this notice (''Issues and Decision Memorandum'').

margins for Navneet and SAB. We are applying to the non-selected companies the rates calculated for the mandatory respondents in these final results, excluding any zero and *de minimis* margins, as referenced below.[9]

Producer/exporter	Weighted-average dumping margin (percent)
Navneet Education Ltd	1.34
SAB International	0.00
Kokuyo Riddhi Paper Products Pvt. Ltd	1.34
Magic International Pvt. Ltd	1.34
Pioneer Stationery Pvt Ltd	1.34
SGM Paper Products	1.34
Super Impex	1.34

Duty Assessment

Commerce shall determine and Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries.[10] Specifically, for Navneet and SAB, we will instruct CBP to liquidate their entries during the POR imported by the importers (or customers) identified in their questionnaire responses without regard to antidumping duties because their weighted-average dumping margins in these final results is zero.[11] In accordance with Commerce's practice, for entries of subject merchandise during the POR for which Navneet or SAB did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no company-specific rate for the intermediate company(ies) involved in the transaction.[12] We intend to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2) of the Tariff Act of 1930, as amended (the Act): (1) The cash deposit rate for respondents noted above will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.91 percent, the all-others rate established in the original antidumping duty investigation.[13] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: April 9, 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 Final Decision Memorandum

I. Summary
II. List of Comments
III. Background
IV. Scope of the Order
V. Analysis of Comments
Comments Concerning Navneet
1. Whether Commerce Should Reclassify Navneet's Reported Levels of Trade
2. Whether Commerce Should Grant Navneet's Claimed Duty Drawback Adjustment
3. Whether Commerce Should Grant an Adjustment for Defective Product Claims Reported in the Other Rebates Field
4. Treatment of Navneet's Excise Expense and Local Body Tax in Home Market Price and Cost Calculation
5. Whether Commerce Should Correct the Miscoded PRIMEU Field
Comment Concerning SAB
6. Whether Certain Chain Stores Who May Be the Importer of Record Should Be Included in the Liquidation Instructions
VI. Recommendation

[FR Doc. 2018–07724 Filed 4–12–18; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See Albemarle Corp. & Subsidiaries* v. *United States,* 821 F.3d 1345, 1351–53 (Fed. Cir. 2016) (*Albemarle*).

[10] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[11] *Id.,* 77 FR at 8102.

[12] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[13] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–913]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 6, 2017, the Department of Commerce (Commerce) published the preliminary results of the administrative review of the countervailing duty order on certain new pneumatic off-the-road tires (OTR

Tires) from the People's Republic of China (China). In the final results, Commerce has made changes to the subsidy rates that were preliminary determined for Guizhou Tyre for the period of review (POR) from January 1, 2015, through December 31, 2015.

DATES: Applicable April 13, 2018.

FOR FURTHER INFORMATION CONTACT: Chien-Min Yang or Jun Jack Zhao, AD/CVD Operations, Office VII, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5484 or (202) 482–1396.

Background

Commerce published the preliminary results of the administrative review of the countervailing duty order on certain new pneumatic off-the-road tires (OTR Tires) from China on October 6, 2017.[1] In this review we individually examined two companies as mandatory respondents: Guizhou Tyre Co., Ltd. (Guizhou Tyre) and Xuzhou Xugong Tyres Co., Ltd. (Xuzhou Xugong). The period of review (POR) is January 1, 2015, through December 31, 2015. In the *Preliminary Results* we preliminarily applied total adverse facts available with regard to Xuzhou Xugong after it withdrew from participating in this review.[2] No interested party commented on Commerce's preliminary determination with respect to Xuzhou Xugong. Accordingly, our determination remains unchanged for these final results. However, based on an analysis of the comments received, Commerce has made certain changes to the subsidy rates that were preliminary determined for Guizhou Tyre. The final subsidy rates are listed in the ''Final Results of Administrative Review'' section below.

Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. Accordingly, the revised deadline for the final results of this review was tolled to April 9, 2018.

Scope of the Order

The products covered by the scope are new pneumatic tires designed for off-the-road (OTR) and off-highway use. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.70.0010, 4011.62.00.00, 4011.80.1020, 4011.90.10, 4011.70.0050, 4011.80.1010, 4011.80.1020, 4011.80.2010, 4011.80.2020, 4011.80.8010, and 4011.80.8020. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope, which is contained in the accompanying Issues and Decision Memorandum, is dispositive.[3]

Analysis of Comments Received

The issues raised by Guizhou Tyre, the Government of the People's Republic of China (GOC), and Titan Tire Corporation (Titan) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (the USW) (collectively, the Petitioners) in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum.[4] The issues are identified in the Appendix to 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 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://trade.gov/enforcement/frn/index.html.* The signed Issues and Decision Memorandum and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received from all interested parties, we have made revisions to some of our benefit calculations for Guizhou Tyre. For a discussion of these issues, see the Issues and Decision Memorandum.

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs we found to be countervailable, we determined that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a description of the methodology underlying all of Commerce's conclusions, see the Issues and Decision Memorandum.

Final Results of Administrative Review

In accordance with 19 CFR 351.221(b)(5), we determined a countervailable subsidy rate for the period January 1, 2015, through December 31, 2015, for Guizhou Tyre, and a rate based on total AFA for Xuzhou Xugong. For the companies for which a review was requested but not selected for individual examination as mandatory respondents and which we are not finding to be cross-owned with the mandatory company respondents, we followed Commerce's practice, pursuant to 705(c)(5)(A)(i) of the Act, which is to base the subsidy rates on an average of the subsidy rates calculated, excluding *de minimis* rates or rates based entirely on adverse facts available.[6] Therefore, we are basing the subsidy rate for the non-selected companies on the subsidy rate calculated for Guizhou Tyre. For a list of these non-selected companies, please see Appendix II to this notice.

We find the countervailable subsidy rates for the producers/exporters under review to be as follows:

Manufacturer/exporter	Subsidy rate (percent *ad valorem*)
Guizhou Tyre Co., Ltd./ Guizhou Tyre Import & Export Co., Ltd	31.49
Xuzhou Xugong Tyres Co., Ltd.	91.94
Non-Selected Companies Under Review	31.49

[1] *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2015,* 82 FR 46754 (October 6, 2017) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* PDM at 7–8.

[3] For a full description of the scope of the order, *see* Memorandum from James Maeder, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Gary Taverman, Deputy Assistant Secretary for Enforcement and Compliance performing the duties of Assistant Secretary for Enforcement and Compliance, ''Issues and Decision Memorandum for the Final Results in the Countervailing Duty Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; 2015,'' dated concurrently with this notice and herein incorporated by reference (Issues and Decision Memorandum).

[4] *See Issues and Decision Memorandum* at 9–14.

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and, section 771(5A) of the Act regarding specificity.

[6] *See, e.g., Certain Pasta from Italy: Preliminary Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 18806, 18811 (April 13, 2010) *unchanged in Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 37386 (June 29, 2010).

Assessment and Cash Deposit Requirements

In accordance with 19 CFR 351.212(b)(2), Commerce intends to issue appropriate instructions to U.S. Customs and Border Protection (CBP) 15 days after publication of the final results of this review. Commerce will instruct CBP to liquidate shipments of subject merchandise produced and/or exported by the companies listed above, entered or withdrawn from warehouse, for consumption from January 1, 2015, through December 31, 2015, at the percent rates, as listed above for each of the respective companies, of the entered value.

Commerce intends also to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above for each of the respective companies shown above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibilities concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 9, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

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  A. Case History
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VI. Subsidies Valuation Information
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  D. Benchmarks and Discount Rates
VII. Use of Facts Otherwise Available and Adverse Inferences
VIII. Analysis of Programs
  A. Programs Determined To Be Countervailable
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IX. Final Results of Review
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  Comment 1 Whether Commerce Should Use Guizhou Tyre's Imports as Tier 1 Benchmarks for Synthetic Rubber
  Comment 2 Whether Certain Benchmarks Used by Commerce in the Preliminary Results Double-Counted Freight and Import Duties
  Comment 3 Whether Commerce Should Countervail Certain Synthetic Rubber Produced by Certain Foreign Companies
  Comment 4 Whether Commerce Should Find the Export Buyer's Credit Program Used in This Case
  Comment 5 Whether the GOC's Import Duty and VAT Exemptions on Imports of Raw Materials Program (Processing Trade Program) Is Countervailable
VIII. Conclusion
Appendix

Appendix II

Non-Selected Companies

1. Aeolus Tyre Co., Ltd.
2. Air Sea Transport Inc
3. Air Sea Worldwide Logistics Ltd
4. AM Global Shipping Lines
5. Apex Maritime Co Ltd
6. Apex Maritime Thailand Co Ltd
7. BDP Intl LTD China
8. Beijing Kang Jie Kong Intl Cargo Agent Co Ltd
9. C&D Intl Freight Forward Inc
10. Caesar Intl Logistics Co Ltd
11. Caterpillar & Paving Products Xuzhou Ltd
12. CH Robinson Freight Services China LTD
13. Changzhou Kafurter Machinery Co Ltd
14. Cheng Shin Rubber (Xiamen) Ind Ltd
15. China Intl Freight Co Ltd
16. Chonche Auto Double Happiness Tyre Corp Ltd
17. City Ocean Logistics Co Ltd
18. Consolidator Intl Co Ltd
19. Crowntyre Industrial Co. Ltd
20. CTS Intl Logistics Corp
21. Daewoo Intl Corp
22. De Well Container Shipping Inc
23. Double Coin Holdings Ltd; Double Coin Group Shanghai Donghai Tyre Co., Ltd; and Double Coin Group Rugao Tyre Co., Ltd. (collectively ''Double Coin'')
24. England Logistics (Qingdao) Co Ltd
25. Extra Type Co Ltd
26. Fedex International Freight Forwarding Services Shanghai Co Ltd
27. FG Intl Logistics Ltd
28. Global Container Line
29. Honour Lane Shipping
30. Innova Rubber Co., Ltd.
31. Inspire Intl Enterprise Co Ltd
32. JHJ Intl Transportation Co
33. Jiangsu Feichi Co. Ltd.
34. Kenda Rubber (China) Co Ltd
35. KS Holding Limited/KS Resources Limited
36. Laizhou Xiongying Rubber Industry Co., Ltd.
37. Landmax Intl Co Ltd
38. LF Logistics China Co Ltd
39. Mai Shandong Radial Tyre Co., Ltd.
40. Maine Industrial Tire LLC
41. Master Intl Logistics Co Ltd
42. Melton Tire Co. Ltd
43. Merityre Specialists Ltd
44. Mid-America Overseas Shanghai Ltd
45. Omni Exports Ltd
46. Orient Express Container Co Ltd
47. Oriental Tyre Technology Limited
48. Pudong Prime Intl Logistics Inc
49. Q&J Industrial Group Co Ltd
50. Qingdao Aotai Rubber Co Ltd
51. Qingdao Apex Shipping
52. Qingdao Chengtai Handtruck Co Ltd
53. Qingdao Chunangtong Founding Co Ltd
54. Qingdao Free Trade Zone Full-World International Trading Co., Ltd.
55. Qingdao Haojia (Xinhai) Tyre Co.
56. Qingdao Haomai Hongyi Mold Co Ltd
57. Qingdao J&G Intl Trading Co Ltd
58. Qingdao Jinhaoyang International Co. Ltd
59. Qingdao Kaoyoung Intl Logistics Co Ltd
60. Qingdao Milestone Tyres Co Ltd.
61. Qingdao Nexen Co Ltd
62. Qingdao Qihang Tyre Co.
63. Qingdao Qizhou Rubber Co., Ltd.
64. Qingdao Shijikunyuan Intl Co Ltd
65. Qingdao Sinorient International Ltd.
66. Qingdao Taifa Group Imp. And Exp. Co., Ltd./Qingdao Taifa Group Co., Ltd.
67. Qingdao Wonderland
68. Qingdao Zhenhua Barrow Manufacturing Co., Ltd.
69. Rich Shipping Company
70. RS Logistics Ltd
71. Schenker China Ltd
72. Seastar Intl Enterprise Ltd
73. SGL Logistics South China Ltd
74. Shandong Huitong Tyre Co., Ltd.
75. Shandong Linglong Tyre Co., Ltd.
76. Shandong Taishan Tyre Co. Ltd.
77. Shanghai Cartec Industrial & Trading Co Ltd
78. Shanghai Grand Sound Intl Transportation Co Ltd
79. Shanghai Hua Shen Imp & Exp Co Ltd
80. Shanghai Part-Rich Auto Parts Co Ltd
81. Shanghai TCH Metals & Machinery Co Ltd
82. Shantou Zhisheng Plastic Co Ltd
83. Shiyan Desizheng Industry & Trade Co., Ltd.
84. Techking Tires Limited
85. Thi Group (Shanghai) Ltd
86. Tianjin Leviathan International Trade Co., Ltd.
87. Tianjin United Tire & Rubber International Co., Ltd.
88. Tianjin Wanda Tyre Group Co.
89. Tianshui Hailin Import and Export Corporation
90. Tiremart Qingdao Inc
91. Translink Shipping Inc

92. Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.
93. Trelleborg Wheel Systems Hebei Co
94. Triangle Tyre Co. Ltd.
95. Universal Shipping Inc
96. UTI China Ltd
97. Weifang Jintongda Tyre Co., Ltd.
98. Weihai Zhongwei Rubber Co., Ltd.
99. Weiss-Rohlig China Co Ltd
100. World Bridge Logistics Co Ltd
101. World Tyres Ltd.
102. Xiamen Ying Hong Import & Export Trade Co Ltd
103. Xuzhou Xugong Tyres Co Ltd; Xuzhou Armour Rubber Company Ltd.; HK Lande International Investment Limited; Armour Tires Inc. (collectively ''Xugong'')
104. Yoho Holding
105. Zheijiang Wheel World Industrial Co Ltd
106. Zhejiang Xinchang Zhongya Industry Co., Ltd.
107. Zhongce Rubber Group Company Limited
108. ZPH Industrial Ltd

[FR Doc. 2018–07721 Filed 4–12–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Department of Commerce Trade Finance Advisory Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The U.S. Department of Commerce Trade Finance Advisory Council (TFAC or Council) will hold a meeting via teleconference on Thursday, April 26, 2018. The meeting is open to the public with registration instructions provided below.

DATES: Thursday, April 26, 2018, from approximately 12:00 p.m. to 2:00 p.m. Eastern Daylight Time (EDT). 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. EDT on April 19, 2018. Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

ADDRESSES: The meeting will be held by conference call. The call-in number and passcode will be provided by email to registrants. Requests to register (including for auxiliary aids) and any written comments should be submitted via email to *TFAC@trade.gov,* or by mail to Ericka Ukrow, Office of Finance and Insurance Industries, U.S. Department of Commerce Trade Finance Advisory Council, Room 18002, 1401 Constitution Avenue NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ericka Ukrow, Designated Federal Officer, Office of Finance and Insurance Industries (OFII), International Trade Administration, U.S. Department of Commerce at (202) 482–0405; email: *Ericka.Ukrow@trade.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 25, 2016, the Secretary of Commerce established the TFAC pursuant to discretionary authority and in accordance with the Federal Advisory Committee Act, as amended, 5 U.S.C. App. The TFAC advises the Secretary of Commerce in identifying effective ways to help expand access to finance for U.S. exporters, especially small- and medium-sized enterprises (SMEs) and their foreign buyers. The TFAC also provides a forum to facilitate the discussion between a diverse group of stakeholders such as banks, non-bank financial institutions, other trade finance related organizations, and exporters, to gain a better understanding regarding current challenges facing U.S. exporters in accessing capital.

During the meeting on April 26, 2018, TFAC members are expected to deliberate and potentially adopt recommendations on policies and programs that can increase awareness of, and expand access to, private export financing resources for U.S. exporters. A copy of the draft recommendations can be made available upon request to Ericka Ukrow at (202) 482–0405; email: *Ericka.Ukrow@trade.gov.*

Public Participation

The meeting will be open to the public and will be accessible to people with disabilities.

All guests are required to register in advance by the deadline identified under the **DATES** caption. Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted, by the registration deadline, as explained under the **ADDRESSES** caption. Last minute requests will be accepted, but may not be possible to fill. There will be fifteen minutes allotted for oral comments from members of the public. To accommodate as many speakers as possible, the time for public comments may be limited to three (3) minutes per person. Individuals 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. Speakers are requested to submit a written copy of their prepared remarks by 5:00 p.m. EDT on April 19, 2018, for inclusion in the meeting records and for circulation to the members of the Council. Any member of the public may submit pertinent written comments concerning matters relevant to the TFAC's affairs at any time. Comments may be submitted to Ericka Ukrow. Comments received after the DEADLINE above will be distributed to the members but may not be considered on the call.

All comments and statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Comments and statements will be posted on the U.S. Department of Commerce Trade Finance Advisory Council website (*http://trade.gov/TFAC*) without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers.

You should submit only information that you are prepared to have made publicly available.

II. Meeting Minutes

Copies of TFAC meeting minutes will be available within 90 days of the meeting.

Dated: April 6, 2018.

Michael Fuchs,

Trade and Project Finance Team Leader, Office of Finance and Insurance Industries.

[FR Doc. 2018–07660 Filed 4–12–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG134

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application from the Commercial Fisheries Research Foundation and Rhode Island Department of Environmental Management contains all of the required information and warrants further consideration. This Exempted Fishing

Permit would allow seven commercial fishing vessels and one party/charter vessel to collect black sea bass catch data while on routine fishing trips. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notice to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before April 30, 2018.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email to: NMFS.GAR.EFP@NOAA.gov.* Include in the subject line ''BSB Research Fleet EFP.''
- *Mail to:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on BSB Research Fleet EFP.''

FOR FURTHER INFORMATION CONTACT: Laura Hansen, NOAA Affiliate, (978) 281–9225.

SUPPLEMENTARY INFORMATION: The Commercial Fisheries Research Foundation (CFRF) and Rhode Island Department of Environmental Management (RI DEM) submitted a complete application for an Exempted Fishing Permit (EFP) on March 20, 2018, to collect fishery-dependent information on black sea bass from May 1, 2018 to April 30, 2019. The EFP would authorize seven commercial fishing vessels and one party/charter vessel to collect and retain black sea bass for onboard sampling. This EFP would exempt the participating vessels from the following Federal regulations:

1. Recreational fishery closure periods specified at 50 CFR 648.146;
2. Commercial and party/charter minimum size limits for black sea bass specified at 50 CFR 648.147(a) and (b).

The research fleet consists of vessels fishing with gear types including, trawls, lobster pots, gillnets, and hook and line. All gear deployments will be typical of the routine fishing practices associated with the fishery being targeted. There will be no increase in fishing effort associated with this project.

Each vessel will be randomly selected to conduct sampling events during three trips per month in the black sea bass stock area. Up to 50 black sea bass would be temporarily held onboard to record their length and sex during each sampling event. All black sea bass collected in Federal waters will be returned to the water after being sampled. Vessels will also be issued the appropriate state exemptions to all applicable state regulations. Vessels fishing under this research permit would be exempt from the recreational closure periods and the commercial and party/charter minimum size limits for black sea bass, to allow temporary retention of both adult and undersized juvenile black sea bass.

If approved, CFRF and RI DEM may request minor modifications and extensions to the EFP throughout the study period. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: April 10, 2018.

Jennifer M. Wallace,

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

[FR Doc. 2018–07742 Filed 4–12–18; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be provided by a nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* May 13, 2018.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Amy B. Jensen, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 3/2/2018 (83 FR 42), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to furnish the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing a small entity to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN(s)—Product Name(s):
7045–00–NIB–0012—Pack, Power, Portable, 12000mAh, Black
7045–00–NIB–0013—Pack, Power, Portable, 6000mAh, Black
Mandatory Source of Supply: North Central Sight Services, Inc., Williamsport, PA
Contracting Activity: General Services Administration, New York, NY
Distribution: A-List

Services

Service Type: Base Supply Center Service
Mandatory for: US Army, Picatinny Arsenal, Picatinny Arsenal, NJ
Mandatory Source of Supply: Central Association for the Blind & Visually Impaired, Utica, NY
Contracting Activity: Dept of the Army, W6QK ACC–PICA
Service Type: Records Management Service
Mandatory for: US Navy, Military Sealift Command, Naval Station Norfolk, 471 East C Street, Norfolk, VA
Mandatory Source of Supply: VersAbility Resources, Inc., Hampton, VA

Contracting Activity: Dept of the Navy, MSC Norfolk

Deletions

On 3/2/2018 (83 FR 42) and 3/9/2018 (83 FR 42), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

NSN(s)—Product Name(s):
8440–00–160–6843—Scarf, Air Force, Men's, Gray
8440–00–823–7520—Scarf, Air Force, Men's, Olive Green
8440–01–005–2558—Scarf, Air Force, Men's, Blue
8440–01–523–5765—Scarf, Air Force, Men's, Black
Mandatory Source of Supply: ASPIRO, Inc., Green Bay, WI
Contracting Activity: Defense Logistics Agency Troop Support
NSN(s)—Product Name(s):
6530–00–290–8292—Urinal, Incontinent
6530–00–NIB–0061—Catheter, External, Male, Self-Adhering, Pop-on
6530–00–NIB–0062—Catheter, External, Male, Self-Adhering, Pop-on
6530–00–NIB–0063—Catheter, External, Male, Self-Adhering, Pop-on
6530–00–NIB–0064—Catheter, External, Male, Self-Adhering, Pop-on
6530–00–NIB–0065—Catheter, External, Male, Self-Adhering, Pop-on
Mandatory Source of Supply: The Lighthouse for the Blind, St. Louis, MO
Contracting Activity: Department of Veterans Affairs, Strategic Acquisition Center
NSN(s)—Product Name(s): 8475–01–142–5648—Nape Strap
Mandatory Source of Supply: Cambria County Association for the Blind and Handicapped, Johnstown, PA
Contracting Activity: Defense Logistics Agency Troop Support

Service

Service Type: Janitorial/Custodial Service
Mandatory for: Naval Air Station: ARCOM Buildings 176 & 177, Willow Grove, PA
Mandatory Source of Supply: The Chimes, Inc., Baltimore, MD
Contracting Activity: Dept of the Navy, Naval FAC Engineering CMD MID LANT

Amy Jensen,

Director, Business Operations.

[FR Doc. 2018–07696 Filed 4–12–18; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Friday, April 20, 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 *http://www.cftc.gov*.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Natise L. Allen,

Executive Assistant.

[FR Doc. 2018–07860 Filed 4–11–18; 4:15 pm]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; AmeriCorps Alumni Outcome Survey; Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled AmeriCorps Alumni Outcome Survey for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments may be submitted, identified by the title of the information collection activity, by May 14, 2018.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: *smar@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Anthony Nerino, at 202–606–3913 or email to *anerino@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on January 17, 2018 (Vol. 83, No 11, p. 2429). This comment period ended March 17, 2018. No public comments were received from this Notice.

Description: CNCS seeks to renew the current information request with revisions to the survey administered in 2015 (OMB #3045–0170). Information will be collected from a nationally representative sample of AmeriCorps alumni who served in AmeriCorps NCCC, AmeriCorps VISTA, and AmeriCorps State and National programs and completed their most recent term of service 2, 5, or 10 years ago.

There are no revisions to the survey instrument. The information collection will administered in the same manner to ensure comparability with the initial responses. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on 4/30/2018.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Alumni Outcome Study.

OMB Number: #3045–0170.

Agency Number: None.

Affected Public: AmeriCorps Alumni who served during the period from 2008 until 2018.

Total Respondents: 3150.

Frequency: One time.

Average Time per Response: 22 Minutes.

Estimated Total Burden Hours: 1155 Hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: March 30, 2018.

Mary Hyde,

Director of Research and Evaluation.

[FR Doc. 2018–07683 Filed 4–12–18; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket No. DARS–2018–0022]

Acquisition of Items for Which Federal Prison Industries Has a Significant Market Share

AGENCY: Department of Defense (DoD).

ACTION: Notice.

SUMMARY: DoD is publishing the updated annual list of product categories for which the Federal Prison Industries' share of the DoD market is greater than five percent.

DATES: *Applicable Date:* April 27, 2018.

FOR FURTHER INFORMATION CONTACT: Greg Snyder, telephone 703–614–0719.

SUPPLEMENTARY INFORMATION:

On November 19, 2009, a final rule was published in the **Federal Register** at 74 FR 59914, which amended the Defense Federal Acquisition Regulation Supplement (DFARS) subpart 208.6 to implement Section 827 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181. Section 827 changed DoD competition requirements for purchases from Federal Prison Industries, Inc. (FPI) by requiring DoD to publish an annual list of product categories for which FPI's share of the DoD market was greater than five percent, based on the most recent fiscal year data available. Product categories on the current list, and the products within each identified product category, must be procured using competitive or fair opportunity procedures in accordance with DFARS 208.602–70.

The Director, Defense Procurement and Acquisition Policy (DPAP), issued a memorandum dated March 27, 2018, that provided the current list of product categories for which FPI's share of the DoD market is greater than five percent based on fiscal year 2015 data from the Federal Procurement Data System. The product categories to be competed effective April 27, 2018, are the following:

- 7125 (Cabinets, Lockers, Bins, and Shelving)
- 7230 (Draperies, Awnings, and Shades)
- 8405 (Outerwear, Men's)
- 8420 (Underwear and Nightwear, Mend's)

The DPAP memorandum with the current list of product categories for which FPI has a significant market share is posted at: *http://www.acq.osd.mil/dpap/cpic/cp/specific_policy_areas.html#federal_prison.*

The statute, as implemented, also requires DoD to—

(1) Include FPI in the solicitation process for these items. A timely offer from FPI must be considered and award procedures must be followed in accordance with existing policy at Federal Acquisition Regulation (FAR) 8.602(a)(4)(ii) through (v);

(2) Continue to conduct acquisitions, in accordance with FAR subpart 8.6, for items from product categories for which FPI does not have a significant market share. FAR 8.602 requires agencies to conduct market research and make a written comparability determination, at the discretion of the contracting officer. Competitive (or fair opportunity) procedures are appropriate if the FPI product is not comparable in terms of price, quality, or time of delivery; and

(3) Modify the published list if DoD subsequently determines that new data requires adding or omitting a product category from the list.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2018–07715 Filed 4–12–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the City of Abilene, Texas, Cedar Ridge Reservoir Water Supply Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE) is preparing an Environmental Impact Statement (EIS) to analyze the direct, indirect, and cumulative effects of a proposed water supply project, the Cedar Ridge Reservoir, proposed by the City of Abilene, TX. A Clean Water Act Section 404 permit would be required for the construction and operation of the proposed Project since it would result in permanent and temporary impacts to waters of the United States. The Project, as proposed by the applicant, is intended to provide approximately 34,400 acre-feet of new reliable water supply to address additional water supply needs. The Cedar Ridge Project would be a non-federal project constructed, owned, and operated by the City of Abilene.

DATES: A public scoping meeting will be held May 16, 2018, 4:00 to 8:00 p.m., in Abilene, TX.

ADDRESSES: The scoping meeting location will be at the Abilene Convention Center, 1100 North 6th Street, Abilene, TX.

FOR FURTHER INFORMATION CONTACT: Questions and comments regarding the proposed action and EIS should be addressed to Mr. Frederick J. Land, Regulatory Project Manager, U.S. Army Corps of Engineers, Regulatory Division, 819 Taylor Street, Room 3A37, Fort Worth, TX 76102; (817) 886–1731; *cedarridge@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The USACE will be conducting a public scoping meeting (see **DATES** and **ADDRESSES**) to describe the proposed Project, resources initially considered to be affected, the NEPA compliance process, and to solicit input on the issues and alternatives to be evaluated

and other related matters. Written comments for scoping will be accepted until June 15, 2018. The USACE has prepared a scoping announcement to familiarize agencies, the public, and interested organizations with the proposed Project and potential environmental issues that may be involved. Copies of the scoping announcement will be available at the public scoping meetings or can be requested by mail. The public Scoping meetings will include an 'open house' format and a presentation of information. Although written comments are encouraged, no formal public statements or public testimony will be taken at this time.

The applicant is proposing to construct and operate a new 227,127 acre-foot reservoir, with a proposed surface area of 6,635 acres at conservation pool and an additional 2,151 acres at flood pool formed by an approximately 5,200-foot long earthen dam. Proposed impacts to waters of the United States at the project site include fill and inundation of 29-miles of the Clear Fork of the Brazos River and inundation of 43 miles of intermittent and ephemeral tributaries to the Clear Fork. In addition, the proposed project would result in downstream impacts associated with hydrologic alterations. As part of the proposed project, other facilities to be constructed include two spillways, a multi-level outlet works, a pump station and 34-mile pipeline, roadways, and construction areas. The pump station and pipeline would affect areas that may be waters of the United States. Construction of the dam and associated facilities would require the placement of approximately 16,000 cubic yards of fill material below the ordinary high water mark of the river and a small amount of fill in an ephemeral tributary. The construction of the dam and spillways would require 117 acres of land. Temporary and permanent construction of the pump station, pipeline, access roadways, laydown areas, and borrow areas could impact an estimated 1,100 acres of land area.

The proposed project would be located primarily in northwest Shackelford County on the Clear Fork of the Brazos River with small portions located in adjacent Haskell, Jones, and Throckmorton counties in West Central Texas. The southern limit of the proposed reservoir would be approximately 25 miles northeast of Abilene, TX, near the town of Lueders, TX. The upstream limit of the reservoir would be located 0.4 river miles upstream from the State Highway (SH) 6 bridge over the Clear Fork near Lueders, TX. The downstream limit of the reservoir would be approximately 15 aerial miles downstream of the SH 6 bridge.

The EIS would be prepared according to the USACE's procedures at 33 CFR 230 and 325 Appendix B for implementing the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4332(2)(c), and consistent with the USACE's policy to facilitate public understanding and review of agency proposals. As part of the EIS process, the need for and purpose of the proposal as well as a full range of reasonable alternatives, including the proposed Project and no action, would be evaluated. Alternatives considered by the Applicant include developing new reservoirs at other locations including South Bend Reservoir, Double Mountain Reservoir (east or west sites), and Breckenridge Reservoir. Non-reservoir alternatives include securing additional water via a pipeline from Possum Kingdom reservoir, developing a scalping operation from Clear Fork to Hubbard Creek reservoir, water purchases, additional development of groundwater resources, and water reuse. The initial resource categories anticipated to be evaluated for direct, indirect and cumulative effects from the construction and operation of the project include soils, geology, mineral resources, geomorphology, surface and groundwater, hydrology, water rights and water use, air quality, noise, climate change, wetlands, water quality, fisheries, aquatics, vegetation, wildlife, threatened and endangered species, state sensitive species, transportation, visuals and aesthetics, cultural resources, paleontological resources, land use, energy use, property ownership, recreation, socioeconomics, hazardous materials, health and safety, and environmental justice.

The USACE has invited the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the Texas Parks and Wildlife Department, the Texas Commission on Environmental Quality, Water Quality Division, and the Texas Historical Commission to be cooperating agencies in the formulation of the EIS.

At this time it is projected that a Draft EIS could be released by Fall 2021.

Stephen L Brooks,

Chief, Regulatory Division, Fort Worth District.

[FR Doc. 2018–07303 Filed 4–12–18; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy.

DATES: The open session of the meeting will be held on April 23, 2018, from 9:00 a.m. to 11:15 a.m. The executive session held from 11:15 a.m. to 12:00 p.m. will be the closed portion of the meeting. Due to circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the U.S. Naval Academy Board of Visitors was unable to provide public notification required by 41 CFR 102–3.lSO(a) concerning the meeting on April 23, 2018, of the U.S. Naval Academy Board of Visitors. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

ADDRESSES: The meeting will be held at the United States Naval Academy in Annapolis, MD. The meeting will be handicap accessible.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Lawrence Heyworth IV, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting from 11:15 a.m. to 12:00 p.m. on April 23, 2018, will consist of discussions of new and pending administrative/minor disciplinary infractions and non-judicial punishments involving midshipmen attending the Naval Academy to include but not limited to, individual honor/conduct violations within the Brigade, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public, as the discussion of such information

cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Department of the Navy/Assistant for Administration has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11:15 a.m. to 12:00 p.m. will be concerned with matters protected under sections 552b(c)(5), (6), and (7) of title 5, United States Code.

Authority: 5 U.S.C. 552b.

Dated: April 6, 2018.

E.K. Baldini,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2018–07774 Filed 4–12–18; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools; Amendment and Extension of Deadline for Transmittal of Applications

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice; Amendment and Extension of Deadline for Transmittal of Applications.

SUMMARY: On March 2, 2018, we published in the **Federal Register** (83 FR 8974) a notice inviting applications (NIA) for new awards for fiscal year (FY) 2018 for the CSP Grants to Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools, Catalog of Federal Domestic Assistance (CFDA) Numbers 84.282B and 84.282E. Since that time, Congress passed and the President signed the Consolidated Appropriations Act, 2018 (Act), which provides funding for the awards under this competition. This document amends the NIA by: (1) Stating that the Secretary may fund out of rank order applications proposing to open a new charter school or replicate or expand a high-quality charter school in underserved, high-poverty, rural areas; and (2) adding definitions related to funding such applications out of rank order.

In addition, we are extending the deadline for transmittal of applications by two weeks, until April 30, 2018.

DATES:

Deadline for Transmittal of Applications: April 30, 2018.

Deadline for Intergovernmental Review: June 29, 2018.

FOR FURTHER INFORMATION CONTACT: Eddie Moat, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W224, Washington, DC 20202–5970. Telephone: (202) 401–2266. Email: *eddie.moat@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Following publication of the NIA, Congress passed and the President signed the Act, which provides funding for the awards under this competition. The report accompanying the Act (the Statement of the Managers) [1] includes language reflecting congressional intent that, of these funds, ''up to $7,500,000 [is] for developer grants to establish or expand charter schools in underserved, high-poverty, rural areas.'' The Statement of the Managers modifies language in the report accompanying the Senate appropriations committee bill,[2] which indicates congressional intent for CSP appropriations to include ''dedicated funding to expand charter schools in rural areas.'' Taking into account this language, we are amending the NIA to notify prospective applicants that the Secretary may fund out of rank order applications proposing to open a new charter school or replicate or expand a high-quality charter school in underserved, high-poverty, rural areas; and to add definitions related to funding such applications out of rank order. In addition, we are extending the deadline for transmittal of applications for the competition by two weeks.

All other requirements and conditions stated in the NIA remain the same.

Amendments

In FR Doc. No. 2018–04294, in the **Federal Register** of March 2, 2018 (83 FR 8974), we make the following amendments:

(a) On page 8974, in the middle column, after the words ''Deadline for Transmittal of Applications:'' we are removing the date ''April 16, 2018'' and replacing it with the date ''April 30, 2018''.

(b) On page 8974, in the middle column, after the words ''Deadline for Intergovernmental Review:'' we are removing the date ''June 15, 2018'' and replacing it with the date ''June 29, 2018''.

(c) On page 8978, in the middle of the first column following the definition of ''expand'', we are adding the following definition, which we are establishing for FY 2018 and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1):

High-poverty school means a school in which at least 50 percent of students are from low-income families as determined using one of the measures of poverty specified under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended. For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-poverty school under this definition is determined on the basis of the most currently available data.

(d) On page 8978, in the middle of the second column, following the definition of ''rural local educational agency'', we are adding the following definition, which we are establishing for FY 2018 and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of GEPA:

Underserved community means a community that has limited access to high-quality educational options.

(e) On page 8981, beginning in the middle column, at the end of section V.2 (Review and Selection Process), we are adding the following paragraph:

Depending upon the number and quality of applications received, the Department may fund out of rank order high-quality applications that propose to open a new *charter school,* or *replicate* or *expand* a *high-quality charter school,* that (a) is located in an underserved community (as defined in this notice); and (b) primarily serves students from rural local educational agencies with at least one high-poverty school (as defined in this notice). To be considered for funding out of rank order, we encourage an applicant to include in its application (i) a statement that it is proposing to open a new *charter school,* or *replicate* or *expand* a *high-quality charter school,* that is located in an underserved community and primarily serves students from rural local educational agencies with at least

[1] See *www.congress.gov/crec/2018/03/22/CREC-2018-03-22-bk3.pdf.*

[2] See *www.congress.gov/115/crpt/srpt150/CRPT-115srpt150.pdf.*

one high-poverty school; and (ii) a description of how the proposed project meets each of the above criteria. If an application that is within funding range contains insufficient information to verify that the application meets these criteria, we may contact the applicant to obtain additional relevant information.

Program Authority: Title IV, part C of the ESEA (20 U.S.C. 7221–7221j).

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 10, 2018.

Margo Anderson,

Acting Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2018–07744 Filed 4–12–18; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2016–0347; FRL–9976–79–OAR]

RIN 2060–AT35

Response to June 1, 2016 Clean Air Act Section 126(b) Petition From Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action on petition.

SUMMARY: The Environmental Protection Agency (EPA) is denying a section 126(b) petition submitted by the state of Connecticut pursuant to the Clean Air Act (CAA or Act) on June 1, 2016. The petition requested that the EPA make a finding that emissions from Brunner Island Steam Electric Station (Brunner Island), located in York County, Pennsylvania, significantly contribute to nonattainment and interfere with maintenance of the 2008 ozone national ambient air quality standards (NAAQS) in Connecticut in violation of the good neighbor provision under the CAA. The EPA is denying the petition based on the conclusion that Connecticut has not demonstrated and the EPA has not determined that the Brunner Island facility emits or would emit pollution in violation of the good neighbor provision with respect to the 2008 ozone NAAQS.

DATES: This final action is effective on April 13, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2016–0347. All documents in the docket are listed and publicly available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in the docket or in hard copy at the EPA Docket Center, William Jefferson Clinton (WJC) West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Questions concerning this final action should be directed to Mr. Lev Gabrilovich, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539–01, Research Triangle Park, NC 27711, telephone (919) 541–1496; email at *gabrilovich.lev@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this document is organized as follows:

I. Executive Summary of the EPA's Decision on Connecticut's CAA Section 126(b) Petition
II. Background and Legal Authority
A. Ozone and Public Health
B. Clean Air Act Sections 110 and 126
C. The EPA's Historical Approach to Addressing Interstate Transport of Ozone Under the Good Neighbor Provision
D. The June 2016 CAA Section 126(b) Petition From Connecticut and Related Actions
III. The EPA's Decision on Connecticut's CAA Section 126(b) Petition
A. Summary of the EPA's Proposed Action
B. The EPA's Standard for Reviewing Connecticut's CAA Section 126(b) Petition Regarding the 2008 8-hour Ozone NAAQS
C. The EPA's Analysis of Connecticut's CAA Section 126(b) Petition
D. Public Comments
IV. Final Action To Deny Connecticut's 126(b) Petition
V. Judicial Review

I. Executive Summary of the EPA's Decision on Connecticut's CAA Section 126(b) Petition

In June 2016, the state of Connecticut, through the Connecticut Department of Energy and Environmental Protection (Connecticut), submitted a petition requesting that the EPA make a finding pursuant to CAA section 126(b) that emissions from Brunner Island Steam Electric Station (Brunner Island), located in York County, Pennsylvania, significantly contribute to nonattainment and/or interfere with maintenance of the 2008 ozone NAAQS in Connecticut in violation of CAA section 110(a)(2)(D)(i)(I), otherwise known as the good neighbor provision. The petition further requests that the EPA order Brunner Island to reduce its oxides of nitrogen (NO_X) emissions. On February 22, 2018, the EPA issued a proposal to deny the CAA section 126(b) petition. 83 FR 7710. The Agency solicited comments on the proposal. In response, the EPA received oral testimony from four speakers at a public hearing on the proposal on February 23, 2018. The EPA also received 27 comments submitted to the docket on the proposed denial. This **Federal Register** notice finalizes EPA's action on Connecticut's CAA section 126(b) petition and addresses major comments the Agency received. The remaining comments are addressed in the Response to Comment (RTC) document available in the docket for this action.

In this final action, the EPA is denying the petition requesting that the EPA make a finding that emissions from Brunner Island significantly contribute to nonattainment and interfere with maintenance of the 2008 ozone NAAQS in Connecticut in violation of the good neighbor provision. In making this final decision, the EPA reviewed the incoming petition, the public comments received, the relevant statutory authorities, and other relevant materials.

The EPA evaluated Connecticut's petition and determined that the state has not met its burden to demonstrate that Brunner Island emits or would emit in violation of the good neighbor provision with respect to the 2008 ozone NAAQS. As discussed in further detail in section III, the state's analysis of Brunner Island's impact on air quality in Connecticut provides insufficient information regarding the source's impact on Connecticut air quality on high ozone days and it does not reflect the facility's current operations. Moreover, the petition does not evaluate the potential costs and air quality benefits that would inform the EPA's evaluation of whether additional emission reductions are cost effective, consistent with the EPA's interpretation of the good neighbor provision. The EPA also finds, based on its own supplemental analysis, that there are no additional highly cost-effective controls available at the source and thus no basis to determine that Brunner Island emits or would emit in violation of the good neighbor provision with respect to the 2008 ozone NAAQS. As discussed in section III, Brunner Island recently installed a natural gas connection pipeline that allows natural gas to be combusted to serve Brunner Island's electric generators. Combusting gas at Brunner Island has significantly reduced the facility's NO_X emissions. Accordingly, the EPA denies Connecticut's CAA section 126(b) petition.

II. Background and Legal Authority

A. Ozone and Public Health

Ground-level ozone is not emitted directly into the air, but is a secondary air pollutant created by chemical reactions between NO_X and volatile organic compounds (VOCs) in the presence of sunlight. These precursor emissions can be transported downwind directly or, after transformation in the atmosphere, as ozone. As a result, ozone formation, atmospheric residence, and transport can occur on a regional scale (*i.e.,* hundreds of miles). For a discussion of ozone-formation chemistry, interstate transport issues, and health effects, *see* the Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (CSAPR Update). 81 FR 74504, 74513–4 (October 26, 2016).

B. Clean Air Act Sections 110 and 126

The statutory authority for this action is provided by CAA sections 126 and 110(a)(2)(D)(i). Section 126(b) of the CAA provides, among other things, that any state or political subdivision may petition the Administrator of the EPA to find that any major source or group of stationary sources in an upwind state emits or would emit any air pollutant in violation of the prohibition of CAA section 110(a)(2)(D)(i).[1] Petitions submitted pursuant to this section are commonly referred to as CAA section 126(b) petitions. Similarly, findings by the Administrator, pursuant to this section, that a source or group of sources emits air pollutants in violation of the CAA section 110(a)(2)(D)(i) prohibition are commonly referred to as CAA section 126(b) findings.

CAA section 126(c) explains the impact of a CAA section 126(b) finding and establishes the conditions under which continued operation of a source subject to such a finding may be permitted. Specifically, CAA section 126(c) provides that it would be a violation of section 126 of the Act and of the applicable state implementation plan (SIP): (1) For any major proposed new or modified source subject to a CAA section 126(b) finding to be constructed or operate in violation of the prohibition of CAA section 110(a)(2)(D)(i); or (2) for any major existing source for which such a finding has been made to operate more than three months after the date of the finding. The statute, however, also gives the Administrator discretion to permit the continued operation of a source beyond three months if the source complies with emission limitations and compliance schedules provided by the EPA to bring about compliance with the requirements contained in CAA sections 110(a)(2)(D)(i) and 126 as expeditiously as practicable but no later than three years from the date of the finding. *Id.*

Section 110(a)(2)(D)(i) of the CAA, often referred to as the ''good neighbor'' provision of the Act, requires states to prohibit certain emissions from in-state sources if such emissions impact the air quality in downwind states. Specifically, CAA sections 110(a)(1) and 110(a)(2)(D)(i)(I) require all states, within three years of promulgation of a new or revised NAAQS, to submit SIPs that contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard. As described further in section II.C, the EPA has developed a number of regional rulemakings to address CAA section 110(a)(2)(D)(i)(I) for the various ozone NAAQS. The EPA's most recent rulemaking, the CSAPR Update, was promulgated to address interstate transport under section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. 81 FR 74504 (October 26, 2016).

C. The EPA's Historical Approach to Addressing Interstate Transport of Ozone Under the Good Neighbor Provision

Given that formation, atmospheric residence, and transport of ozone occur on a regional scale (*i.e.,* hundreds of miles) over much of the eastern U.S., the EPA has historically addressed interstate transport of ozone pursuant to the good neighbor provision through a series of regional rulemakings focused on the reduction of NO_X emissions. In developing these rulemakings, the EPA has typically found that downwind states' problems attaining and maintaining the ozone NAAQS result, in part, from the contribution of pollution from multiple upwind sources located in different upwind states.

The EPA has promulgated four regional interstate transport rulemakings that have addressed the good neighbor provision with respect to various ozone NAAQS considering the regional nature of ozone transport. Each of these rulemakings essentially followed the same four-step framework to quantify and implement emission reductions necessary to address the interstate transport requirements of the good neighbor provision. These steps are:

(1) Identifying downwind air quality problems relative to the ozone NAAQS. The EPA has identified downwind areas with air quality problems (referred to as ''receptors'') considering monitored ozone data where appropriate and air quality modeling projections to a future compliance year. Pursuant to the opinion in *North Carolina* v. *EPA,* 531 F.3d 896, 908–911 (D.C. Cir. 2008), the Agency identified areas expected to be in nonattainment with the ozone NAAQS and those areas that may struggle to maintain the NAAQS;

(2) determining which upwind states are linked to these identified downwind air quality problems and warrant further analysis to determine whether their emissions violate the good neighbor provision. In the EPA's most recent rulemakings, the EPA identified such upwind states to be those modeled to contribute at or above a threshold equivalent to one percent of the applicable NAAQS.

[1] The text of CAA section 126 codified in the U.S. Code cross-references section 110(a)(2)(D)(ii) instead of section 110(a)(2)(D)(i). The courts have confirmed that this is a scrivener's error and the correct cross-reference is to CAA section 110(a)(2)(D)(i). *See Appalachian Power Co.* v. *EPA,* 249 F.3d 1032, 1040–44 (D.C. Cir. 2001).

(3) for states linked to downwind air quality problems, identifying upwind emissions on a statewide basis that will significantly contribute to nonattainment or interfere with maintenance of a standard. In all four of the EPA's prior rulemakings, the EPA apportioned emission reduction responsibility among multiple upwind states linked to downwind air quality problems using cost- and air quality-based criteria to quantify the amount of a linked upwind state's emissions that must be prohibited pursuant to the good neighbor provision; and

(4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, implementing the necessary emission reductions within the state. The EPA has done this by requiring affected sources in upwind states to participate in allowance trading programs to achieve the necessary emission reductions.

The EPA's first such rulemaking, the NO_X SIP Call, addressed interstate transport with respect to the 1979 ozone NAAQS. 63 FR 57356 (October 27, 1998). The EPA concluded in the NO_X SIP Call that ''[t]he fact that virtually every nonattainment problem is caused by numerous sources over a wide geographic area is a factor suggesting that the solution to the problem is the implementation over a wide area of controls on many sources, each of which may have a small or unmeasurable ambient impact by itself.'' 63 FR 57356, 57377 (October 27, 1998). The NO_X SIP Call promulgated statewide emission budgets and required upwind states to adopt SIPs that would decrease NO_X emissions by amounts that would meet these budgets, thereby eliminating the emissions that significantly contribute to nonattainment or interfere with maintenance of the ozone NAAQS in downwind states. The EPA also promulgated a model rule for a regional allowance trading program called the NO_X Budget Trading Program that states could adopt in their SIPs as a mechanism to achieve some or all of the required emission reductions. All of the jurisdictions covered by the NO_X SIP Call ultimately chose to adopt the NO_X Budget Trading Program into their SIPs. The NO_X SIP Call was upheld by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in all pertinent respects. *See Michigan* v. *EPA,* 213 F.3d 663 (2000).

In coordination with the NO_X SIP Call rulemaking under CAA section 110(a)(2)(D)(i)(I), the EPA also addressed several pending CAA section 126(b) petitions submitted by eight northeastern states regarding the same air quality issues addressed by the NO_X SIP Call (*i.e.,* interstate ozone transport for the 1979 ozone NAAQS). These CAA section 126(b) petitions asked the EPA to find that ozone emissions from numerous sources located in 22 states and the District of Columbia had adverse air quality impacts on the petitioning downwind states. Based on technical determinations made in the NO_X SIP Call regarding upwind state impacts on downwind air quality, the EPA in May 1999 made technical determinations regarding the claims in the petitions, but did not at that time make the CAA section 126(b) findings requested by the petitions. 64 FR 28250 (May 25, 1999). In making these technical determinations, the EPA concluded that the NO_X SIP Call would itself fully address and remediate the claims raised in these petitions, and that the EPA would therefore not need to take separate action to remedy any potential violations of the CAA section 110(a)(2)(D)(i) prohibition. 64 FR 28252. However, subsequent litigation over the NO_X SIP Call led the EPA to ''de-link'' the CAA section 126(b) petition response from the NO_X SIP Call, and the EPA made final CAA section 126(b) findings for 12 states and the District of Columbia. The EPA found that sources in these states emitted in violation of the prohibition in the good neighbor provision with respect to the 1979 ozone NAAQS based on the affirmative technical determinations made in the May 1999 rulemaking. In order to remedy the violation under CAA section 126(c), the EPA required affected sources in the upwind states to participate in a regional allowance trading program whose requirements were designed to be interchangeable with the requirements of the optional NO_X Budget Trading Program model rule provided under the NO_X SIP Call. 65 FR 2674 (January 18, 2000). The EPA's action on these section 126(b) petitions was upheld by the D.C. Circuit. *See Appalachian Power,* 249 F.3d 1032.

The EPA next promulgated the Clean Air Interstate Rule (CAIR) to address interstate transport under the good neighbor provision with respect to the 1997 ozone NAAQS, as well as the 1997 fine particulate matter ($PM_{2.5}$) NAAQS. The EPA adopted the same framework for quantifying the level of states' significant contribution to downwind nonattainment in CAIR as it used in the NO_X SIP Call, based on the determination in the NO_X SIP Call that downwind ozone nonattainment is due to the impact of emissions from numerous upwind sources and states. 70 FR 25162, 25172 (May 12, 2005). The EPA explained that ''[t]ypically, two or more States contribute transported pollution to a single downwind area, so that the 'collective contribution' is much larger than the contribution of any single State.'' 70 FR 25186. CAIR included two distinct regulatory processes—(1) a regulation to define significant contribution (*i.e.,* the emission reduction obligation) under the good neighbor provision and provide for submission of SIPs eliminating that contribution, 70 FR 25162, and (2) a regulation to promulgate, where necessary, federal implementation plans (FIPs) imposing emission limitations, 71 FR 25328 (April 28, 2006). The FIPs required electric generating units (EGUs) in affected states to participate in regional allowance trading programs, which replaced the previous NO_X Budget Trading Program.

In conjunction with the second CAIR regulation promulgating FIPs, the EPA acted on a CAA section 126(b) petition received from the state of North Carolina on March 19, 2004, seeking a finding that large EGUs located in 13 states were significantly contributing to nonattainment and/or interfering with maintenance of the 1997 ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS in North Carolina. Citing the analyses conducted to support the promulgation of CAIR, the EPA denied North Carolina's CAA section 126(b) petition in full based on a determination that either the named states were not adversely impacting downwind air quality in violation of the good neighbor provision or such impacts were fully remedied by implementation of the emission reductions required by the CAIR FIPs. 71 FR 25328, 25330.

The D.C. Circuit found that EPA's approach to section 110(a)(2)(D)(i)(I) in CAIR was ''fundamentally flawed'' in several respects, and the rule was remanded in July 2008 with the instruction that the EPA replace the rule ''from the ground up.'' *North Carolina* v. *EPA,* 531 F.3d at 929. The decision did not find fault with the EPA's general multi-step framework for addressing interstate ozone transport, but rather concluded EPA's analysis did not address all elements required by the statute. The EPA's separate action denying North Carolina's CAA section 126(b) petition was not challenged.

On August 8, 2011, the EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to replace CAIR. 76 FR 48208 (August 8, 2011). CSAPR addressed the same ozone and

$PM_{2.5}$ NAAQS as CAIR and, in addition, addressed interstate transport for the 2006 $PM_{2.5}$ NAAQS by requiring 28 states to reduce sulfur dioxide (SO_2) emissions, annual NO_X emissions, and/or ozone season NO_X emissions that would significantly contribute to other states' nonattainment or interfere with other states' abilities to maintain these air quality standards. Consistent with prior determinations made in the NO_X SIP Call and CAIR, the EPA continued to find that multiple upwind states contributed to downwind ozone nonattainment. Specifically, the EPA found ''that the total 'collective contribution' from upwind sources represents a large portion of $PM_{2.5}$ and ozone at downwind locations and that the total amount of transport is composed of the individual contribution from numerous upwind states.'' 76 FR 48237. Accordingly, the EPA conducted a regional analysis, calculated emission budgets for affected states, and required EGUs in these states to participate in new regional allowance trading programs to reduce statewide emission levels. CSAPR was subject to nearly four years of litigation in which the Supreme Court upheld the EPA's approach to calculating emission reduction obligations and apportioning upwind state responsibility under the good neighbor provision, but also held that the EPA was precluded from requiring more emission reductions than necessary to address downwind air quality problems. *See EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584, 1607–1609 (2014).[2]

Most recently, the EPA promulgated the CSAPR Update to address the good neighbor provision requirements for the 2008 ozone NAAQS, the same NAAQS at issue in the Connecticut section 126(b) petition. 81 FR 74504 (October 26, 2016). The final CSAPR Update built upon previous efforts to address the collective contributions of ozone pollution from 22 states in the eastern U.S. to widespread downwind air quality problems, including the NO_X SIP Call, CAIR, and the original CSAPR. As was also the case for the previous rulemakings, the EPA identified emissions from large EGUs as significantly contributing and/or interfering with maintenance based on cost and air quality factors. The CSAPR Update finalized EGU NO_X ozone season emission budgets for affected states that were developed using uniform control stringency available at a marginal cost of $1,400 per ton of NO_X reduced. This level of control stringency represented ozone season NO_X reductions that could be achieved in the 2017 analytic year, which was relevant to the upcoming 2018 attainment date for moderate ozone nonattainment areas, and included the potential for operating and optimizing existing selective catalytic reduction (SCRs) post-combustion controls; installing state-of-the-art NO_X combustion controls; and shifting generation to existing units with lower NO_X emission rates within the same state.

The CSAPR Update finalized enforceable measures necessary to achieve the emission reductions in each state by requiring power plants in covered states to participate in the CSAPR NO_X Ozone Season Group 2 allowance trading program. The CSAPR trading programs and the EPA's prior emission trading programs (*e.g.,* the NO_X Budget Trading Program associated with the NO_X SIP Call) have provided a proven, cost-effective implementation framework for achieving emission reductions. In addition to providing environmental certainty (*i.e.,* a cap on regional and statewide emissions), these programs have also provided regulated sources with flexibility when choosing compliance strategies. This implementation approach was shaped by previous rulemakings and reflects the evolution of these programs in response to court decisions and practical experience gained by states, industry, and the EPA.

In finalizing the CSAPR Update, the EPA determined the rule may only be a partial resolution of the good neighbor obligation for many states, including Pennsylvania, and that the emission reductions required by the rule ''may not be all that is needed'' to address transported emissions.[3] 81 FR 74521–522 (October 26, 2016). The EPA noted that the information available at that time indicated that downwind air quality problems would remain in 2017 after implementation of the CSAPR Update to which upwind states continued to be linked at or above the one-percent threshold. However, the EPA could not determine whether, at step three of the four-step framework, the EPA had quantified all emission reductions that may be considered highly cost effective because the rule did not evaluate non-EGU ozone season NO_X reductions and further EGU control strategies (*i.e.,* the implementation of new post-combustion controls) that are achievable on longer timeframes after the 2017 analytic year.

Of particular relevance to this action, the EPA determined in the CSAPR Update that emissions from Pennsylvania were linked to both nonattainment and maintenance concerns for the 2008 ozone NAAQS in Connecticut based on air quality modeling projections to 2017. 81 FR 74538–539. The EPA found there were cost-effective emission reductions that could be achieved within Pennsylvania at a marginal cost of $1,400 per ton, quantified an emission budget for the state, and required EGUs located within the state, including the source identified in Connecticut's petition, to comply with the EPA's trading program under the CSAPR Update beginning with the 2017 ozone season. This emission budget was imposed to achieve necessary emission reductions and mitigate Pennsylvania's impact on downwind states' air quality in time for the July 2018 moderate area attainment date for the 2008 ozone NAAQS.

D. The June 2016 CAA Section 126(b) Petition From Connecticut and Related Actions

On March 12, 2008, the EPA promulgated a revision to the ozone NAAQS, lowering both the primary and secondary standards to 75 parts per billion (ppb).[4] Subsequently, on June 1, 2016, Connecticut, submitted a CAA section 126(b) petition alleging that emissions from Brunner Island significantly contribute to nonattainment and/or interfere with maintenance of the 2008 ozone NAAQS in Connecticut.[5] Brunner Island is a 1,411 megawatt facility with three tangentially-fired steam boiler EGUs, each equipped with low NO_X burner technology with closed-coupled/separated over fire air (LNC3) combustion controls, located in York County in southeastern Pennsylvania.[6] The units were constructed starting in 1961 through 1969. For over 50 years, all three units at Brunner Island have

[2] On remand from the Supreme Court, the D.C. Circuit further affirmed various aspects of the CSAPR, and also remanded the rule without vacatur for reconsideration of certain states' emissions budgets. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (2015). The EPA addressed the remand in several rulemaking actions in 2016 and 2017.

[3] The EPA determined that the emission reductions required by the CSAPR Update were the full scope of the good neighbor obligation for Tennessee with respect to the 2008 ozone NAAQS. 81 FR 74551–522.

[4] *See* National Ambient Air Quality Standards for Ozone, Final Rule, 73 FR 16436 (March 27, 2008).

[5] Petition of the State of Connecticut Pursuant to Section 126 of the Clean Air Act, submitted June 1, 2016. The petition is available in the docket for this action.

[6] For tangentially-fired boiler types, LNC3 is state of the art control technology. *See* sections 3.9.2 and 5.2.1 on pages 3–25 and 5–5 of the Integrated Planning Model (IPM) 5.13 documentation for details about combustion controls. The IPM documentation is available at *https://www.epa.gov/airmarkets/power-sector-modeling-platform-v513.*

historically burned coal. Brunner Island recently installed a natural gas connection pipeline allowing natural gas to be combusted to serve Brunner Island's electric generators.[7] Following installation of this pipeline, Brunner Island primarily combusted natural gas as fuel during the 2017 ozone season.[8] Using primarily natural gas as fuel during the 2017 ozone season reduced Brunner Island's actual ozone season NO_X emissions to 877 tons in 2017 from 3,765 tons in 2016 and reduced the facility's ozone season NO_X emission rate to 0.090 pounds per millions of British thermal units (lbs/mmBtu) in 2017 from 0.370 lbs/mmBtu in 2016.[9]

The petition contends that emissions from Brunner Island significantly contribute to nonattainment and interfere with maintenance of the 2008 ozone NAAQS at six out of 12 ozone monitors in Connecticut. In support of this assertion, the petition contends that emissions from Brunner Island contribute levels equal to or greater than one percent of the 2008 ozone NAAQS to downwind nonattainment and maintenance receptors. The petition further contends that Brunner Island is able to reduce emissions at a reasonable cost using readily available control options. The petition therefore concludes that NO_X emissions from Brunner Island significantly contribute to nonattainment and interfere with maintenance of the 2008 ozone NAAQS in Connecticut. The petition requests that the EPA direct the operators of Brunner Island to reduce NO_X emissions to eliminate this impact.

The petition cites several sources of data for its contention that Brunner Island is impacting air quality in Connecticut. First, the petition notes that 10 out of 12 air quality monitors in Connecticut were violating the 2008 ozone NAAQS based on 2012–2014 data and preliminary 2013–2015 data available at the time the petition was submitted.[10] The petition further cites to modeling conducted by the EPA to support development of the CSAPR Update to claim that four ozone monitors in Connecticut were projected to have nonattainment or maintenance concerns in 2017.[11]

To support the conclusion that Brunner Island impacts air quality at some of these monitoring sites, Connecticut provides a technical memorandum from Sonoma Technologies, Inc., outlining the results of modeling that analyzed the impact of NO_X emissions from Brunner Island on Connecticut. According to the petition, this modeling shows that emissions from Brunner Island contributed an amount greater than one percent of the 2008 ozone NAAQS at six monitoring sites in Connecticut based on emissions from the facility during the 2011 ozone season and that Brunner Island is therefore linked to Connecticut's air quality problems.

Connecticut further alleges that Brunner Island has cost-effective and readily available control technologies that can reduce its NO_X emissions. The petition first notes that Brunner Island currently has no NO_X post-combustion controls installed at any of the units but that the facility was planning to add the capability to use natural gas fuel at all three of its units by the summer of 2017. The petition summarizes four potential ways by which Brunner Island could reduce its NO_X emissions: Replacing coal combustion with natural gas fuel, modifying its boiler furnace burners and combustion systems to operate at lower flame temperatures, installing selective noncatalytic reduction (SNCR) controls, and installing SCR controls. In particular, the petition contends that a federally enforceable mechanism to ensure Brunner Island uses natural gas fuel would eliminate Brunner Island's significant contribution to ozone levels in Connecticut. The petition states that current federal and state rules will not require Brunner Island to operate on natural gas, install post-combustion controls, or otherwise limit NO_X emissions beyond previously allowable permit levels.

The petition suggests that the then-proposed CSAPR Update could not be relied upon to control emissions from Brunner Island because: (1) It was not final at the time the petition was submitted and was therefore uncertain;[12] and (2) the proposed rule would not require Brunner Island to reduce its emissions below the threshold of one percent of the NAAQS. The petition notes that the modeling to support the proposed rule shows that the four Connecticut monitors will continue to have nonattainment and maintenance problems after implementation of the proposed emission budgets. Finally, the petition suggests that, because EGUs may trade allowances within and between states, this could result in emission levels in excess of the state's budget, and thus the petition suggests the rule will likely not affect Brunner Island's emissions. In particular, the petition suggests that this aspect of the CSAPR Update will not reduce emissions from Brunner Island on high electricity demand days or days with the highest ozone levels.

Based on the technical support provided in its petition, Connecticut requests that the EPA make a CAA section 126(b) finding and require that Brunner Island comply with emission limitations and compliance schedules to eliminate its significant contribution to nonattainment and interference with maintenance in Connecticut.

Subsequent to receiving Connecticut's petition, the EPA published a final rule extending the statutory deadline for the Agency to take final action. 81 FR 48348 (July 25, 2016). Section 126(b) of the Act requires the EPA to either make a finding or deny a petition within 60 days of receipt of the petition and after holding a public hearing. However, any action taken by the EPA under CAA section 126(b) is also subject to the procedural requirements of CAA section 307(d). *See* CAA section 307(d)(1)(N). This section requires the EPA conduct notice-and-comment rulemaking, including issuance of a notice of proposed action, a period for public comment, and a public hearing before making a final determination whether to make the requested finding. In light of the time required for notice-and-comment rulemaking, CAA section 307(d)(10) provides for a time extension, under certain circumstances, for rulemakings subject to the section 307(d) procedural requirements. In accordance with section 307(d)(10), the EPA determined that the 60-day period for action on Connecticut's petition

[7] On June 7, 2016, an article by S&P Global indicated that Talen Energy Corp. is in the process of converting the Brunner Island plant to co-fire with natural gas. The Connecticut CAA section 126(b) petition and an April 28, 2017, letter from Talen Energy Corp. indicate that Brunner Island has taken necessary steps to construct a natural gas pipeline and enable the combustion of natural gas. Talen Energy Corp. comments on this action, submitted on March 26, 2018, confirm that this natural gas conversion project was completed in 2017. These documents are available in the docket for this action.

[8] Hourly emission rates reported to the EPA and fuel usage reported to the U.S. Energy Information Administration (EIA) demonstrate Brunner Island predominately used natural gas during the ozone season. The emission data for 2017 are publicly available at *https://www.epa.gov/ampd* and the fuel usage data are available at *https://www.eia.gov/electricity/data/eia923/.*

[9] These data are publicly available at *https://www.epa.gov/ampd. See* Air Markets Program Data in the docket for this proposal.

[10] Of the twelve monitors in Connecticut, seven are violating the 2008 ozone NAAQS based on 2014–2016 data. *See* ozone design value table available at *https://www.epa.gov/air-trends/air-quality-design-values#report.*

[11] The petition referred to modeling conducted for purposes of the proposed CSAPR Update in 2015. *See* 80 FR 75706, 75725–726 (December 3, 2015). The EPA conducted updated modeling to support the final rulemaking, which also identified four projected nonattainment and maintenance receptors in 2017. 81 FR 74533.

[12] The final CSAPR Update was promulgated a few months later. 81 FR 74504 (October 26, 2016).

would be insufficient for the EPA to complete the necessary technical review, develop an adequate proposal, and allow time for notice and comment, including an opportunity for public hearing. Therefore, on July 25, 2016, the EPA published a final rule extending the deadline for the EPA to take final action on Connecticut's CAA section 126(b) petition to January 25, 2017. The notice extending the deadline can also be found in the docket for this rulemaking.

When the EPA had not acted by that date, Connecticut filed suit in the U.S. District Court for the District of Connecticut alleging that the EPA failed to take timely action on Connecticut's CAA section 126(b) petition.[13] On February 7, 2018, the court issued an order requiring the EPA to hold a public hearing on the petition within 30 days and to take final action within 60 days of the court's order. *See* Ruling on Motions for Summary Judgment and Motion Concerning Remedy, *Connecticut* v. *EPA,* No. 3:17–cv–00796 (D. Conn. February 7, 2018). Consistent with the court's order, the EPA held a public hearing on the proposed action on February 23, 2018. 83 FR 6490 (February 14, 2018).

On April 25, 2017, a coalition of public health, conservation, and environmental organizations submitted a letter urging the EPA to immediately grant several CAA section 126(b) petitions pending before the Agency, including Connecticut's, arguing that the petitions' proposed remedies would also provide critical air quality benefits to the communities surrounding the affected power plants in Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia, as well as other downwind states, including New Jersey, New York, Maine, Massachusetts, and Rhode Island.[14] On April 28, 2017, Talen Energy Corp., the owner and operator of Brunner Island, submitted a letter urging the EPA to deny Connecticut's CAA section 126(b) petition due to alleged deficiencies in the petition. The EPA acknowledges receipt of these letters, and has made them available in the docket for this action. However, rather than respond directly to the letters in the proposed action on the petition, the EPA encouraged interested parties to submit relevant comments during the public comment period.

III. The EPA's Decision on Connecticut's CAA section 126(b) Petition

A. Summary of the EPA's Proposed Action

In section III of the February 22, 2018, proposed action, the EPA explained its proposed basis for denial of Connecticut's CAA section 126(b) petition. Given that ozone is a regional pollutant, the EPA proposed to evaluate the petition consistent with the same four-step regional analytic framework that the EPA has used in previous regulatory actions evaluating regional interstate ozone transport problems. Within this framework, the EPA also proposed to evaluate whether Brunner Island emits or would emit in violation of the good neighbor provision based on both current and future anticipated emission levels. The EPA identified two bases for denial.

First, the EPA noted that the Agency's historical approach to evaluating CAA section 126(b) petitions looks first to see whether a petition, standing alone, identifies or establishes a technical basis for the requested section 126(b) finding. 83 FR 7715. In this regard, the Agency identified several elements of the state's analysis that were considered insufficient to support Connecticut's conclusion. In particular, the EPA proposed to find that the state's analysis of Brunner Island's impact on air quality in Connecticut provides insufficient information regarding the source's impact on high ozone days and it does not reflect the facility's current operations. *Id.* Moreover, the EPA proposed to find that the petition does not evaluate the potential costs and air quality benefits that would inform the EPA's evaluation of whether additional emission reductions are cost effective, consistent with the EPA's interpretation of the good neighbor provision. *Id.* at 7718.

Second, the EPA also proposed to rely on its own independent analyses to evaluate the potential basis for the requested CAA section 126(b) finding. *Id.* at 7716. The EPA noted that Brunner Island completed construction of a natural gas pipeline connection prior to the beginning of the 2017 ozone season (*i.e.,* by May 1, 2017), and primarily burned natural gas with a low NO_X emission rate in the 2017 ozone season, which indicates that Brunner Island has already implemented the emission reductions requested by Connecticut's petition. *Id.* at 7717. The EPA also explained that it expects the facility to continue operating primarily by burning natural gas in future ozone seasons. *Id.* To support this determination, the EPA relied on its finding that economic factors, including compliance with the CSAPR Update and fuel-market economics, would provide an incentive for Brunner Island to cost-effectively reduce NO_X emissions. *Id.* at 7718. The EPA therefore proposed to find, based on its own analysis, that there are no additional highly cost-effective controls available at the source, and thus Brunner Island does not currently emit and would not emit in violation of the good neighbor provision with respect to the 2008 ozone NAAQS. *Id.*

The EPA's basis for this final action denying the petition has not fundamentally changed from the proposal. We continue to believe that Connecticut has not demonstrated that Brunner Island emits or would emit in violation of the good neighbor provision such that it will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in Connecticut. Moreover, the EPA's own analysis provides no basis to conclude that the Brunner Island facility either currently emits or would emit pollution in violation of the good neighbor provision for the 2008 ozone NAAQS. In section III of this notice, and in the RTC document included in the docket for this action, the agency explains the rationale supporting its conclusion in light of the public comments.

B. The EPA's Standard for Reviewing Connecticut's CAA Section 126(b) Petition Regarding the 2008 8-Hour Ozone NAAQS

As discussed in section II.B of this notice, section 126(b) of the CAA provides a mechanism for states and other political subdivisions to seek abatement of pollution in other states that may be affecting their air quality. However, it does not identify specific criteria or a specific methodology for the Administrator to apply when deciding whether to make a section 126(b) finding or deny a petition. Therefore, the EPA has discretion to identify relevant criteria and develop a reasonable methodology for determining whether a section 126(b) finding should be made. *See, e.g., Chevron, U.S.A., Inc.* v. *NRDC,* 467 U.S. 837, 842–43 (1984); *Smiley* v. *Citibank,* 517 U.S. 735, 744–45 (1996).

As an initial matter, the EPA's historical approach to evaluating CAA

[13] Two citizen groups, Sierra Club and Connecticut Fund for the Environment, intervened in this case on behalf of Connecticut.

[14] The EPA had received five additional CAA section 126(b) petitions at the time of the proposal from two other states (Delaware and Maryland) regarding the 2008 and 2015 ozone NAAQS, each claiming that one or more specific power plant EGUs in upwind states emit or would emit in violation of the good neighbor provision. The EPA notes that this action only addresses Connecticut's CAA section 126(b) petition regarding Brunner Island. The EPA has not yet proposed action on the other five petitions.

section 126(b) petitions looks first to see whether a petition identifies or establishes a sufficient basis for the requested section 126(b) finding. The EPA first evaluates the technical analysis in the petition to see if that analysis, standing alone, is sufficient to support a section 126(b) finding. The EPA focuses on the analysis in the petition because the statute does not require the EPA to conduct an independent technical analysis to evaluate claims made in section 126(b) petitions. The petitioner thus bears the burden of establishing, as an initial matter, a technical basis for the specific finding requested. The EPA has no obligation to prepare an analysis to supplement a petition that fails, on its face, to include an initial technical demonstration. Such a petition, or a petition that fails to identify the specific finding requested, could be found insufficient.

Nonetheless, the EPA may decide to conduct independent analyses when helpful in evaluating the basis for a potential section 126(b) finding or developing a remedy if a finding is made. As explained in the following sections, given the EPA's concerns with the information submitted as part of Connecticut's CAA section 126(b) petition, and the fact that the EPA has previously issued a rulemaking defining and at least partially addressing the same environmental concern that the petition seeks to address, the EPA determined that it was appropriate to conduct an independent analysis to determine whether it should grant or deny the petition. Such analysis, however, is not required by the statute and may not be necessary or appropriate in other circumstances.

With respect to the statutory requirements of both section 110(a)(2)(D)(i) and section 126, the EPA has consistently acknowledged that Congress created these provisions as two independent statutory tools to address the problem of interstate pollution transport. *See, e.g.,* 76 FR 69052, 69054 (November 7, 2011).[15] Congress provided two separate statutory processes to address interstate transport without indicating any preference for one over the other, suggesting it viewed either approach as a legitimate means to produce the desired result. While either provision may be applied to address interstate transport, they are also closely linked in that a violation of the prohibition in CAA section 110(a)(2)(D)(i) is a condition precedent for action under CAA section 126(b) and, critically, that significant contribution to nonattainment and interference with maintenance are construed identically for purposes of both provisions (since the identical terms are naturally interpreted as meaning the same thing in the two linked provisions). *See Appalachian Power,* 249 F. 3d at 1049–50.

Thus, in addressing a section 126(b) petition that addresses ozone transport, the EPA believes it is appropriate to interpret these ambiguous terms consistent with the EPA's historical approach to evaluating interstate ozone pollution transport under the good neighbor provision. As described in sections II.A and II.C of this notice, ozone is a regional pollutant and previous EPA analyses and regulatory actions have evaluated the regional interstate ozone transport problem using a four-step regional analytic framework. The EPA most recently applied this four-step framework in the promulgation of the CSAPR Update to at least partially address interstate transport with respect to the 2008 ozone NAAQS under CAA section 110(a)(2)(D)(i)(I). Given the specific cross-reference in CAA section 126(b) to the substantive prohibition in CAA section 110(a)(2)(D)(i), the EPA believes any prior findings made under the good neighbor provision are informative—if not determinative—for a CAA section 126(b) action, and thus the EPA's four-step approach under CAA section 110(a)(2)(D)(i)(I) is also appropriate for evaluating under CAA section 126(b) whether a source or group of sources will significantly contribute to nonattainment or interfere with maintenance of the 2008 8-hour ozone NAAQS in a petitioning state. Because the EPA interprets significant contribution to nonattainment and interference with maintenance to mean the same thing under both provisions, the EPA's decision whether to grant or deny a CAA section 126(b) petition regarding the 2008 8-hour ozone NAAQS depends on whether there is a downwind air quality problem in the petitioning state (*i.e.,* step one of the four-step framework); whether the upwind state where the source subject to the petition is located is linked to the downwind air quality problem (*i.e.,* step two); and, if such a linkage exists, whether there are additional highly cost-effective controls achievable at the source(s) named in the CAA section 126(b) petition (*i.e.,* step three).

The EPA notes that Congress did not otherwise specify how the EPA should determine that a major source or group of stationary sources ''emits or would emit'' any air pollutant in violation of the prohibition of CAA section 110(a)(2)(D)(i)(I) under the terms of section 126(b). Thus, the EPA also believes it is reasonable and appropriate at each step to consider whether the facility ''emits or would emit'' in light of the facility's current operating conditions. Therefore, the EPA interprets the phrase ''emits or would emit'' in this context to mean that a source may ''emit'' in violation of the good neighbor provision if, *based on current emission levels,* the upwind state contributes to downwind air quality problems (*i.e.,* steps one and two), and the source may be further controlled through implementation of highly cost-effective controls (*i.e.,* step 3). Similarly, a source ''would emit'' in violation of the good neighbor provision if, *based on reasonably anticipated future emission levels* (accounting for existing conditions), the upwind state contributes to downwind air quality problems (*i.e.,* steps one and two) and the source could be further controlled through implementation of highly cost-effective controls (*i.e.,* step 3). Consistent with this interpretation, the EPA has therefore evaluated, in the following section, whether Brunner Island emits or would emit in violation of the good neighbor provision based on both current and future anticipated emission levels.

In interpreting the phrase ''emits or would emit in violation of the prohibition of section [110(a)(2)(D)(i)],'' if the EPA or a state has already adopted provisions that eliminate the significant contribution to nonattainment or interference with maintenance of the NAAQS in downwind states, then there simply is no violation of the CAA section 110(a)(2)(D)(i)(I) prohibition. Put another way, requiring additional reductions would result in eliminating emissions that do not contribute significantly to nonattainment or interfere with maintenance of the NAAQS, an action beyond the scope of the prohibition in CAA section 110(a)(2)(D)(i)(I) and therefore beyond the scope of the EPA's authority to make the requested finding under CAA section 126(b). *See EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. at 1604 n.18, 1608–09 (holding the EPA may not require sources in upwind states to reduce emissions by more than necessary to eliminate significant contribution to nonattainment or interference with maintenance of the

[15] Courts have also upheld the EPA's position that CAA sections 110(a)(2)(D)(i) and section 126 are two independent statutory tools to address the same problem of interstate transport. *See GenOn REMA, LLC* v. *EPA,* 722 F.3d 513, 520–23 (3d Cir. 2013); *Appalachian Power,* 249 F.3d at 1047.

NAAQS in downwind states under the good neighbor provision).

Thus, it follows that if a state already has a SIP that the EPA approved as adequate to meet the requirements of CAA section 110(a)(2)(D)(i)(I), the EPA would not find that a source in that state was emitting in violation of the prohibition of CAA section 110(a)(2)(D)(i)(I) absent new information demonstrating that the SIP is now insufficient to address the prohibition. Similarly, if the EPA has promulgated a FIP that fully addressed the deficiency, the FIP would eliminate emissions that significantly contribute to nonattainment or interfere with maintenance in a downwind state, and, hence, absent new information to the contrary, sources in the upwind state would not emit in violation of the section 110(a)(2)(D)(i)(I) prohibition.

The EPA notes that a SIP or FIP implementing section 110(a)(2)(D)(i)(I) only means that a state's emissions are adequately prohibited for the particular set of facts analyzed under approval of a SIP or promulgation of a FIP. If a petitioner produces new data or information showing a different level of contribution or other facts not considered when the SIP or FIP was promulgated, compliance with a SIP or FIP may not be determinative regarding whether the upwind sources would emit in violation of the prohibition of section 110(a)(2)(D)(i)(I). *See* 64 FR 28250, 28274 n.15 (May 25, 1999); 71 FR 25328, 25336 n.6 (April 28, 2006); *Appalachian Power,* 249 F.3d at 1067 (later developments can be the basis for another CAA section 126 petition). Thus, in circumstances where a SIP or FIP addressing section 110(a)(2)(D)(i)(I) is being implemented, the EPA will evaluate the section 126(b) petition to determine if it raises new information that merits further consideration.

C. The EPA's Analysis of Connecticut's CAA Section 126(b) Petition

As described earlier in section II.C of this notice, the EPA has determined that a state may contribute significantly to nonattainment or interfere with maintenance of the 2008 ozone NAAQS where emissions from the state impact a downwind air quality problem (nonattainment or maintenance receptor) at a level exceeding a one percent contribution threshold, and where the sources in the state can implement emission reductions through highly cost-effective control measures. *See EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. at 1606–07; *Appalachian Power,* 249 F. 3d at 1049–50.

The EPA has already conducted such an analysis for the 2008 ozone NAAQS with respect to Pennsylvania's impact on receptors in Connecticut in the CSAPR Update. The EPA determined that, based on 2017 modeling projections, statewide emissions from sources in Pennsylvania were linked to four air quality monitors in Connecticut expected to have nonattainment or maintenance concerns. However, contrary to the assertions made in Connecticut's petition, the threshold of contributing levels equal to or greater than one percent of the 2008 ozone NAAQS to downwind nonattainment and maintenance receptors used in step two in the CSAPR Update did not alone represent emissions that were considered to ''contribute significantly'' or ''interfere with maintenance'' of the NAAQS. The conclusion that a state's emissions met or exceeded this threshold only indicated that further analysis was appropriate to determine whether any of the upwind state's emissions met the statutory criteria of significantly contributing to nonattainment or interfering with maintenance. This further analysis in step three of the EPA's four-step framework considers cost, technical feasibility and air quality factors to determine whether any emissions deemed to contribute to the downwind air quality problem must be controlled pursuant to the good neighbor provision. Thus, while the EPA's modeling conducted for the CSAPR Update did link statewide emissions from Pennsylvania to nonattainment and maintenance receptors in Connecticut in 2017, this does not conclude the determination, made at step three, as to whether Brunner Island's emissions ''contribute significantly'' to nonattainment or ''interfere with maintenance'' of the 2008 ozone NAAQS.

In light of the EPA's conclusions that Pennsylvania emissions are linked to Connecticut's air quality based on the CSAPR Update modeling, the Agency need not take a position regarding whether it is appropriate or consistent with the EPA's historical four-step framework for addressing ozone transport to evaluate the impact of a single source on downwind air quality versus the impact of statewide emissions.[16] Nonetheless, the EPA notes that, for the same reasons that the modeled impact of a state is insufficient to conclude the EPA's analysis, the impact of a single source on downwind air quality would also not necessarily be determinative of whether that source emits or would emit in violation of the good neighbor provision. Thus, the modeling summary provided by Connecticut regarding Brunner Island's potential impact on Connecticut monitors does not indicate whether in step three of the EPA's framework there are feasible and highly cost-effective emission reductions available at Brunner Island such that the EPA could determine that this facility emits or would emit in violation of the good neighbor provision.

The agency also notes that Connecticut's analysis appears to provide insufficient information for the EPA to make a determination under CAA section 126(b) because the conclusions that the petition draws regarding Brunner Island's particular impacts on Connecticut are not sufficiently supported by the state's technical assessment. In particular, existing EPA analyses of interstate ozone pollution transport focus on contributions to high ozone days at the downwind receptor in order to evaluate the impact on nonattainment and maintenance at the receptor. For example, in the CSAPR Update modeling, ozone contributions were calculated using data for the days with the highest future year modeled ozone concentrations.[17] For the 2008 ozone NAAQS, only the highest measured ozone days from each year are considered for the calculation of ozone design values [18] (the values that determine whether there is a measured NAAQS violation). Therefore, measured ozone values that are far below the level of the NAAQS do not cause an exceedance or violation of the NAAQS. For this reason, only ozone contributions to days that are among the highest modeled ozone days at the receptor are relevant to determining if a state or source is linked to downwind nonattainment or maintenance issues. The analysis and metrics provided by the petitioner provide some information on the frequency and magnitude of ozone impacts. However, the information is unclear as to whether the modeled and/or measured ozone levels

[16] The EPA notes, however, that the DC Circuit has affirmed the EPA's decision in a prior section 126(b) action to evaluate the impacts of statewide, rather than source-specific, impacts on downwind ozone nonattainment. *Appalachian Power,* 249 F. 3d at 1049–50.

[17] Air Quality Modeling Technical Support Document for the Final Cross-State Air Pollution Rule Update, 17 (August 2016). Available at *https://www.epa.gov/sites/production/files/2017-05/documents/aq_modeling_tsd_final_csapr_update.pdf.*

[18] Ozone design values are calculated as the three-year average of the annual fourth-highest daily maximum 8-hour average measured ozone concentration at each monitor. *See* 80 FR 65296 (October 26, 2015) for a detailed explanation of the calculation of the 3-year 8-hour average and 40 CFR part 50, appendix U.

in Connecticut on the days when emissions from Brunner Island have the largest impact at Connecticut receptors are among the highest modeled ozone days at those receptors. Thus, the petition does not provide sufficient information to evaluate the contribution of Brunner Island's emissions to nonattainment and maintenance receptors in Connecticut.[19]

We also note that the petition's evaluation of Brunner Island's impact on Connecticut relied on emission data from 2011 which, as discussed in more detail in the following paragraphs, is not likely to be representative of current and/or future NO_X emissions and ozone levels in Connecticut, Pennsylvania, and the rest of the region.[20] Therefore, the modeled impacts identified in the petition are likely also not representative of the impacts of Brunner Island's current emission levels on ozone concentrations in Connecticut.

With respect to the question of whether there are feasible and highly cost-effective NO_X emission reductions available at Brunner Island (step three of the four step framework), Brunner Island primarily burned natural gas with a low NO_X emission rate in the 2017 ozone season, and the EPA expects the facility to continue operating primarily by burning natural gas in future ozone seasons. As such, and as described in more detail in the following paragraphs, the EPA does not find at this time that there are additional feasible and highly cost-effective NO_X emission reductions available at Brunner Island. The EPA therefore has no basis to determine, consistent with the standard of review outlined in section III.B, that Brunner Island would not emit in violation of the good neighbor provision with respect to the 2008 ozone NAAQS.

Connecticut's CAA section 126(b) petition first proposes that the operation of natural gas is an available cost-effective emission reduction measure that could be implemented at Brunner Island. As noted previously, Brunner Island completed construction of a natural gas pipeline connection prior to the beginning of the 2017 ozone season (*i.e.,* by May 1, 2017). Brunner Island operated primarily using natural gas as fuel for the 2017 ozone season. As a result, Brunner Island's actual ozone season NOx emissions declined from 3,765 tons in 2016 to 877 tons in 2017, and the facility's ozone season NO_X emission rate declined from 0.370 lbs/mmBtu in 2016 to 0.090 lbs/mmBtu in 2017. Thus, Brunner Island has already implemented the emission reductions consistent with what Connecticut asserted would qualify as a cost-effective strategy for reducing NO_X emissions. Accordingly, the EPA has determined that Connecticut's section 126(b) petition does not demonstrate that, at this current level of emissions, Brunner Island emits in violation of the good neighbor provision.

Similarly, the EPA concludes that Connecticut's petition does not demonstrate that Brunner Island would emit in violation of the good neighbor provision. The EPA also believes that Brunner Island will continue to primarily use natural gas as fuel during future ozone seasons for several economic reasons. First, compliance with the CSAPR Update provides an economic incentive to cost-effectively reduce NO_X emissions. Specifically, Brunner Island's participation in the CSAPR NO_X Ozone Season Group 2 allowance trading program provides an economic incentive to produce electricity in ways that lower ozone-season NO_X, such as by burning natural gas relative to burning coal at this particular power plant. Under the CSAPR Update, each ton of NO_X emitted by a covered EGU has an economic value—either a direct cost in the case that a power plant must purchase an allowance to cover that ton of emissions for CSAPR Update compliance or an opportunity cost in the case that a power plant must use an allowance in its account for compliance and thereby foregoes the opportunity to sell that allowance on the market. The EPA notes that Brunner Island's 2017 emissions would have been approximately 2,714 tons more than its actual 2017 emissions if it had operated as a coal-fired generator, as it did in 2016.[21] This reduction in NO_X emissions that is attributable to primarily burning natural gas has an economic value in the CSAPR allowance trading market.

Second, there are continuing fuel-market based economic incentives suggesting that Brunner Island will continue to primarily burn natural gas during the ozone season. Brunner Island elected to add the capability to primarily utilize natural gas by way of a large capital investment in a new natural gas pipeline capacity connection. Brunner Island's operators would have planned for and constructed this project during the recent period of relatively low natural gas prices. In the years preceding the completion of this natural gas pipeline connection project, average annual Henry Hub natural gas spot prices ranged from $2.52/mmBtu to $4.37/mmBtu (*i.e.,* between 2009 and 2016).[22] The capital expenditure to construct a natural gas pipeline connection suggests that natural gas prices within this range make it economic (*i.e.,* cheaper) for Brunner Island to burn natural gas to generate electricity relative to burning coal. As such, future natural gas prices in this same range suggest that Brunner Island will continue to primarily burn natural gas during future ozone seasons. The EPA and other independent analysts expect future natural gas prices to remain low and within this price range exhibited from 2009 to 2016 due both to supply and distribution pipeline build-out. For example, the Energy Information Administration's (EIA) 2018 Annual Energy Outlook (AEO) natural gas price projections for Henry Hub spot price range from $3.06/mmBtu in 2018 to $3.83/mmBtu in 2023.[23] Moreover, the AEO short-term energy outlook and New York Mercantile Exchange futures further support the estimates of a

[19] Table two in the Sonoma Technologies, Inc. technical memorandum that supports Connecticut's petition indicates that the ''maximum number of days any one monitor [in Connecticut] had a significant ozone contribution'' was two, but the table does not indicate whether those days were high measured and/or modeled ozone days.

[20] The Connecticut petition relies on air quality modeling that uses 2011 emission data. As an example of how emissions have changed between 2011 and a recent historical year, the EPA notes that Pennsylvania's 2017 EGU NO_X ozone season emissions were 79 percent below 2011 levels. Brunner Island is located in Pennsylvania, which as a facility reduced its ozone season NO_X emissions by 88 percent in 2017 relative to 2011 levels. These data are publicly available at *https://www.epa.gov/ampd.*

[21] This estimated emissions difference was calculated as the difference between 2017 reported NO_X emissions of 877 tons and a counterfactual 2017 NO_X emissions estimate of 3,591 tons created using 2017 operations (*i.e.,* heat input of 19,406,872 mmBtu) multiplied by the 2016 NO_X emission rate of 0.37 lb/mmBtu reflecting coal-fired generation. These data are publicly available at *https://www.epa.gov/ampd.*

[22] Henry Hub is a significant distribution hub located on the natural gas pipeline system located in Louisiana. Due to the significant volume of trades at this location, it is seen as the primary benchmark for the North American natural gas market. These data are publicly available at *https://www.eia.gov/dnav/ng/hist/rngwhhdA.htm.*

[23] In the 2018 reference case Annual Energy Outlook (AEO) released February 6, 2018, created by the U.S. Energy Information Administration (EIA), natural gas prices for the power sector for 2018 through 2023. Available at *https://www.eia.gov/outlooks/aeo/data/browser/#/?id=13-AEO2018&cases=ref2018&sourcekey=0.* Projected delivered natural gas prices for the electric power sector in the Middle Atlantic region, where Brunner Island is located, ranged between $3.56 in 2018 and $4.08/mmBtu in 2023. The projected delivered coal prices for the electric power sector in the Middle Atlantic region remain relatively constant, ranging from $2.51 to $2.56/mmBtu. These data are publicly available at *https://www.eia.gov/outlooks/aeo/data/browser/#/?id=3-AEO2018&region=1-2&cases=ref2018&start=2016&end=2023&f=A&linechart=ref2018-d121317a.3-3-AEO2018.1-2&map=ref2018-d121317a.4-3-AEO2018.1-2&sourcekey=0.*

continued low-cost natural gas supply.[24] These independent analyses of fuel price data and projections lead to the EPA's expectation that fuel-market economics will continue to support Brunner Island's primarily burning natural gas during future ozone seasons through at least 2023. The EPA further notes that recent analyses projecting emission levels to a future year indicate that no air quality monitors in Connecticut are projected to have nonattainment or maintenance problems with respect to the 2008 ozone NAAQS by 2023.[25] While this modeling is not necessarily determinative of whether Brunner Island emits or would emit in violation of the good neighbor provision, it does suggest that, by 2023, air quality in Connecticut may be significantly improved compared to present monitored values and it may no longer be necessary to further reduce emissions from any state to ensure attainment of the 2008 ozone NAAQS in Connecticut.[26]

The context in which Brunner Island installed natural gas-firing capability and burned natural gas is consistent with observed recent trends in natural gas utilization within the power sector, suggesting that Brunner Island's economic situation in which it primarily burns gas as fuel during the ozone season is not unique or limited. Comparing total heat input from 2014 with 2017 for all units that utilize natural gas and report to the EPA's Clean Air Markets Division, historical data showed an increased use of natural gas of 14 percent.[27] This overall increase results from both an increase in capacity from the construction of additional units and an increased gas-fired utilization capacity factor. The available capacity increased six percent while average capacity factor increased from 23 percent to 25 percent, which reflects an eight percent increase in utilization.

Considering the projected continued broader downward trends in NO_X emissions resulting in improved air quality in Connecticut, the EPA anticipates that Brunner Island will likely continue to primarily burn natural gas during the ozone season as air quality in Connecticut continues to improve. Accordingly, the EPA has no basis to conclude that the facility would emit in violation of the good neighbor provision with respect to the 2008 ozone NAAQS.

We do not agree with the petition to the extent that it asserts that the ability to buy and bank allowances in the CSAPR Update's ozone season NO_X allowance trading program will incentivize Brunner Island to increase its emissions. As an initial matter, Connecticut fails to support its contention that the CSAPR Update does not incentivize sources to reduce emissions and thus does not meet the demonstration burden imposed on petitioners under CAA section 126(b). Moreover, Brunner Island's 2017 emission levels demonstrate that, contrary to Connecticut's assertions, Brunner Island reduced emissions while operating under the economic incentives of the CSAPR Update allowance trading program. This is also true for EGUs in Pennsylvania more broadly, which had collective NO_X emissions of 13,646 tons, well below the Pennsylvania NO_X emissions budget of 17,952 tons. The petition also fails to support its contention that Brunner Island's participation in the allowance trading program will result in increased emissions on days with either the highest ozone levels or days with high electricity demand. Throughout the 2017 ozone season, Brunner Island's hourly NO_X rate averaged 0.09 lb/mmBtu and was higher than 0.30 lb/mmBtu in only 16 hours, or 0.4% of the time.[28] Based on historical emission rate data for Brunner Island before the completion of the natural gas pipeline, a rate above 0.30 lb/mmBtu indicates the facility is predominately burning coal (*e.g.,* their average ozone-season NO_X emission rate in 2016 was 0.37 lb/mmBtu). Conversely, based on historical emission rate data for Brunner Island after the completion of the natural gas pipeline, a rate below 0.15 indicates the facility is predominately burning natural gas (*e.g.,* their average ozone-season emission rate in 2017 was 0.10 lb/mmBtu). During the highest 10 percent of ozone season electricity demand hours based on total hourly gross generation reported to EPA for the region around Pennsylvania (Connecticut, Delaware, Maryland, Pennsylvania, New Jersey and New York), Brunner Island's average emission rate was just below 0.10 lb/mmBtu and was higher than 0.15 lb/mmBtu in only 28 of the 367 hours, or 7.6% of those hours. Brunner Island's emissions were never above 0.30 lb/mmBtu during these hours. Thus, based on 2017 ozone season operations, EPA finds no evidence to suggest that Brunner Island's participation in the allowance trading program would incentivize Brunner Island to increase its emissions generally or result in increased emissions on days with high electricity demand.

Finally, to the extent that Connecticut identifies other control strategies that could potentially be implemented at Brunner Island in order to reduce NO_X emissions, including modifications to combustion controls or implementation of post-combustion controls like SCRs and SNCRs, the petition does not include any information or analysis regarding the costs of such controls and it does not demonstrate that such controls are highly cost-effective considering potential emission reductions or downwind air quality impacts. As noted previously, in the CSAPR Update, the EPA quantified upwind states' obligations under the good neighbor provision based on emission reductions available at a marginal cost of $1,400/ton of NO_X reduced. The EPA's analysis showed that additional NO_X reductions at EGUs, including installation of new SCRs and SNCRs at EGUs that lacked post-combustion controls, would be more expensive.[29] The cost of such new post-combustion controls at Brunner Island would likely be even more expensive considering current and anticipated emission rates.

Under the EPA's approach to quantifying those amounts of emissions that significantly contribute to nonattainment or interfere with maintenance in the CSAPR Update, the cost to implement a particular control strategy is balanced against air quality factors, such as the amount of NO_X emission reductions available using the control strategy and the downwind reductions in ozone at identified receptors that would result from the

[24] AEO short-term energy outlook available at *https://www.eia.gov/outlooks/steo/report/natgas.php.*

[25] *See* Supplemental Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I) (October 2017), available in the docket for this proposed action.

[26] The EPA also notes that a proposed settlement agreement between Sierra Club and Talen Energy may further ensure that Brunner Island will operate by burning gas in the ozone season in 2023 and future years. Under the settlement, Brunner Island agrees to operate only on natural gas during the ozone season (May 1–September 30) starting on January 1, 2023, (subjected to limited exceptions) and cease coal operations after December 31, 2028. *See* a joint statement regarding this agreement, available at *http://talenenergy.investorroom.com/2018-02-14-Joint-Statement-Talen-Energy-and-the-Sierra-Club-Reach-Agreement-on-the-Future-Operation-of-the-Brunner-Island-Power-Plant.* As of the date of this final action, that settlement agreement has not yet been finalized.

[27] From 8.4 billion mmBtu to 9.6 billion mmBtu. *See* EPA's Clean Air Markets Division data *available at https://ampd.epa.gov/ampd/.*

[28] *See* Brunner Island 2017 Hourly Emissions Spreadsheet, available in the docket for this action.

[29] *See* EGU NO_X Mitigation Strategies Final Rule Technical Support Document available at *https://www.regulations.gov,* Docket ID No. EPA–HQ–OAR–2015–0500–0554.

emission reductions. Connecticut has not attempted to evaluate what NO_X emission reductions or improvements in ozone concentrations would accrue from these additional control strategies and thus has not demonstrated that the additional costs associated with these controls would be justified by the air quality considerations.[30] This element is not only key to the EPA's interpretation of the good neighbor provision as it applies step three to ozone pollution transport, but is also necessary to ensure that upwind emissions are not reduced by more than necessary to improve downwind air quality, consistent with the Supreme Court's holding in *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. at 1604 n.18, 1608–09. Thus, the petition does not demonstrate that potential emission reductions achievable at Brunner Island through installation of such controls would necessarily constitute the state's good neighbor obligation with respect to the 2008 ozone NAAQS.

Based on the information discussed in this notice, the EPA is denying Connecticut's section 126(b) petition on two bases. First, the EPA has identified a number of reasons noted in this section as to why Connecticut has not met its burden to demonstrate that Brunner Island emits or would emit in violation of the good neighbor provision with respect to the 2008 ozone NAAQS. Second, the EPA finds, based on its own analysis, that Brunner Island combusted primarily natural gas in the 2017 ozone season, resulting in a low NO_X emission rate for this facility, and it is expected that future operation will be consistent with 2017 operations. In light of this determination, the EPA finds that there are no additional highly cost-effective controls available at the source, and thus there is no basis at this time for the EPA to find that Brunner Island emits or would emit in violation of the good neighbor provision with respect to the 2008 ozone NAAQS.[31]

[30] Although Brunner Island has already reduced emissions via installation and operation of the natural gas pipeline, the EPA notes that Connecticut's petition also did not evaluate either the costs or anticipated air quality benefits of this control strategy, and thus did not demonstrate that emission reductions achieved through the operation of natural gas are necessarily required under the good neighbor provision with respect to the 2008 ozone NAAQS.

[31] As previously discussed, the petition correctly identifies that Pennsylvania is linked to downwind air quality problems in Connecticut, and has been included in the CSAPR Update with respect to its downwind impacts on Connecticut's attainment of the 2008 ozone NAAQS. While this action proposes to determine that no further controls are necessary to ensure that Brunner Island does not and would not ''emit'' in violation of the good neighbor provision for the 2008 ozone NAAQS with respect to Connecticut, this proposal does not make any broader determination as to the good neighbor obligation for Pennsylvania.

D. Public Comments

The EPA solicited comment on the proposed denial of Connecticut's section 126(b) petition. This section addresses significant comments received on the February 22, 2018 proposed denial. Remaining comments are addressed in a separate RTC document found in the docket for this action.

Several commenters asserted that the EPA should base its decision to grant or deny Connecticut's section 126(b) petition on the technical support included in the petition. The commenters contend that the petition was based on the most recent data available when the petition was submitted and allege that the proposed denial fails to meaningfully engage with the data and evidence provided in the petition.

The commenters are incorrect in asserting that the EPA must base its decision to grant or deny a petition based only on the technical support included in the petition. Were the EPA to act solely on the information available in the petition, that information may result in an arbitrary and unreasonable decision by the EPA, and could, for example, impose controls or emission limitations that are not appropriately tailored to the problem as it exists at the time of EPA's final action or at the time when such controls or limitations would actually be implemented. This could result in unnecessary over-control (or under-control) of emissions, in potential violation of the Supreme Court's holding in *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584, 1608–09 (2014). Therefore, the EPA does not agree that it would be appropriate to solely rely on the information in the petition to evaluate Brunner Island's impact on Connecticut in light of the recent operational changes at the facility.

Moreover, as discussed in section III.B of the notice of final action, the EPA may decide to conduct independent analyses when helpful in evaluating the basis for a potential section 126(b) finding or developing a remedy if a finding is made. In this instance, Brunner Island's recent installation of a natural gas connection pipeline allowing natural gas to be combusted to serve Brunner Island's electric generators, which has significantly reduced the facility's NO_X emissions, resulted in changed circumstances at the facility such that the 2011 emissions analyzed in the petition are not an accurate indicator of Brunner Island's future ozone seasons emissions. To inform its rationale, the EPA examined emissions from the 2017 ozone season and expected future emission levels, which reflect the recent changes at Brunner Island.

Although the EPA determined that it was appropriate to conduct an independent analysis to determine whether it should grant or deny the petition, the commenter is incorrect in asserting that the EPA failed to meaningfully engage with the data and evidence provided in the petition. As described in section III.B, the petitioner bears the burden of establishing, as an initial matter, a technical basis for the specific finding requested. The EPA evaluated the information provided by the petitioner, and found that there was insufficient support for the EPA to grant the petition on its face. For example, the EPA examined the relevance of the 2011 emissions data provided in the petition, finding that the state's analysis no longer reflects the facility's current operations due to changed conditions at Brunner Island. The EPA also noted the lack of information regarding ozone impacts on high ozone days at specific downwind receptors in Connecticut and the state's failure to evaluate costs or air quality benefits of proposed control measures. Thus, the EPA did evaluate the data and evidence provided in the petition and found it lacking.

Several commenters asserted that while Brunner Island has installed the capability to use natural gas as fuel, the facility can switch back to coal at any time and increase its NO_X emissions. These commenters contend that the EPA must therefore place a federally enforceable requirement on Brunner Island pursuant to section 126 to ensure the facility continues to operate on natural gas. The commenters suggest that the use of the term ''prohibit'' in section 110(a)(2)(D)(i)(I) means that the EPA must include a legally enforceable emission limit requiring Brunner Island to operate with gas for electricity generation.

The commenters assertion that the EPA's expectations regarding Brunner Island's future operations do not satisfy the strict emission prohibition of CAA section 110(a)(2)(D)(i)(I) implicitly assumes that Brunner Island is in fact operating in violation of section 110(a)(2)(D)(i)(I). The EPA agrees with the commenter that the prohibition of section 110(a)(2)(D)(i)(I) is linked directly to section 126(b), in that a violation of the prohibition in CAA section 110(a)(2)(D)(i) is a condition precedent for action under CAA section

126(b) and, critically, that significant contribution to nonattainment and interference with maintenance should be construed identically for purposes of both provisions where EPA has already given meaning to the terms under one provision. 83 FR 7711 through 7722; *see also Appalachian Power Co.* v. *EPA,* 249 F.3d 1032, 1048–50 (D.C. Cir. 2001) (affirming as reasonable the EPA's approach to interpreting a violation of section 110(a)(2)(D)(i)(I) under section 126 consistent with its approach in the NO_X SIP Call).

Given the inextricable link between the substantive requirements of the two provisions, the EPA applied the same four-step framework used in previous ozone transport rulemakings, including the CSAPR Update, to evaluate whether Brunner Island significantly contributes to nonattainment or interferes with maintenance of the 2008 ozone NAAQS in Connecticut. Pursuant to this framework, the EPA first determines at steps one and two whether emissions from an upwind state impact downwind air quality problems at a level that exceeds an air quality threshold, such that the state is linked and therefore contributes to the air quality problem. At step three, the EPA then determines whether the contribution is ''significant'' or interferes with maintenance of the NAAQS based on several factors, including the availability of cost-effective emission reductions at sources within the state. Where the EPA determines that sources in a state do not have cost-effective emission reductions available, the EPA concludes that the state does not significantly contribute to nonattainment or interfere with maintenance of the NAAQS, and thus, that there are no emissions at the source that must be ''prohibited'' under section 110(a)(2)(D)(i)(I).

As described in section III.C, the EPA adopted the same framework with respect to Connecticut's section 126(b) petition by evaluating the linkage between Pennsylvania and Connecticut, and the availability of emission reductions at Brunner Island. The EPA determined that while emissions from the state of Pennsylvania are impacting Connecticut under steps one and two of the framework, Brunner Island does not emit and would not emit in violation of this provision because there are no further cost-effective emission reductions available at the source under step three of the framework. The EPA's application of the same framework that the agency has used to evaluate impacts under section 110(a)(2)(D)(i)(I) to the evaluation of Brunner Island's impacts on Connecticut under section 126(b) is therefore consistent with the commenters' suggestion that the two statutory provisions are directly linked.

Importantly, the EPA only implements federally enforceable limits under step four of the four-step framework for sources that the EPA determines have emissions that significantly contribute to nonattainment or interfere with maintenance of the ozone NAAQS downwind under steps one, two, and three. *See* 81 FR 74553 (declining to impose CSAPR Update FIP obligations for EGUs in District of Columbia and Delaware despite linkages to downwind receptors where EPA determined no cost-effective emission reductions were available). This is consistent with the statutory language of section 110(a)(2)(D)(i)(I), which ''prohibit[s]'' only those emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state. The EPA has reasonably interpreted this to mean that where there is no such impact, the EPA and the states are not required to impose emission limitations.[32] The EPA does not dispute that, were it to find that Brunner Island emits or would emit in violation of the prohibition under section 110(a)(2)(D)(i)(I), an appropriate remedy to mitigate the emission impacts would necessarily have to be federally enforceable, both under section 126(c) (requiring compliance by a source with EPA-imposed emission limitations and compliance schedules) and section 110(a)(2)(D)(ii) (requiring a state implementation plan to contain provisions ensuring compliance with the requirements of section 126). Because the EPA has determined that there are no further cost-effective emission reductions available at Brunner Island at step three, the EPA does not reach step four's requirement to impose federally enforceable emission reductions.

[32] This is also consistent with designation requirements elsewhere in title I. Downwind areas are initially designated attainment or nonattainment for the ozone NAAQS based on actual measured ozone concentrations, regardless of whether the level of ozone concentrations is due to enforceable emission limits. Similarly, the EPA generally evaluates whether sources in nearby areas contribute to measured nonattainment in such areas for purposes of designations based on actual emission levels, and thus sources in those nearby areas are generally subject to nonattainment planning requirements only if actual emissions from that area are considered to contribute to the air quality problem. Here, where ''significant contribution'' is necessarily a higher standard than the contribution threshold used in designations, it is reasonable and consistent to determine that states or EPA need only impose emission limitations if it is determined that there is significant contribution or interference with maintenance.

Several commenters challenge the EPA's determination that Brunner Island will primarily operate on natural gas in future ozone seasons as ''speculative'' and ''conjecture.'' These commenters suggest that factors such as natural gas prices could change in the future that would make it more economic to burn coal and buy allowances in the CSAPR Update regional trading program. Thus, the commenters contend that the EPA cannot rely on Brunner Island's recent ozone season operation on gas to determine that there are no further cost-effective emission reductions available at the source. The commenters also suggest that a proposed settlement agreement between Sierra Club and Talen Energy indicates Brunner Island's intention to continue firing significant amounts of coal between now and 2023, when the first emission limitations would take effect requiring Brunner Island to operate on gas during the ozone season.

As discussed in section III.C, the EPA has ample evidence to expect that Brunner Island will continue operating primarily by burning natural gas in future ozone seasons. The EPA does not claim, as the commenter suggests, that one year of changed operations provides assurances of Brunner Island's future activity. Brunner Island's recent installation of a natural gas pipeline and subsequent use of natural gas as fuel is not the only piece of evidence indicating that Brunner Island will likely burn primarily natural gas in future ozone seasons. Rather, as described in this notice and in the RTC, the EPA has also relied on its finding that economic factors, including compliance with the CSAPR Update and fuel-market economics, would provide an incentive for Brunner Island to combust primarily natural gas. Thus, the EPA's analysis of Brunner Island's anticipated future operations is based on reasonable and rigorous assessments of the best data available regarding the electricity generating markets, rather than speculation.

The EPA does not believe the fluctuating nature of market forces asserted by the commenter outweighs the EPA's analysis of market trends, forces, and likely behaviors. The commenters themselves speculate, without analysis or evidence, that market forces may be such in the future that Brunner Island would likely not use primarily natural gas. The EPA also does not believe it is appropriate to speculate on the underlying motivations behind the proposed settlement agreement between Talen Energy and Sierra Club, or what such motivations

might mean for operation during years not covered by the agreement. Rather, the EPA's analysis is based on economic incentives and market conditions, which support that Brunner Island will primarily combust natural gas, consistent with trends in the electric generating industry. The commenter has not provided any information challenging this analysis, and merely speculates on potentially fluctuating market forces and potential motivations behind Brunner Island's agreements. This speculation does not outweigh the EPA's reasoned evidence-based analysis of Brunner Island's likely behavior during the ozone season. Thus, without specific evidence or analysis to the contrary, the EPA has no reason to believe that the evidence provided in either the proposed or final action is inaccurate. The EPA notes that if in fact Brunner Island's operations change such that the facility is operating primarily on coal during future ozone seasons and future emission levels increase significantly, then today's final action denying Connecticut's section 126 petition would not preclude the State from submitting another petition regarding Brunner Island's impacts. The EPA is not, however, pre-determining what action may be appropriate on any such future petition, which would depend upon a variety of factors, including the level of emissions at Brunner Island and future ozone concentrations in Connecticut.

IV. Final Action To Deny Connecticut's Section 126(b) Petition

Based on the considerations outlined at proposal, after considering all comments, and for the reasons described in this notice, the EPA is denying the Connecticut's section 126(b) petition regarding the Brunner Island facility in York County, Pennsylvania. The EPA finds that Connecticut has not met its burden to demonstrate that Brunner Island emits or would emit in violation of the good neighbor provision with respect to the 2008 ozone NAAQS. The EPA also finds, based on its own analysis, that there are no additional highly cost-effective controls available at the source and thus no basis at this time to determine that Brunner Island emits or would emit in violation of the good neighbor provision with respect to the 2008 ozone NAAQS.

V. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate regional circuit June 12, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

Dated: April 6, 2018.

E. Scott Pruitt,

Administrator.

[FR Doc. 2018–07752 Filed 4–12–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0466; FRL–9975–97]

Product Cancellation Orders: Certain Pesticide Registrations and Amendments To Terminate Uses; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of December 26, 2017, concerning the cancellations and amendments to terminate uses voluntarily requested by the registrants and accepted by the Agency. This document is being issued to correct the cancellation order in Section IV as the entries in Tables 1B were not administered correctly.

DATES: The **Federal Register** of October 3, 2017, announcing the request to voluntarily cancel pesticide registrations specified that the cancellations of products listed in Table 1B will be effective December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher Green, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0367; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0466, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What does this correction do?

This notice is being issued to correct Section IV of the cancellation notice. This correction changes the cancellation date for the two entries in Table 1B.

FR Doc. 2017–27811 published in the **Federal Register** of December 26, 2017 (80 FR 60985) (FRL–9971–10) is corrected as follows:

On page 60989, in Section IV, correct the cancellation order statement to read:

''The effective date of the cancellations that are subject of this notice is December 26, 2017, for the registrations identified in Table 1A and the effective date of the cancellation that are subject of this notice is December 31, 2020, for the registrations identified in Table 1B. The requests to cancel the registrations identified in Table 1B would terminate the last Spirodiclofen products registered for use in the United States.''

Authority: 7 U.S.C. 136 *et seq.*

Dated: March 27, 2018.

Delores Barber,

Director, Information Technology and Resource Management Division, Office of Pesticide Programs.

[FR Doc. 2018–07738 Filed 4–12–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–9975–75]

Access to Confidential Business Information by CGI Federal Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, CGI Federal Inc. of Fairfax, VA, to access information which has

been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data occurred on or about February 28, 2018.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Scott Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8257; email address: *Sherlock.scott@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. 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.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2003–0004, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the Agency taking?

Under GSA/FEDSIM solicitation number GSC–QFOB–18F–33169, task order number 47QFCA–18–F–0009, contractor CGI of 12601 Fair Lakes Circle, Fairfax, VA, is assisting the Office of Pollution Prevention and Toxics (OPPT) by providing technical support; development of operations and maintenance of Central Data Exchange (CDX) chemical safety and pollution prevention (CSPP) applications; and Chemical Information Systems (CIS) OPPT Confidential Business Information Local Area Network (CBI LAN) applications.

In accordance with 40 CFR 2.306(j), EPA has determined that under GSA/FEDSIM solicitation number GSC–QFOB–18F–33169, task order number 47QFCA–18–F–0009, CGI required access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. CGI personnel were given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA has provided CGI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract is taking place at EPA Headquarters in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until February 25, 2023. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

CGI personnel have signed nondisclosure agreements and were briefed on appropriate security procedures before they were permitted access to TSCA CBI.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: March 29, 2018.

Pamela S. Myrick,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2018–07644 Filed 4–12–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2015–0827; FRL–9976–61–OAR]

Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022–2025 Light-Duty Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; withdrawal.

SUMMARY: In this notice, the Environmental Protection Agency (EPA) Administrator has reconsidered the previous Final Determination of the Mid-term Evaluation of greenhouse gas emission standards for model year 2022–2025 light-duty vehicles. The Administrator determines that the current standards are based on outdated information, and that more recent information suggests that the current standards may be too stringent. The Administrator thus concludes that the standards are not appropriate in light of the record before EPA and, therefore, should be revised as appropriate. EPA is also withdrawing the previous Final Determination issued by the agency on January 12, 2017, with this notice. EPA, in partnership with the National Highway Traffic Safety Administration, will initiate a notice and comment rulemaking in a forthcoming **Federal Register** notice to further consider appropriate standards for model year 2022–2025 light-duty vehicles, as appropriate. On March 22, 2017, EPA published a **Federal Register** notice providing its intention to reconsider the Final Determination of the Mid-term Evaluation of greenhouse gas emissions standards for model year 2022–2025 light-duty vehicles, this notice was published jointly with the Department of Transportation (DOT). On August 21, 2017, EPA and DOT jointly published a **Federal Register** notice providing a 45-day public comment period on the reconsideration and EPA held a public hearing on September 6, 2017.

FOR FURTHER INFORMATION CONTACT: Christopher Lieske, Office of Transportation and Air Quality (OTAQ), Assessment and Standards Division (ASD), Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor MI 48105; telephone number: (734) 214–4584; email address: *lieske.christopher@epa.gov* fax number: 734–214–4816.

SUPPLEMENTARY INFORMATION:

I. Introduction

In this notice, the Administrator of the Environmental Protection Agency (EPA) is making a new determination of the Mid-term Evaluation (MTE) of greenhouse gas (GHG) emission standards for model year (MY) 2022–2025 light-duty vehicles. The Administrator determines that the standards are not appropriate in light of the record before EPA, and therefore, should be revised as appropriate. EPA is also withdrawing the January 12, 2017 Final Determination (January 2017 Determination) with this notice. EPA, in partnership with the National Highway Traffic Safety Administration (NHTSA), will initiate a notice and comment rulemaking in a forthcoming **Federal Register** notice to further consider appropriate standards for MY 2022–2025 light-duty vehicles, as appropriate.

The Administrator makes this finding due to the significant record that has been developed since the January 2017 Determination. Many of the key assumptions EPA relied upon in its January 2017 Determination, including gas prices and the consumer acceptance of advanced technology vehicles, were optimistic or have significantly changed and thus no longer represent realistic assumptions. For example, fuel price estimates used by EPA in the original rulemaking are very different from recent EIA forecasts. EPA needs to update these estimates in the analysis and more accurately reflect changes in US oil production. Economic inputs such as the social cost of carbon, the rebound effect, and energy security valuation should also be updated to be consistent with the literature and empirical evidence.

EPA has also both developed and received additional data and assessments since the January 2017 Determination regarding technology effectiveness and technology costs which warrant additional consideration.

In making this finding, the Administrator has also considered that the reach and success of the program established in the 2012 rulemaking is significantly limited when consumers cannot afford new cars. New information and data provided show the potential significant negative effects of higher vehicle costs.

Based on our review and analysis of the comments and information submitted, and EPA's own analysis, the Administrator believes that the current GHG emission standards for MY 2022–2025 light-duty vehicles presents challenges for auto manufacturers due to feasibility and practicability, raises potential concerns related to automobile safety, and results in significant additional costs on consumers, especially low-income consumers. On the whole, the Administrator believes the MY 2022–2025 GHG emission standards are not appropriate and, therefore, should be revised as appropriate. EPA, in partnership with NHTSA, will further explore the appropriate degree and form of changes to the program through a notice and comment rulemaking process. This Determination is not a final agency action. As EPA explained in the 2012 final rule establishing the MTE process, a determination to maintain the current standards would be a final agency action, but a determination that the standards are not appropriate would lead to the initiation of a rulemaking to adopt new standards, and it is the conclusion of that rulemaking that would constitute a final agency action and be judicially reviewable as such.[1]

II. Background

The 2012 rulemaking establishing the National Program for federal GHG emissions and corporate average fuel economy (CAFE) standards for MY 2017–2025 light-duty vehicles included a regulatory requirement for the EPA to conduct a Mid-term Evaluation (MTE) of the GHG standards established for MY 2022–2025.[2] EPA included this self-required reevaluation due to the long time frame at issue in setting standards for MYs 2022–2025, and given NHTSA's obligation to conduct a de novo rulemaking in order to establish final standards for vehicles for those model years.[3] EPA's regulations at 40 CFR 86.1818–12(h) state that ''in making the determination as to whether the existing standards are appropriate, the Administrator shall consider the information available on the factors relevant to setting greenhouse gas emission standards under section 202(a) of the Clean Air Act for model years 2022–2025, including but not limited to:

1. The availability and effectiveness of technology, and the appropriate lead time for introduction of technology;
2. The cost on the producers or purchasers of new motor vehicles or new motor vehicle engines;
3. The feasibility and practicability of the standards;
4. The impact of the standards on reduction of emissions, oil conservation, energy security, and fuel savings by consumers;
5. The impact of the standards on the automobile industry;
6. The impacts of the standards on automobile safety;
7. The impact of the greenhouse gas emission standards on the Corporate Average Fuel Economy standards and a national harmonized program; and
8. The impact of standards on other relevant factors.'' [4]

EPA regulations on the MTE process required EPA to issue a Final Determination no later than April 1, 2018 on whether the GHG standards for MY 2022–2025 light-duty vehicles remain appropriate under section 202(a) of the Clean Air Act.[5] The regulations also required the issuance of a draft Technical Assessment Report (TAR) by November 15, 2017, an opportunity for public comment on the draft TAR, and, before making a Final Determination, an opportunity for public comment on whether the GHG standards for MY 2022–2025 remain appropriate. In July 2016, the draft TAR was issued for public comment jointly by the EPA, NHTSA, and the California Air Resources Board (CARB).[6] Following the draft TAR, EPA published a Proposed Determination for public comment on December 6, 2016 and provided less than 30 days for public comments over major holidays.[7] EPA published the January 2017 Determination on EPA's website and *regulations.gov* finding that the MY 2022–2025 standards remained appropriate.[8]

On March 15, 2017, President Trump announced a restoration of the original mid-term review timeline. The President made clear in his remarks, ''[i]f the standards threatened auto jobs, then commonsense changes'' would be made in order to protect the economic viability of the U.S. automotive industry.'' [9] In response to the President's direction, EPA announced in a March 22, 2017,[10] **Federal Register** notice, its intention to reconsider the Final Determination of the MTE of GHGs emissions standards for MY 2022–2025 light-duty vehicles. The Administrator stated that EPA would coordinate its reconsideration with the rulemaking process to be undertaken by NHTSA regarding CAFE standards for cars and light trucks for the same model years.

On August 21, 2017,[11] EPA published a notice in the **Federal Register** announcing the opening of a 45-day public comment period and inviting stakeholders to submit any additional comments, data, and information they believed were relevant to the Administrator's reconsideration of the January 2017 Determination. EPA held a public hearing in Washington, DC on September 6, 2017.[12] EPA received more than 290,000 comments in response to the August 21, 2017 notice.[13]

[1] 77 FR 62784, (**Federal Register**, Vol 77, No 199, pp 62784–62785).

[2] 40 CFR 86.1818–12(h).

[3] 77 FR 62784.

[4] 40 CFR 86.1818–12(h)(1).

[5] *Id.; see also* 77 FR 62624 (October 15, 2012).

[6] 81 FR 49217 (July 27, 2016).

[7] 81 FR 87927 (December 6, 2016).

[8] Docket item EPA–HQ–OAR–2015–0827–6270 (EPA–420–R–17–001).

[9] *See https://www.whitehouse.gov/briefings-statements/remarks-president-trump-american-center-mobility-detroit-mi/.*

[10] 82 FR 14671 (March 22, 2017).

[11] 82 FR 39551 (August 21, 2017).

[12] 82 FR 39976 (August 23, 2017).

[13] The public comments, public hearing transcript, and other information relevant to the Mid-term Evaluation are available in docket EPA–HQ–OAR–2015–0827.

III. The Administrator's Assessment of Factors Relevant to the Appropriateness of the MY 2022–2025 GHG Emission Standards

In the following sections, the Administrator provides his assessment on why the current standards for MY 2022–2025 are not appropriate based on the regulatory provisions found in 40 CFR 86.1818–12(h). The Administrator considered the complete record, including all comments provided on the reconsideration, in his determination.

Factor 1: The Availability and Effectiveness of Technology, and the Appropriate Lead Time for Introduction of Technology; and Factor 3: The Feasibility and Practicability of the Standards

The Administrator finds, based on the record, including new data and information provided since January 2017, that the January 2017 Determination was optimistic in its assumptions and projections with respect to the availability and effectiveness of technology and the feasibility and practicability of the standards. Accordingly, the Administrator now determines that the MY 2022–2025 GHG emissions standards may not be feasible or practicable and there is greater uncertainty as to whether technology will be available to meet the standards on the timetable established in the regulations. This is a result of: (1) The changes in trends of electrification since the January 2017 Determination; (2) reliance on future technology advances; and (3) the acceptance rate of the necessary technology by consumers.

a. The Changes in Trends of Electrification Since the January 2017 Determination

The agency's January 2017 Determination was completed at a time when the trends and data associated with MY 2012–2015 showed that the majority of the major car-manufacturing companies were ''over-complying'' with their relative GHG compliance requirements and building up credits. EPA's latest data [14] alongside new reports and data submitted by stakeholders [15] show that starting in MY 2016 many companies, for the first time, had to rely on credits in order to comply with the program, and predicts this will occur again for Model Year 2017. While these companies did remain in compliance, they are relying on banked credits which suggests that it may be increasingly difficult for them to comply going forward as they use up their supply of credits. Additionally, the stringency curve dramatically increases at around the same time these credits could run out, further complicating the feasibility of compliance for MY 2022–2025.

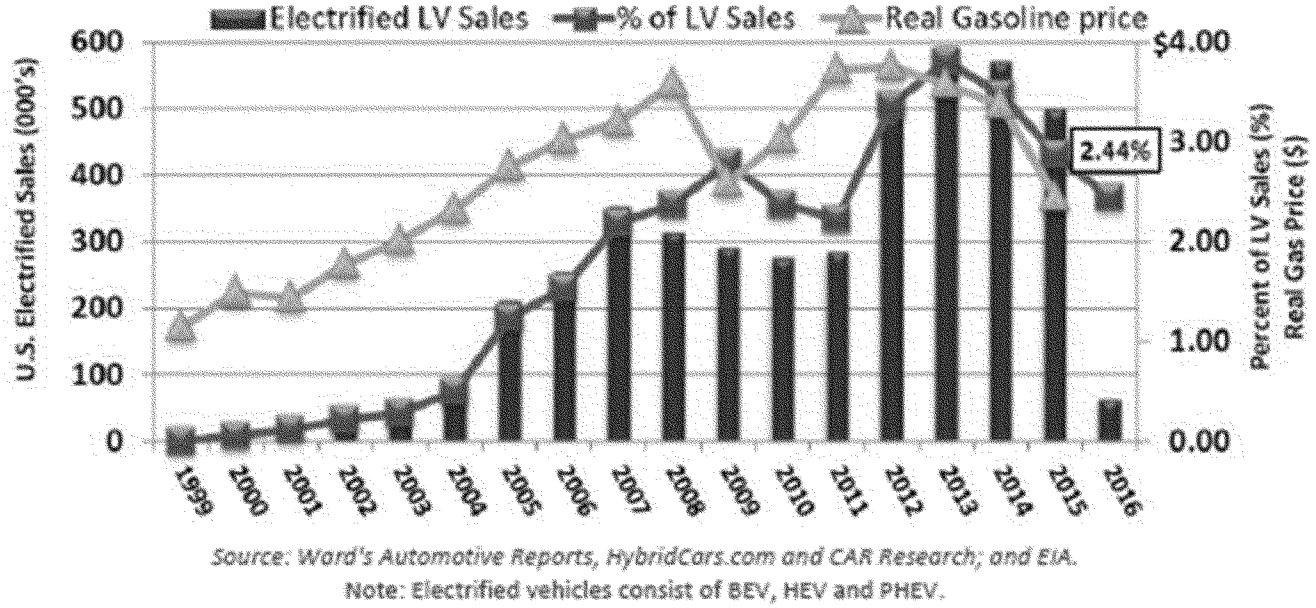
The figure below shows that since a peak in 2013, electrified light-vehicle (LV) sales have decreased both as a total and as a percentage of all light-vehicle sales. This calls into question EPA assumptions for the 2012 rulemaking and the January 2017 Determination that sales of electrified LVs will be sufficient to support compliance with the MY 2022–2025 standards.

Multiple commenters also questioned the feasibility of the standards due to flagging consumer demand for fuel-efficient vehicles including electric vehicles. The Alliance of Automobile Manufacturers (Alliance) stated that the level of technology modeled by EPA is insufficient to meet the standards and that the actual level of technology needed is misaligned with market realities. Global Automakers similarly charged that ''decline in vehicle sales, lower gas prices, an increased preference for light trucks over cars, and sluggish demand for high fuel economy vehicles—are taking place as the stringency of the standards increase at an unprecedented rate. There is, simply put, a misalignment between the increasing stringency of the standards and the decreasing consumer demand for fuel efficiency'' and that ''revised findings would support the conclusion that adjustments to the regulations are needed.'' Global Automakers submitted the figure below to show the sluggish demand for electrification in the U.S. market from 1999 through early 2016.

[14] EPA, Greenhouse Gas Emission Standards for Light-Duty Vehicles—Manufacturer Performance Report for the 2016 Model Year, Office of Transportation and Air Quality, EPA–420–R–18–002, January 2018, *https://www.epa.gov/regulations-emissions-vehicles-and-engines/greenhouse-gas-ghg-emission-standards-light-duty-vehicles.*

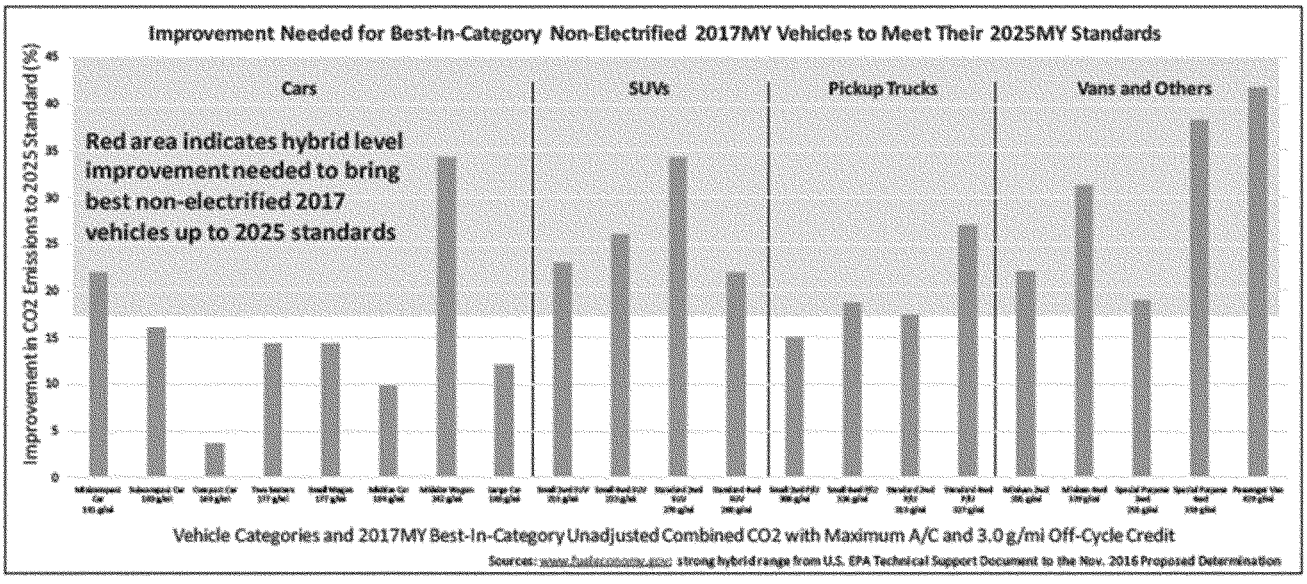
[15] *See e.g.,* Analysis of EPA Vehicle Technology Walks in Prior Final Determination Response to Comments (Alliance Attachment 2); Evaluation of the Environmental Protection Agency's Lumped Parameter Model Informed Projections from the Proposed Determination (Novation Analytics, September 2017) (Alliance Attachment 3); and Critical Assessment of Certain Technical and Economic Assumptions Made in EPA's Final Determination on the Appropriateness of the Model Year 2022–2025 Light-Duty Vehicle Greenhouse Gas Emission Standards under the Midterm Evaluation (Trinity Consultants, NERA Economic Consulting, October 2017) (Alliance Attachment 6).

Figure 1: Figure Submitted by Global Automakers (p. 42) titled: "Figure 16: U.S. Electrified Light Vehicle Sales and Take Rate 1999 - 2016 YTD"



The Alliance stated that ''[i]nformation on compliance trends, including the feasibility of meeting the standards, projections on compliance, and the credit system are increasingly indicating that it is not feasible—taking all technology, cost, product cycle, and practical market factors into account—to meet the standards as they are currently set.'' For example, Figure 2 below shows that significant vehicle electrification, specifically strong hybrids, would be needed to meet the standards, contrary to the agency's assertion in the January 2017 Determination.

Figure 2: Figure submitted by the Alliance (p. 18) titled "Figure 5: Improvement in CO_2 Emissions Required in the Best MY 2017 Non-Electrified Vehicles to Meet MY 2025 Targets"[16]



Global Automakers, the Alliance, and individual automakers provided detailed information on a variety of technologies that EPA projected could be used to meet the MY 2022 through 2025 standards. Regarding the need for electrification, the Alliance asserts that advanced internal combustion engine technologies alone will not meet MY 2025 standards and that the need for greater electrification than EPA originally projected means that issues unique to electrification must be considered. The Alliance further

[16] The Alliance submitted this figure in color with the upper shaded portion in red as indicated in the note in the figure.

provided that presently only electric vehicles (*e.g.,* strong hybrid, plug-in hybrid (PHEV), or electric vehicle (EV)) meet MY 2025 standards, even with credit assumptions, and that those vehicles make up a minimal amount of the market share indicating a less than adequate acceptance by consumers. Despite automakers continuing to offer an increasing amount of advance technology vehicles for sale, consumer adoption remains very low. These comments provide data that raises concerns about EPA's 2017 Determination.

Toyota provided comment that ''compliance with the current requirements through the 2025 MY require gasoline hybrid electric vehicles or more sophisticated forms of vehicle electrification at sales volumes significantly higher than the agencies' estimates and at levels the market is unable or unwilling to support absent significant changes in market signals.'' Toyota further provided that they continue to disagree with EPA's past assessment that lighter, more aerodynamic vehicles powered by less expensive conventional gasoline powertrains will be sufficient to comply with the standards. Fiat Chrysler Automobiles (FCA) similarly indicated, ''FCA continues to provide data that shows more technology is necessary than the agencies have assumed for 2022–2025MY compliance. The advanced technologies needed, including higher levels of electrification will negatively affect affordability, lowering sales, and ultimately impacting jobs.'' Mercedes Benz estimated that it will need more than 25 percent battery electric vehicles (BEVs) and around 5 percent PHEVs in its fleet to meet the standards in MY 2025, noting that these estimates are significantly higher than the 7 percent BEV and 3 percent PHEV shares projected by EPA for the overall fleet. One commenter stated that they believe standards can be met with only small increases in the efficiency of fossil fuel engines.

EPA also received comments from several non-governmental organizations stating that the existing record supports the previous determination. Several commenters also provided technical information and/or analysis. The Union of Concerned Scientists (UCS) provided that they do not believe the auto manufacturers are correct about the degree of electrification that they claim will be necessary to meet the standards.

Several commenters supported extending incentives for advanced technologies. The Alliance recommended that EPA extend the advanced technology multiplier incentives beyond MY 2021 and that manufacturers should not be held responsible for upstream power plant emissions (*i.e.,* manufacturers should be allowed to use the 0 g/mile emissions factor for electric powered vehicles rather than having to account for upstream electricity generation emissions). Toyota similarly commented that EPA should extend the current advanced technology sales multiplier and 0 g/mi allowance through MY 2025. Mercedes Benz requested that EPA extend the multipliers through at least MY 2025 to support further commercialization of electric and hybrid vehicles. Jaguar Land Rover supported the reconsideration of the final determination as a way ''to enable a future final determination that provides incentives for very clean technologies.''

NGV America urged the agency provide a level playing field for natural gas vehicles. As stated in their comments, ''Regulatory incentives currently in place for vehicle manufacturers provide no benefit for renewable natural gas and include requirements that prevent automakers from realizing benefit from selling natural gas vehicles,'' including the driving range requirement on alternative fuel that is required for natural gas vehicles but not for electric vehicles.

Several commenters also supported flexibilities for advanced technology vehicles. CALSTART stated that to spur the EV market, the agencies could consider maintaining the current credits for full zero emission vehicles, and delay the upstream emissions factors for such vehicles. Securing America's Future Energy (SAFE) commented in support of extending the advanced technology credits out to MY 2025 to help facilitate and accelerate the transition to energy sources other than oil. Edison Electric Institute and California Electric Transportation Coalition also commented in support of extending the advanced technology credits. The National Coalition for Advanced Transportation (NCAT) commented that to the extent that EPA seeks to make adjustments to increase flexibility, it urges the agency to recognize and support the role of EVs and other advanced technology vehicles.

The Alliance and Toyota commented that the current full size pick-up truck incentives should be available to all light-duty trucks. They further commented that the program's sales volume thresholds should be removed because they discourage the application of technology, since manufacturers cannot be confident of achieving the sales thresholds.

Based on consideration of the information provided, the Administrator believes that it would not be practicable to meet the MY 2022–2025 emission standards without significant electrification and other advanced vehicle technologies that lack a requisite level of consumer acceptance.

b. Reliance on Future Technology

EPA received comments from the auto manufacturers that EPA should exclude technologies that are protected by intellectual property rights and have not been introduced and certified to Tier 3 emissions requirements. Specifically, the Alliance stated that EPA should exclude from its technology assessments dynamic skip fire, variable compression ratio engines, Mazda's SkyActiv X, and other technologies that are protected by intellectual property rights and have not been introduced and certified to Tier 3 emissions requirements. Toyota's information stated that ''[n]ot yet implemented technologies, such as advanced cylinder deactivation and 48V mild hybrid systems, can play a role in improving efficiency and reducing CO_2 emissions moving forward; however, we do not project these technologies as sufficient to meet the 2025 MY requirements.''

Regarding the use of Atkinson cycle engines, the Alliance commented that the EPA analysis oversimplified and did not consider the financial consequence of aggressive penetration. New information from Global Automakers provided that ''it is difficult to maintain confidence in the agency's optimism about the wide consumer acceptance, supply availability, safety and learning for new, unproven technologies such as the broad application of naturally aspirated Atkinson cycle engines.''

In general, the Alliance, Global Automakers and others found that EPA's modeling overestimates the role conventional technologies can play in meeting future standards and that industry believes more strong hybrids and plug-in electric vehicles will be needed to meet current standards, raising concerns about cost and affordability. Both the Alliance and Global Automakers submitted detailed information regarding various aspects of EPA modeling, raising several technical issues, and submitted several new studies in support of their comments.[17]

[17] See ''Analysis of EPA Vehicle Technology Walks in Prior Final Determination Response to Comments'' (Alliance Attachment 2), ''Evaluation of the Environmental Protection Agency's Lumped Parameter Model Informed Projections from the

Continued

Other commenters were more optimistic about the availability of advanced technologies. Suppliers provided comments about specific technologies available to meet the standards. The Motor and Equipment Manufacturers Association (MEMA) commented that suppliers continue to improve a myriad of technologies as industry pushes innovation—specifically, more capable 48-volt systems, higher efficiency turbo engines, various advances in thermal management and control technologies, and new composites and materials for improved light-weighting. Manufacturers of Emission Controls Association (MECA) noted that automakers have announced plans to adopt 48-volt mild hybrids at a faster rate than originally planned and commented on new technologies that will be in production prior to 2021 but were not considered in the draft TAR, including dynamic cylinder deactivation, variable compression ratio and electric boost. MECA gave an example that dynamic cylinder deactivation combined with 48-volt systems which they stated has the potential to improve fuel economy by up to 20 percent. One commenter stated that they believe existing standards are achievable now without expensive or ''boutique'' technologies and are becoming even more cost-effective as time passes.[18] Other commenters performed analyses of the technical feasibility of meeting the MY2025 standards,[19] including analyses of a number of engine and other technologies that they believe EPA did not fully consider.

Based on EPA's review of the comments and information received since the January 2017 Determination, technologies continue to develop. Some technologies, such as continuously variable transmissions, have been adopted in many more vehicle applications than originally anticipated by EPA in the 2012 rulemaking and have continued to demonstrate potential further improvements in efficiency. Other technologies such as the dual clutch transmissions EPA projected in the 2012 rulemaking have not gained significant customer acceptance and as such, have proven difficult for manufacturers to deploy. A third category, of recently adopted technologies such as dynamic skip fire (2019 Chevrolet Silverado) and variable compression ratio engines (2019 Infiniti QX50), may have the potential to offer additional technology pathways to aid future compliance. As such, it is appropriate that the EPA continue to evaluate these and other technology developments in the forthcoming rulemaking.

Some commenters supported strengthening the standards in any future reconsideration and at a minimum retaining the standards due to certain new information and analysis available since the rule was adopted in 2012. For example, one commenter stated that they believe the costs of compliance are declining and believes that final compliance costs will be less than initially estimated.

To note, ethanol producers and agricultural organizations commented in support of high octane blends from clean sources as a way to enable GHG reducing technologies such as higher compression ratio engines. They provided information suggesting that mid-level (*e.g.,* E30) high octane ethanol blends should be considered as part of the Mid-term Evaluation and that EPA should consider requiring that mid-level blends be made available at service stations. The petroleum industry noted that high octane fuel is available today for vehicles that require it and commented that EPA has no basis for including octane number as a factor in the Mid-term Evaluation because it was not considered in the prior rulemakings or the draft TAR. The Alliance and Global Automakers commented that higher octane gasoline enables opportunities for use of more energy-efficient technologies (*e.g.,* higher compression ratio engines, improved turbocharging, optimized engine combustion) and that manufacturers would support a transition to higher octane gasoline, but do not advocate any sole pathway for producing increased octane.

Several state and local governments commented on the appropriateness of the MY 2022–2025 standards. CARB referenced its independent midterm review completed in March 2017 where it found the MY 2022–2025 GHG emission standards to be appropriate and that the latest information continues to support maintain or strengthening the current standards.[20]

Other state government agencies stated that the standards are appropriate, continue to apply, and that they believe compliance will be even easier than expected with newer conventional technologies.

The Aluminum Association provided new studies regarding the use of aluminum in light-weighting and noted additional forthcoming studies which could inform EPA's reconsideration, commenting that the aluminum industry continues to provide and improve light-weighting solutions to help meet rigorous GHG and fuel efficiency regulations without sacrificing safety.

EPA has given careful consideration to these comments and agrees that these commenters have identified both current and promising technologies that may be able to deliver significant improvements in reducing GHG emissions once fully deployed. However, EPA also recognizes that there is significant uncertainty both in the pace of development of these technologies and in the degree of efficiency improvements they will ultimately be able to deliver. EPA believes that this uncertainty further supports its determination to reconsider the current standards through a subsequent rulemaking.

c. The Acceptance of the Necessary Technologies by Consumers

In addition to the issues related to new technologies needing to be developed to meet the MY 2022–2025 emission standards, consumers' preferences must change to ensure that the current standards can be met—that is, consumers will need to be willing to purchase vehicles with new technologies. However, as shown below, consumers' preferences are not necessarily aligned to meet emission standards and there is uncertainty on this issue that merits further consideration. Consumers' preferences are driven by many factors and fuel economy is merely one factor that increases and decreases based on the price of gasoline.

The Alliance and Global Automakers state that the standards will be effective only if people buy a mix of vehicles that

Proposed Determination'' (Novation Analytics, September 2017) (Alliance Attachment 3), and ''Critical Assessment of Certain Technical and Economic Assumptions Made in EPA's Final Determination on the Appropriateness of the Model Year 2022–2025 Light-Duty Vehicle Greenhouse Gas Emission Standards under the Midterm Evaluation'' (Trinity Consultants, NERA Economic Consulting, October 2017) (Alliance Attachment 6).

[18] See comments in the docket from the Advanced Engine Systems Institute.

[19] See ''Efficiency Technology and Cost Assessment for the U.S. 2025–2030 Light-Duty Vehicles'' (International Council on Clean Transportation, March 2017, Attachment 5 to ICCT comments), ''Technical Assessment of CO_2 Emission Reductions for Passenger Vehicles in the Post-2025 Timeframe'' (Environmental Defense Fund).

[20] CARB, Advanced Clean Cars Midterm Review, Resolution 17–3 (March 24, 2017), available at: *https://www.arb.ca.gov/msprog/acc/mtr/res17-3.pdf;* CARB, California's Advanced Clean Cars Midterm Review, *Summary Report for the Technical Analysis of the Light Duty Vehicle Standards* (January 18, 2017) (p. ES–3), available at: *https://www.arb.ca.gov/msprog/acc/mtr/acc_mtr_finalreport_full.pdf.* See CARB comments at docket item EPA–HQ–OAR–2015–0827–9197.

is sufficiently fuel-efficient on average to meet the standards, but that current trends do not indicate an acceptance by consumers of the increased costs and tradeoffs in other desirable vehicle attributes that are needed to comply with more stringent GHG standards going forward. The only MY 2017 vehicles that could comply with the MY 2025 standard have a very low consumer acceptance rate today and make up less than 5 percent of the total market share (see Figure 2 above). Despite the auto industry providing an increasing number of battery-electric vehicle models and plug-in hybrid electric vehicle models, combined national sales of these vehicles still account for just over one percent of the market. According to data submitted by the Global Automakers, sales of hybrids peaked in 2013 at 3.1 percent, but only accounted for 2 percent of the market in 2016.

The Alliance, Global Automakers, Mercedes-Benz, and National Corn Growers Association expressed concerns about low adoption rates of electrified vehicles (strong hybrids, PHEVs, and EVs). Global Automakers stated that customers are not buying electrified vehicles at a rate sufficient for compliance. Mitsubishi and Mercedes-Benz pointed to low gasoline prices and limited infrastructure for electric vehicle charging as an additional obstacle for electric vehicle adoption. Mitsubishi considered the standards unachievable if consumers are not willing to buy more electrification in their vehicles.

Some commenters countered that consumers do prioritize fuel economy that sales numbers decreased because of the cyclical nature of the industry, and that there is enough flexibility in the market to meet consumer needs. Also, a number of commenters asserted that there is a growing understanding and acceptance of electrification in vehicles, pointing to an increased percentage of EV sales and automakers announcing plans for electrification. Contrary to these comments, as shown in Figure 1, EV sales have decreased and when looking at very small numbers, percentage growth may be misleading.

A further issue is the growing preference for light duty trucks over cars. In 2012, the car and light truck shares were projected to be 67 percent to 33 percent respectively for MY 2025. According to EPA's 2017 Fuel Economy Trends Report, the split in MY 2016 was 55 percent cars and 45 percent trucks. With regard to MY 2016 compliance, the Alliance commented that the large shift in consumer buying patterns toward the light-truck fleet has negatively impacted industry compliance because the light-truck standards were relatively more demanding during this period of time.

Several commenters expressed concern over potential adverse effects on other vehicle attributes due to the standards. The Alliance, Global Automakers, and other stakeholders noted that consumers consider a wide range of features in their purchase decisions. Mercedes-Benz cited low sales of its S550E PHEV which, though more efficient than its internal combustion engine counterpart, had slower acceleration and reduced trunk space. The National Automobile Dealers Association (NADA) and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) noted that consumers' preferences vary with time and market conditions, such as fuel prices. The Alliance, Global Automakers, and Mitsubishi stated that current low gas prices make the standards more difficult to achieve. The Alliance and NADA pointed to a recent study from Resources for the Future that found greater willingness to pay for performance than for fuel economy, and the potential for misestimating willingness to pay if not taking into account other vehicle attributes.[21] Global Automakers expressed concern that, if EPA cannot calculate consumers' willingness to pay for attributes, it may overestimate the probability of success for the standards. One commenter stated that consumers slightly undervalue or fully value future fuel savings while other commenters cited a poll in Ohio supporting achieving an average of 40 mpg in 2025. Consumers Union cited research that found that fuel economy is the top factor that consumers want to be improved in their next vehicle.

Commenters shared perspectives on the current and projected state of the vehicle market and demand. Global Automakers commented that overall vehicle sales have leveled off, and it believes that sales may decline in coming years. CFA noted that vehicle models with larger fuel economy improvements had larger sales increases while sales for those with lower improvements had lower increases. EPA intends to continue to consider vehicle sales and the potential impact of the EPA standards on vehicle sales as a relevant factor in the forthcoming rulemaking.

Various comments raised questions about how to predict the impacts of the standards on vehicle sales. The Alliance and NADA argued that EPA has not yet conducted an ''appropriate analysis'' of the sales impacts of the standards, and NADA asks the agencies to ''fully understand'' consumer vehicle purchase decisions. The Alliance referenced work by Ford suggesting that the standards would reduce sales volumes by four percent using cost estimates from the draft TAR. Other commenters provided that neither EPA nor NHTSA has found vehicle demand modeling methods robust enough to predict sales impacts; and EDF stated EPA and NHTSA could consider using a static forecast (that is, assuming market shares to be unaffected by the standards).

Auto industry and dealer comments discussed implications for vehicle fleet turnover. The Alliance noted that low fleet turnover would reduce the effectiveness of the GHG program. NADA suggested that the GHG program should seek to maximize fleet turnover.

Several commenters discussed a study by researchers at Indiana University. The Indiana University's 'Total Cost of Ownership' analysis found that the MY2017–2025 standards would decrease sales using a ''2016 perspective'' but that it would increase sales when using inputs from the 2012 final rulemaking. Some commenters raised concerns related to the study related to future benefits of improved fuel economy and different assumptions in consumer willingness to pay. Graham, a coauthor of the IU study, supported the assumptions of the report in a response to those comments.

EPA agrees that impacts on new vehicle sales and fleet turnover are important factors that were not adequately considered in the January 2017 Determination. As noted above, if new vehicle sales are lower than expected because of higher prices, or lack of consumer acceptance of advanced technologies, significant share of projected GHG reductions and fuel saving gains on a fleet-wide basis may not be realized. EPA intends to more fully consider these potential actions in the forthcoming rulemaking. EPA intends to explore new analytical tools to look at new vehicle sales and fleet turnover as part of its decision-making record for the new rule.

Factor 2: The Cost on the Producers or Purchasers of New Motor Vehicles or New Motor Vehicle Engines

The cost on the producers (*e.g.,* suppliers, auto manufacturers), intermediaries (*e.g.,* auto dealers), and purchasers (*e.g.,* consumers, car drivers) can be rather significant based on the standards set. For consumers, especially

[21] To note, there are numerous peer-reviewed studies related to this subject and many of them are available in the docket associated with this action. EPA intends to summarize and assess the studies on this topic as part of the forthcoming rulemaking.

low-income consumers, moderate increases to the cost of cars can result in significant impacts to disposable income.

Both the Alliance and Global Automakers identified areas where EPA underestimated costs. The Alliance identified three areas related to technology cost that it believes need further assessment: Direct technology costs, indirect cost multipliers, and cost learning curves.[22] Global Automakers asserted that EPA's modeling has consistently underestimated the costs associated with technologies and the amount of technology needed, commenting that a quality check at every step of the process needs to be done with real-world data that has been supplied by manufacturers.

The January 2017 Determination did not give appropriate consideration to the effect on low-income consumers. The Administrator believes that affordability of new cars across the income spectrum, and especially among low-income consumers, is an important factor, both because of its equity impacts and because of its potential impacts on the total energy savings delivered by the standards. In its new rulemaking, EPA plans to thoroughly assess the impacts of the standards on affordability and reconsider the importance of this factor in selecting an appropriate level of the standard.

The Alliance, Mitsubishi, and Vermont Energy Investment Corporation (VEIC) recommended that EPA revisit affordability concerns. The Alliance and Global noted that average vehicle transactions prices have increased. The Alliance stated that consumers do not change the fraction of their budgets for transportation; if vehicles become more expensive, they will have to buy less expensive vehicles with fewer features. Global Automakers expected price increases to lead some low-income households to switch from buying new to used vehicles, and some to be forced out of the market entirely. The Alliance reiterated that the standards have a disproportionate negative impact on low-income households. Mitsubishi expressed concern that it would have to add electrification to already efficient low-priced vehicles and the increased price could drive buyers to less efficient used vehicles. NADA and Graham expressed concerns that potential buyers will not be able to get loans large enough to cover the increased vehicle prices. Mercedes-Benz pointed out that up to half its sales in some markets are leased; the payback period for technologies to meet the standards may exceed the typical three-year leasing period, and low residual values for advanced technologies could further increase lease payments.

The Alliance stated that the standards have a disproportionate negative impact on low-income households. Other commenters stated that the standards will have a larger proportionate benefit for low-income households and referenced a Greene and Welch study.[23] VEIC requested that the agencies consider that relaxing the standards will increase ownership costs on lower-income drivers. EDF did not find adverse effects on affordability and note that the standards will lead to used vehicle purchasers having more fuel efficient choices.

On the issue of consumer affordability, some stakeholders commented that EPA standards are not making new vehicles less affordable, citing a Synapse Energy Economics report prepared for Consumers Union. The report noted a wider range for vehicle prices at the upper end, due to higher-end vehicles receiving more features, at the same time that the prices of entry-level vehicles have stayed roughly the same for the past 10 years.

EPA concludes that affordability concerns and their impact on new vehicle sales should be more thoroughly assessed, further supporting its determination to initiate a new rulemaking for the 2022–2025 standards.

Factor 4: The Impact of the Standards on Reduction of Emissions, Oil Conservation, Energy Security, and Fuel Savings by Consumers

The impact of the standards on emissions, oil conservation, energy security, and fuel savings to consumers are significantly affected by many assumptions including but not limited to: (1) The consumer adoption of new lower emitting cars; (2) cost of fuel; and (3) the rebound effects.

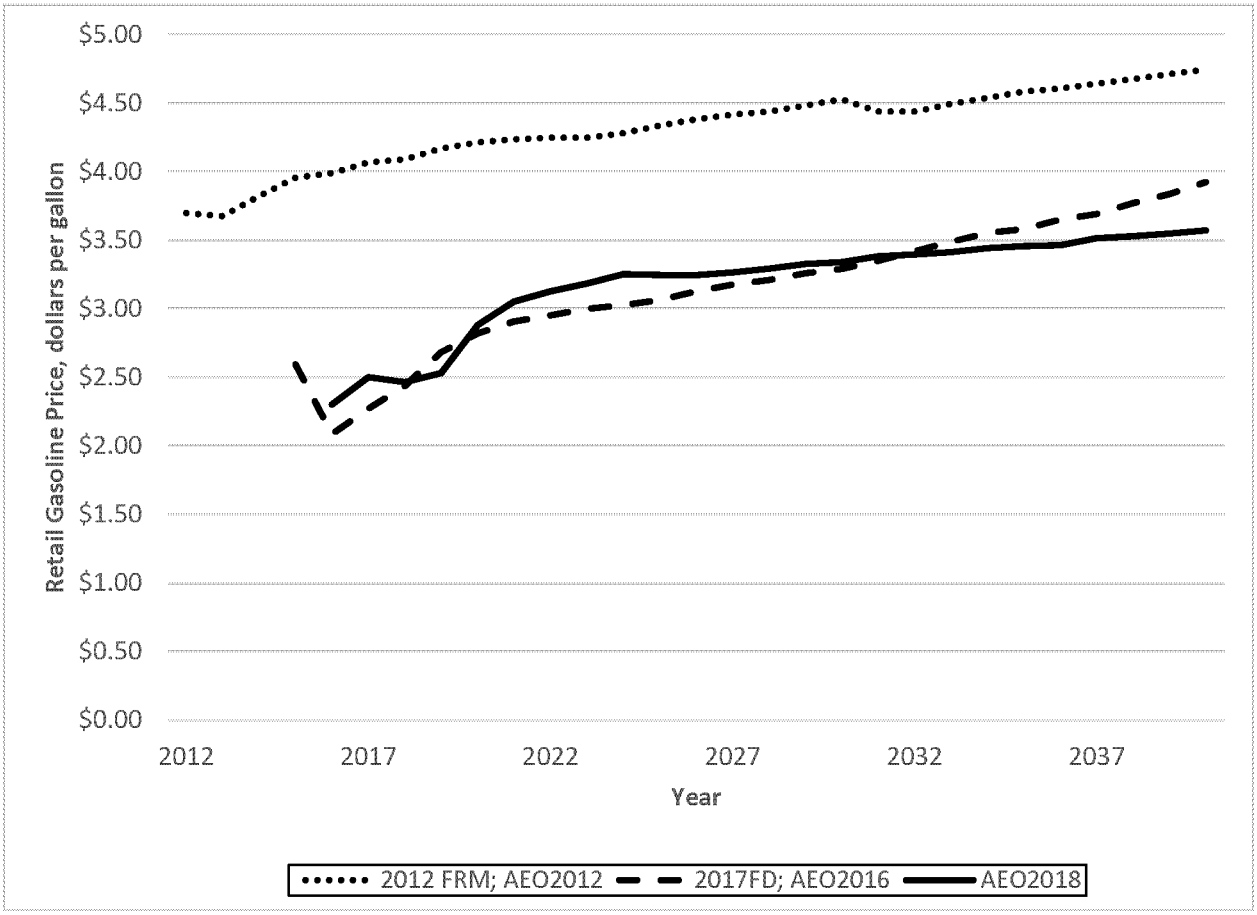
Slower or decreased consumer adoption of new lower emitting cars, as mentioned above, would result in decreased effectiveness of the program. As consumer preference changes and/or the cost of new cars increases, consumers may be less willing to purchase new vehicles and thus phase out the higher-emitting older cars. Because of the potential decrease in adoption of newer cars the reduction of emissions from the standards may be less than originally thought. The same logic can be applied to oil conservation. EPA believes that this issue raises enough concern to warrant consideration in the future rulemaking.

With respect to cost of fuel, for example, the lifetime fuel savings to consumers can change by almost 200 percent per vehicle based on the assumption on gas prices according to the 2016 Proposed Determination (Table IV.12). This significant effect on consumer savings due to fuel prices can in turn affect both consumer demand for fuel-efficient vehicles and their driving behavior generally, both of which significantly affect impacts on emissions, oil conservation and energy security. Figure 3 below shows the fuel price projections EPA used in the 2012 final rule, the January 2017 Determination, and the current projections from the Energy Information Administration's Annual Energy Outlook (AEO). As can be seen from the figure, the 2012 rule projected significantly higher fuel prices than current EIA projections, while the 2017 Final Determination used similar projections to EIA. Lower fuel prices mean lower incentives for consumers to purchase fuel efficient vehicles, because the fuel cost savings they get from doing so are also lower. Thus, the projections for fuel cost savings in the 2012 rule may have been optimistic, which increases the challenge manufacturers face in making fuel-efficient vehicles attractive to consumers. This consideration supports EPA's determination that the current standards are inappropriate and should be reconsidered in a new rulemaking.

[22] See ''Critical Assessment of Certain Technical and Economic Assumptions Made in EPA's Final Determination on the Appropriateness of the Model Year 2022–2025 Light-Duty Vehicle Greenhouse Gas Emission Standards under the Midterm Evaluation'' (Trinity Consultants, NERA Economic Consulting, October 2017) (Alliance Attachment 6).

[23] D.L. Greene and J.G. Welch (2017), ''The impact of increased fuel economy for light-duty vehicles on the distribution of income in the United States: A Retrospective and Prospective Analysis.'' March 2017. University of Tennessee, Knoxville.

Figure 3: EIA Annual Energy Outlook Retail Gasoline Price Projections, $/gallon (all values adjusted to 2017$)



With respect to the rebound effect (the increase in driving resulting from a lower marginal cost of driving due to greater fuel efficiency), EPA received a range of views and assessments in the recent public comments. Higher rebound values mean that consumers are inherently driving more due to the increase in fuel efficiency of the vehicle and this impact will offset the reduction of emissions, oil conservation, energy security, and fuel savings by customers. EPA believes it is important to fully consider the effects of a rebound effect to project an accurate assessment of the projected fuel savings, and EPA intends to do so in its new rulemaking.

With respect to energy security, the situation of the United States is dramatically different than it was at the time the 2012 standards were promulgated, and even significantly different from its situation in 2016 when the draft TAR was developed.

Regarding emissions, some state and local government commenters pointed to the co-benefits of GHG standards as important criteria pollutant control measures. For example, NACAA commented that the standards would lead to oxides of nitrogen (NOx) reduction that contribute to attainment and maintenance of the 2008 and 2015 ozone and 2012 fine particulate matter National Ambient Air Quality Standards (NAAQS) and other air benefits. While EPA agrees that there are co-benefits from these standards, EPA notes that the standards are supposed to be based on GHG emissions and that while co-benefits exist with respect to emissions such as criteria pollutants, using GHG emission standards as criteria pollutant control measures is likely a less efficient mechanism to decrease criteria pollutants and those issues are already handled through the NAAQS implementation processes.

Based on the information provided above, the Administrator believes that there is strong basis for concern that the current emission standards from MY 2022—2025 may not produce the same level of benefits that was projected in the January 2017 Determination. This further supports the Administrator's determination to withdraw the prior Determination and initiate a rulemaking to reconsider the current standards.

Factor 5: The Impact of the Standards on the Automobile Industry

The Administrator finds, based on the current record, that the standards potentially impose unreasonable per vehicle costs resulting in decreased sales and potentially significant impact to both automakers and auto dealers. Trinity Consulting & NERA Economic Consulting (TC/NERA) [24] found that the MY 2022–2025 standards would reduce vehicle sales over those four model years from 65 million to 63.7 million, a reduction of 1.3 million vehicles, due to higher vehicle prices.

EPA also recognizes significant unresolved concerns regarding the impact of the current standards on United States auto industry employment. The Center for Automotive Research (CAR),[25] a nonprofit

[24] Trinity Consultants & NERA Economic Consulting, Critical Assessment of Certain Technical And Economic Assumptions Made in EPA'S Final Determination On the Appropriateness of the Model Year 2022–2025 Light-duty Vehicle Greenhouse Gas Emission Standards Under the Midterm Evaluation 2 (Oct. 2017).

[25] McAlinden et al., Center for Automotive Research (2016). The Potential Effects of the 2017–

Continued

automotive research center, developed a cost-benefit study referenced by multiple commenters that estimated employment losses up to 1.13 million due to the standards if the standards increased prices by $6,000 per vehicle. Other stakeholders submitted comments critical of the CAR report.

Commenters expressed differing points of view on the potential effects of the standards on employment and the macroeconomy and predicting the exact effect of the GHG emission standards on the macroeconomy is rather difficult.

Some commenters pointed to negative effects on the economy and employment due to higher costs from the standards. The Alliance commented that each job in the auto sector creates 6.5 additional jobs, and stated that auto sector employment is generally related to vehicle sales, which is expected to decline. The Alliance, Global Automakers, and FCA expressed concern that cost increases associated with the MY 2022–2025 standards could reduce sales and employment, and put downward pressure on the macroeconomy. The Alliance and Global Automakers argued that reduced revenues from a sales drop due to the standards would reduce spending on research and development.

Other commenters stated that the standards could lead to macroeconomic and employment benefits through their effects on innovation. Commenters also stated that innovation and investment resulting from the standards have contributed to the recovery of the auto industry and the wider economy. Some commenters stated that reopening the standards increases uncertainties that may reduce investments in advanced technologies.

The UAW, while not objecting to a reevaluation of the standards, stated that EPA should ensure that the regulations recognize the long-term importance of manufacturing a diverse fleet of motor vehicles in the United States by American workers and radically weakening the standards will adversely impact investments in key technologies and put domestic manufacturers behind in making fuel-saving technologies being used to meet the standards. Some commenters stated they believe there would be positive effects on employment from the standards through their effects on investments.

The automotive supplier commenters discussed their views on the importance of the standards in maintaining the competitive advantage U.S. companies currently have in the global marketplace. For example, MEMA commented that reducing the stringency of the standards in the U.S. increases the likelihood that work on these emissions-reducing technologies would shift to other markets.

A number of commenters cited Carley *et al.,*[26] which included a study of the macroeconomic impacts of the standards, conducted by researchers at Indiana University. The study found that the short-term effects of the standards are negative, but the long-term effects of the standards are positive for employment but will not overtake the negative effects until at least 2025. Several commenters identified concerns in the Carley et.al. analysis that contributed to short-term negative effects. Graham, a coauthor of the report, responded to these comments by supporting the IU report assumptions.

EPA finds that a more rigorous analysis of job gains and losses is needed to determine the net effects of alternate levels of the standards on employment and believes this is an important factor to consider in adopting appropriate standards. EPA intends to include such an analysis as part of the basis for the new rule.

Factor 6: The Impacts of the Standards on Automobile Safety

EPA and NHTSA considered some potential safety impacts in the 2012 rulemaking, and EPA considers safety to be an important factor in the reconsideration of the MY 2022–2025 standards. For example, fleet turnover is important to an overall safety analysis, as newer cars tend to be safer and more efficient than older cars due to safety technology innovation and regulatory requirements. EPA intends to further assess the scope of its safety analysis in the upcoming rulemaking to examine the possible impacts of fleet turnover on safety. The Administrator finds that this safety analysis is an additional reason to undertake the forthcoming rulemaking.

Factor 7: The Impact of the Greenhouse Gas Emission Standards on the Corporate Average Fuel Economy Standards and a National Harmonized Program

Many stakeholders commented on the importance of maintaining a National Program for GHG emissions and CAFE standards, and stakeholders urged EPA and NHTSA to continue coordinating with the California Air Resources Board. For example, Global Automakers commented, ''Harmonization between the federal and California programs must be maintained. EPA, NHTSA and California need to work together to maintain the One National Program as all parties committed to at its inception.'' Toyota commented that its ultimate objective ''remains a true, single national standard governing fuel economy and greenhouse gas emissions in the future.'' Nissan and Mitsubishi similarly commented that harmonization between federal and California programs must be maintained, urging California, EPA and NHTSA to work together.

Automotive suppliers also commented on the importance of maintaining the National Program. For example, the MEMA stated ''[t]he One National Program provides industry stakeholders with economies of scale and increases domestic investment in emissions-reducing and fuel-efficiency technologies and jobs. Anything that falls short of a National Program will fail to provide the long-term planning certainty the industry needs to make the long-term business and technology investment decisions to meet MYs 2022–2025 standards and beyond.'' The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) commented that all stakeholders should work towards a single National Program and that ''California and non-governmental organizations must have a seat at the table along with manufacturers and workers.''

EPA believes that a national harmonized program is very important and will continue to work toward maintaining a national harmonized program through MY 2025 and beyond. To that end, EPA, in collaboration with NHTSA, will initiate a notice and comment rulemaking in a forthcoming **Federal Register** notice to further consider appropriate standards for MY 2022–2025 light-duty vehicles, as appropriate. This coordination will ensure that GHG emission standards and CAFE standards are as aligned as much as possible given EPA and NHTSA's different statutory authorities.

EPA and NHTSA have been communicating with stakeholders, including CARB and automobile manufacturers, to try and ensure that a national harmonized program remains intact to minimize unnecessary cost and burdens in the development of the notice and comment rulemaking.

2025 EPA/NHTSA GHG/Fuel Economy Mandates on the U.S. Economy. *http://www.cargroup.org/publication/the-potential-effects-of-the-2017-2025-epanhtsa-ghgfuel-economy-mandates-on-the-u-s-economy/*.

[26] Sanjay Carley, Denvil Duncan, John D. Graham, Saba Siddiki, and Nikolaos Zirogiannis. ''A Macroeconomic Study of Federal and State Automotive Regulations,'' Indiana University School of Public and Environmental Affairs, March 2017.

Factor 8: The Impact of Standards on Other Relevant Factors

The January 2017 Determination also identified regulatory certainty as an additional relevant factor that was considered as part of the determination. EPA understands that automakers and suppliers plan many years in advance.[27] Given such long lead times, regulatory certainty can increase the efficiency of business planning and investment cycles. The Administrator agrees that regulatory certainty is extremely important, but is reconsidering its conclusion that maintaining the current standards is the best way to provide such certainty.

Furthermore, industry cannot effectively plan for compliance with the current MY 2022–2025 GHG standards until it knows the outcome of the upcoming NHTSA rulemaking for MY 2022–2025 CAFE standards. Any regulatory certainty potentially provided by the January 2017 Determination is not supported by the fact that NHTSA had not yet begun their statutorily required rulemaking process, and EPA did not know at that time whether NHTSA would establish coordinated requirements. EPA now believes that the greatest potential regulatory certainty is provided in the long run by undertaking a new rulemaking, in partnership with NHTSA, and ensuring that the resulting standards are harmonized to the greatest degree possible.

IV. Revised Determination

Even with the wide range in perspectives, it is clear that many of the key assumptions EPA relied upon in its January 2017 Determination, including gas prices, and the consumer acceptance of advanced technology vehicles, were optimistic or have significantly changed. EPA has also both developed and received additional data and assessments since the January 2017 Determination regarding technology effectiveness and technology costs which warrant additional consideration. In addition, the reach and success of the program is significantly limited when consumers do not purchase new vehicles with low GHG emissions, either because they are priced out of them or are unwilling to spend additional money on advanced fuel-saving technologies.

Based on our review and analysis of the comments and information submitted, the Administrator believes that the current GHG program for MY 2022–2025 vehicles presents difficult challenges for auto manufacturers and adverse impacts on consumers. On the whole, the Administrator believes the MY 2022–2025 GHG emission standards are not appropriate and, therefore, should be revised as appropriate. EPA, in partnership with NHTSA, will further explore the appropriate degree and form of changes to the program through a notice and comment rulemaking process.

As stated above, in this notice, the Administrator has determined that the standards are not appropriate in light of the record before EPA, and therefore, should be revised as appropriate. EPA is also withdrawing the January 2017 Determination with this notice. EPA, in partnership with NHTSA, will initiate a notice and comment rulemaking in a forthcoming **Federal Register** notice to further consider appropriate standards for MY 2022–2025 light-duty vehicles. This notice concludes EPA's MTE under 40 CFR 86.1818–12(h). Finally, EPA notes, as discussed above, that this revised determination is not a final agency action, as explained in the 2012 final rule. The effect of this action is rather to initiate a rulemaking process whose outcome will be a final agency action. Until that rulemaking has been completed, the current standards remain in effect and there is no change in the legal rights and obligations of any stakeholders.

Dated: April 2, 2018.

E. Scott Pruitt,

Administrator.

[FR Doc. 2018–07364 Filed 4–12–18; 8:45 am]

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[27] To note, some commenters raised concerns that reevaluating the standards increases uncertainty that might reduce investment in advanced technologies that could hurt jobs and United States competitiveness. As mentioned below, EPA disagrees with this concern as NHTSA must still complete a rulemaking for MY 2022–2025.

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9038–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7156 or *https://www2.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements

Filed 04/02/2018 Through 04/06/2018 Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-nepa-public/action/eis/search.*

EIS No. 20180058, Final, USFS, WI, Townsend Project, Review Period Ends: 05/14/2018, Contact: Marilee Houtler 715–276–6333

EIS No. 20180059, Final, WAPA, CO, Estes to Flatiron Transmission Lines Rebuild Project Larimer County, Colorado Final Environmental Impact Statement (DOE/EIS–0483), Review Period Ends: 05/14/2018, Contact: Mark Wieringa 720–962–7448

EIS No. 20180060, Draft, USFS, CA, Tahoe National Forest Over-snow Vehicle Use Designation, Comment Period Ends: 05/29/2018, Contact: Joe Chavez 530–478–6158

EIS No. 20180061, Final, USFS, OR, Trout Creek, Review Period Ends: 05/29/2018, Contact: Joan Schmidgall 541–367–3809

EIS No. 20180062, Draft, NPS, CO, Great Sand Dunes National Park and Preserve Draft Ungulate Management Plan and EIS, Comment Period Ends: 05/31/2018, Contact: Tucker Blythe 719–378–6311

EIS No. 20180063, Draft Supplement, BR, WA, Kachess Drought Relief Pumping Plant and Keechelus Reservoir-to-Kachess Reservoir Conveyance (KDRPP/KKC) Projects Supplemental Draft Environmental Impact Statement, Kittitas and Yakima Counties, Washington, Comment Period Ends: 07/11/2018, Contact: Candace McKinley 509–575–5848 ext. 603

Dated: April 9, 2018.

Kelly Knight,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2018–07690 Filed 4–12–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0350; FRL–9975–55]

Pesticide Maintenance Fee: Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit III., pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

DATES: The cancellations are effective April 13, 2018.

FOR FURTHER INFORMATION CONTACT: Michael Yanchulis, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0237; email address: *yanchulis.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0350, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

This cancellation order follows an August 3, 2017 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit III. to voluntarily cancel these product registrations. In the August 3, 2017 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 180-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received six general comments on the August 3, 2017 notice but none merited its further review. The registration numbers below were listed in the August 3, 2017 notice but already have been canceled by other **Federal Register** notices so are not listed in this notice. The products are listed by their cancellation **Federal Register** notice: (1) **Federal Register** of November 10, 2010 (75 FR 69065; FRL–8852–4) with cancellation effective July 31, 2016: 66222–62, 66222–63, ID 980003 and WA 980012; and (2) **Federal Register** of August 29, 2017 (82 FR 41017; FRL–9964–27): 498–180. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

Section 4(i)(5) of FIFRA (7 U.S.C. 136a-1(i)(5)) requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations granted under FIFRA section 3 (7 U.S.C. 136a) as well as those granted under FIFRA section 24(c) (7 U.S.C. 136v(c)) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

Under FIFRA, the EPA Administrator may reduce or waive maintenance fees for minor agricultural use pesticides when it is determined that the fee would be likely to cause significant impact on the availability of the pesticide for the use.

In fiscal year 2017, maintenance fees were collected in one billing cycle. In late October of 2016, all holders of either FIFRA section 3 registrations or FIFRA section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of January 15, 2017. A notice of intent to cancel was sent in April of 2017 to companies who did not respond and to companies who responded, but paid for less than all of their registrations. Since mailing the notices of intent to cancel, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

In fiscal year 2017, the Agency has waived the fee for 338 minor agricultural use registrations at the request of the registrants. Maintenance fees have been paid for about 16,136 FIFRA section 3 registrations, or about 97% of the registrations on file in October 2016. Fees have been paid for about 1,859 FIFRA section 24(c) registrations, or about 87% of the total on file in October 2016. Cancellations for non-payment of the maintenance fee affect about 166 FIFRA section 3 registrations and about 13 FIFRA section 24(c) registrations. These cancellations can be found in Table 3 of Unit III. Cancellations for companies paying the fee at one of the capped payment amounts are considered voluntary cancellations since the registration could be maintained without an additional fee payment. These cancellations are subject to a 180-day comment period and are listed in Table 1of Unit III.

The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until January 15, 2018, 1 year after the date on which the fee was due. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold, or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation order.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through special reviews or other Agency actions. These general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

III. What action is the Agency taking?

This notice announces the cancellation, as requested by registrant, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Chemical name
100–598	100	Profenofos Technical	Profenofos.
100–669	100	Curacron 8E Insecticide-Miticide	Profenofos.
100–1411	100	Enfold Insecticide	Emamectin benzoate.
264–956	264	Gustafson Allegiance-LS Fungicide	Metalaxyl.
264–967	264	Raxil Allegiance MD Fungicide	Metalaxyl, Tebuconazole.
264–993	264	Secure Dry Insecticide	Spinosad.
264–994	264	Secure II Liquid Stored Grain Insecticide	Spinosad.
264–1073	264	Puma Ultra Herbicide	Fenoxaprop-p-ethyl.
264–1132	264	Poncho/GB126	Clothianidin; Bacillus firmus strain I–1582.
264–1176	264	Melocon WP	Purpureocillium lilacinum strain 251.
432–757	432	Tribute II XL Termiticide/insecticide Concentrate.	Esfenvalerate.
432–814	432	Deltamethrin 25 SC Concentrate	Deltamethrin.
432–823	432	Delta 920 Dust Insecticide	Deltamethrin.
432–824	432	Delta Granular	Deltamethrin.
432–897	432	Aliette HG Brand Fungicide	Fosetyl-Al.
432–1252	432	Maxforce Professional Insect Control Ant Killer Bait Stations.	Hydramethylnon.
432–1253	432	Maxforce Roach Control System Formula 18493.	Hydramethylnon.
432–1260	432	Maxforce Ant Bait F3	Fipronil.
432–1263	432	Maxforce Ant Bait F2	Fipronil.
432–1265	432	Maxforce IBH11	Hydramethylnon.
432–1301	432	Tempo 20 WP in Water Soluble Packets	Cyfluthrin.
432–1303	432	Tempo 1 Insecticide	beta-Cyfluthrin.
432–1305	432	Tempo 10 WP in Packets	beta-Cyfluthrin.
432–1306	432	Tempo 20 WP Insecticide in Water Soluble Packets.	Cyfluthrin.
432–1313	432	Tempo 2 TC Insecticide	Cyfluthrin.
432–1315	432	Tempo 0.1% Dust Insecticide	Cyfluthrin.
432–1357	432	Tempo Ultra 40 Insecticide	beta-Cyfluthrin.
432–1368	432	Premise Gel Insecticide	Imidacloprid.
464–99	464	Chlorine	Chlorine.
464–8131	464	Aqucar Sump Buddy Pro Water Treatment Microbiocide.	2,2-Dibromo-3-nitrilopropionamide.
498–187	498	Champion Sprayon Ant & Roach Killer 4	Piperonyl butoxide; Permethrin; Tetramethrin.
524–610	524	M1750 Herbicide	Glyphosate ethanolamine salt; Dicamba, diglycolamine salt.
777–105	777	Lysol Brand IV I.C. Disinfectant	Quaternary ammonium compounds; Ethanol.
961–352	961	Lebanon Fertilizer with Surflan	Oryzalin.
961–364	961	Lebanon Fertilizer with Barricade Preemergence Weed Control (0.22%).	Prodiamine.
961–369	961	Lebanon Fertilizer with Dimension (0.072%) Crabgrass Control.	Dithiopyr.
1001–82	1001	Bounty Turf and Ornamental Insecticide	Imidacloprid.
1001–83	1001	Minx Ornamental Miticide/insecticide	Abamectin.
1812–338	1812	Kocide LF	Copper hydroxide.
3432–25	3432	Pool Protector Brand Pool Algaecide & Sanitizer.	Quaternary ammonium compounds.
4787–33	4787	Cheminova Methyl Parathion Technical	Methyl parathion.
4822–479	4822	Raid Ant & Roach Killer 479	Piperonyl butoxide; Permethrin; o-Phenylphenol; Pyrethrins.
4822–547	4822	Deedee 1	Quaternary ammonium compounds.
5383–108	5383	Polyphase 662	Carbendazim; Carbamic acid, butyl-, 3-iodo-2-propynyl ester; 1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N′-(1,1-dimethylethyl)-6-(methylthio)-.
5383–161	5383	Z–9 Tricosene Technical	cis-9-Tricosene.
5383–162	5383	Trimedlure	4(or 5)-Chloro-2-methylcyclohexanecarboxylic acid, 1,1-dimethylethyl ester.
5383–163	5383	Disparlure Racemic	cis-7,8-Epoxy-2-methyloctadecane.
5383–168	5383	Fungitrol 1075	1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N′-(1,1-dimethylethyl)-6-(methylthio)-.
5383–173	5383	Fungitrol 11–50S Fungicide	Folpet.
5383–179	5383	Nuosept W	Bronopol; 5-Chloro-2-methyl-3(2H)-isothiazolone; 2-Methyl-3(2H)-isothiazolone.

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Company No.	Product name	Chemical name
5383–180	5383	Nuosept W Concentrate	Bronopol; 5-Chloro-2-methyl-3(2H)-isothiazolone; 2-Methyl-3(2H)-isothiazolone.
5383–185	5383	Nuosept BT10	1,2-Benzisothiazolin-3-one.
5383–186	5383	Nuosept BMC 412	1,2-Benzisothiazolin-3-one; 2-Methyl-3(2H)-isothiazolone; 5-Chloro-2-methyl-3(2H)-isothiazolone.
5813–47	5813	Bowl Gard Automatic Bowl Cleaner	Calcium hypochlorite.
5813–48	5813	Bowl Gard II Automatic Toilet Bowl Cleaner.	Calcium hypochlorite.
5813–71	5813	Ultra Clorox Bleach Formula C	Sodium hypochlorite.
5813–72	5813	Ultra Clorox Bleach Formula G	Sodium hypochlorite.
10088–109	10088	Permicide 9% Concentrate	Permethrin.
10163–46	10163	Prokil Naled Insecticide	Naled.
10163–56	10163	Gowan Dimethoate E267	Dimethoate.
10163–76	10163	Gowan Wettable Sulfur	Sulfur.
10163–77	10163	Gowan Dusting Sulfur	Sulfur.
10163–120	10163	Gowan Trifluralin 10G	Trifluralin.
10163–141	10163	Sulfur Base (for Manufacturing Use)	Sulfur.
10163–205	10163	Handy Spray Betasan Crabgrass Preventer.	Bensulide.
10163–249	10163	Thiophanate Methyl 80 WDG	Thiophanate-methyl.
10163–262	10163	Thiophanate Methyl 70–W Agricultural Fungicide.	Thiophanate-methyl.
47371–158	47371	PVP Iodine Solution FE—150	Betadine.
59639–100	59639	Resource 80 WP Herbicide	Flumiclorac.
59639–122	59639	V–10097 Herbicide	Glyphosate-isopropylammonium; Flumiclorac.
60063–37	60063	Echo 6F ETQ	Chlorothalonil.
60063–54	60063	Flud-E 1SC Turf Fungicide	Fludioxonil.
66222–3	66222	Pyrinex 4 EC	Chlorpyrifos.
66222–15	66222	Prometryn 4L Herbicide	Prometryn.
66222–18	66222	Chlorpyrifos 15G	Chlorpyrifos.
66222–38	66222	Sonora 4SC	Prometon.
66222–39	66222	Pramitol 4RR	Prometon.
66222–43	66222	Pramitol 4 MUP	Prometon.
66222–49	66222	Valuron 60 DF Herbicide	Metsulfuron.
66222–50	66222	Metsulfuron Methyl 60DF Herbicide	Metsulfuron.
66222–55	66222	Pramitol 2l-Diuron 2l	Diuron; Prometon.
66222–57	66222	Rimon (Novaluron) 7.5 WDG	Novaluron.
66222–98	66222	Fanfare 2EC–CAL	Bifenthrin.
66222–101	66222	Bifenthrin SC Lawn and Tree Flowable Insecticide/Miticide.	Bifenthrin.
66222–102	66222	Bifenthrin SC Flowable Insecticide/Miticide.	Bifenthrin.
66222–110	66222	Prodiamine 65 WDG	Prodiamine.
66222–112	66222	Folpan 80 WDG Industrial	Folpet.
66222–116	66222	Cotton-Pro	Prometryn.
66222–122	66222	Acephate 90 SP Cotton Insecticide	Acephate.
66222–142	66222	Diuron MUP	Diuron.
66222–147	66222	Nations AQ II Metsulfuron Methyl DF	Metsulfuron.
66222–148	66222	Nations AQ II Metsulfuron Methyl 60 DF	Metsulfuron.
66222–153	66222	Triclopyr 4	Triclopyr, butoxyethyl ester.
66222–164	66222	Vegetation Manager Metsulfuron Methyl-Turf Herbicide.	Metsulfuron.
66222–165	66222	Vegetation Manager Metsulfuron Methyl DF.	Metsulfuron.
66222–166	66222	Imazapyr 2SL	Imazapyr, isopropylamine salt.
66222–167	66222	Imazapyr 4 SL	Imazapyr, isopropylamine salt.
66222–171	66222	Mohave 70 EG Bareground Vegetation Control.	Diuron; Imazapyr.
66222–175	66222	Pyrimax 3.2 L Herbicide	Pyrithiobac-sodium.
66222–202	66222	Ironclad Herbicide	Nicosulfuron; Rimsulfuron.
66222–206	66222	Farmsaver.com Metsulfuron Methyl 60 DF.	Metsulfuron.
66222–228	66222	Pasada 1.6F	Imidacloprid.
66222–237	66222	Dupont Direx 4L	Diuron.
66222–238	66222	Mana Karmex XP Herbicide	Diuron.
66222–242	66222	Fomesafen 2 SL	Sodium salt of fomesafen.
66222–255	66222	Mana 11415	Bifenthrin.
66222–259	66222	Mana 24301	Chlorpyrifos; Bifenthrin.

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Company No.	Product name	Chemical name
70627–37	70627	Johnson Wax Professional Cockroach Gel Bait Formula 3.	Abamectin.
70627–38	70627	Johnson Wax Professional Residual Insecticide.	Cyfluthrin.
70627–44	70627	Johnson Wax Professional Cockroach Bait Station.	Abamectin.
70627–45	70627	Johnson Wax Professional Fire Ant Bait	Abamectin.
70627–46	70627	Johnson Wax Professional Perimeter Spray Microencapsulated Concentrate.	Cyfluthrin.
AL070001	100	Reward Landscape and Aquatic Herbicide.	Diquat dibromide.
AL110002	100	Heritage Fungicide	Azoxystrobin.
AL120001	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
AR930001	71368	Weedar 64 Broadleaf Herbicide	2,4-D, dimethylamine salt.
AZ070011	71711	ET Herbicide/Defoliant	Pyraflufen-ethyl.
AZ120002	228	Nufarm Ethephon 2 Plant Growth Regulator.	Ethephon.
CA020005	264	Rovral Brand 4 Flowable Fungicide	Iprodione.
CA040008	264	Rovral 4 Flowable Fungicide	Iprodione.
CA050001	264	Rovral Brand 4 Flowable Fungicide	Iprodione.
CA060020	264	Rovral Brand 4 Flowable Fungicide	Iprodione.
CA140007	228	Nufarm Ethephon 2 Plant Growth Regulator.	Ethephon.
CA930015	264	Rovral 4 Flowable Fungicide	Iprodione.
CA970033	228	Riverdale Solution Water Soluble	2,4-D, dimethylamine salt.
CO150003	55146	Gibgro 4LS	Gibberellic acid.
CO980003	5481	Orthene Turf, Tree & Ornamental Sprayb WSP.	Acephate.
FL110011	100	Heritage Fungicide	Azoxystrobin.
FL130004	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
FL890017	5481	Orthene 75 S Soluble Powder	Acephate.
FL890018	5481	Orthene 75 S Soluble Powder	Acephate.
FL890019	5481	Orthene 75 S Soluble Powder	Acephate.
FL890022	5481	Orthene 75 S Soluble Powder	Acephate.
FL940002	5481	Orthene 75 S Soluble Powder	Acephate.
GA000001	59639	Knack Insect Growth Regulator	Pyriproxyfen.
GA050003	100	Caparol 4l	Prometryn.
GA110001	100	Abound Flowable Fungicide	Azoxystrobin.
GA110005	352	Dupont Coragen Insect Control	Chlorantraniliprole.
GA110007	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
GA880004	5481	Orthene 75 S Soluble Powder	Acephate.
GA960002	5481	Orthene 75 S Soluble Powder	Acephate.
HI140001	61842	Lime-Sulfur Solution	Lime sulfur.
IN110001	100	Abound Flowable Fungicide	Azoxystrobin.
KY100003	100	Quadris Flowable Fungicide	Azoxystrobin.
LA120019	352	Dupont Leadoff Herbicide	Rimsulfuron; Thifensulfuron.
LA130002	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
LA930001	71368	Weedar 64 Broadleaf Herbicide	2,4-D, dimethylamine salt.
LA950001	464	Chlorine	Chlorine.
MA090001	100	Callisto Herbicide	Mesotrione.
MD130005	100	Abound Flowable Fungicide	Azoxystrobin.
ME070002	264	Provado 1.6 Flowable Insecticide	Imidacloprid.
ME090003	100	Callisto Herbicide	Mesotrione.
ME120003	228	Nufarm Ethephon 2 Plant Growth Regulator.	Ethephon.
MI140008	100	Switch 62.5WG	Cyprodinil; Fludioxonil.
MI160001	100	Heritage Fungicide	Azoxystrobin.
MN070001	55146	Agritin	Fentin hydroxide.
MN070008	55146	Agri Tin Flowable	Fentin hydroxide.
MO050004	100	Caparol 4L	Prometryn.
MO120002	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
MO140004	100	Abound Flowable Fungicide	Azoxystrobin.
MS010003	71368	Roundup Herbicide	Glyphosate-isopropylammonium.
MS120013	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
MS900016	71368	Weedar 64 Broad Leaf Herbicide	2,4-D, dimethylamine salt.
MS910004	228	Riverdale Weedestroy AM–40 Amine Salt.	2,4-D, dimethylamine salt.
MT060007	100	Touchdown CT Herbicide	Glycine, N-(phosphonomethyl)- potassium salt.
NC110003	100	Quadris Flowable Fungicide	Azoxystrobin.
NC110006	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
ND030011	55146	Agri Tin Water Soluble Pack	Fentin hydroxide.

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Company No.	Product name	Chemical name
ND040007	71368	Nufarm Credit Systemic Extra Herbicide	Glyphosate-isopropylammonium.
ND050001	100	Callisto	Mesotrione.
ND060002	524	RT 3 Herbicide	Glycine, N-(phosphonomethyl)- potassium salt.
ND060003	100	Touchdown CT Herbicide	Glycine, N-(phosphonomethyl)- potassium salt.
NE000002	264	Rovral 4 Flowable Fungicide	Iprodione.
NE150002	100	Heritage Fungicide	Azoxystrobin.
NJ130011	100	Avid 0.15EC Miticide/Insecticide	Abamectin.
NM110003	81880	Sandea Herbicide	Halosulfuron-methyl.
NM130002	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
NM140003	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
NV980001	100	Agri-Mek 0.15EC	Abamectin.
OH110004	100	Abound Flowable Fungicide	Azoxystrobin.
OH130003	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
OK110004	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
OR010034	5481	Orthene 75 S Soluble Powder	Acephate.
OR010035	5481	Orthene 97 Pellets	Acephate.
OR060019	5481	Orthene 97	Acephate.
OR940036	228	Riverdale Weedestroy AM 40 Amine Salt	2,4-D, dimethylamine salt.
PA110001	100	Abound Flowable Fungicide	Azoxystrobin.
PA130004	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
SC110003	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
SC120002	100	Abound Flowable Fungicide	Azoxystrobin.
TN080010	100	Aatrex 4L	Atrazine.
TN110001	100	Abound Flowable Fungicide	Azoxystrobin.
TN130003	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
TX000005	5481	Orthene 97 Pellets	Acephate.
TX110012	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
TX120004	228	Nufarm Ethephon 2 Plant Growth Regulator.	Ethephon.
TX150003	100	Heritage Fungicide	Azoxystrobin.
TX830022	5481	Orthene 75 S Soluble Powder	Acephate.
TX900001	5481	Orthene 75 S Soluble Powder	Acephate.
TX970011	5481	Orthene 90 S	Acephate.
UT000003	5481	Orthene 97 Pellets	Acephate.
VA050003	100	Caparol 4l	Prometryn.
VA110001	100	Abound Flowable Fungicide	Azoxystrobin.
VA130008	100	Avid 0.15 EC Miticide/Insecticide	Abamectin.
VA150002	100	Heritage Fungicide	Azoxystrobin.
WA050014	5481	Orthene 97	Acephate.
WA070001	264	Rovral 4 Flowable Fungicide	Iprodione.
WA090022	5481	Orthene 97	Acephate.
WA110001	100	Callisto Herbicide	Mesotrione.
WA120006	100	Switch 62.5WG	Cyprodinil; Fludioxonil.
WA940032	228	Riverdale Weedestroy AM–40 Amine Salt.	2,4-D, dimethylamine salt.
WI010006	71368	Weedar 64 Broadleaf Herbicide	2,4-D, dimethylamine salt.
WI060002	5481	Orthene 75 S Soluble Powder	Acephate.
WI060003	5481	Orthene 97	Acephate.
WI950007	71368	Weedar 64 Broadleaf Herbicide	2,4-D, dimethylamine salt.
WY030004	352	Dupont Asana XL Insecticide	Esfenvalerate.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELED PRODUCTS

EPA company No.	Company name and address
100	Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419.
228	Nufarm Americas, Inc., 4020 Aerial Center Parkway, Suite 101, Morrisville, NC 27560.
264	Bayer Cropscience LP, P.O. Box 12014, Research Triangle Park, NC 27709.
352	E. I. Du Pont de Nemours and Company, Chestnut Run Plaza, 974 Centre Road, Wilmington, DE 19805.
432	Bayer Environmental Science, A Division of Bayer Cropscience LP, P.O. Box 12014, Research Triangle Park, NC 27709.
464	The Dow Chemical Co., 1501 Larkin Center Drive, 200 Larkin Center, Midland, MI 48674.
498	Chase Products Co., P.O. Box 70, Maywood, IL 60153.

TABLE 2—REGISTRANTS OF CANCELED PRODUCTS—Continued

EPA company No.	Company name and address
524	Monsanto Company, 1300 I Street NW, Suite 450 East, Washington, DC 20005.
777	Reckitt Benckiser LLC, 399 Interpace Parkway, Parsippany, NY 07054.
961	Lebanon Seaboard Corporation, 1600 East Cumberland Street, Lebanon, PA 17042.
1001	Cleary Chemicals, LLC, c/o. Nufarm Americas, Inc., 4020 Aerial Center Parkway, Suite 101, Morrisville, NC 27560.
1812	Griffin LLC, c/o. DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714.
3432	N. Jonas & Co., Inc., P.O. Box 425, Bensalem, PA 19020.
4787	Cheminova A/S, c/o FMC Corporation, 1735 Market Street, Philadelphia, PA 19103.
4822	S. C. Johnson & Son, Inc., 1525 Howe Street, Racine, WI 53403.
5383	Troy Chemical Corp., c/o. Troy Corporation, 8 Vreeland Road, Florham Park, NJ 07932.
5481	Amvac Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660.
5813	The Clorox Co., c/o PS&RC, P.O. Box 493, Pleasanton, CA 94566.
10088	Athea Laboratories Inc., P.O. Box 240014, Milwaukee, WI 53224.
10163	Gowan Company, P.O. Box 5569, Yuma, AZ 85366.
47371	H&S Chemicals Division, c/o Lonza Inc., 90 Boroline Road, Allendale, NJ 07401.
55146	Nufarm Americas, Inc., 4020 Aerial Center Parkway, Suite 101, Morrisville, NC 27560.
59639	Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596.
60063	Sipcam Agro USA, Inc., 2525 Meridian Pkwy., Suite 350, Durham, NC 27713.
61842	Pyxis Regulatory Consulting, Inc., Agent for Tessenderlo Kerley, Inc., 4110 136th Street CT NW, Gig Harbor, WA 98332.
66222	Makhteshim Agan of North America, Inc., D/B/A Adama, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
70627	Diversey, Inc., P.O. Box 19747, Charlotte, NC 28219.
71368	Nufarm Americas, Inc., 4020 Aerial Center Parkway, Suite 101, Morrisville, NC 27560.
71711	Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808.
81880	Canyon Group LLC, c/o Gowan Company, 370 S. Main Street, Yuma, AZ 85364.

Table 3 of this unit lists all of the FIFRA section 3 and section 24(c) registrations which were canceled for non-payment of the 2017 maintenance fee. These registrations have been canceled by order on August 22, 2017 and without hearing.

TABLE 3—FIFRA SECTION 3 AND SECTION 24(c) REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2017 MAINTENANCE FEE

Registration No.	Product name
278–43	Sanygen Liquid Shock.
706–69	Claire Disinfectant Spray.
784–96	Whirl-Clean.
1020–4	Oakite Chlor-Tergent.
1072–11	K.O. Dyne.
1072–19	Babsyne-20.
2212–17	Legphene.
2230–20001	Sodium Hypochlorite Solution.
2296–101	Easy-Dab Bacteriostatic Creme Cleanser.
2382–122	Yard Spray Concentrate.
3377–27	M–B–R 98 Technical.
3377–61	Albrom 100PC Disinfectant.
3377–62	Xtrabrom 111 Biocide.
3377–72	Albrom 100T Disinfectant.
6390–25	Vikol THP.
6552–17	Kay Dee Royal Rabon Block 4 with Rabon Oral Larvicide.
6718–25	Pursue Toilet Bowl Cleaner.
6959–92	Cessco Fire Ant Killer.
7152–33	Sparkling Water-Simply & Easily Superstick 8.
7152–34	Mini-Tabs.
7152–39	Slo-Tab 8.
7152–88	Seaboard Liquid Shock.
7313–22	Sigmaplane Ecol HS Antifouling Redbrown 5297 HS–RD.
7754–51	ARI Yard & Patio Formula 1.
8186–19	C-Flex 40.
8405–3	FS–102 Sanitizer & Udderwash.
8405–22	WC–20.
8536–5	Pic-Brom 33.
8536–6	Pic-Brom 55.
8536–7	Pic-Brom 43.
8536–9	Pic-Brom 50.
8536–19	Methyl Bromide 98%.
8622–77	Bromoblend 99.
8622–80	Biobrom AS.
8622–87	Sodiumbrom IWT Shock.
9198–212	Ole 75% Fungicide.

TABLE 3—FIFRA SECTION 3 AND SECTION 24(c) REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2017 MAINTENANCE FEE—Continued

Registration No.	Product name
9198–230	Andersons Golf Products Kansel + Fertilizer.
11220–7	Tri-Con 67/33.
11220–8	Tri-Con 75/25.
11220–17	Methyl Bromide 89.5%.
11411–9	Leslie's Power Powder.
11411–10	Leslie's Chlorinating Liquid.
11678–5	Thionex Endosulfan Technical.
11694–112	Sun Skeeter.
13283–19	Rainbow Weed Killer 4031.
13283–21	Rainbow Weed Killer 4049.
21268–19	Blue Shield Black Algae Eliminator.
21268–20	Blue Shield Liquid-Chlor.
21268–21	Blue Shield Shock Treatment.
32240–6	Crop Cure 2.
34052–9	Enforcer.
37589–5	Mariner Renaturalizer Water Unit.
39096–2	Fintrol Fish Toxicant Kit.
39444–12	Virustat Microbial Water Purification Cartridge.
42177–74	E–Z Clor Bromagen.
43553–20	Stop-Mold ''F''.
43813–55	Wocosen T98.
43813–58	Wocosen T98.
46183–13	Bioway Bio Actin 20.
47265–3	Z–11-Tetradecenyl Acetate Technical Pheromone.
48222–7	Agro-K Copper Lite.
48737–2	Lurol AG–1000.
49547–5	Alen Pine Oil 60.
51873–8	De-Cut.
52252–10	Bioredox PA Sterilant.
55304–1	Calcium Hypochlorite 70% Dry Chlorinating Pellets.
56336–51	Olive Fly Attract and Kill (A&K) Target Device for Commercial Olives.
56336–53	Olive Fly Attract and Kill (A&K) Target Device for Ornamental Olives.
57538–17	Stimulate Plus Yield Enhancer.
57538–29	Fortified Stimulate Yield Enhancer.
57538–36	Stimulate Fruit Thinner.
57538–37	Stimulate Grain Filler.
57538–38	Stimulate Power.
57538–44	Stimulate Flower Fertility.
57538–45	Stimulute Bud Former.
57538–46	Stimulute Seed Germ.
57538–47	Stimulate Fruit Sizer.
57538–48	Stimulate Root Growth.
57787–33	Multi Shock.
58185–13	Truban Fungicide.
58185–30	Fungo 50 WSB Wettable Powder Turf & Ornamental Systemic Fungicide.
58185–33	Domain FL.
58300–21	Stop Bugging Me! Max.
58300–22	Stop Bugging Me! House & Garden.
59106–3	Bioclear 550 Fizzy Tabs.
59894–9	Kwikkill Disinfecting/deodorizing Spray/solution.
60142–1	Virahol.
60142–3	Virahol Hospital Surface Disinfectant Towelette.
61483–1	Penta 5 Sure Treat Wood Protector Wood Preserver.
61903–1	Tech Group Bleach & Disinfectant.
62575–5	Biesterfeld 2,4–D Ester LV.
63191–13	Insect Dust.
63963–1	Ethylene.
65345–2	Basic Copper Carbonate Technical Grade (Wet Cake).
65878–1	Sulfuric Acid/Potato Vine Desiccant.
67360–14	Intercide ABF–5 SV.
67360–15	Intercide ABF–5 SVC.
70385–1	Microban Disinfectant Spray.
72112–1	Transom 50 WSB.
72112–3	Fathom 14.3 MEC.
72138–1	Real Pine Cleaner Disinfectant Deodorizer.
73176–1	Nutguard-V/Fruitguard-V.
74655–30	Generox 750.
74965–3	Comet Spraygel.
75197–1	Avachem Sucrose Octanoate (40.0%).
75197–2	Avachem Sorbitol Octanoate (90%).
75217–1	Nava Quick Tabs.

TABLE 3—FIFRA SECTION 3 AND SECTION 24(c) REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2017 MAINTENANCE FEE—Continued

Registration No.	Product name
79442–14	Exosex SP Tab.
79442–15	Exomite-Pro.
80286–21	DCept CLM.
81045–3	Baits Motel Stay Awhile-Rest Forever.
82437–1	K & W Agrochemicals 5–15–5 with Gro-Root Liquid (GRL) Root & Transplant Stimulatory with 2 Hormones.
82437–3	Kingro RTU (Ready-To-Use).
82437–4	Rootaid Gel.
82437–6	Prostim L.
82437–8	Prostim II.
82571–4	CSC 80% Thiosperse/thioben.
82760–3	BCS 3502A.
82760–4	BCS 3252A.
83451–11	Bromicide Gel.
83525–1	Wego Chlor 90.
83525–2	Wegochlor Tabs.
83525–4	Wegochlor 56.
83555–1	Aria Air Sanitizer.
83772–3	Agsaver Lambda-Cy.
83772–6	Agsaver Permethrin 3.2EC.
83772–7	Agsaver Clethodim.
83772–9	Agsaver Metolachlor.
83772–10	Agsaver Metolachlor II.
83968–1	HP PM 70.
83968–2	HP PM 50.
84214–2	Ag3+ Fiber 9%.
84517–1	Brite Bleach.
84526–4	Sanosil C34.
84526–5	Sanosil C5.
84545–12	Steriplex SD RTU.
84890–1	IO Purge 5065.
84890–2	PL I–20.
84890–3	IO Purge 5060.
84890–4	M–2205 Disinfectant/Sanitizer/Cleaner.
84890–5	M–2205 20% Iodine Concentrate.
84890–6	M–2205 Farm Disinfectant/Sanitizer.
85341–2	Revere Antimicrobial Brass.
85375–1	Argent 47.
86008–1	Imazapyr Technical.
86352–3	Sweep+Bed Bug Killer.
87518–2	Sorite.
87772–1	Phicide Sodium Manufacturing Concentrate.
87772–2	Phicide Sodium (Sodium Pyrithione 41% Aqueous Solution) Industrial Fungicide & Bactericide.
87931–12	Diflubenzuron Technical.
87994–1	MBC Soil Fumigant.
88082–1	Smartguard.
88082–3	Smart Guard for Cats & Kittens.
88259–3	Dichlor Shock.
88602–2	Diflubenzuron Technical.
88633–3	Copper Sulfate Pentahydrate.
89013–1	Motiv.
89046–1	Fpsolano.
89046–2	Fpsolano Technical.
89883–1	Oxy Blast 35 Hydrogen Peroxide Solution.
90051–1	12.5% Sodium Hypochlorite Solution.
90856–3	Monofoil Screen/Glass Protectant.
91234–2	Kylix SC Lawn Care.
91234–3	Kylix G Lawn Care.
91234–4	Kylix SC Golf Course Insecticide.
91234–7	S307.1 Bentazon 4 Herbicide.
CA900001	Methyl Bromide 100.
ID130011	Tri-Con 80/20.
IL120002	Compound DRC–1339 Concentrate-Feedlots.
KS120003	Compound DRC–1339 Concentrate-Staging Areas.
KY020002	Compound DRC–1339 Concentrate-Staging Areas.
LA050014	Sabrechlor 25.
MS020007	Glyfos Custom Herbicide.
NM030003	Compound DRC–1339 Concentrate-Staging Areas.
NM980003	Cobra Herbicide.
NY130004	Smart Sponge Plus.
TX980006	Cobra Herbicide.
WA030008	Rex Lime Sulphur Solution.

TABLE 3—FIFRA SECTION 3 AND SECTION 24(c) REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2017 MAINTENANCE FEE—Continued

Registration No.	Product name
WA110008	HTH Dry Chlorinator Granular.

IV. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received six comments were received in response to the August 3, 2017 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of products listed in Table 1 of Unit III. All six comments were general in nature about non-specific pesticides and EPA's pesticide program and did not merit further review.

V. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit III. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit III. are canceled. The effective date of the cancellations that are the subject of this notice is April 13, 2018. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit III. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VII. will be a violation of FIFRA.

VI. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of August 3, 2017 (82 FR 36138) (FRL–9963–80). The comment period closed on January 30, 2018.

VII. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit III. until the date of publication of this **Federal Register** notice. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1, except for export in accordance with FIFRA section 17 (7 U.S.C. 136o), or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit III. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: March 29, 2018.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2018–07743 Filed 4–12–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request (OMB No. 3064–0179)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 the existing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). Currently, the FDIC is soliciting comment on renewal of the information collection described below.

DATES: Comments must be submitted on or before June 12, 2018.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Jennifer Jones (202–898–6768), Counsel, MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jennifer Jones, 202–898–6768, *jennjones@FDIC.gov,* Counsel, MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information

1. *Title:* Assessment Rate Adjustment Guidelines for Large and Highly Complex Institutions.

OMB Number: 3064–0179.

Form Number: None.

Affected Public: Large and highly complex depository institutions.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency per respondent	Estimated time per response	Frequency of response	Total annual estimated burden (hours)
Assessment Rate Adjustment Guidelines for Large and Highly Complex Institutions.	Reporting	Required to Obtain or Retain Benefits.	1	1	80.00	On Occasion	80
Total Hourly Burden							80

General Description of Collection: These guidelines established a process through which large and highly complex depository institutions could request a deposit insurance assessment rate adjustment from the FDIC.

There is no change in the method or substance of the collection. The overall reduction in burden hours is the result of economic fluctuation. In particular, the number of respondents has decreased while the hours per response and frequency of responses have remained the same.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, on April 9, 2018.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–07667 Filed 4–12–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of Receivership

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for Guaranty National Bank of Tallahassee, Tallahassee, Florida, has been authorized to take all actions necessary to terminate the receivership of Guaranty National Bank (Receivership).

Surplus national bank receiverships must comply with 12 U.S.C. 197, which requires the Receiver to convene a shareholders' meeting.

Notice of the shareholders' meeting was given to Evergreen Bancshares, Inc., the sole shareholder of Guaranty National Bank of Tallahassee, on January 24, 2018.

The shareholder meeting was held on February 28, 2018, and at it, Evergreen Bancshares, Inc., voted to appoint itself as agent to take possession of the remaining assets of the Receivership.

All assets of the Receivership not previously disposed of have been transferred to Evergreen Bancshares, Inc., as agent appointed by the bank's shareholder pursuant to 12 U.S.C. 197.

Upon distribution of the assets of the Receivership, the Receiver was discharged from any and all liabilities to the association and to each and all creditors and shareholders thereof.

The Receiver has irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective April 1, 2018, the Receivership has been terminated and the Receivership has ceased to exist as a legal entity.

Dated at Washington, DC, on April 9, 2018.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–07634 Filed 4–12–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of Receiverships

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for each of the following insured depository institutions, was charged with the duty of winding up the affairs of the former institutions and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

NOTICE OF TERMINATION OF RECEIVERSHIPS

Fund	Receivership name	City	State	Termination date
10337	Community First Bank—Chicago	Chicago	Illinois	04/01/2018
10350	The Bank of Commerce	Wood Dale	Illinois	04/01/2018
10352	Western Springs National Bank and Trust	Western Springs	Illinois	04/01/2018
10410	Mid City Bank, Inc.	Omaha	Nebraska	04/01/2018

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination dates listed above, the Receiverships have been terminated, the Receiver has been discharged, and the Receiverships have ceased to exist as legal entities.

Dated at Washington, DC, on April 9, 2018.
Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–07635 Filed 4–12–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with Consumer Financial Protection Bureau's (CFPB) Regulation B (Equal Credit Opportunity Act) (FR B; OMB No. 7100–0201).

DATES: Comments must be submitted on or before June 12, 2018.

ADDRESSES: You may submit comments, identified by FR B, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public website at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Federal Reserve should modify the proposal prior to giving final approval.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report

Report title: Recordkeeping and Disclosure Requirements Associated with Consumer Financial Protection Bureau's (CFPB) Regulation B (Equal Credit Opportunity Act).

Agency form number: FR B.

OMB control number: 7100–0201.

Frequency: Monthly; annually.

Respondents: State member banks; subsidiaries of state member banks; subsidiaries of bank holding companies; U.S. branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks); commercial lending companies owned or controlled by foreign banks; and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a; 611–631).

Estimated number of respondents: Notifications, furnishing of credit information, record retention (applications, actions, and prescreened solicitations), information for monitoring purposes, and rules on providing appraisal reports (providing appraisal report), 958 respondents; Self-testing: Record retention—incentives, 92 respondents; Self-testing: Record retention—self-correction, 23 respondents, and Self-testing: Record retention—rules concerning requests for information (disclosure for optional self-test), 92 respondents.

Estimated average hours per response: Notifications, 6 hours; Furnishing of credit information, 2.5 hours; Record retention (Applications, actions, and prescreened solicitations), 8 hours; Information for monitoring purposes, 0.25 hours; Rules on providing appraisal reports (Providing appraisal report), 3 hours; Self-testing: Record retention—incentives, 2 hours; Self-testing: Record retention—self-correction, 8 hours; and

Self-testing: Record retention—rules concerning requests for information (disclosure for optional self-test), 3.5 hours.

Estimated annual burden hours: Notifications, 68,976 hours; Furnishing of credit information, 28,740 hours; Record retention (Applications, actions, and prescreened solicitations), 7,664 hours; Information for monitoring purposes, 2,874 hours; Rules on providing appraisal reports (Providing appraisal report), 34,488 hours; Self-testing: Record retention—incentives, 184 hours; Self-testing: Record retention—self-correction, 184 hours; and Self-testing: Record retention—rules concerning requests for information (disclosure for optional self-test), 3,864 hours.

General description of report: ECOA was enacted in 1974 and is implemented by the CFPB's Regulation B for institutions the Board supervises.[1] The ECOA prohibits discrimination in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), or other specified bases (receipt of public assistance, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1600 *et seq.*)). To aid in implementation of this prohibition, the statute and regulation subject creditors to various mandatory disclosure requirements, notification provisions informing applicants of action taken on the credit application, provision of appraisal reports in connection with mortgages, credit history reporting, monitoring rules, and recordkeeping requirements. These requirements are triggered by specific events and disclosures must be provided within the time periods established by the statute and regulation.

Legal authorization and confidentiality: The Board's Legal Division has determined that the CFPB is authorized to issue its Regulation B pursuant to its authority to prescribe regulations to carry out the purposes of ECOA (15 U.S.C. 1691b). The obligation to comply with the recordkeeping and disclosure requirements of CFPB's Regulation B is mandatory. Because the recordkeeping and disclosure requirements of the CFPB's Regulation B require creditors to retain their own records and to make certain disclosures to customers, the Freedom of Information Act (FOIA) would only be implicated if the Board's examiners retained a copy of this information as part of an examination a bank. Records obtained as a part of an examination or supervision of a bank are exempt from disclosure under FOIA exemption (b)(8), for examination material (5 U.S.C. 552(b)(8)). In addition, the records may also be exempt under (b)(4) or (b)(6). Records would be exempt under (b)(4) if the records contained ''trade secrets and commercial or financial information obtained from a person and privileged or confidential'' and the disclosure of the information would cause substantial harm to the competitive position of the respondents (5 U.S.C. 552(b)(4)). Records would be exempt under (b)(6) if the records contained personal information, the disclosure of which would ''constitute a clearly unwarranted invasion of personal privacy'' (5 U.S.C. 552(b)(6)).

[1] 15 U.S.C. 1691. The CFPB's Regulation B is located at 12 CFR part 1002.

Board of Governors of the Federal Reserve System, April 9, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–07668 Filed 4–12–18; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Solicitation of Applications for Membership on the Community Advisory Council

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) established the Community Advisory Council (the ''CAC'') as an advisory committee to the Board on issues affecting consumers and communities. This Notice advises individuals who wish to serve as CAC members of the opportunity to be considered for the CAC.

DATES: Applications received between Monday, April 16, 2018 and Friday, June 15, 2018 will be considered for selection to the CAC for terms beginning January 1, 2019.

ADDRESSES: Individuals who are interested in being considered for the CAC may submit an application via the Board's website or via email. The application can be accessed at *https://www.federalreserve.gov/secure/CAC/Application/.* Emailed submissions can be sent to *CCA-CAC@frb.gov.* The information required for consideration is described below.

If electronic submission is not feasible, submissions may be mailed to the Board of Governors of the Federal Reserve System, Attn: Community Advisory Council, Mail Stop I–305, 20th Street and Constitution Ave. NW, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: Jennifer Fernandez, Community Development Analyst, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave. NW, Washington, DC 20551, or (202) 452–2412, or *CCA-CAC@frb.gov.* Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Board created the Community Advisory Council (CAC) as an advisory committee to the Board on issues affecting consumers and communities. The CAC is composed of a diverse group of experts and representatives of consumer and community development organizations and interests, including from such fields as affordable housing, community and economic development, employment and labor, financial services and technology, small business, and asset and wealth building. CAC members meet semiannually with the members of the Board in Washington, DC to provide a range of perspectives on the economic circumstances and financial services needs of consumers and communities, with a particular focus on the concerns of low- and moderate-income consumers and communities. The CAC complements two of the Board's other advisory councils—the Community Depository Institutions Advisory Council (CDIAC) and the Federal Advisory Council (FAC)—whose members represent depository institutions.

The CAC serves as a mechanism to gather feedback and perspectives on a wide range of policy matters and emerging issues of interest to the Board of Governors and aligns with the Federal Reserve's mission and current responsibilities. These responsibilities include, but are not limited to, banking supervision and regulatory compliance (including the enforcement of consumer protection laws), systemic risk oversight and monetary policy decision-making, and, in conjunction with the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC), responsibility for implementation of the Community Reinvestment Act (CRA).

This Notice advises individuals of the opportunity to be considered for appointment to the CAC. To assist with the selection of CAC members, the Board will consider the information submitted by the candidate along with

other publicly available information that it independently obtains.

Council Size and Terms

The CAC consists of at least 15 members. The Board will select members in the fall of 2018 to replace current members whose terms will expire on December 31, 2018. The newly appointed members will serve three-year terms that will begin on January 1, 2019. If a member vacates the CAC before the end of the three-year term, a replacement member will be appointed to fill the unexpired term.

Application

Candidates may submit applications by one of three options:

- *Online:* Complete the application form on the Board's website at *https://www.federalreserve.gov/secure/CAC/Application/* .
- *Email:* Submit all required information to *CCA–CAC@frb.gov.*
- *Postal Mail:* If electronic submission is not feasible, submissions may be mailed to the Board of Governors of the Federal Reserve System, Attn: Community Advisory Council, Mail Stop I–305, 20th Street and Constitution Ave. NW, Washington, DC 20551.

Interested parties can view the current Privacy Act Statement at: *https://www.federalreserve.gov/Secure/CAC/Privacy*.

Below are the application fields. Asterisks (*) indicate required fields.

- Full Name *
- Email Address *
- Phone Number *
- Postal Mail Street Address *
- Postal Mail City *
- Postal Zip Code *
- Organization *
- Title *
- Organization Type (select one) *
  - ○ For Profit
    - ■ Community Development Financial Institution (CDFI)
    - ■ Non-CDFI Financial Institution
    - ■ Financial Services
    - ■ Professional Services
    - ■ Other
  - ○ Non-Profit
    - ■ Advocacy
    - ■ Association
    - ■ Community Development Financial Institution (CDFI)
    - ■ Educational Institution
    - ■ Foundation
    - ■ Service Provider
    - ■ Think Tank/Policy Organization
    - ■ Other
  - ○ Government
- Primary Area of Expertise (select one) *
  - ○ Civil rights
  - ○ Community development finance
  - ○ Community reinvestment and stabilization
  - ○ Consumer protection
  - ○ Economic and small business development
  - ○ Labor and workforce development
  - ○ Financial technology
  - ○ Household wealth building and financial stability
  - ○ Housing and mortgage finance
  - ○ Rural issues
  - ○ Other (please specify)
- Secondary Area of Expertise (select one)
  - ○ Civil rights
  - ○ Community development finance
  - ○ Community reinvestment and stabilization
  - ○ Consumer protection
  - ○ Economic and small business development
  - ○ Labor and workforce development
  - ○ Financial technology
  - ○ Household wealth building and financial stability
  - ○ Housing and mortgage finance
  - ○ Rural issues
  - ○ Other (please specify)
- Resume *
  - ○ The resume should include information about past and present positions you have held, dates of service for each, and a description of responsibilities.
- Cover Letter *
  - ○ The cover letter should explain why you are interested in serving on the CAC as well as what you believe are your primary qualifications.
- Additional Information
  - ○ At your option, you may also provide additional information about your qualifications.

Qualifications

The Board is interested in candidates with knowledge of fields such as affordable housing, community and economic development, employment and labor, financial services and technology, small business, and asset and wealth building, with a particular focus on the concerns of low- and moderate-income consumers and communities. Candidates do not have to be experts on all topics related to consumer financial services or community development, but they should possess some basic knowledge of these areas and related issues. In appointing members to the CAC, the Board will consider a number of factors, including diversity in terms of subject matter expertise, geographic representation, and the representation of women and minority groups.

CAC members must be willing and able to make the necessary time commitment to participate in organizational conference calls and prepare for and attend meetings two times per year (usually for two days). The meetings will be held at the Board's offices in Washington, DC The Board will provide a nominal honorarium and will reimburse CAC members only for their actual travel expenses subject to Board policy.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, April 9, 2018.

Ann. Misback,

Secretary of the Board.

[FR Doc. 2018–07695 Filed 4–12–18; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Requests for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED
MARCH 1, 2018 THRU MARCH 31, 2018

03/01/2018		
20171924	S	Ingevity Corporation; Koch Industries Inc.; Ingevity Corporation.
20180782	G	Starboard Value and Opportunity Fund Ltd.; Newell Brands Inc.; Starboard Value and Opportunity Fund Ltd.
20180787	G	Continental Grain Company; Bunge Limited; Continental Grain Company.
20180790	G	E*Trade Financial Corporation; Capital One Financial Corporation; E*Trade Financial Corporation.
20180813	G	LivaNova, plc.; CardiacAssist, Inc. (dba TandemLife); LivaNova, plc.
03/05/2018		
20180717	G	SS&C Technologies Holdings, Inc.; DST Systems, Inc.; SS&C Technologies Holdings, Inc.
20180806	G	Bock Capital EU Acquisitions MAC SARL; Thomas J. Redmond, Jr.; Bock Capital EU Acquisitions MAC SARL.
20180809	G	Waste Connections, Inc.; Waste Technologies LLC; Waste Connections, Inc.
20180811	G	Dr. Patrick Soon-Shiong; tronc. Inc.; Dr. Patrick Soon-Shiong.
20180818	G	Carbonite, Inc.; Dell Technologies Inc.; Carbonite, Inc.
20180820	G	Clayton, Dubilier & Rice Fund X, L.P.; Three-Twenty-Three Family Holdings, LLC 2; Clayton, Dubilier & Rice Fund X, L.P.
03/06/2018		
20180737	G	Andrea Pignataro; Hellman & Friedman Capital Partners VII, L.P.; Andrea Pignataro.
20180760	G	GI Partners Fund V LP; Togetherwork Holdings, LLC; GI Partners Fund V LP.
20180817	G	Viavi Solutions, Inc.; Cobham plc; Viavi Solutions, Inc.
20180843	G	Michael Angelakis; Comcast Corporation; Michael Angelakis.
03/07/2018		
20180773	G	Golden Gate Capital Opportunity Fund, L.P.; West First Management Corp.; Golden Gate Capital Opportunity Fund, L.P.
20180826	G	Centene Corporation; CMG Holding Company, LLC; Centene Corporation.
03/08/2018		
20171840	G	KKR North America Fund XI (AMG) LLC; Envision Healthcare Corporation; KKR North America Fund XI (AMG) LLC.
03/09/2018		
20180793	G	AP VIII Olympus VoteCo, LLC; Nasdaq, Inc.; AP VIII Olympus VoteCo, LLC.
20180803	G	EFR Group Holdings S.a.r.l.; The Kroger Co.; EFR Group Holdings S.a.r.l.
20180812	G	Blackstone Capital Partners (Cayman) VII L.P.; 2003 TIL Settlement; Blackstone Capital Partners (Cayman) VII L.P.
20180814	G	Cevian Capital II G.P. Limited; Autoliv, Inc.; Cevian Capital II G.P. Limited.
20180824	G	Trilantic Capital Partners V (North America) AIV A L.P.; M. Ryan McGrath; Trilantic Capital Partners V (North America) AIV A L.P.
20180825	G	Trilantic Capital Partners V (North America) AIV A L.P.; Michael S. McGrath; Trilantic Capital Partners V (North America) AIV A L.P.
20180832	G	Compagnie Financiere Rupert; YOOX Net-A-Porter Group S.p.A.; Compagnie Financiere Rupert.
20180834	G	HGGC Fund III–A, L.P.; H.I.G. Middle Market LBO Fund II, L.P.; HGGC Fund III–A, L.P.
20180840	G	Sean E. Reilly; Lamar Advertising Company; Sean E. Reilly.
20180841	G	Kevin P. Reilly, Jr.; Lamar Advertising Company; Kevin P. Reilly, Jr.
20180844	G	Thomas J. Campbell; Morrill M. Hall, Jr. and Judy C. Hall; Thomas J. Campbell.
20180846	G	Bain Capital Asia Fund III, L.P.; World Wide Packaging, LLC; Bain Capital Asia Fund III, L.P.
20180857	G	BDCM Opportunity Fund IV, L.P.; GST AutoLeather, Inc.; BDCM Opportunity Fund IV, L.P.
20180861	G	Centene Corporation; RGA International Corporation; Centene Corporation.
03/12/2018		
20180847	G	Rhone Partners V L.P.; Fogo de Chao, Inc.; Rhone Partners V L.P.
20180848	G	Kemper Corporation; Infinity Property and Casualty Corporation; Kemper Corporation.
20180849	G	Oleg Deripaska; Oleg Deripaska; Oleg Deripaska.
20180852	G	Andeavor; Plains All American Pipeline, L.P.; Andeavor.
20180853	G	Granite Construction Incorporated; Layne Christensen Company; Granite Construction Incorporated.
20180873	G	Sequoia Capital Global Growth Fund II, L.P.; Doordash, Inc.; Sequoia Capital Global Growth Fund II, L.P.
03/13/2018		
20180573	G	SCR-Sibelco N.V.; Fairmount Santrol Holdings Inc.; SCR-Sibelco N.V.
20180810	G	HSI Holdings I, Inc.; Allscripts Healthcare Solutions, Inc.; HSI Holdings I, Inc.
20180838	G	Varian Medical Systems, Inc.; Sirtex Medical Limited; Varian Medical Systems, Inc.
03/14/2018		
20180845	G	Andeavor; Delek US Holdings, Inc.; Andeavor.
20180850	G	JELD-WEN HOLDING, inc.; American Building Supply, Inc.; JELD-WEN HOLDING, inc.
20180878	G	The Mark and Robyn Jones Descendants Trust 2014; Texas Wasatch Insurance Holdings Group, LLC; The Mark and Robyn Jones Descendants Trust 2014.

EARLY TERMINATIONS GRANTED—Continued
MARCH 1, 2018 THRU MARCH 31, 2018

03/15/2018		
20180871	G	RH plc; Promotora de Inversiones Mexicanas, S.A.; CRH plc.
03/16/2018		
20180869	G	AEA Investors Small Business Fund III LP; AEA Investors Fund VI AIV LP; AEA Investors Small Business Fund III LP.
20180870	G	LyondellBasell Industries N.V.; A. Schulman, Inc.; LyondellBasell Industries N.V.
20180887	G	Blackstone Capital Partners (Cayman) VII L.P.; PennWell Corporation; Blackstone Capital Partners (Cayman) VII L.P.
20180891	G	General Mills, Inc.; Blue Buffalo Pet Products, Inc.; General Mills, Inc.
20180893	G	Byron Allen Folks; Bain Capital Integral Investors 2006, LLC; Byron Allen Folks.
20180894	G	FR XIII Foxtrot AIV, L.P.; Long Point Capital Fund III, L.P.; FR XIII Foxtrot AIV, L.P.
20180901	G	Platinum Equity Capital Kestrel Partners, L.P.; GenOn Energy, Inc.; Platinum Equity Capital Kestrel Partners, L.P.
20180910	G	Grupo Financiero Inbursa, S.A. de C. V.; M&G Resins USA, LLC; Grupo Financiero Inbursa, S.A. de C. V.
20180918	G	ServiceMaster Global Holdings, Inc.; Copesan Services, Inc.; ServiceMaster Global Holdings, Inc.
03/19/2018		
20180839	G	Uniti Group Inc.; U.S. TelePacific Holdings Corp.; Uniti Group Inc.
20180876	G	GI Partners Fund V LP; Trivest Fund V, L.P.; GI Partners Fund V LP.
20180892	G	GI Partners Fund V LP; Shamrock Capital Growth Fund III, L.P.; GI Partners Fund V LP.
20180903	G	Platinum Equity Capital Partners III, L.P.; American & Efird Global, L.P.; Platinum Equity Capital Partners III, L.P.
03/20/2018		
20180822	G	Total Produce plc; David H. Murdock; Total Produce plc.
20180900	G	Spinner US AcquireCo Inc.; Student Transportation Inc.; Spinner US AcquireCo Inc.
20180904	G	S&P Global Inc.; Kensho Technologies Inc.; S&P Global Inc.
03/22/2018		
20180796	G	Focus Financial Partners, LLC; Nigro Karlin Segal & Feldstein, LLP; Focus Financial Partners, LLC.
20180851	G	Temenos Group AG; Fidessa Group PLC; Temenos Group AG.
20180865	G	Centene Corporation; MHM Services, Inc.; Centene Corporation.
03/23/2018		
20180883	G	Third Point Partners Qualified L.P.; United Technologies Corporation; Third Point Partners Qualified L.P.
20180884	G	Third Point Reinsurance Ltd.; United Technologies Corporation; Third Point Reinsurance Ltd.
20180885	G	Third Point Offshore Fund, Ltd.; United Technologies Corporation; Third Point Offshore Fund, Ltd.
20180886	G	Third Point Ultra, Ltd.; United Technologies Corporation; Third Point Ultra, Ltd.
03/26/2018		
20180912	G	Howard John Simon and Armity A. Simon; Dignity Health; Howard John Simon and Armity A. Simon.
20180921	G	The Clorox Company; HPH Specialized International Fund 1, LP; The Clorox Company.
20180922	G	Hyeon Joo Park; Bruno del Ama; Hyeon Joo Park.
20180931	G	DFW Capital Partners V, L.P.; Distinguished LLC; DFW Capital Partners V, L.P.
20180936	G	ACON Equity Partners IV, L.P.; TV Cooperative Company; ACON Equity Partners IV, L.P.
20180937	G	Centene Corporation; RxAdvance Corporation; Centene Corporation.
20180939	G	Welsh Carson Anderson & Stowe XII, L.P.; Wells Fargo & Company; Welsh Carson Anderson & Stowe XII, L.P.
20180940	G	AXA S.A.; XL Group Ltd; AXA S.A.
20180945	G	Riverstone Global Energy and Power Fund V (FT), L.P.; Riverstone V FW Holdings, LLC; Riverstone Global Energy and Power Fund V (FT), L.P.
20180949	G	Coller International Partners VII, L.P.; Nordic Capital VII Beta, L.P.; Coller International Partners VII, L.P.
03/27/2018		
20180856	G	Roche Holding Ltd; Flatiron Health, Inc.; Roche Holding Ltd.
20180864	G	OEP VI Feeder (Cayman), L.P.; Telefonakiebolaget LM Ericsson; OEP VI Feeder (Cayman), L.P.
20180880	G	Novacap TMT V, L.P.; Horizon Telcom, Inc.; Novacap TMT V, L.P.
20180919	G	Jollibee Foods Corporation; Richard E. Schaden; Jollibee Foods Corporation.
20180920	G	Jollibee Foods Corporation; Richard F. Schaden; Jollibee Foods Corporation.
20180935	G	salesforce.com, Inc.; Aktion Partners, LLC; salesforce.com, Inc.
20180948	G	BlueLinx Holdings Inc.; Charlesbank Equity Fund VII, LP; BlueLinx Holdings Inc.
20180951	G	Centerbridge Credit Partners Master AIV III, L.P.; Seadrill Ltd.; Centerbridge Credit Partners Master AIV III, L.P.
03/28/2018		
20180866	G	WMIH Corp.; FIF HE Holdings LLC; WMIH Corp.
20180943	G	Cognizant Technology Solutions Corporation; Edgewater Growth Capital Partners III, LP; Cognizant Technology Solutions Corporation.

EARLY TERMINATIONS GRANTED—Continued
MARCH 1, 2018 THRU MARCH 31, 2018

	03/29/2018	
20180890	G	The Veritas Capital Fund V, L.P.; James E. Miller; The Veritas Capital Fund V, L.P
	03/30/2018	
20180863	G	PS Holdings Independent Trust; United Technologies Corporation; PS Holdings Independent Trust.
20180877	G	Antin Infrastructure Partners III FPCI; Oak Hill Capital Partners IV (Onshore), L.P.; Antin Infrastructure Partners III FPCI.
20180952	G	Ensono Holdings LLC, Series 1; Azim Premji; Ensono Holdings LLC, Series 1.
20180958	G	Permira VI L.P. 1; Corporate Risk Holdings I, Inc.; Permira VI L.P. 1.
20180959	G	KKR Core Holding Company LLC; Dental Acquisition Corporation; KKR Core Holding Company LLC.
20180960	G	Al Ladder (Luxembourg) Midco S.a.r.l.; Laird PLC; Al Ladder (Luxembourg) Midco S.a.r.l.
20180964	G	Madison Industries Holdings LLC; SMJA Holdings, LLC; Madison Industries Holdings LLC.
20180967	G	VF Corporation; HF Investment Holdings, LLC; VF Corporation.
20180972	G	ENGIE S.A.; Edison International; ENGIE S.A.
20180973	G	KKR Energy Income and Growth Fund I L.P.; Devon Energy Corporation; KKR Energy Income and Growth Fund I L.P.
20180976	G	Stephen Kircher; OZRE Holdings XVI LLC; Stephen Kircher.
20180979	G	Sonoco Products Company; Highland Packaging Solutions, Inc.; Sonoco Products Company.
20180986	G	Comvest Investment Partners V, L.P.; Koorosh Yaraghi; Comvest Investment Partners V, L.P.
20180993	G	Gregory E. Lindberg; Michael Joseph Nordlicht; Gregory E. Lindberg.

For Further Information Contact: Theresa Kingsberry, Program Support Specialist, Federal Trade Commission Premerger Notification Office, Bureau of Competition, Room CC–5301, Washington, DC 20024, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2018–07697 Filed 4–12–18; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–1856]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by May 14, 2018.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov*.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*.

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement of a previously approved collection; *Title of Information Collection:* Request for Certification in the Medicare/Medicaid Program for Provides of Outpatient Physical Therapy and/or Speech-Language Pathology; *Use:* The form is used as an application to be completed by providers of outpatient physical therapy and/or speech-language pathology services requesting participation in the Medicare and Medicaid programs. This form initiates the process for obtaining a decision as to whether the conditions of participation are met as a provider of outpatient physical therapy, speech-language pathology services, or both. It

is used by the State agencies to enter new providers into the Automated Survey Process Environment (ASPEN). *Form Number:* CMS–1856 (OMB control number: 0938–0065); *Frequency:* Annually, occasionally; *Affected Public:* Private sector—Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 350; *Total Annual Responses:* 350; *Total Annual Hours:* 88. (For policy questions regarding this collection contact Peter Ajuonuma at 410–786–3580.)

Dated: April 9, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–07680 Filed 4–12–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Child Care and Development Fund, Quarterly Case Record Report (ACF–801).

OMB No.: 0970–0167.

Description: Section 658K of the Child Care and Development Block Grant (CCDBG) Act (42 U.S.C. 9858, as amended by Pub. L. 113–186) requires that States and Territories submit monthly case-level data on the children and families receiving direct services under the Child Care and Development Fund (CCDF). The implementing regulations for the statutorily required reporting are at 45 CFR 98.70 and 98.71. Case-level reports, submitted quarterly or monthly (at grantee option), include monthly sample or full population case-level data. The data elements to be included in these reports are represented in the ACF–801. ACF uses disaggregate data to determine program and participant characteristics as well as costs and levels of child care services provided. This provides ACF with the information necessary to make reports to Congress, address national child care needs, offer technical assistance to grantees, meet performance measures, and conduct research. ACF requests extension of the ACF–801 with changes.

The CCDF final rule at 45 CFR 98.71(a)(11) requires that States and Territories report new information on the ACF–801. With this extension, ACF is proposing to add two new data elements to the existing reporting requirements. These proposed revisions to the ACF–801 would allow ACF to collect the amount charged per child by those providers who charge the family more than the required copayment in instances where the provider's price exceeds the subsidy payment. We are particularly interested in receiving comments on the availability of these data at the State and Territory level, the quality of that data, and feedback on approaches to obtain this type of information.

Respondents: States, the District of Columbia, and Territories including Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianna Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–801	56	4	27	6,048

Estimated Total Annual Burden Hours: 6,048.

In compliance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chap 35), the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018–07646 Filed 4–12–18; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1073]

Antimicrobial Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Antimicrobial Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on May 1, 2018, from 10 a.m. to 3:30 p.m.

ADDRESSES: DoubleTree by Hilton Hotel Bethesda/Washington DC, Grand Ballroom, 8120 Wisconsin Ave., Bethesda, MD 20814–3624. The conference center's telephone number is 301–652–2000. Answers to commonly asked questions about FDA Advisory Committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

Information about the DoubleTree by Hilton Hotel Bethesda—Washington DC Conference Center can be accessed at: *http://doubletree3.hilton.com/en/hotels/maryland/doubletree-by-hilton-hotel-bethesda-washington-dc-WASBHDT/index.html.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2018–N–1073. The docket will close on April 30, 2018. Submit either electronic or written comments on this public meeting by April 30, 2018. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 30, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of April 30, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before April 26, 2018, will be provided to the committee. Comments received after that date will be taken into consideration by FDA.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–N–1073 for ''Antimicrobial Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see the **ADDRESSES** section), 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.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Cindy Chee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *AMDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss new drug application (NDA) 208627 for tecovirimat, sponsored by SIGA Technologies Inc., for the proposed indication of the treatment of smallpox disease caused by variola virus in adults and pediatric patients. This product was developed under the Animal Rule (21 CFR part 314, subpart I).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the

appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see the **ADDRESSES** section) on or before April 26, 2018, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1:15 p.m. and 2:15 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 24, 2018. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 25, 2018.

Persons attending FDAs advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Cindy Chee (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 10, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–07747 Filed 4–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1270]

Considerations for Design, Development, and Analytical Validation of Next Generation Sequencing-Based In Vitro Diagnostics Intended To Aid in the Diagnosis of Suspected Germline Diseases; Guidance for Stakeholders and Food and Drug Administration Staff; 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 the final guidance entitled ''Considerations for Design, Development, and Analytical Validation of Next Generation Sequencing (NGS)-Based In Vitro Diagnostics (IVDs) Intended to Aid in the Diagnosis of Suspected Germline Diseases; Guidance for Stakeholders and Food and Drug Administration Staff.'' FDA's vision is that NGS-based tests can be developed, validated, and offered for clinical use through a process that leverages appropriate standards, quality systems controls, and community assessment of clinical validity to streamline the premarket review process. This guidance provides recommendations for designing, developing, and establishing analytical performance for NGS-based tests used for whole exome human DNA sequencing (WES) or targeted human DNA sequencing intended to aid in the diagnosis of symptomatic individuals with suspected germline diseases or other conditions. These recommendations are based on FDA's understanding of the tools and processes needed to run an NGS-based test along with the design and analytical validation considerations appropriate for such tests.

DATES: The announcement of the guidance is published in the **Federal Register** on April 13, 2018.

ADDRESSES: You may submit either electronic or written comments on Agency guidances 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–2016–D–1270 for ''Considerations for Design, Development, and Analytical Validation of Next Generation Sequencing (NGS)-Based In Vitro Diagnostics (IVDs) Intended to Aid in the Diagnosis of Suspected Germline Diseases; Guidance for Stakeholders and Food and Drug Administration Staff.'' 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)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Considerations for Design, Development, and Analytical Validation of Next Generation Sequencing (NGS)-Based In Vitro Diagnostics (IVDs) Intended to Aid in the Diagnosis of Suspected Germline Diseases; Guidance for Stakeholders and Food and Drug Administration Staff'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Zivana Tezak, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4544, Silver Spring, MD 20993–0002, 301–796–6206; or *OIRPMGroup@fda.hhs.gov;* or Adam Berger, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4547, Silver Spring, MD 20993–0002, 240–402–1592; or *OIRPMGroup@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is committed to implementing a flexible and adaptive regulatory approach to the oversight of NGS-based tests, which will foster innovation and simultaneously assure that patients have access to accurate and meaningful test results. FDA held two public workshops on this issue: ''Optimizing FDA's Regulatory Oversight of Next Generation Sequencing Diagnostic Tests Public Workshop'' held on February 20, 2015, and ''Standards Based Approach to Analytical Performance Evaluation of Next Generation Sequencing In Vitro Diagnostic Tests'' held on November 12, 2016.

This guidance document provides recommendations for designing, developing, and establishing analytical validity of NGS-based tests used for WES or targeted human DNA sequencing intended to aid in the diagnosis of individuals with suspected germline diseases or other conditions (hereinafter referred to as ''NGS-based tests for germline diseases'' or ''NGS-based tests''). It also outlines considerations for possibly classifying certain NGS-based tests for germline diseases in class II and exempting them from premarket notification requirements. These recommendations should be used as guidelines for test developers for premarket submissions. However, the longer term goal is for these recommendations to form the basis for standards that FDA could recognize or for special controls and/or conditions for premarket notification (510(k)) exemption. FDA is also issuing a guidance entitled ''Use of Public Human Genetic Variant Databases to Support Clinical Validity for Genetic and Genomic-Based In Vitro Diagnostics'' which is being issued concurrently elsewhere in this issue of the **Federal Register**.

On July 8, 2016, FDA announced a draft guidance in the **Federal Register** (81 FR 44614) and made available for public comment. The comment period closed on October 6, 2016. FDA reviewed and considered all public comments received and revised the guidance, as appropriate.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on considerations for design, development, and analytical validation of NGS-based IVDs used to aid in the diagnosis of suspected germline diseases. 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.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This guidance document is also available at *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Considerations for Design, Development, and Analytical Validation of Next Generation Sequencing (NGS)-Based In Vitro Diagnostics (IVDs) Intended to Aid in the Diagnosis of Suspected Germline Diseases; Guidance for Stakeholders and Food and Drug Administration Staff'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 16009 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This 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 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 801 and 21 CFR 809.10, regarding labeling, have been approved under OMB control

number 0910–0485; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 820, regarding the quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in the guidance document ''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff'' have been approved under OMB control number 0910–0756.

Dated: April 9, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–07687 Filed 4–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1111]

Agency Information Collection Activities; Proposed Collection; Comment Request; Permanent Discontinuation or Interruption in Manufacturing of Certain Drug and Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on ''Permanent Discontinuation or Interruption in Manufacturing of Certain Drug and Biological Products.''

DATES: Submit either electronic or written comments on the collection of information by June 12, 2018.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before June 12, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of June 12, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–N–1111 for ''Permanent Discontinuation or Interruption in Manufacturing of Certain Drug and Biological Products.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or

provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Permanent Discontinuation or Interruption in Manufacturing of Certain Drug and Biological Products—21 CFR 310.306, 314.81(b)(3)(iii), and 600.82

OMB Control Number 0910–0759—Extension

Sections 310.306, 314.81(b)(3)(iii), and 600.82 (21 CFR 310.306, 314.81(b)(3)(iii), and 600.82) were modified to implement sections 506C and 506E of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 356c and 356e) as amended by the Food and Drug Administration Safety and Innovation Act. Under these sections, applicants with an approved new drug application (NDA) or abbreviated new drug application (ANDA) for a covered drug product, manufacturers of a covered drug product marketed without an approved application, and applicants with an approved biologics license application (BLA) for a covered biological product (including certain applications of blood or blood components) must notify FDA in writing of a permanent discontinuance of the manufacture of the drug or biological product, or an interruption in manufacturing of the drug or biological product, that is likely to lead to a meaningful disruption in the applicant's supply (or a significant disruption for blood or blood components) of that product. The notification is required if the drug or biological product is life supporting, life sustaining, or intended for use in the prevention or treatment of a debilitating disease or condition, including use in emergency medical care or during surgery, and if the drug or biological product is not a radiopharmaceutical drug product.

The regulations also require that the notification include the following information: (1) The name of the drug or biological product subject to the notification, including the National Drug Code Directory (NDC) (or, for a biological product that does not have an NDC, an alternative standard for identification and labeling that has been recognized as acceptable by the Center Director); (2) the name of each applicant of the drug or biological product; (3) whether the notification relates to a permanent discontinuance of the drug or biological product or an interruption in manufacturing of the product; (4) a description of the reason for the permanent discontinuance or interruption in manufacturing; and (5) the estimated duration of the interruption in manufacturing. The notification must be submitted to FDA electronically at least 6 months prior to the date of the permanent discontinuance or interruption in manufacturing. If 6 months' advance notice is not possible because the permanent discontinuance or interruption in manufacturing was unanticipated 6 months in advance, the applicant must notify FDA as soon as practicable, but in no case later than 5 business days after the permanent discontinuance or interruption in manufacturing occurs.

If an applicant fails to submit the required notification, FDA will issue a letter informing the applicant or manufacturer of its noncompliance. The applicant must submit to FDA, not later than 30 calendar days after FDA issues the letter, a written response setting forth the basis for noncompliance and providing the required notification.

Description of Respondents: Applicants of prescription drugs and biological products subject to an approved NDA, ANDA, or BLA, and manufacturers of prescription drug products marketed without an approved ANDA or NDA, if the product is life supporting, life sustaining, or intended for use in the prevention or treatment of a debilitating disease or condition, including use in emergency medical care or during surgery, or is not a radiopharmaceutical product. If the BLA applicant is a manufacturer of blood or blood components, it is only subject to these regulations if it manufactures a significant percentage of the nation's blood supply.

Burden Estimates: Based on the number of drug and biological product shortage related notifications we have seen in the past 12 months, we estimate that annually a total of approximately 75 respondents (''No. of Respondents'' in table 1) will notify us of a permanent discontinuance of the manufacture of a drug or biological product or an interruption in manufacturing of a drug or biological product that is likely to lead to a meaningful disruption in the respondent's supply of that product. We estimate that these respondents will submit annually a total of approximately 352.5 notifications as required under §§ 310.306, 314.81(b)(3)(iii), and 600.82. We estimate 4.7 notifications per respondent, because a respondent may experience multiple discontinuances or interruptions in manufacturing in a year that require notification (''No. of Responses per Respondent'' in table 1). We also estimate that preparing and submitting these notifications to FDA will take approximately 2 hours per respondent (''Average Burden per Response'' in table 1).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Notifications required under §§ 310.306 (unapproved drugs), 314.81(b)(3)(iii) (products approved under an NDA or ANDA), and 600.82 (products approved under a BLA)	75	4.7	352.5	2	705

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated burden for this information collection has changed since the previous OMB approval. The current burden is based on the number of actual new notifications received including notifications that were counted previously under the OMB approval for the interim final rule entitled ''Permanent Discontinuance or Interruption in Manufacturing of Certain Drug or Biological Products'' (80 FR 38915, July 8, 2015) (OMB control number 0910–0699).

Dated: April 9, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–07684 Filed 4–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1233]

Use of Public Human Genetic Variant Databases To Support Clinical Validity for Genetic and Genomic-Based In Vitro Diagnostics; Guidance for Stakeholders and Food and Drug Administration Staff; 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 the final guidance entitled ''Use of Public Human Genetic Variant Databases to Support Clinical Validity for Genetic and Genomic-Based In Vitro Diagnostics; Guidance for Stakeholders and Food and Drug Administration Staff.'' This guidance document describes how publicly accessible databases of human genetic variants can serve as sources of valid scientific evidence to support the clinical validity of genotype-phenotype relationships in FDA's regulatory review of genetic and genomic-based tests. This guidance further outlines the process by which administrators of genetic variant databases could voluntarily apply to FDA for recognition, and how FDA would review such applications and periodically reevaluate recognized databases.

DATES: The announcement of the guidance is published in the **Federal Register** on April 13, 2018.

ADDRESSES: You may submit either electronic or written comments on Agency guidances 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–2016–D–1233 for ''Use of Public Human Genetic Variant Databases to Support Clinical Validity for Genetic and Genomic-Based In Vitro Diagnostics; Guidance for Stakeholders and Food and Drug Administration Staff.'' 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 office 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)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Use of Public Human Genetic Variant Databases to Support Clinical Validity for Genetic and Genomic-Based In Vitro Diagnostics; Guidance for Stakeholders and Food and Drug Administration Staff '' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Laura Koontz, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4553, Silver Spring, MD 20993–0002, 301–796–7561, *OIRPMGroup@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance document describes one part of FDA's effort to create a flexible regulatory approach to the oversight of genetic and genomic-based tests. FDA held three workshops on this issue: ''Use of Databases for Establishing the Clinical Relevance of Human Genetic Variants'' on November 13, 2015, ''Patient and Medical Professional Perspectives on the Return of Genetic Test Results'' on March 2, 2016, and ''Adapting Regulatory Oversight of Next Generation Sequencing-Based Tests'' on September 23, 2016. The goal of this effort is to help ensure patients receive accurate and meaningful results, while promoting innovation in test development. This guidance document describes how publicly accessible databases of human genetic variants can serve as sources of valid scientific evidence to support the clinical validity of genotype-phenotype relationships in FDA's regulatory review of genetic and genomic-based tests. FDA is also issuing a guidance entitled ''Considerations for Design, Development, and Analytical Validation of Next Generation Sequencing (NGS)-Based In Vitro Diagnostics (IVDs) Intended to Aid in the Diagnosis of Suspected Germline Diseases—Guidance for Stakeholders and Food and Drug Administration Staff,'' which is being released concurrently elsewhere in this issue of the **Federal Register**.

NGS can enable rapid, broad, and deep sequencing of a portion of a gene, entire exome(s), or a whole genome and may be used clinically for a variety of diagnostic purposes, including risk prediction, diagnosis, and treatment selection for a disease or condition. The rapid adoption of NGS-based tests in both research and clinical practice is leading to identification of an increasing number of genetic variants (*e.g.,* pathogenic, benign, and of unknown significance), including rare variants that may be unique to a single individual or family. This guidance document describes FDA's considerations in determining whether a genetic variant database is a source of valid scientific evidence that could support the clinical validity of genetic and genomic based tests. This guidance further outlines the process by which administrators of genetic variant databases could voluntarily apply to FDA for recognition, and how FDA would review such applications and periodically reevaluate recognized databases. A draft guidance was announced in the **Federal Register** on July 8, 2016 (81 FR 44611) and made available for public comment. The comment period closed on October 6, 2016. FDA reviewed and considered all public comments received and revised the guidance as appropriate.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on the ''Use of Public Human Genetic Variant Databases to Support Clinical Validity for Genetic and Genomic-Based In Vitro Diagnostics.'' 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.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This guidance document is also available at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm* or *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Use of Public Human Genetic Variant Databases to Support Clinical Validity for Genetic and Genomic-Based In Vitro Diagnostics; Guidance for Stakeholders and Food and Drug Administration Staff'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 16008 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the guidance document ''Use of Public Human Genetic Variant Databases to Support Clinical Validity for Genetic and Genomic-Based In Vitro Diagnostics; Guidance for Stakeholders and Food and Drug Administration Staff'' have been approved under OMB control number 0910–0850. The collections of information in the guidance document ''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff; Guidance for Industry and Food and Drug Administration Staff'' have been approved under OMB control number 0910–0756. The collections of information regarding premarket submissions have been approved as follows: The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number

0910–0120 and the collections of information in 21 CFR part 814, subparts A through E, have been approved under OMB control number 0910–0231.

Dated: April 9, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–07686 Filed 4–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; New Therapeutic Uses.

Date: June 6, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, Room 1066, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Barbara J. Nelson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health 6701 Democracy Blvd., Democracy 1, Room 1080, Bethesda, MD 20892–4874, 301–435–0806, *nelsonbj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B–Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: April 10, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–07753 Filed 4–12–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel; Prevention and Treatment Research to Address HIV/AIDS Disparities in Woman in the U.S.

Date: May 24, 2018.

Time: 12:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Gateway Building, 7201 Wisconsin Ave., Suite 533, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Maryline Laude-Sharp, Ph.D., Scientific Review Officer, National Institute on Minority Health and Health Disparities, National Institutes of Health, 7201 Wisconsin Ave., Bethesda, MD 20814, (301) 451–9536, *mlaudesharp@nih.gov.*

Dated: April 10, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–07755 Filed 4–12–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the meeting of the Council of Councils.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Council of Councils.

Open: May 18, 2018.

Time: 8:15 a.m. to 11:30 a.m.

Agenda: Call to Order and Introductions; Announcements and Updates; Evaluating the ''Broadening Experiences in Scientific Training (BEST)'' Awards; NIDA Update; Introduction to the Use of Non-Human Primates (NHP) in Addiction Research; NHP Models of Drug Addiction.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Closed: May 18, 2018.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: Review of Grant Applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Open: May 18, 2018.

Time: 2:30 p.m. to 4:05 p.m.

Agenda: Division of Program Coordination, Planning, and Strategic Initiatives (DPCPSI) Program Presentations; Update from the Office of Portfolio Analysis; Closing Remarks.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Franziska Grieder, D.V.M., Ph.D., Executive Secretary, Director, Office of Research Infrastructure Programs, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, NIH, 6701 Democracy Boulevard, Room 948, Bethesda, MD 20892, *GriederF@mail.nih.gov*, 301–435–0744.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a

government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Council of Council's home page at *http://dpcpsi.nih.gov/council/* where an agenda will be posted before the meeting date.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: April 10, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–07757 Filed 4–12–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel; Mechanisms of Disparities for HIV-Related Co-morbidities in Health Disparity Populations.

Date: May 30, 2018.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Minority Health and Health Disparities, 7201 Wisconsin Ave., Suite 525, Rm. 533K, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Xinli Nan, Ph.D., Scientific Review Officer, National Institute on Minority Health and Health Disparities, National Institutes of Health, Scientific Review Branch, OERA, 7201 Wisconsin Ave., Suite 525, Bethesda, MD 20814, (301) 594–7784, *Xinli.Nan@nih.gov.*

Dated: April 10, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–07756 Filed 4–12–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Synthesis and Distribution of Drugs of Abuse and Related Compounds (8944).

Date: April 24, 2018.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 827–5702, *lf33c.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Toxicological Evaluations of Potential Medications to Treat Drug Addiction (8939).

Date: May 15, 2018.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 827–5702, *lf33c.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 10, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–07754 Filed 4–12–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chronic Disease in the Caribbean-II.

Date: April 16, 2018.

Time: 3:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gniesha Yvonne Dinwiddie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3137, Bethesda, MD 20892, *dinwiddiegy@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AIDS and Related Research Special Topic.

Date: April 19, 2018.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216,

MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR16–215: Preclinical Research on Model Organisms to Predict Treatment Outcomes for Disorders Associated with Intellectual and Developmental Disabilities.

Date: April 25, 2018.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Pat Manos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–408–9866, *manospa@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 9, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–07679 Filed 4–12–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting Center for Mental Health Services

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration, (SAMHSA) Center for Mental Health Services (CMHS) National Advisory Council (NAC) will meet on April 30, 2018, from 11:00 a.m. to 12:00 p.m. Eastern Daylight Time (EDT) in a closed teleconference meeting.

The meeting will include discussion and evaluation of grant applications reviewed by SAMHSA's Initial Review Groups, and involves an examination of confidential financial and business information as well as personal information concerning the applicants. Therefore, the meeting will be closed to the public as determined by the Assistant Secretary for Mental Health and Substance Use, in accordance with Title 5 U.S.C. 552b(c)(4) and (6) and Title 5 U.S.C. App. 2, 10(d).

Meeting information and a roster of Council members may be obtained either by accessing the SAMHSA Council website at *http://www.samhsa.gov/about-us/advisory-councils/cmhs-national-advisory-council* or by contacting Ms. Pamela Foote (see contact information below).

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Mental Health Services National Advisory Council.

Dates/Time/Type: Monday, April 30, 2018, 11:00 a.m. to 12:00 p.m. EDT: CLOSED.

Place: SAMHSA, 5600 Fishers Lane, 14th Floor, Conference Room 14SEH02, Rockville, Maryland 20857.

Contact: Pamela Foote, Designated Federal Official, SAMHSA CMHS NAC, 5600 Fishers Lane, Room 14E53C, Rockville, Maryland 20857, Telephone: (240) 276–1279, Fax: (301) 480–8491, Email: *pamela.foote@samhsa.hhs.gov*.

Carlos Castillo,

Committee Management Officer, SAMHSA.

[FR Doc. 2018–07693 Filed 4–12–18; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project—''Talk. They Hear You.'' Campaign Evaluation: National Survey—NEW

SAMHSA's Center for Substance Abuse Prevention (CSAP) is requesting approval from the Office of Management and Budget (OMB) for a new data collection, ''*Talk. They Hear You.*'' *Campaign Evaluation: National Survey.* This collection includes two instruments:

1. Screener
2. Survey Tool

The national survey is part of a larger effort to evaluate the impact of the ''*Talk. They Hear You.*'' *campaign.* These evaluations will help determine the extent to which the campaign has been successful in educating parents and caregivers nationwide about effective methods for reducing underage drinking (UAD). The campaign is designed to educate and empower parents and caregivers to talk with children about alcohol. To prevent initiation of underage drinking, the campaign targets parents and caregivers of children aged 9–15, with the specific aims of:

1. Increasing parent or caregiver awareness of and receptivity to campaign messages (knowledge);
2. Increasing parent or caregiver awareness of underage drinking prevalence (knowledge);
3. Increasing parent or caregiver disapproval of underage drinking (attitudes);
4. Increasing parent or caregiver knowledge, skills, and confidence in how to talk to their children about, and prevent, UAD (attitudes); and
5. Increasing parent or caregiver actions to prevent underage drinking by talking to their children about UAD (behaviors).

The national survey will target parents in the base year in 2018, and then annually in the 4 option years following that, making this a repeat cross-sectional research study. The survey will be based on the survey originally approved for use in the 2016 impact evaluation, which was designed to quantify parent and caregiver awareness of the campaign and retention of campaign messages, and to determine whether parents and caregivers have used the campaign materials in talking to their children. SAMHSA will seek to conduct this research nationwide through online surveys. The survey will be accessible

via an access link that will be disseminated to respondents via email. Respondents will be recruited to participate in this online survey from a Qualtrics© panel (which hosts more than 6 million active panelists), as was done for the survey pilot conducted in 2016. Researchers will conduct a quota-based sampling approach to maximize the representativeness of the sample and will be oversampling the Hispanic population. This will allow us to achieve a representative sample of parents of middle-school–aged children in the United States across notable socioeconomic and demographic variables of interest to the study. This approach will also allow us to oversample minority populations, such as Hispanics, as necessary in order to achieve the diversity needed to yield a comprehensive set of opinions, experiences, and feedback of the ''Talk. They Hear You.'' campaign materials and products.

TABLE 1—ESTIMATED BURDEN FOR RESPONDENTS

Category of respondent	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total hour burden	Wage rate	Total hour cost
Individuals (Screened)	5,555	1	5,555	.05 hours	277.75	$23	$6,388.25
Individuals (Complete survey).	5,000	1	5,000	.17 hours	850	23	19,550.00
Totals	10,555	.....	10,555	.....	1,127.75	23	25,938.25

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 15E57–B, 5600 Fishers Lane, Rockville, MD 20857 *OR* email a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received by June 12, 2018.

Summer King,

Statistician.

[FR Doc. 2018–07439 Filed 4–12–18; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[188D0102DR DS62400000 DL1000000.000000 DR.62452.18NPS100; OMB Control Number 1084–0034]

Agency Information Collection Activities; Documenting, Managing and Preserving Department of the Interior Museum Collections Housed in Non-Federal Repositories

AGENCY: Office of Acquisition and Property Management, Office of the Secretary, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Acquisition and Property Management, Office of the Secretary, Department of the Interior are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before May 14, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Elizabeth Varner, Office of Acquisition and Property Management, U.S. Department of the Interior, 1849 C Street NW, MS 4262–MIB, Washington, DC 20240; or by email to *Elizabeth_Varner@ios.doi.gov.* Please reference OMB Control Number 1084–0034 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Elizabeth Varner by email at *Elizabeth_Varner@ios.doi.gov*, or by telephone at 202–513–7564.

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 provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on January 17, 2018 (83 FR 2463). 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 the Office of Acquisition and Property Management and other DOI bureaus; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Office of Acquisition and Property Management enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Office of Acquisition and Property Management 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.

Abstract: The Department of the Interior (DOI) manages an estimated 204 million museum objects in trust for the American public as reported in the DOI Museum Property Management Summary Report Fiscal Year 2016. This diverse collection consists of archaeological artifacts, archives, art, biological specimens, ethnographic objects, geological specimens, historic objects, and paleontological specimens that are owned and managed by ten of the Department's bureaus and offices (bureaus). This information collection request is directed to non-Federal repositories that house DOI museum collections. The information that DOI obtains, on a voluntary basis, concerns DOI museum collections held at non-

Federal repositories. Receipt of this information supports the Department's responsibilities for the management of its museum collections.

The information that DOI seeks consists of the following:

A. Catalog Records;
B. Accession Records;
C. Facility Checklist for Spaces Housing DOI Museum Property (Checklist);
D. Inventory of Museum Collections (Inventory); and
E. Input on Collections from Lands Administered by the U.S. Department of the Interior that are Located at Non-Federal Facilities (Input Form).

Although the majority of DOI's collections are housed in various bureau facilities across the nation, approximately ten percent (an estimated more than 25 million objects) are located at approximately 880 non-Federal repositories, primarily state, tribal, and local museums and university departments. Most of the DOI museum artifacts, specimens, and archives housed in non-Federal repositories resulted from authorized scientific research projects on Federal lands, and include collections from the disciplines of archaeology, biology, geology, and paleontology, as well as associated project documentation. Many of these non-Federal repositories have successful, longstanding relationships with the Department.

DOI museum objects cared for in non-Federal repositories are those artifacts, specimens, and archives that are established as Federal property under Federal law, implementing regulations, and Executive Orders. Common law also confers rights to landowners, including the Federal government, such as ownership of property, resources, and other tangible assets existing on or originating from those lands, unless those rights were previously relinquished, sold, awarded, or otherwise reassigned. Also, permits and other agreements for the collection of artifacts and specimens from public lands managed at the time by the Department further establish Federal ownership. In order to maintain accountability of and facilitate access to DOI museum objects, the objects must be documented in the Interior Collection Management System (ICMS), its successor, or in another collection management database from which the necessary data can be imported into ICMS, or its successor.

DOI policy requires that all permitees conducting authorized scientific research and authorized individuals performing compliance activities on DOI-managed lands must ensure that any retained museum specimens or objects collected during a project are: (1) Accessioned and cataloged in ICMS, or its successor, according to DOI standards; and (2) housed in an appropriate museum repository that meets DOI museum standards. These requirements ensure the collections' long-term preservation, protection, and accessibility for research access and use. The majority of current scientific research projects and care of the resulting collections meet these criteria.

Title of Collection: Documenting, Managing and Preserving Department of the Interior Museum Collections Housed in Non-Federal Repositories.

OMB Control Number: 1084–0034.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Museums; academic, cultural, and research institutions; and, state or local agencies and institutions.

Total Estimated Number of Annual Respondents: 800.

Total Estimated Number of Annual Responses: 800.

Estimated Completion Time per Response: Varies from 1 hour to 12 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 3,600 Hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: Maximum of once per year per collection instrument, and likely less frequently.

Total Estimated Annual Nonhour 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 authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Megan Olsen,

Director, Office of Acquisition and Property Management.

[FR Doc. 2018–07682 Filed 4–12–18; 8:45 am]

BILLING CODE 4334—63P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000. L51040000.FI0000. 18XL5017AR]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW181106, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As provided for under the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of competitive oil and gas lease WYW181106 from Blue Tip Energy Wyoming Inc. for land in Converse and Natrona Counties, Wyoming. The lessee filed the petition on time, along with all rentals due since the lease terminated under the law. No leases affecting this land were issued before the petition was filed. The BLM proposes to reinstate the lease.

FOR FURTHER INFORMATION CONTACT: Erik Norelius, Acting Branch Chief for Fluid Minerals Adjudication, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming, 82003; phone 307–775–6176; email *enoreliu@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Norelius 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. A reply will be sent during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and the $159 cost of publishing this notice. The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). The BLM proposes to reinstate the lease effective October 1, 2016, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Authority: 30 U.S.C. 188 (e)(4) and 43 CFR 3108.2–3 (b)(2)(v).

Erik Norelius,

Acting Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2018–07726 Filed 4–12–18; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS01000. L13400000.PQ0000.18X; N–95554; MO #4500116808]

Notice of Intent To Prepare a Resource Management Plan Amendment With Associated Environmental Assessment and Notice of Segregation for the Proposed Dry Lake East Designated Leasing Area, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), the Bureau of Land Management (BLM), Las Vegas Field Office (LVFO), intends to prepare a Resource Management Plan Amendment and Environmental Assessment (EA) for the proposed Dry Lake East Designated Leasing Area (DLA), approximately 10 miles northeast of Las Vegas, Nevada, and east of the Dry Lake Solar Energy Zone. Through this Notice the BLM is segregating the public lands located within the proposed DLA from appropriation under the public land laws, including the Mining Law, but not the Mineral Leasing or Material Sales Acts, for a period of up to 2 years from the date of publication of this Notice. Publication of this Notice initiates the beginning of the scoping process to solicit public comments and identify issues.

DATES: This Notice initiates the public scoping process and segregation period for the public lands within the proposed DLA. Comments on issues may be submitted in writing until May 14, 2018. The date(s) and location(s) of any meetings will be announced at least 15 days in advance through local news media and the BLM website at: *https://go.usa.gov/xnbdU.* In order for comments to be fully considered in the BLM's Resource Management Plan Amendment/EA, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later.

ADDRESSES: Submit comments related to the project by any of the following methods:

- *Email: BLM_NV_SNDO_DLE_DLA@blm.gov.*
- *E-planning: https://go.usa.gov/xnbdU.*
- *Fax:* (702) 515–5010, attention Nicollee Gaddis.
- *Mail:* BLM, Las Vegas Field Office, Attn: Nicollee Gaddis, 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301.

FOR FURTHER INFORMATION CONTACT: Nicollee Gaddis, Planning & Environmental Coordinator, at telephone (702) 515–5136; or address 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301; or email *ngaddis@blm.gov.* Contact Ms. Gaddis to have your name added to the mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The proposed Dry Lake East DLA would be located on approximately 1,800 acres of lands managed by the BLM, located approximately 10 miles northeast of Las Vegas, Nevada and east of the Dry Lake Solar Energy Zone. Designation of the proposed DLA would allow the BLM to conduct a competitive lease auction for solar development.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the Resource Management Plan Amendment/EA. At present, the BLM has identified the following preliminary issues: Threatened and endangered species, the Old Spanish National Historic Trail, visual resource impacts, surface water, recreation, socioeconomic effects, and cumulative impacts.

The BLM will consult with Native American tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Native American tribal consultation will be conducted in accordance with policy, and tribal concerns will be given due consideration, including impacts on Indian Trust assets. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Segregation: In accordance with 43 CFR 2091.3–1(e) and 43 CFR 2804.25(f), the BLM is segregating the public lands within the proposed DLA from appropriation under the public land laws, including the Mining Law, but not the Mineral Leasing or the Material Sales Acts, for a period of up to 2 years in order to promote the orderly administration of the public lands. This segregation is subject to valid existing mining claims located before this segregation notice. There are currently no mining claims in the identified area. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact lands identified in this Notice may be allowed with the approval of an authorized officer of the BLM. The segregation period may not exceed 2 years, unless the State Director determines and documents in writing, prior to the expiration of the segregation period, that an extension is necessary for the orderly administration of the public lands. If the State Director determines that an extension is necessary, the BLM will extend the segregation for up to 2 years by publishing a Notice in the **Federal Register**, prior to the expiration of the initial segregation period.

The lands segregated under this Notice are legally described as follows:

Mount Diablo Meridian, Clark County, Nevada

T. 17 S., R. 64 E.,
Sec. 32, those portions lying east of the right-of-way boundary of NEV 045565 and west of the right-of way boundary of CC 0360.
T. 18 S., R. 64 E.,
Sec. 5, those portions lying west of the right-of way boundary of CC 0360;
Sec. 6, those portions lying east of the right-of-way boundary of NEV 045565;
Sec. 7, lots 12, 18, 19, 20, and 29, NE¼NE¼, S½NE¼, N½SE¼, N½SE¼SE¼, N½SW¼SE¼ and N½SE¼SW¼;
Sec. 8, those portions lying west of the right-of way boundary of CC 0360.

Termination of the segregation occurs on the earliest of the following dates: Upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a Right of Way; automatically at the end of the segregation; or upon publication of a **Federal Register** Notice of termination of the segregation.

Upon termination of segregation of these lands, all lands subject to this segregation would automatically reopen to appropriation under the public land laws and location under the Mining Law of 1872 (30 U.S.C. 22 *et seq.*).

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2, 43 CFR 1610.5, 43 CFR 2091.3–1, and 43 CFR 2804.25(f).

Gayle Marrs-Smith,

Las Vegas Field Manager.

[FR Doc. 2018–07736 Filed 4–12–18; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0025283; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: New York State Museum, Albany, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The New York State Museum 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 New York State Museum. 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 New York State Museum at the address in this notice by May 14, 2018.

ADDRESSES: Lisa Anderson, New York State Museum, 3049 Cultural Education Center, Albany, NY 12230, telephone (518) 486–2020, email *lisa.anderson@nysed.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the New York State Museum, Albany, NY. The human remains were removed from sites in Onondaga and Tioga Counties, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. 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 New York State Museum professional staff in consultation with representatives of the Onondaga Nation.

History and Description of the Remains

At some time prior to 1914, human remains representing, at minimum, one individual were removed from a site in the town of Pompey in Onondaga County, NY. The human remains were acquired in 1914 as part of a larger collection purchased from Otis M. Bigelow. The human remains consist of a small cranial fragment from an adult individual of unknown age and sex. No known individual was identified. No associated funerary objects are present.

Beauchamp described the Pompey area as the early home of the Onondaga, where numerous village sites date from the late pre-contact period through the seventeenth century.

In the 1960s, human remains representing, at minimum, two individuals were removed from the vicinity of Endicott, possibly the Engelbert site, in Tioga County, NY. The human remains were found among archeological collections belonging to the New York State Archaeological Association Louis A. Brennan/Lower Hudson Chapter, and were transferred to the museum in 2011. Information with the human remains suggests they may have been excavated by Brennan and studied by Dr. Audrey Sublett at Florida Atlantic University in 1967. Sublett analyzed human remains from the Engelbert site in 1967 and 1968. The human remains represent an adult male, 35–45 years of age, and a single ulna of an adult individual of unknown age and sex. No known individuals were identified. No associated funerary objects are present.

The Engelbert site is a large, multicomponent habitation site that was used intermittently over a period of about 5,000 years. The site was also used as a burial site during at least two different periods, from about A.D. 1000 to the 1400s, and from the late 1500s to possibly the early 1600s. Based on the findings of the NAGPRA Review Committee in 2008, the Engelbert site was determined to be culturally affiliated with Onondaga Nation and the Haudenosaunee Confederacy.

In the 1960s, human remains representing, at minimum, one individual were removed from the Oran-Barnes site in Onondaga County, NY. The human remains were collected from the surface of the site by Stanley Gibson, whose family donated the remains to the museum as part of a larger collection in 2009. The human remains consist of a femur fragment from an adult individual of unknown age and sex (#A2009.35K). No known individual was identified. No associated funerary objects are present.

In 1976, human remains representing, at minimum, one individual were removed from the Oran-Barnes site in Onondaga County, NY. The human remains were collected from the surface of a hillside midden by James Bradley, who donated them to the museum in 2009. The human remains include one small cranial fragment and a tooth representing at least one adult individual of unknown age and sex (#A2009.13B.99.16–17). No known individual was identified. No associated funerary objects are present.

The Oran-Barnes site is a large village site that has been dated to the late pre-contact period, circa A.D. 1500, based on the type of settlement and the artifacts present, including pottery.

In 1977, human remains representing, at minimum, one individual were removed from the Shurtleff site in Onondaga County, NY. The human remains were collected from the surface of a hillside midden by James Bradley, who donated them to the museum as part of a larger collection in 2012. The human remains consist of three small cranial fragments and a foot phalange from at least one adult individual of unknown age and sex (#A2012.05B.61–62). No known individual was identified. No associated funerary objects are present.

The Shurtleff site is considered an early historic Onondaga village site that has been dated to approximately A.D. 1635–1645 (or 1630–1640) based on the types of glass beads found at the site.

Determinations Made by the {Museum or Federal Agency}

Officials of the New York State Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 6

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 Onondaga Nation.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Lisa Anderson, New York State Museum, 3049 Cultural Education Center, Albany, NY 12230, telephone (518) 486–2020, email *lisa.anderson@nysed.gov,* by May 14, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Onondaga Nation may proceed.

The New York State Museum is responsible for notifying the Onondaga Nation that this notice has been published.

Dated: March 22, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–07700 Filed 4–12–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–25274; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: U.S. Army Corps of Engineers, Omaha District, Omaha, NE, and State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Omaha District (Omaha District), 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. 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 Omaha District. 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 Omaha District at the address in this notice by May 14, 2018.

ADDRESSES: Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capital Avenue, Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil.*

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 U.S. Army Corps of Engineers, Omaha District and in the physical custody of the South Dakota State Archaeological Research Center (SARC), that meet the definition of unassociated funerary objects 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 Item(s)

In 1956, 148 cultural items were removed from site 39CA0006 in Buffalo County, SD. Site 39CA0006 was excavated by Dr. David A. Baerreis, University of Wisconsin, prior to the creation of the Oahe Dam Reservoir. At that time, human remains and funerary objects were removed from two features (Feature 2 and Feature 4). The excavation records show that the 148 unassociated funerary objects at SARC were removed from Feature 2 (which contained two individuals). The current location of the human remains from this feature is unknown. The cultural items were originally stored at the University of Wisconsin-Madison until they were moved to the South Dakota State Archaeological Research Center (SARC) in 2015. The cultural items are presently located at the SARC, under the managerial control of the U.S. Army Engineer District, Omaha District. The 148 unassociated funerary objects are 1 chalcedony biface knife, 103 ceramic body sherds, 19 rim sherds, 2 faunal bone awls, 1 unidentifiable faunal bone fragment, 4 faunal bone hoes, 1 faunal bone knife, 2 modified faunal bones, 1 biface flake, 1 biface knife, 3 chipped stones, 2 projectile points, 3 scrapers, 3 shaft abraders, 1 uniface flake, and 1 catlinite pipe fragment.

Site 39CA0006 is a fortified village and is believed to represent the Extended Coalescent (A.D. 1500–1675) because of the mix of European and Native elements among the objects, including brass elements and glass beads, as well as the presence of flexed primary inhumations and log coverings, which represent a burial practice of the Akaska Focus. Based on oral tradition, historic accounts, archeological evidence, geographical location, and physical anthropological interpretations, the Extended Coalescent variants are believed to be ancestral Arikara. The Arikara are represented today by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Determinations Made by the Omaha District

Officials of the Omaha District have determined that*:*

• Pursuant to 25 U.S.C. 3001(3)(B), the 148 cultural items 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 and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

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 Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capital Avenue, Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil,* by May 14, 2018. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

The U.S. Army Corps of Engineers, Omaha District, is responsible for notifying the Three Affiliated Tribes of the Fort Berthold Reservation, North

Dakota, that this notice has been published.

Dated: March 21, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–07703 Filed 4–12–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–IMR–GRSA–24169; PPWONRADE2, PMP00EI05.YP0000]

Ungulate Management Plan Draft Environmental Impact Statement, Great Sand Dunes National Park and Preserve, Colorado

AGENCY: National Park Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: The National Park Service announces the availability of a Draft Environmental Impact Statement (DEIS) for the Ungulate Management Plan (UMP) for Great Sand Dunes National Park and Preserve, Colorado. The UMP DEIS assesses the impacts that could result from continuing current management (the no-action alternative), or implementing any of the action alternatives for the future management of elk and bison at Great Sand Dunes. The NPS preferred alternative identified in the UMP DEIS is alternative 3.

DATES: The National Park Service will accept comments on the Draft Environmental Impact Statement for 45 days after the date the Environmental Protection Agency publishes their Notice of Availability in the **Federal Register**.

ADDRESSES: Information will be available for public review and comment online at *http://parkplanning.nps.gov/grsa,* and in the Office of the Superintendent, Great Sand Dunes National Park and Preserve, 11500 Highway 150 Mosca, Colorado 81146.

FOR FURTHER INFORMATION CONTACT: Acting Superintendent, Great Sand Dunes National Park and Preserve, 11500 Highway 150, Mosca, Colorado 81146, (719) 378–6311, *grsa_superintendent@nps.gov;* or Fred Bunch, Chief of Resource Management, Great Sand Dunes National Park and Preserve, 11500 Highway 150, Mosca, Colorado 81146, (719) 378–6361, *fred_bunch@nps.gov.*

SUPPLEMENTARY INFORMATION: The combined General Management Plan (GMP)/Wilderness Study for the Great Sand Dunes National Park and Preserve (GRSA) was approved in 2007. In the GMP Record of Decision, the NPS committed to developing an elk management plan to address concerns of elk overconcentration in GRSA. The GMP also addressed the potential future acquisition of the Medano Ranch from The Nature Conservancy (TNC). TNC currently manages a bison herd on these lands, and the GMP noted if additional bison habitat became available at some time in the future, the NPS could consider managing bison in the park.

As a result of the guidance in the GMP and active, ongoing efforts to acquire the Medano Ranch, the NPS has prepared this Ungulate Management Plan Draft Environmental Impact Statement (UMP DEIS). The purpose of the UMP DEIS is to determine the appropriate future management of elk and bison in GRSA. Action is needed at this time because:

- Elk and bison are currently on the landscape and there is no plan to address their management and impacts, both positive and negative, in support of desired habitat conditions.
- Disproportionate elk use in sensitive and highly productive/diverse areas of the park is leading to adverse impacts, particularly in wetland vegetation communities. In addition, the existing bison herd spends a disproportionate amount of time using these same vegetation communities, particularly during winter when elk overconcentration is the highest.
- Bison are currently managed by TNC on the Medano Ranch and portions of the Park and a decision is needed to determine whether to have bison at GRSA in the future and, if so, how to manage them.
- The Department of the Interior (DOI) Bison Conservation Initiative and the NPS Call to Action (Back Home on the Range), combined with additional information about bison and bison habitat in the San Luis Valley, provides an opportunity to reexamine the potential for bison conservation following the 2007 GMP.

This UMP DEIS, which was prepared with the US Fish and Wildlife Service and Colorado Parks and Wildlife as cooperating agencies, evaluates the impacts of the no-action alternative (Alternative 1) and three action alternatives (Alternatives 2, 3, and 4).

Under alternative 1, public elk hunting would continue in the Preserve, but there would be no other active elk management and no new action would occur to manage impacts from elk, including the effects of elk herbivory. TNC would continue to graze bison on the Medano Ranch until government acquisition and would be responsible for removing their bison and associated fencing prior to NPS acquisition of the Medano Ranch, in accordance with the 2007 GMP Record of Decision. Under this alternative, the NPS would remove the current bison fencing on NPS lands.

Alternative 2 would incorporate active elk management to redistribute elk from areas of overconcentration. Public elk hunting would continue in the Preserve, and NPS would use elk dispersal tools in the Park, including non-lethal hazing, and limited lethal removal using trained volunteers and other authorized agents. Additional exclosures (fencing) would be constructed for the purpose of protecting sensitive habitat or for habitat restoration. This alternative would follow the current direction in the GMP for bison, as described for Alternative 1.

Alternative 3 (the NPS Preferred Alternative) would include public elk hunting in the Preserve, and the same non-lethal and lethal elk redistribution tools described under Alternative 2. The NPS would also make a programmatic decision to amend the GMP and manage a bison herd in the park after acquisition of the Medano Ranch. For the first 5–7 years after acquisition of the Medano Ranch, the NPS would seek to partner with TNC to manage the bison herd. After this timeframe, the NPS would assume responsibility of bison management within the existing bison fence, with a population goal of 80 to 260 animals. The bison range could be expanded within the life of the plan, at which point the NPS could consider a population goal between 80 and 560 animals. Tools used to manage bison abundance and distribution in the future would include roundup and translocation, hazing, and limited lethal removal.

Under Alternative 4, public elk hunting in the Preserve would continue, and the NPS would use the same non-lethal and lethal elk redistribution tools described under Alternatives 2 and 3 in the Park. Under this alternative, the NPS would acquire the Medano Ranch and work with TNC to remove all bison, but would make a programmatic decision to amend the GMP so that after a period of 5–7 years, the NPS would establish a new conservation herd to be managed by the NPS. Once re-established, bison abundance and range would be the same as described for alternative 3, as would potential future bison management tools.

Because the range of alternatives includes the removal of bison completely or deferred NPS management of bison for 5–7 years, and because of concerns that the high

concentration of elk could be resulting in impacts on certain park resources such as wetlands, the initial phase of this plan would focus on managing elk to alter their high concentrations at certain times in the Park. Over the long term, the NPS would develop quantitative metrics of ecological integrity and vegetative condition as additional triggers to adaptively manage elk and, possibly, bison, depending on the selected action. Over the long-term, the NPS would use adaptive monitoring and adaptive management of elk and, if appropriate, bison, to support a historical array of ecologically healthy plant communities across the Park's landscape that are used by these ungulates, specifically riparian and wetland communities, as well as shrub and grassland communities. The goal of this long-term adaptive management framework is to continually evaluate the effectiveness of the ungulate management plan; improve management over time; and ensure that impacts of elk and bison, and their management inside the Park, remain in the range predicted in the UMP/EIS.

The NPS is preparing this UMP DEIS to analyze specific proposals related to elk management tools that might be used to address overconcentration issue, while providing a programmatic (broader and higher level) analysis of potential decisions about the future of bison in GRSA. Those decisions include (1) whether or not to amend the GMP to allow for bison at GRSA, and if so, how many bison might be appropriate; (2) when the NPS would assume bison management responsibilities; and (3) what management tools the NPS might use upon assuming bison management responsibilities. This programmatic analysis is intended to address the general environmental issues, impacts, and benefits relating to these broad decisions about bison. NPS feels this a meaningful point to make these broad decisions, but there is too much uncertainty at this time as to the ultimate specific implementation of potential bison management tools, should the NPS select an alternative that includes bison at GRSA. If such an alternative becomes the selected action, this programmatic National Environmental Policy Act review for bison would support more specific subsequent decisions and provide a body of information that can be incorporated by reference into any future planning/compliance that may be needed.

Public Participation: After the Environmental Protection Agency Notice of Availability is published, the NPS will schedule public meetings to be held during the comment period. Dates, times, and locations of these meetings will be announced in press releases and on the NPS Planning, Environment, and Public Comment website for the UMP DEIS at *http://parkplanning.nps.gov/grsa.*

How To Comment: You are encouraged to comment on the UMP DEIS at *http://parkplanning.nps.gov/grsa.* You may also hand-deliver or mail your comments to the Superintendent, Great Sand Dunes National Park and Preserve, 11500 Highway 150, Mosca, Colorado 81146. Written comments will also be accepted during scheduled public meetings discussed above. Comments will not be accepted by fax, email, or by any method other than those specified above. Bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted. 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.

Authority: 42 U.S.C. 4321 *et seq.;* 43 CFR part 46.

Dated: April 2, 2018.

Sue E. Masica,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. 2018–07681 Filed 4–12–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0025285; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Mississippi Department of Archives and History, Jackson, MS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Mississippi Department of Archives and History has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes. 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 Mississippi Department of Archives and History. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: 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 Mississippi Department of Archives and History at the address in this notice by May 14, 2018.

ADDRESSES: Patty Miller-Beech, Mississippi Department of Archives and History, P.O. Box 571, Jackson, MS 39205–0571, telephone (601) 576–6944, email *pmbeech@mdah.ms.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Mississippi Department of Archives and History, Jackson, MS. The human remains and associated funerary objects were removed from Tunica County, DeSoto County, Clay County, and Panola County, MS.

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 Mississippi Department of Archives and History's professional staff in consultation with representatives of The Chickasaw Nation. The following Indian Tribes were invited to consult but did not wish to participate: the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Jena Band of Choctaw Indians,

Mississippi Band of Choctaw Indians, The Choctaw Nation of Oklahoma, The Muscogee (Creek) Nation, The Quapaw Tribe of Indians, and the Tunica-Biloxi Indian Tribe.

History and Description of the Remains

Between July 1988 and August 1991, human remains representing, at minimum, 147 individuals were removed from the Austin site (22Tu549) in Tunica County, MS. The burials were brought to the attention of the Mississippi Department of Archives and History (MDAH) after the landowner discovered them during land leveling activities. Subsequently, a salvage excavation of the site was performed to prevent further damage to the burials. The results of the excavation uncovered more burials, features from houses, wall trenches, refuse pits, numerous pottery bowls, projectile points, ornamental artifacts, and faunal remains. The burials, which included both partial and complete skeletal remains, demonstrate an array of burial practices from bundle burials to comingled burials of ages ranging from infancy to adult. Male and females were present. Some burials had funerary objects, while many did not. No known individuals were identified. The 37 associated funerary objects consist of 2 celts, 4 shell beads, 1 clay bead, 1 whole turtle shell, 5 turtle shell fragments, 1 shell necklace, 2 wolf teeth, 1 deer jaw, 8 projectile points, 1 broken Mississippi Plain var. Neely's Ferry vessel, 1 large broken Larto Red Filmed bowl, 2 square-bottomed Alligator-incised jars, 1 Baytown Plain jar, 1 Evansville Punctate jar, 2 Coles Creek incised bowls, 1 partial Baytown Plain bowl, 1 Mulberry Creek Cordmarked vessel and 2 Baytown Plain vessels. Based on the types of pottery found in the immediate area, the age of the Austin site appears to range from the Coles Creek period to the Mississippian period (A.D. 700–1400). Radiocarbon dating of this site has not been performed. In addition, based on the condition of the human remains, as well as the associated funerary objects, the individuals have been determined to be Native American.

In April of 1968, human remains representing, at minimum, 15 individuals were removed from the Bonds Village site (22Tu530) in Tunica County, MS. The human remains were brought to the attention of the North Delta Chapter of the Mississippi Archaeological Association after heavy cultivation had caused considerable disturbance to the site. With the approval of the landowner and MDAH, a salvage excavation of the site was performed to prevent further damage to the burials. The individuals ranged in ages from infant to adult, with the majority interred as extended burials. There was one bundle burial; it contained the remains of a juvenile male. Both males and females were interred on this site. Funerary artifacts had been placed with the bundle burial and an extended burial containing two adult males. No known individuals were identified. The 13 associated funerary objects are 1 Bell Plain bowl, 1 bone awl, 1 shell hoe, and 10 projectile points. Based on pottery found on the site, the age of Bonds Village site (22Tu530) appears to date to the Mississippian period (A.D. 1050–1450). Physical anthropological analysis of the remains has determined them to be Native American.

In 1969, human remains representing, at minimum, one individual were removed from the Boyd site (22Tu531) in Tunica County, MS. The human remains were removed during a salvage excavation conducted by MDAH personnel. The human remains appear to belong to an adult female, based on osteological indicators. The burial had been heavily impacted by land-leveling activities. Based upon ceramic pottery sherds found at the site, the burial appears to date anywhere from the Tchula to Marksville period (350 B.C.–A.D. 450). No known individual was identified. No associated funerary objects are present.

In June of 1990, human remains representing, at minimum, one individual were removed from a burial (Burial #2) at the Brogan Village site (22CL501B) in Clay County, MS. The human remains were removed during a salvage excavation conducted by MDAH archeologists. A second burial (Burial #1) was also recovered during this excavation. The human remains from Burial #1 were sent to Ohio in 1990 for analysis, presumably as soon as they were disinterred. None of the field reports by MDAH archeological staff mention Burial #1 aside from the initial sketch and a note regarding the analysis placed with the Burial #2 documentation. The human remains from Burial #1 are presumed missing at this time, and no further information is available. No known individual was identified. No associated funerary objects are present. Based upon pottery sherds found nearby, the age of the Brogan Village site appears to date to the Late Woodland (Miller III phase) (A.D. 550–950).

In 1971, human remains representing, at minimum, five individuals were removed from the Dogwood Ridge site (22Ds511) in DeSoto County, MS. The human remains were removed during a salvage excavation performed by archeologists with MDAH. This bundle burial was initially recorded as containing one individual, but subsequent analysis has shown that the burial bundle contains five individuals with the burial bundle. Three adult males, one juvenile, and one infant were included in the bundle burial. No known individuals were identified. No associated funerary objects are present. There were no artifacts associated with the burial, but a pottery sherd found within the site may date the burial from the Baytown phase to Late Mississippian phase (A.D. 400–1700). No radiocarbon dating has been performed, but osteological analysis has determined that the burials are Native American.

In the late 1970s, human remains representing, at minimum, two individuals were removed from the Dugger Bluff site (22Pa587) in Panola County, MS. The human remains were recovered and curated at MDAH. No other identifying information, such as the age or sex of the individuals, has been retrieved at this time. Based on ceramic sherds found within the site boundaries, this site appears to date to the Middle Woodland period (A.D. 400–1100). No known individuals were identified. No associated funerary objects are present.

In the 1980s, human remains representing, at minimum, four individuals were removed from the Dundee site (22Tu501) in Tunica County, MS. The human remains were recovered during a salvage excavation and curated at the MDAH. The human remains, though very fragmentary, were determined to belong to two adults and two juveniles, based on wear on the dentition. Previous reports on the Dundee site by Calvin Brown in 1926 stated that the site was comprised of several mounds dating back to at least the Mississippian period and possibly the Late Woodland Phase (A.D. 400–1700). No known individuals were identified. No associated funerary objects are present.

In the late 1960s, human remains representing, at minimum, five individuals were removed from the McCarter Mound site (22Pa502) in Panola County, MS. The human remains were recorded and excavated during a salvage excavation by the North Delta Chapter of the Mississippi Archaeological Association and subsequently curated at MDAH. The human remains, though fragmentary and in poor condition, have been osteologically identified as belonging to four adults and one juvenile. Determination of sex was not possible.

Ceramics found at the McCarter Mound (22Pa502) site have been dated to the Early Marksville period (200 B.C.) No known individuals were identified. No associated funerary objects are present.

In 1993, human remains representing, at minimum, 12 individuals were removed from the Hollywood site (22Tu500) in Tunica County, MS. The human remains were recovered during a salvage excavation and curated at MDAH. Osteological examination determined that the human remains belong to one infant, three children, one adult female, two adult males, and five adults of indeterminate sex. Most of the human remains were poorly preserved. No known individuals were identified. No associated funerary objects are present. Radiocarbon dating of materials from the site indicates that the human remains date to the Mississippian period, (A.D. 1400–1600).

In 1974, human remains representing, at minimum, 14 individuals were recovered from the Flowers #3 site (22Tu518) in Tunica County, MS. The human remains were recovered during a salvage excavation and curated at MDAH. The human remains were comprised of bundle burials with fragmentary interments of each individual. The human remains belong to three children, one infant (6–9 months), one adolescent, two female young adults, one young adult male, three young adults (sex indeterminate), one female adult (45–50 years), one male adult (45–50 years), and one adult of indeterminate sex. No known individuals were identified. Ceramics found at the site dates the site to the Mississippian period (A.D. 1100–1700). No associated funerary objects are present.

In 1974, human remains representing, at minimum, one individual were recovered from the Norflett Mound site (22Tu519) in Tunica County, MS. The human remains were recovered during a salvage excavation and curated at MDAH. The human remains were identified as an adult (30–35 years) of indeterminate sex. No known individual was identified. Ceramics found at the Norflett Mound site (22Tu519) date the burial to the early Middle Woodland period (200 B.C.–A.D. 100). No associated funerary objects are present.

Determinations Made by the Mississippi Department of Archives and History

Officials of the Mississippi Department of Archives and History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of at least 207 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 50 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 Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Jena Band of Choctaw Indians, Mississippi Band of Choctaw Indians, The Chickasaw Nation, The Choctaw Nation of Oklahoma, The Muscogee (Creek) Nation, The Quapaw Tribe of Indians, and the Tunica-Biloxi 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 Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Jena Band of Choctaw Indians, Mississippi Band of Choctaw Indians, The Chickasaw Nation, The Choctaw Nation of Oklahoma, The Muscogee (Creek) Nation, The Quapaw Tribe of Indians, and the Tunica-Biloxi Indian Tribe.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Jena Band of Choctaw Indians, Mississippi Band of Choctaw Indians, The Chickasaw Nation, The Choctaw Nation of Oklahoma, The Muscogee (Creek) Nation, The Quapaw Tribe of Indians, and the Tunica-Biloxi Indian Tribe.

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 Patty Miller-Beech, Mississippi Department of Archives and History, P.O. Box 571, Jackson, MS 39205–0571, telephone (601) 576–6944, email *pmbeech@mdah.ms.gov,* by May 14, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Jena Band of Choctaw Indians, Mississippi Band of Choctaw Indians, The Chickasaw Nation, The Choctaw Nation of Oklahoma, The Muscogee (Creek) Nation, The Quapaw Tribe of Indians, and the Tunica-Biloxi Indian Tribe may proceed.

The Mississippi Department of Archives and History is responsible for notifying the Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas), Jena Band of Choctaw Indians, Mississippi Band of Choctaw Indians, The Chickasaw Nation, The Choctaw Nation of Oklahoma, The Muscogee (Creek) Nation, The Quapaw Tribe of Indians, and the Tunica-Biloxi Indian Tribe that this notice has been published.

Dated: March 22, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–07699 Filed 4–12–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0025284: PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: New York State Museum, Albany, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The New York State Museum, 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. 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 New York State Museum. 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 New York State Museum at the address in this notice by May 14, 2018.

ADDRESSES: Lisa Anderson, New York State Museum, 3049 Cultural Education Center, Albany, NY 12230, telephone (518) 486–2020, *lisa.anderson@nysed.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the New York State Museum, Albany, NY, that meet the definition of unassociated funerary objects 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 late nineteenth century, three cultural items were removed from the Brewerton cemetery site in Onondaga County, NY. They were part a larger collection purchased by the museum from Otis M. Bigelow in 1914. The unassociated funerary objects are 3 pottery smoking pipes, including one with a side-facing bear effigy on the bowl (#31868), one with a ringed collar bowl (#31908), and one with a self-directed eagle effigy on the bowl (#31909). The pipes were illustrated by Rev. William M. Beauchamp in the late 19th century and described as being from a Native American grave. Based on the style of the pipes and other items reportedly found in the burial, and which are not in the museum's possession, the cultural items probably date to the mid- to late-seventeenth century.

In the late nineteenth century, four cultural items were removed from a site in the town of Pompey in Onondaga County, NY. The unassociated funerary objects are 2 rolled sheet brass tinklers, 1 brass wire hoop, and 1 black glass button (#50096). The cultural items were part of a larger collection belonging to Rev. William M. Beauchamp and purchased by the museum in 1949 from his daughter, Mrs. Grace B. Lodder. Beauchamp identified the cultural items as from a grave in Pompey. Beauchamp described the Pompey area as the early home of the Onondaga, where numerous village sites date from the late pre-contact period through the seventeenth century. Traded by the Dutch, similar glass buttons have been found on early historic Onondaga sites, and probably date to the 17th century.

In 1908, 506 cultural items were removed from a site near Dorwin Springs, Onondaga Valley, in Onondaga County, NY. The 506 unassociated funerary objects are a string of 26 shell beads and 480 white glass seed beads (#50097). The cultural items were part of a larger collection belonging to Rev. William M. Beauchamp and purchased by the museum in 1949 from his daughter, Mrs. Grace B. Lodder. Beauchamp identified the burial as Native American and suggested the glass beads may have been part of a belt. He estimated the site dated to about A.D. 1750, a date consistent with the type of beads and other items reportedly found in the burial, and which are not in the museum's possession.

Determinations Made by the New York State Museum

Officials of the New York State Museum have determined that*:*

- Pursuant to 25 U.S.C. 3001(3)(B), the 513 cultural items 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 and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Onondaga Nation.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Lisa Anderson, New York State Museum, 3049 Cultural Education Center, Albany, NY 12230, telephone (518) 486–2020, email *lisa.anderson@nysed.gov,* by May 14, 2018. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Onondaga Nation may proceed.

The New York State Museum is responsible for notifying the Onondaga Nation that this notice has been published.

Dated: March 22, 2018

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–07701 Filed 4–12–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–25273; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Army Corps of Engineers, Omaha District, Omaha, NE, and State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Omaha District (Omaha District), 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 Omaha District. 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 Omaha District at the address in this notice by May 14, 2018.

ADDRESSES: Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capital Avenue, Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil.*

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 U.S. Army Engineer District, Omaha District and in the physical custody of the South Dakota State Archaeological Research Center (SARC). The human remains and associated funerary objects were removed from sites 39WW0003 and 39CA0006 in Walworth and Campbell Counties, SD.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by SARC and Omaha District professional staff in consultation with representatives of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

History and Description of the Remains

In 1956, human remains representing, at minimum, four individuals were removed from two features (Feature 2 and Feature 4) at site 39CA0006, Bamble Site, in Campbell County, SD. Each feature reportedly contained the remains of two individuals. The human remains were collected by Dr. David A. Baerreis, University of Wisconsin, when multiple sites were excavated prior to the creation of the Oahe Dam Reservoir. The human remains and associated funerary objects were originally stored at the University of Wisconsin-Madison until the collection was moved to SARC in 2015. An inventory of the collections at SARC located human remains and associated funerary objects from Feature 4. No human remains from Feature 2 were located. The human remains at SARC from Feature 4 total a minimum of four individuals (3 adults and 1 subadult). No known individuals were identified. The 1,168 associated funerary objects from Feature 4 include 1 complete ceramic vessel, 154 ceramic rim sherds, 877 ceramic body sherds, 1 ceramic handle sherd, 3 badland knives, 1 petrified wood badlands knife, 4 faunal bone awls, 13 unidentifiable faunal bone fragments, 12 faunal bone hoes, 4 modified antlers, 10 modified faunal bones, 2 faunal shaft wenches, 1 unidentifiable faunal bone, 1 charcoal piece, 3 seed vials, 2 corn seed vials, 5 biface flakes, 3 biface knives, 1 biface tool, 1 chert projectile point, 2 chipped stones, 1 chipped stone fragment, 3 groundstones, 1 groundstone axe, 1 ground stone fragment, 5 hammerstones, 2 modified flakes, 1 polishing stone, 5 scrapers, 7 shaft abraders, 1 uniface flake, 1 brass tinkler, 2 brass tubes, 2 brass fragments, 21 gypsum crystals, 2 red ochre vials, 1 yellow ochre vial, 1 modified chalcedony flake, 1 catlinite pipe, 4 chalcedony scrapers, 4 petrified wood scrapers, and 1 war club.

In 1956 human remains representing, at minimum, 12 individuals were removed from site 39WW0003, Spiry-Eklo Site, in Walworth County, SD. The human remains were collected by Dr. David A. Baerreis, University of Wisconsin, when multiple sites were excavated prior to the creation of the Oahe Dam Reservoir. The human remains and associated funerary objects were originally stored at the University of Wisconsin-Madison until the collection was moved to SARC in 2015, where they are currently housed under the managerial control of the Omaha District. An inventory of the collections identified 12 individuals (8 adults of indeterminate sex, 2 subadults, and 2 infants). No known individuals were identified. The 743 associated funerary objects include 127 ceramic rim sherds, 558 ceramic body sherds, 2 ceramic handle sherds, 2 bone awls (faunal), 2 bone hoes (faunal), 5 modified bones (faunal), 3 unidentified bone fragments (faunal), 2 burnt corn cobs, 1 wood fragment, 12 glass beads, 2 abraders, 1 biface fragment, 1 biface knife, 7 chipped stone flakes, 1 chipped stone tool, 1 modified flake, 3 projectile points, 3 uniface flakes, 1 catlinite fragment, and 9 scrapers.

Based on morphological characteristics, archeological context, and associated funerary objects, the human remains in this notice are determined to be Native American. Both Site 39CA0006 and Site 39WW0003 are fortified villages and are believed to represent the Extended Coalescent (A.D. 1500–1675) because of the mix of European and Native elements among the objects, including brass elements and glass beads, as well as the presence of flexed primary inhumations and log coverings, which represent a burial practice of the Akaska Focus. Based on oral tradition, historic accounts, archeological evidence, geographical location, and physical anthropological interpretations, the Extended Coalescent variants are believed to be ancestral Arikara. The Arikara are represented today by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Determinations Made by the Omaha District

Officials of the U.S. Army Corps of Engineers, Omaha District have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 16 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 1,911 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 Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

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 Ms. Sandra Barnum, U.S. Army Engineer District, Omaha, ATTN: CENWO–PM–AB, 1616 Capital Avenue, Omaha, NE 68102, telephone, (402) 995–2674, email *sandra.v.barnum@usace.army.mil* by May 14, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, may proceed.

The U.S. Army Corps of Engineers, Omaha District is responsible for notifying the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, that this notice has been published.

Dated: March 21, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–07702 Filed 4–12–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR01113000, XXXR0680R1, RR.R0336A1R.7WRMP0032]

Notice of Availability of a Supplemental Draft Environmental Impact Statement and Notice of Public Meetings for the Kachess Drought Relief Pumping Plant and Keechelus Reservoir-to-Kachess Reservoir Conveyance, Kittitas and Yakima Counties, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and public meetings.

SUMMARY: The Bureau of Reclamation and Washington State Department of Ecology (Ecology) have made available for public review and comment the Kachess Drought Relief Pumping Plant and Keechelus Reservoir-to-Kachess Reservoir Conveyance Supplemental Draft Environmental Impact Statement (SDEIS). This SDEIS was previously identified in the Notice of Intent to Prepare an Environmental Impact Statement as ''Keechelus Reservoir-to-Kachess Reservoir Conveyance and Kachess Inactive Storage.'' The name was changed to better reflect the proposed action and alternatives evaluated in the SDEIS. The SDEIS addresses the impacts associated with the Kachess Drought Relief Pumping Plant (KDRPP) and Keechelus Reservoir-to-Kachess Reservoir Conveyance (KKC) by expanding on the analysis conducted in the Yakima River Basin Integrated Water Resource Management Plan (Integrated Plan) Programmatic Environmental Impact Statement (March 2012).

DATES: Send written comments on the SDEIS on or before July 12, 2018.

Two public meetings will be held on the following dates:

1. Wednesday, May 16, 2018, 4:00 p.m. to 7:00 p.m., Cle Elum, WA.

2. Thursday, May 17, 2018, 4:00 p.m. to 7:00 p.m., Ellensburg, WA.

ADDRESSES: Send written comments or requests for copies to Ms. Candace McKinley, Bureau of Reclamation, 1917 Marsh Road, Yakima, WA 98901, 509–575–5848, ext. 603, or via email to *kkbt@usbr.gov.* The SDEIS is also accessible on the following websites: *http://www.usbr.gov/pn/programs/eis/kdrpp/index.html* and *http://www.usbr.gov/pn/programs/eis/kkc/index.html.*

The public meeting locations are:

1. Cle Elum—U.S. Forest Service, Cle Elum Ranger District, Tom Craven Conference Room, 803 W 2nd Street, Cle Elum, Washington 98922;

2. Ellensburg—Armory Main Hall, Kittitas Valley Event Center, 901 East 7th Ave., Ellensburg, Washington 98926.

FOR FURTHER INFORMATION CONTACT: Ms. Candace McKinley, 509–575–5848, ext. 603; or by email at *kkbt@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation published a notice of availability of a draft environmental impact statement previously identified as ''Keechelus Reservoir-to-Kachess Reservoir Conveyance and Kachess Inactive Storage'' in the **Federal Register** on January 9, 2015 (80 FR 1431). The public comment period was reopened and concluded on June 15, 2015. A supplemental draft environmental impact statement was necessary after analyzing the need for a floating pumping plant that could be a feasible alternative to achieve the KDRPP purposes. The SDEIS, titled, ''Kachess Drought Relief Pumping Plant and Keechelus Reservoir-to-Kachess Reservoir Conveyance Supplemental Draft Environmental Impact Statement'' documents the potential effects that may result from the new pumping plant at Kachess Reservoir and water conveyance from Keechelus Reservoir to Kachess Reservoir.

The SDEIS evaluates construction and operation of three alternative designs and locations for the Kachess Drought Relief Pumping Plant, including reservoir intakes and tunnels, pumping plants and pump units, pipelines, surge tanks, outlet works, fish screens and barriers, power supply substations, and electric transmission lines. The SDEIS also evaluates construction and operation of the KKC, including the Yakima River diversion and intake, the Yakima River to Keechelus portal conveyance, fish screen, bored tunnel, discharge structure, spillway and stilling basin, and mechanical building as a component of KDRPP.

The primary study area generally encompasses Kachess Reservoir and its tributaries, Keechelus Reservoir and its tributaries, the Kachess River, the Yakima River between Keechelus Dam and the Easton Diversion Dam near Lake Easton and the electric transmission line route from near Easton to the Kachess Reservoir pumping plant. The extended study area generally includes the Yakima Project vicinity.

Authority

The Kachess and Keechelus reservoirs were authorized on December 12, 1905, by the Secretary of the Interior in connection with the Tieton and Sunnyside Divisions of the Yakima Project. The Secretary was acting under authority of the Reclamation Act of June 17, 1902. The Yakima River Basin Water Enhancement Project was authorized on December 28, 1979 (93 Stat. 1241, Pub. L. 96–162, Feasibility Study—Yakima River Basin Water Enhancement Project). Title XII of the Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994 (108 Stat. 4526 Pub. L. 103–434) authorized fish, wildlife, and recreation as additional purposes of the Yakima Project.

Public Review of SDEIS

Copies of the SDEIS are available for public review at the following locations:

1. Bureau of Reclamation, Columbia-Cascades Area Office, 1917 Marsh Road, Yakima, Washington 98901.

2. Washington State Department of Ecology, 15 W. Yakima Avenue, Suite 200, Yakima, Washington 98902.

Libraries

1. Carpenter Memorial Library, 302 N Pennsylvania Ave., Cle Elum, WA 98922.

2. Ellensburg Public Library, 209 N. Ruby St., Ellensburg, WA 98926.

3. Roslyn Public Library, 201 S. First St., Roslyn, WA 98941.

4. Benton City Library, 810 Horne Dr., Benton City, WA 99320.

5. Kennewick Library, 1620 S. Union St., Kennewick, WA 99338.

6. Kittitas Public Library, 200 N. Pierce St., Kittitas, WA 98934.

7. Mid-Columbia Library, 405 S. Dayton St., Kennewick, WA 99336.

8. Pasco Library, 1320 W. Hopkins St., Pasco, WA 99301.

9. Prosser Library, 902 7th St., Prosser, WA 99350.

10. Richland Public Library, 955 Northgate Dr., Richland, WA 99352.

11. Sunnyside Public Library, 621 Grant Ave., Sunnyside, WA 98944.

12. Toppenish Library, 1 S. Elm St., Toppenish, WA 98948.

13. Wapato Library, 119 E. 3rd St., Wapato, WA 98951.

14. Washington State Library, Point Plaza East, 6880 Capitol Blvd. SE, Tumwater, WA 98504.

15. West Richland Library, 3803 W. Van Giesen St., Richland, WA 99353.

16. Yakama Nation Library, 100 Spiel-Yi Loop, Toppenish, WA 98948.

17. Yakima Valley Regional Library, 102 N. 3rd St., Yakima, WA 98901.

Special Assistance for Public Meetings

If special assistance is required at the public meetings, please contact Ms. Candace McKinley, at *kkbt@usbr.gov* or 509–575–5848, ext. 603. Please notify Ms. McKinley as far in advance of the meeting as possible to enable

Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. TTY users may dial 711 to obtain a toll-free TTY relay.

Public Disclosure

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.

Dated: April 6, 2018.

Lorri J. Gray,

Regional Director, Pacific Northwest Region.

[FR Doc. 2018–07737 Filed 4–12–18; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1002]

Certain Carbon and Alloy Steel Products; Commission Determination To Terminate the Investigation in Its Entirety

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the investigation in its entirety.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Inv. No. 337–TA–1002 on June 2, 2016, based on a complaint filed by complainant United States Steel Corporation of Pittsburgh, Pennsylvania (''U.S. Steel''), alleging a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''). See 81 FR 35381 (June 2, 2016). The complaint alleges violations of section 337 based upon the importation into the United States, or in the sale after importation of certain carbon and alloy steel products by reason of: (1) A conspiracy to fix prices and control output and export volumes, the threat or effect of which is to restrain or monopolize trade and commerce in the United States; (2) misappropriation and use of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States; and (3) false designation of origin or manufacturer, the threat or effect of which is to destroy or substantially injure an industry in the United States. *Id.* The notice of investigation identified forty (40) respondents that are Chinese steel manufacturers or distributors, as well as some of their Hong Kong and United States affiliates. *Id.* In addition, the Office of Unfair Import Investigations is also a party in this investigation. *Id.* Eighteen (18) respondents participated in the investigation and all other respondents were found in default, including fifteen (15) respondents that are subject to the false designation of origin claim (''Defaulting Respondents''). See Comm'n Notice (Oct. 14, 2016), Comm'n Notice (Oct. 18, 2016), Comm'n Notice (Nov. 18, 2016).

On August 26, 2016, the participating respondents filed a motion to terminate U.S. Steel's antitrust claim under 19 CFR 210.21. On November 14, 2016, the presiding administrative law judge (''ALJ'') issued an initial determination (''ID''), granting Respondents' motion to terminate Complainant's antitrust claim under 19 CFR 210.21 and, in the alternative, under 19 CFR 210.18. Order No. 38 (Nov. 14, 2016). On December 19, 2016, the Commission issued a Notice determining to review Order No. 38. See 81 FR 94416–7 (Dec. 23, 2016). On April 20, 2017, the Commission held an oral argument on the issue of whether a complainant alleging a violation of section 337 based on antitrust law must show antitrust injury.

On February 15, 2017, U.S. Steel filed a motion to partially terminate the investigation on the basis of withdrawal of its trade secret allegations, which were alleged against only certain of the participating respondents. On February 22, 2017, the ALJ issued an ID, granting U.S. Steel's motion to terminate the investigation with respect to its trade secret allegations. Order No. 56 (Feb. 22, 2017). On March 24, 2017, the Commission determined not to review Order No. 56. Comm'n Notice (Mar. 24, 2017).

On October 2, 2017, the ALJ issued an ID, granting the remaining participating respondents' motions for summary determination of no section 337 violation based on false designation of origin. Order No. 103 (Oct. 2, 2017). On November 1, 2017, the Commission determined not to review Order No. 103. Comm'n Notice (Nov. 1, 2017).

On March 19, 2018, the Commission terminated the investigation as to the antitrust claim. Notice (Mar. 19, 2018). In the same notice, the Commission requested briefing on remedy, public interest, and bonding concerning the previously defaulted respondents subject to the false designation of origin claim. *Id.*

On March 30, 2018, U.S. Steel submitted a letter indicating that it did not intend to file a response to the Commission's request for briefing on remedy, public interest, and bonding concerning the previously defaulted respondents subject to the false designation of origin claim. Also on March 30, 2018, OUII filed a response to the Commission's notice, recommending that the Commission decline to issue remedial orders against the Defaulting Respondents under the circumstances.

The Commission is authorized to issue relief against defaulters pursuant to section 337(g)(1) ''upon request'' from the complainant. 19 U.S.C. 1337(g)(1). Because U.S. Steel has abandoned its request, as stated in the complaint, for a remedy against the Defaulting Respondents, the Commission has determined to terminate the investigation in its entirety.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 9, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–07666 Filed 4–12–18; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–570 and 731–TA–1346 (Final)]

Aluminum Foil From China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of aluminum foil from China that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of China.[2]

Background

The Commission, pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)), instituted these investigations effective March 9, 2017, following receipt of a petition filed with the Commission and Commerce by The Aluminum Association Trade Enforcement Working Group and its individual members. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of aluminum foil from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations 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 November 22, 2017 (82 FR 55633). The hearing was held in Washington, DC, on February 8, 2018, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on April 9, 2018. The views of the Commission are contained in USITC Publication 4771 (April 2018), entitled *Aluminum Foil From China: Investigation Nos. 701–TA–570 and 731–TA–1346 (Final).*

By order of the Commission.

Issued: April 9, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–07665 Filed 4–12–18; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 83 FR 9274 and 83 FR 9282 (March 5, 2018).

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request, Reentry Employment Opportunities Evaluation, New Collection

AGENCY: Office of the Assistant Secretary for Policy, Chief Evaluation Office, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents is properly assessed. Currently, DOL is soliciting comments concerning the collection of data about the Reentry Employment Opportunities (REO) Program. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before June 12, 2018.

ADDRESSES: You may submit comments by either one of the following methods: *Email: ChiefEvaluationOffice@dol.gov; Mail or Courier:* Jessica Lohmann, Chief Evaluation Office, OASP, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Jessica Lohmann by email at *ChiefEvaluationOffice@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. *Background:* The information collection activities described in this notice will provide data for the Reentry Employment Opportunities (REO) program evaluation. As part of the REO program, DOL awarded $73 million in Reentry Project (RP) grants during 2017, $31 million in Reentry Demonstration Project grants during 2016, and $21 million in Training to Work grants during 2015 and 2016. DOL also is considering awarding grants during 2018. Although each grant program is distinctive, the overarching aim of the REO program is to improve employment outcomes and workforce readiness for people involved in the justice system by way of employment services, case management, and other supportive services.

The REO program evaluation will involve grantees that received grants during 2016, 2017, and/or 2018. The evaluation will involve an implementation study and an impact study. The implementation study will address four main research questions: (1) How were programs implemented and what factors influenced implementation?; (2) What are the variations in the model, structure, partnerships, and services of the REO grants?; (3) How did implementation vary by organization type (such as an intermediary organization that operates in more than one state or a community-based organization) and target population?; and (4) What key program elements appear to be promising? Research questions for the impact study include: (1) What impact do grantees or strategies implemented by grantees have on participants' outcomes, such as employment and recidivism?; (2) Does program effectiveness vary by grantee characteristics, such as population served and services offered?; and (3) To what extent do impacts vary across selected subpopulations, such as age group and type of offense?

This **Federal Register** Notice provides the opportunity to comment on the following proposed REO evaluation data collection instruments:

** Grantee survey.* To obtain information about the REO grantees' approaches to project management, recruitment and outreach, and service

delivery, we will field an electronic survey to up to 96 grantees. This survey will include questions to lead to insights about variations across grantees and grant programs and contextualize the data from the impact and implementation studies.

* *Impact feasibility site visit protocols.* The evaluation team will conduct up to 42 site visits with grantees and/or their subgrantees to explore the feasibility of their participating in the impact study; the visits will average no more than one day.

* *Baseline information form (BIF).* In sites selected for the impact study, applicants will complete a BIF before random assignment. The BIF will take about 10 minutes to complete and will collect demographics; information about education, work history and other experiences; and contact information. Whenever possible, BIFs will be collected electronically through the study's web-based system for random assignment. Data entry for each BIF will take about 10 minutes to complete. The system will then randomly assign participants and monitor the integrity of the random assignment process.

A future information collection request will include the impact study's follow-up survey, as well as phone interview protocols, site visit protocols, and virtual focus group protocols for the implementation study.

II. *Desired Focus of Comments:* Currently, DOL is soliciting comments concerning the above data collection for the REO Evaluation. DOL is particularly interested in comments that do the following:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency related to employer services, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the ICR to survey and fieldwork respondents, including the validity of the study approach and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the information collection on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

III. *Current Actions:* At this time, DOL is requesting clearance for the implementation study grantee survey; site visit protocol for the impact study feasibility assessment; and BIF to be entered into the random assignment system.

Type of Review: New information collection request.

Title: Reentry Employment Opportunities Evaluation.

OMB Control Number: 1290–0NEW.

Affected Public: REO program staff, evaluation participants, and partner agencies.

ESTIMATED BURDEN HOURS

Type of instrument	Total number of respondents	Annual number of respondents [a]	Number of responses per respondent	Average burden hour per response	Annual estimated burden hours [a]
Grantee Survey [b]	192	64	1	0.17	11
Impact Feasibility Site Visit Protocols [c]	325	108	1.68	1	182
Baseline Information Form [d]	3,780	1,260	1	0.17	210
Total	4,327	1,442			621

[a] All annual totals reflect a three year clearance and study data collection period.

[b] The number of respondents and average time per response for the grantee survey are based on an assumption that 96 grantees will take an average of 20 minutes to respond (involving 1 respondent for 10 minutes and a second respondent for 10 minutes).

[c] Assumes each visit will, on average, involve individual or group interviews with approximately 13 respondents (2 site administrators, 5 front-line staff, and 6 partners per site). The team anticipates completing up to 42 visits in total, with some sites being visited once and some being visited twice. The average burden time per response will be 1 hour, although some meetings will be shorter and some will be longer. To account for the fact that a subset of sites will receive two visits, the number of responses per respondent is calculated as 1.68.

[d] The total number of respondents is 3,780 participants who will complete the BIF. This assumes the baseline information forms (BIF) will take an average of 10 minutes for participants to complete.

[e] Study participants will respond to the BIF once. Each program staff will be responsible for data entering approximately 126 BIFs into the RAS. The total burden represents the sum of the participant burden across participants and program staff (3,780 participants * 1 response * .17 of an hour = 643 burden hours) + (30 program staff * 126 responses to data enter * .17 of an hour = 643 burden hours) for a grand total, with rounding,of 1,285 burden hours (which equates to approximately 428 annual burden hours per the three years of the study).

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 9, 2018.

Molly Irwin,

Chief Evaluation Officer, U.S. Department of Labor.

[FR Doc. 2018–07709 Filed 4–12–18; 8:45 am]

BILLING CODE 4510–HX–P

OFFICE OF MANAGEMENT AND BUDGET

OMB Final Sequestration Report to the President and Congress for Fiscal Year 2018

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of availability of the OMB Final Sequestration Report to the President and Congress for FY 2018.

SUMMARY: OMB is issuing its Final Sequestration Report to the President and Congress for FY 2018 to report on compliance of enacted 2018 discretionary appropriations legislation with the discretionary caps. The report includes adjustments to the 2018 and 2019 caps for changes in the Bipartisan Budget Act of 2018 and it finds that enacted appropriations are within those discretionary caps for 2018. As a result, a sequestration of discretionary budget authority is not required in 2018. The report also finds that enacted supplemental appropriations for 2017 are within the 2017 caps.

DATES:

Release Date: April 6, 2018. Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985, requires the Office of Management and

Budget (OMB) to issue its Final Sequestration Report 15 calendar days after the end of a congressional session. With regard to this final report and to each of the three required sequestration reports, section 254(b) specifically states the following:

Submission and Availability of Reports.—Each report required by this section shall be submitted, in the case of CBO, to the House of Representatives, the Senate and OMB and, in the case of OMB, to the House of Representatives, the Senate, and the President on the day it is issued. On the following day, a notice of the report shall be printed in the **Federal Register**.

However, a provision in the 2018 Continuing Resolution delayed the release of this report until 15 days after the 2018 Continuing Resolution expired on March 23, 2018.

ADDRESSES: The OMB Sequestration Reports to the President and Congress is available on-line on the OMB home page at: *https://www.whitehouse.gov/omb/legislative/sequestration-reports-orders/*.

FOR FURTHER INFORMATION CONTACT: Thomas Tobasko, 6202 New Executive Office Building, Washington, DC 20503, Email address: *ttobasko@omb.eop.gov,* telephone number: (202) 395–5745, fax number: (202) 395–4768. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

John Mulvaney,

Director.

[FR Doc. 2018–07653 Filed 4–12–18; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2018–031]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records they no longer need to conduct agency business. NARA invites public comments on such records schedules.

DATES: NARA must receive requests for copies in writing by May 14, 2018. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA); 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: NARA publishes notice in the **Federal Register** for records schedules they no longer need to conduct agency business. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Agriculture, Foreign Agricultural Service (DAA–0166–2018–0003, 2 items, 2 temporary items). **Federal Register** records. Included are correspondence, reports, notices, proposed rules, final rules, and announcements.

2. Department of Agriculture, Foreign Agricultural Service (DAA–0166–2018–0029, 2 items, 2 temporary items).

Personnel records of non-Federal cooperators and consultants subsidized by market development funds.

3. Department of Defense, Defense Logistics Agency (DAA–0361–2018–0001, 2 items, 1 temporary item). Records related to general orders including background material and related correspondence. Proposed for permanent retention are the official record copies.

4. Department of Defense, Defense Security Service (DAA–0446–2016–0004, 11 items, 11 temporary items). Records relating to the handling of information in the context of foreign relations including embassy liaison visits, hand carriage requests, trip reports, briefing materials, and related information.

5. Department of Justice, Federal Bureau of Investigation (DAA–0065–2018–0002, 2 items, 1 temporary item). Headquarters investigatory case files for crimes involving violations of the Organized Crime Control Act of 1970, maintained in a Racketeer Influenced and Corrupt Organizations (RICO) case. Proposed for permanent retention are those case files with more than one section, 30 or more serialized documents, or corresponding to field office case files retained as permanent.

6. Department of the Navy, Agency-wide (DAA–NU–2015–0003, 60 items, 36 temporary items). Records relating to operations and readiness, including flight safety, data dissemination, climate observations, diving safety, and associated matters. Proposed for permanent retention are records on policy, fleet command files, strategy, planning and tactical doctrine, operating plans, unit histories, counter-intelligence investigations, intelligence programs, status of forces and readiness, and emergency planning.

7. Department of Veterans Affairs, Veterans Health Administration (DAA–0015–2016–0003, 14 items, 7 temporary items). Records related to public affairs including Congressional testimony, speeches and publications, news releases and summaries, and audiovisual records of public activities. Proposed for permanent retention are speeches and publications of national and regional high-level officials, and audiovisual records of national and regional significant events or programs.

8. Consumer Financial Protection Bureau, Agency-wide (DAA–0587–2018–0002, 1 item, 1 temporary item). Director's suggestion box records.

9. Consumer Financial Protection Bureau, Office of Administrative Adjudication (DAA–0587–2017–0002, 5 items, 2 temporary items). Working files of the Administrative Law Judge and administrative correspondence files. Proposed for permanent retention are the docket files and associated tracker, consent orders, and stipulations.

10. Federal Retirement Thrift Investment Board, Office of Investments (DAA–0474–2017–0005, 5 items, 5 temporary items). Records relating to the administration, management, and maintenance of the defined contribution plan for Federal employees.

11. United States International Trade Commission, Office of the General Counsel (DAA–0081–2018–0001, 1 item, 1 temporary item). Review and authorization records for statutory gift acceptance for the commissioners.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2018–07691 Filed 4–12–18; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS): Meeting of the ACRS Subcommittee on NuScale; Notice of Meeting

The ACRS Subcommittee on NuScale will hold a meeting on April 16, 2018, at 11545 Rockville Pike, Room T–2B1, Rockville, Maryland 20852.

The meeting will be open to public attendance The meetings will be open to public attendance with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meeting shall be as follows:

Monday, April 16, 2018—1:00 p.m. Until 5:00 p.m.

The Subcommittee will discuss the AREVA Topical Report ANP–10337, ''PWR Fuel Assembly Structural Response to Externally Applied Dynamic Excitations.'' The Subcommittee will hear presentations by and hold discussions with the NRC staff, Framatome staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Michael Snodderly (Telephone 301–415–2241 or Email: *Michael.Snodderly@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 4, 2017 (82 FR 46312).

Detailed meeting agendas and meeting transcripts are available on the NRC website at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland. After registering with Security, please contact Mr. Theron Brown (Telephone 301–415–6702 or 301–415–8066) to be escorted to the meeting room.

Dated: April 9, 2018.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2018–07689 Filed 4–12–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on May 3–5, 2018, 11545 Rockville Pike, Rockville, Maryland 20852.

Thursday, May 3, 2018, Conference Room T–2B1, 11545 Rockville Pike, Rockville, Maryland 20852

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:15 a.m.: APR1400: Long-Term Core Cooling (Open)—The Committee will have briefings by and discussion with representatives of the NRC staff and Korea Hydro & Nuclear Power Co., Ltd., regarding long-term core cooling.

10:30 a.m.–12:00 p.m.: APR1400: Large Break Loss-of-Coolant-Accident (Closed)—The Committee will have briefings by and discussion with representatives of the NRC staff and Korea Hydro & Nuclear Power Co., Ltd., regarding the safety evaluation associated with the subject topical report. [**Note:** This session is closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)].

2:00 p.m.–4:00 p.m.: Report of the External Manmade Hazards Working Group (Open)—The Committee will have discussions by the working group.

4:00 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)].

Friday, May 4, 2018, Conference Room T–2B1, 11545 Rockville Pike, Rockville, Maryland 20852

8:30 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b (c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

10:00 a.m.–12:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)].

1:00 p.m.–6:00 p.m.: Preparation of ACRS Reports/Retreat (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and potential retreat items. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)]. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

Saturday, May 5, 2018, Conference Room T–2B1, 11545 Rockville Pike, Rockville, Maryland 20852

8:30 a.m.–12:00 p.m.: Preparation of ACRS Reports/Retreat (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and potential retreat items. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)]. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b (c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 4, 2017 (82 FR 46312). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC website at *http://www.nrc.gov/reading-rm/adams.html or http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–6702), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated at Rockville, Maryland, this 10th day of April, 2018.

For the Nuclear Regulatory Commission.

Russell E. Chazell,

Advisory Committee Management Officer.

[FR Doc. 2018–07704 Filed 4–12–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS): Meeting of the ACRS Subcommittee on APR1400; Notice of Meeting

The ACRS Subcommittee on APR1400 will hold meetings on April 17–18, 2018, at 11545 Rockville Pike, Room T–2B1, Rockville, Maryland 20852.

The meetings will be open to public attendance with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meetings shall be as follows:

Tuesday, April 17, 2018 and Wednesday, April 18, 2018

The Subcommittee will review the APR1400 Design Control Document and Safety Evaluation Report with No Open Items Chapter 2, Section 2.5, ''Geology, Seismology, and Geotechnical Engineering,'' Chapter 3, ''Design of Structures, Systems, Components, and Equipment,'' Chapter 7, ''Instrumentation & Controls,'' Chapter 15, ''Transient and Accident Analyses,'' and Topical Report, ''Large-Break Loss of Coolant Accident.''

The Subcommittee will hear presentations by and hold discussions with the NRC staff and Korea Hydro & Nuclear Power Company regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher Brown (Telephone 301–415–7111 or Email: *Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 4, 2017 (82 FR 46312).

Detailed meeting agendas and meeting transcripts are available on the NRC website at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland 20852. After registering with Security, please contact Ms. Kendra Freeland (Telephone 301–415–6207) to be escorted to the meeting room.

Dated: April 9, 2018.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2018–07688 Filed 4–12–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0251]

Supplementary Guidance Documents for Subsequent License Renewal

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing final NUREG–2221, ''Technical Bases for Changes in the Subsequent License Renewal Guidance Documents NUREG–2191 and NUREG–2192,'' and NUREG–2222, ''Disposition of Public Comments on the Draft Subsequent License Renewal Guidance Documents NUREG–2191 and NUREG–2192.'' These two documents describe the technical changes that were made to the guidance documents for initial license renewal, NUREG–1801, Revision 2, ''Generic Aging Lessons Learned (GALL) Report,'' and NUREG–1800, Revision 2, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants,'' for utilities wishing to apply for subsequent license renewal (*i.e.,* for operation from 60 to 80 years) along with the technical bases for these changes and the NRC staff's response to public comments received on the drafts of NUREG–2191 and NUREG–2192.

DATES: April 13, 2018.

ADDRESSES: Please refer to Docket ID NRC–2015–0251 when contacting the NRC about the availability of information regarding these documents. You may obtain publicly-available information related to these documents using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0251. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's *Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* NUREG–2221, ''Technical Bases for Changes in the Subsequent License Renewal Guidance Documents NUREG–2191 and NUREG–2192,'' and NUREG–2222, ''Disposition of Public Comments on the Draft Subsequent License Renewal Guidance Documents NUREG–2191 and NUREG–2192'' are available in ADAMS under Accession No(s): ML17362A126, and ML17362A143, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Bennett Brady, telephone: 301–415–2981, email: *Bennett.Brady@nrc.gov* or Eric Oesterle, telephone: 301–415–1014, email: *Eric.Oesterle@nrc.gov;* both are in the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION: The Atomic Energy Act (AEA) of 1954, as amended, authorizes the NRC to issue 40-year initial licenses and upon application and approval, subsequently renew licenses for nuclear power reactors. The NRC's regulations permit these licenses to be renewed beyond the initial 40-year term for an additional period of time, up to 20 years, based on the outcome of an assessment to determine if the nuclear facility can continue to operate safely during the proposed period of extended operation. There are no limitations in the AEA or the NRC's regulations restricting the number of times a license may be renewed.

The nuclear power industry has sent letters of intent to apply for subsequent

license renewals in 2018, 2019, and 2020. Subsequent License Renewal is a term referring to all license renewals allowing a plant to operate beyond the 60-year period (40-year period of an initial operating license and a 20-year period of the first license renewal). Based on a survey conducted by the nuclear power industry, the NRC staff believes that additional applications for subsequent license renewal will be submitted in future years.

The NRC has developed and published final guidance for licensees that intend to apply for subsequent license renewal. The guidance documents for subsequent license renewal (*i.e.,* for operation from 60 to 80 years), NUREG–2191, the ''Generic Aging Lessons Learned for Subsequent License Renewal (GALL–SLR) Report,'' and NUREG–2192, the ''Standard Review Plan for Review of Subsequent License Renewal Applications for Nuclear Power Plants'' (SRP–SLR), address the issues for increased operating time from 60 to 80 years. The guidance also considers recent operating experience identified since the release of GALL Report, Rev. 2. The GALL–SLR Report and SRP–SLR also include changes that have been previously issued for public comment as part of the staff's license renewal Interim Staff Guidance (ISG) process. These ISGs can be found at *http://www.nrc.gov/reading-rm/doc-collections/isg/license-renewal.html.* These ISGs (ML12286A275, ML11297A085, ML12138A296, ML12270A436, ML12044A215, ML12352A057, ML13227A361, ML15308A018, and ML16237A383) have been incorporated into the GALL–SLR Report and the associated sections of the SRP–SLR. The NRC has previously received public comments on these ISGs, and is not requesting additional comments on the ISGs.

A notice of availability and request for comments on draft NUREG–2191 and draft NUREG–2192 was published in the **Federal Register** on December 23, 2015 (80 FR 79956). The public comment period ended on February 29, 2016. The NRC received over 500 comments on these draft guidance documents. The NRC also published a supplement to the draft guidance documents in the **Federal Register** on March 29, 2016 (81 FR 17500). The public comment period on the supplements to draft NUREG–2191 and draft NUREG–2192 ended May 31, 2016. The NRC reviewed and dispositioned all of the comments and published the disposition of the comments and the technical bases for their disposition in companion NUREG documents, which are being published at this time, NUREG–2221, ''Technical Bases for Changes in the Subsequent License Renewal Guidance Documents NUREG–2191 and NUREG–2192,'' and NUREG–2222, ''Disposition of Public Comments on the Draft Subsequent License Renewal Guidance Documents NUREG–2191 and NUREG–2192.'' The NRC's resolution of these comments are incorporated in the final SLR guidance documents, NUREG–2191 and NUREG–2192.

Dated at Rockville, Maryland, this 10th day of April 2018.

For the Nuclear Regulatory Commission.

Eric R. Oesterle,

Chief, License Renewal Project Branch, Division of Materials and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–07698 Filed 4–12–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0213]

Information Collection: Requirements for Renewal of Operating Licenses for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of the Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants.''

DATES: Submit comments by June 12, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0213. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0213 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0213.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement for part 54 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'' is available in ADAMS under Package Accession No. ML17310A926.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

Please include Docket ID NRC–2017–0213 in the subject line of your comment submission in order to ensure that the NRC is able to make your

comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below:

1. *The title of the information collection:* 10 CFR part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants.''

2. *OMB approval number:* 3150–0155.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* There is a one-time application for any licensee wishing to renew the operating license for its nuclear power plant. There is a one-time requirement for each licensee with a renewed operating license to submit a letter documenting the completion of inspection and testing activities. All holders of renewed licenses must perform yearly record keeping.

6. *Who will be required or asked to respond:* Commercial nuclear power plant licensees who wish to renew their operating licenses and holders of renewed licenses.

7. *The estimated number of annual responses:* 66 (8 reporting responses + 58 recordkeepers).

8. *The estimated number of annual respondents:* 6.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 226,320 (168,320 hours reporting + 58,000 hours recordkeeping).

10. *Abstract:* Part 54 of 10 CFR establishes license renewal requirements for commercial nuclear power plants and describes the information that licensees must submit to the NRC when applying for a license renewal. The application must contain information on how the licensee will manage the detrimental effects of age-related degradation on certain plant systems, structures, and components so as to continue the plant's safe operation during the renewal term. The NRC needs this information to determine whether the licensee's actions will be effective in assuring the plants' continued safe operation during the period of extended operation. Holders of renewed licenses must retain in an auditable and retrievable form, for the term of the renewed operating license, all information and documentation required to document compliance with 10 CFR part 54. The NRC needs access to this information for continuing effective regulatory oversight.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 10th day of April 2018.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2018–07729 Filed 4–12–18; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83022; File No. SR–CboeEDGX–2018–012]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Rule 21.9 of the Exchange's Rules and Related Functionality Applicable to the Routing Options Made Available by the Exchange's Equity Options Platform

April 9, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 9, 2018, Cboe EDGX Exchange, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to modify Rule 21.9 of Exchange's rules and related functionality applicable to the routing options made available by the Exchange's equity options platform (''EDGX Options'').

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify Rule 21.9 to modify the description of two existing routing strategies (without modifying such strategies) and to adopt a new routing strategy. Exchange Rule 21.9 describes various options to route orders away from EDGX Options to other options exchanges. Rule 21.9(a)(2)(A) describes Parallel D routing as a routing option under which an order checks the System [5] for available contracts and then is sent to destinations on the System routing table. Parallel 2D is described in Rule 21.9(a)(2)(B) in the same way. To distinguish the two options, however, Parallel D routing is described as a routing option that may route to multiple destinations at a *single price level* simultaneously whereas Parallel 2D routing is described as a routing option that may route to multiple destinations and at *multiple price levels* simultaneously. The Exchange proposes to retain this functionality but to change the refer to the routing strategy equivalent to both Parallel D and Parallel 2D as the ROUT routing option and then to specify that a User [6] may select either Route To Improve (''RTI'') or Route To Fill (''RTF'') for the ROUT routing option, thus capturing the distinction between the two strategies. In other words, the RTI routing option would continue to function as the Parallel D routing option is described (*i.e.,* routing at a single price level) and the RTF would continue to function as the Parallel 2D routing option is described (*i.e.,* routing at multiple price levels). The proposed description is identical to and based on the description employed for the Exchange's cash equities trading platform (''EDGX Equities'').[7] The Exchange does not propose any other changes to these routing options.

The Exchange also proposes to adopt the SWPA routing option based on a similar routing option offered with respect to EDGX Equities. Specifically, as proposed, SWPA would be a routing option under which an order checks the System for available contracts and then is sent to only Protected Quotations [8] and only for displayed size. Further, to the extent that any portion of the routed order is unexecuted, the remainder is posted to the EDGX Options Book at the order's limit price, unless otherwise instructed by the User. This proposed routing strategy is based on EDGX Rule 11.11(g)(9), and is identical except for references to ''contracts'' instead of ''shares'' and reference to the ''EDGX Options Book'' instead of the ''EDGX Book.'' The Exchange also has not proposed to adopt the final sentence of the routing strategy as defined for EDGX Equities because that sentence is only necessary to differentiate the SWPA routing strategy from the SWPB routing strategy and the Exchange is not proposing to adopt SWPB routing for EDGX Options.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] 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 change to the references to the Parallel D and Parallel 2D routing options are intended to align the Exchange's routing strategies between EDGX Equities and EDGX Options. As noted above, there is no substantive change to the operation of the strategies.

The proposed rule change also is designed to support the principles of Section 11A(a)(1)[11] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. In particular, the proposed change to introduce an additional routing strategy will provide market participants with greater flexibility in routing orders consistent with the options market Options Order Protection and Locked/Crossed Market Plan without developing order routing strategies on their own. The Exchange again notes that the proposed routing strategy is based on and substantively identical to a routing option offered by EDGX Equities.[12]

(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 Exchange notes that the proposal will further promote consistency between the Exchange's trading platforms for EDGX Equities and EDGX Options. The Exchange does not believe that the proposed changes will have any impact on inter-market competition as the proposed SWPA routing strategy will be available to all Users. The Exchange does not believe that the proposed SWPA routing strategy will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange provides routing services in a highly competitive market in which participants may avail themselves of a wide variety of routing options offered by self-regulatory organizations, other broker-dealers, market participants' own proprietary routing systems, and service bureaus. In such an environment, system enhancements such as the changes proposed in this rule filing do not burden competition, because they can succeed in attracting order flow to the Exchange only if they offer investors higher quality and better value than services offered by others.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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) [13] of the Act and Rule 19b–4(f)(6) thereunder.[14]

[5] The ''System'' is the automated trading system used by EDGX Options for the trading of options contracts. *See* Rule 16.1(a)(59).

[6] The term ''User'' means any Options Member or Sponsored Participant who is authorized to obtain access to the Exchange's System pursuant to Rule 11.3. *See* Rule 16.1(a)(63).

[7] *See* EDGX Rule 11.11(g)(13).

[8] The term Protected Quotation is defined in EDGX Rule 27.1(a)(19) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1(a)(1).

[12] *See* EDGX Rule 11.11(g)(9).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [16] 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 states that waiver of the 30-day operative delay would allow Exchange Users to more quickly benefit from this proposed rule change and would be consistent with routing options that are already available on EDGX Equities. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 No. SR–CboeEDGX–2018–012 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 No. SR–CboeEDGX–2018–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also 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 No. SR–CboeEDGX–2018–012 and should be submitted on or before May 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

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BILLING CODE 8011–01–P

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.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] 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).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83019; File No. SR–CboeBZX–2018–023]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Transaction Fees for Use on Cboe BZX Exchange, Inc.'s Equity Platform

April 9, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 29, 2018, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members [5] and non-Members of the Exchange pursuant to BZX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule applicable to its equities trading platform (''BZX Equities'') to: (i) Amend the rate for orders that yield fee code HA; (ii) add a Non-Displayed Add Volume Tier and amend the required criteria for current Non-Displayed Add Volume Tiers 1 and 2 under footnote 1; (iii) delete the Step-Up Add Tier under footnote 4 Single MPID Investor Tiers; (iv) delete Tier 1 under footnote 13, Tape B Volume and Quoting Tiers; and (v) delete Tier 1 and adjust the rebates for current Tiers 2 and 3 under footnote 19, NBBO Setter Tiers.

Fee Code HA

Fee code HA is appended to non-displayed orders that add liquidity and receive a rebate of $0.0017 per share.[6] The Exchange proposes to reduce the rebate provided to orders that yield fee code HA from $0.0017 per share to $0.0015 per share.

Add Volume Tiers Under Footnote 1

The Exchange currently offers thirteen Add Volume Tiers under footnote 1, which provide an enhanced rebate of $0.0025 [sic] to $0.0032 per share for qualifying orders which yield fee codes B, V, and Y,[7] or HA. The Exchange now proposes to add a Non-Displayed Add Volume Tier and amend the required criteria for the current Non-Displayed Add Volume Tiers 1 and 2 under footnote 1 which would be available for qualifying orders which yield fee code HA.

- Under the proposed Non-Displayed Add Volume Tier 1, a Member may receive an enhanced rebate of $0.0018 per share where they add an ADV[8] greater than or equal to 0.05% of the TCV,[9] as Non-Displayed orders that yield fee codes HA or HI.[10]
- Under the current Non-Displayed Add Volume Tier 1 (to be renumbered as Tier 2), a Member may receive an enhanced rebate of $0.0020 per share where they add an ADV greater than or equal to 0.09% of the TCV, as Non-Displayed orders that yield fee codes HA or HI. The Exchange proposes to amend the tier's required criteria to now require that the Member add an ADV greater than or equal to 0.15% of the TCV. The Exchange does not proposes to amend any other portion of the tier's required criteria or its applicable rebate.
- Under the Non-Displayed Add Volume Tier 2 (to be renumbered as Tier 3), a Member may receive an enhanced rebate of $0.0025 per share where they add an ADV greater than or equal to 0.18% of the TCV, as Non-Displayed orders that yield fee codes HA or HI. The Exchange proposes to amend the tier's required criteria to now require that the Member add an ADV greater than or equal to 0.25% of the TCV. The Exchange does not proposes to amend any other portion of the tier's required criteria or its applicable rebate.

Single MPID Investor Tiers Under Footnote 4

The Exchange currently offers two Single MPID Investor Tier under footnote 4, which provide an enhanced rebate of $0.0027 per share and $0.0031 per share for qualifying orders which yield fee codes B, V, or Y. The distinction between the existing tier under footnote 4 and other tiers offered by the Exchange, is that the volume measured to determine whether a Member qualifies is performed on a Market Participant Identifier (''MPID'') by MPID basis. The Exchange now proposes to delete the Step-Up Add Tier under footnote 4 under which a Member may receive an enhanced rebate of $0.0027 per share where the MPID has a Step-Up ADAV from November 2016, greater than or equal to 500,000 shares.

Tape B Volume and Quoting Tiers Under Footnote 13

The Exchange currently offers two tiers under footnote 13, which provide an enhanced rebate of $0.0027 per share and an additional rebate of $0.0001 per share for qualifying orders which yield fee codes B. The Exchange now proposes to delete Tier 1 under footnote 13 under which a Member may receive an enhanced rebate of $0.0027 per share where their have a Tape B ADAV[11] as a percentage of TCV greater than or equal to 0.08%. The Exchange proposes to renumber existing Tier 2 as Tier 1 and to delete an ''s'' from the term ''fee codes'' in the footnote's introductory language.

NBBO Setter Tiers Under Footnote 19

The Exchange currently offers three NBBO Setter Tiers under footnote 19, which provide an additional rebate of $0.0001 to $0.0004 per share for orders that establish a new National Best Bid or Offer (''NBBO'') and which are appended with fee code B, V or Y. The Exchange notes that the proposed the NBBO Setter Tiers are additive rebates, and thus, can be combined with other incentives and structures offered by the Exchange. The Exchange proposes to delete Tier 1 and adjust the rebates for current Tiers 2 and 3.

- Tier 1 provides an additional rebate of $0.0001 in qualifying orders where a Member has a Setter Add TCV[12] of at least 0.05%. The Exchange proposes to delete Tier 1.
- Tier 2 (to be renumbered as Tier 1) provides an additional rebate of $0.0002 in qualifying orders where a Member has a Setter Add TCV of at least 0.10%. The Exchange proposes to decrease the additional rebate provided by the tier to $0.00015 per share.
- Tier 3 (to be renumbered as Tier 2) provides an additional rebate of $0.0004 in qualifying orders where a Member has a Setter Add TCV of at least 0.15%. The Exchange only proposes to renumber the tier and does not propose to alter the tier's required criteria or additional rebate.

Implementation Date

The Exchange proposes to implement these amendments to its fee schedule on April 2, 2018.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[13] in general, and furthers the objectives of Section 6(b)(4),[14] in particular, as it is designed to provide

[6] *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[7] Fee codes B, V, and Y are appended to displayed orders that add liquidity in tape B, A, or C, respectively. *Id.*

[8] ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. *Id.*

[9] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. *Id.*

[10] Fee code HI is appended to non-displayed orders that receive price improvement and add liquidity. *Id.*

[11] ''ADAV'' means average daily added volume calculated as the number of shares added per day. *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[12] ''Setter Add TCV'' means average daily added volume calculated as the number of displayed shares added that establish a new NBBO as a percentage of TCV. *Id.*

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange.

Fee Code HA

The Exchange believes the proposed decrease to the rebate provided to orders that yield fee code HA is reasonable, fair and equitable, because the proposed rate equals the rebate provided to identical orders on Cboe EDGX Exchange, Inc. (''EDGX'').[15] The proposed rebate for fee code HA is also non-discriminatory because it will be available to all Members who submit non-displayed orders that add liquidity.

Tier Modifications

The Exchange believes that the proposed modifications to the tiered pricing structure are reasonable, fair and equitable, and non-discriminatory. The Exchange operates in a highly competitive market in which market participants may readily send order flow to many competing venues if they deem fees at the Exchange to be excessive or incentives provided to be insufficient. The proposed structure remains intended to attract order flow to the Exchange by offering market participants a competitive pricing structure. The Exchange believes it is reasonable to offer and incrementally modify incentives intended to help to contribute to the growth of the Exchange.

Volume-based pricing such as that proposed herein have been widely adopted by exchanges, including the Exchange, and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) The value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provisions and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and volume discovery processes.

Add Volume Tiers. The proposed addition of and modifications to the remaining two Non-Displayed Add Volume Tiers reinforces the purpose of the Add Volume Tier by incentivizing Members to send Non-Displayed orders to the Exchange. The proposes modifications to the current two tier required criteria are equitable and reasonable in light of the addition of a new Non-Displayed Add Volume Tier and serve to make the required criteria and related enhanced rebate reasonably related to each other and reflect the scaled difficulty in achieving each tier. Thus, the Exchange believes that the proposed modifications to the tiered pricing structure under footnote 1 are a reasonable, equitable, and not an unfairly discriminatory allocation of fees and rebates because they will provide Members with an incentive to reach certain thresholds on the Exchange by contributing a meaningful amount of order flow and because such an incentive is open to all Members on an equal basis.

NBBO Setter Tiers. The Exchange believes the modification to the additional rebate provided by the one of the two remaining NBBO Setter Tiers under footnote 19 is a reasonable means to encourage Members to not only increase their liquidity on the Exchange but also to contribute to the market quality of the Exchange by offering aggressively priced liquidity. The Exchange further believes that the proposed rate represents an equitable allocation of reasonable dues, fees, and other charges because the thresholds necessary to achieve the tiers would continue to encourage Members to add additional liquidity to the Exchange. The revised additional rebate was modestly changed and continues to reasonably reflect the difficulty of achieving each tier's required criteria. The Exchange further believes that the NBBO Setter Tiers are not unreasonably discriminatory as they are equally available to all Members.

Elimination of Unused Tiers

The Exchange believes that the proposed modifications to eliminate tiers under footnotes 4, 13, and 19 are reasonable, fair, and equitable because the current tiers were not providing the desired result of incentivizing Members to increase their participation in BZX Equities. Therefore, eliminating these tiers will have a negligible effect on order flow and market behavior. The Exchange believes the proposed changes are not unfairly discriminatory because they will apply equally to all Members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of the proposed change to the Exchange's tiered pricing structure burden competition, but instead, that they enhance competition as they are intended to increase the competitiveness of BZX by modifying pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee structures to be unreasonable or excessive. The proposed changes are generally intended to enhance the rebates for liquidity added to the Exchange, which is intended to draw additional liquidity to the Exchange, and to eliminate a rebate that has not achieved its desired result. The Exchange does not believe the proposed amendments would burden intramarket competition as they would be available to all Members uniformly.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and paragraph (f) of Rule 19b–4 thereunder.[17] 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,

[15] *See* fee code HA in the EDGX fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/edgx/* (providing a rebate of $0.0015 per share to non-displayed orders that add liquidity).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

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–CboeBZX–2018–023 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–2018–023. 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–CboeBZX–2018–023 and should be submitted on or before May 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–07674 Filed 4–12–18; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83021; File No. SR–CboeBZX–2018–026]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify Rule 21.9 of the Exchange's Rules and Related Functionality Applicable to the Routing Options Made Available by the Exchange's Equity Options Platform

April 9, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 2, 2018, Cboe BZX Exchange, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to modify Rule 21.9 of the Exchange's rules and related functionality applicable to the routing options made available by the Exchange's equity options platform (''BZX Options'').

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify Rule 21.9 to modify the description of two existing routing strategies (without modifying such strategies) and to adopt a new routing strategy. Exchange Rule 21.9 describes various options to route orders away from BZX Options to other options exchanges. Rule 21.9(a)(2)(A) describes Parallel D routing as a routing option under which an order checks the System[5] for available contracts and then is sent to destinations on the System routing table. Parallel 2D is described in Rule 21.9(a)(2)(B) in the same way. To distinguish the two options, however, Parallel D routing is described as a routing option that may route to multiple destinations at a *single price level* simultaneously whereas Parallel 2D routing is described as a routing option that may route to multiple destinations and at *multiple price levels* simultaneously. The Exchange proposes to retain this functionality but to change the refer to the routing strategy equivalent to both Parallel D and Parallel 2D as the ROUT routing option and then to specify that a User[6] may select either Route To Improve (''RTI'') or Route To Fill (''RTF'') for the ROUT routing option, thus capturing the distinction between the two strategies. In other words, the RTI routing option would continue to function as the Parallel D routing option is described (*i.e.,* routing at a single price level) and the RTF would continue to function as the Parallel 2D routing option is described (*i.e.* routing at multiple price levels). The proposed description is substantively identical to and based on the description employed for the Exchange's cash equities trading platform (''BZX Equities'').[7] The Exchange does not propose any other changes to these routing options.

The Exchange also proposes to adopt the SWPA routing option based on a similar routing option offered with respect to BZX Equities. Specifically, as proposed, SWPA would be a routing option under which an order checks the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] The ''System'' is the automated trading system used by BZX Options for the trading of options contracts. *See* Rule 16.1(a)(59).

[6] The term ''User'' means any Options Member or Sponsored Participant who is authorized to obtain access to the Exchange's System pursuant to Rule 11.3. *See* Rule 16.1(a)(63).

[7] *See* BZX Rule 11.13(b)(3)(G).

System for available contracts and then is sent to only Protected Quotations [8] and only for displayed size. Further, to the extent that any portion of the routed order is unexecuted, the remainder is posted to the BZX Options Book at the order's limit price, unless otherwise instructed by the User. This proposed routing strategy is based on and similar to BZX Rule 11.13(b)(3)(I), which describes the SWPA routing strategy for BZX Equities. However, the Exchange has proposed language describing SWPA on BZX Options instead on rule text of its affiliate, Cboe EDGX Exchange, Inc. (''EDGX''), which also offers the SWPA routing strategy for its cash equities trading platform (''EDGX Equities'').[9] The proposed rule text for BZX Options' version of SWPA is specifically based on EDGX Rule 11.11(g)(9), and is identical except for references to ''contracts'' instead of ''shares'' and reference to the ''BZX Options Book'' instead of the ''EDGX Book.'' The Exchange also has not proposed to adopt the final sentence of the routing strategy as defined for EDGX Equities because that sentence is only necessary to differentiate the SWPA routing strategy from the SWPB routing strategy and the Exchange is not proposing to adopt SWPB routing for BZX Options.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(5) of the Act [11] 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 change to the references to the Parallel D and Parallel 2D routing options are intended to align the Exchange's routing strategies between BZX Equities and BZX Options. As noted above, there is no substantive change to the operation of the strategies.

The proposed rule change also is designed to support the principles of Section 11A(a)(1) [12] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. In particular, the proposed change to introduce an additional routing strategy will provide market participants with greater flexibility in routing orders consistent with the options market Options Order Protection and Locked/Crossed Market Plan without developing order routing strategies on their own. The Exchange again notes that the proposed routing strategy is based on and substantively identical to a routing option offered by BZX Equities.[13]

(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 Exchange notes that the proposal will further promote consistency between the Exchange's trading platforms for BZX Equities and BZX Options. The Exchange does not believe that the proposed changes will have any impact on inter-market competition as the proposed SWPA routing strategy will be available to all Users. The Exchange does not believe that the proposed SWPA routing strategy will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange provides routing services in a highly competitive market in which participants may avail themselves of a wide variety of routing options offered by self-regulatory organizations, other broker-dealers, market participants' own proprietary routing systems, and service bureaus. In such an environment, system enhancements such as the changes proposed in this rule filing do not burden competition, because they can succeed in attracting order flow to the Exchange only if they offer investors higher quality and better value than services offered by others.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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)[14] of the Act and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [16] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [17] 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 states that waiver of the 30-day operative delay would allow Exchange Users to more quickly benefit from this proposed rule change and would be consistent with routing options that are already available on BZX Equities. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[18]

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

[8] The term Protected Quotation is defined in BZX Rule 27.1(a)(19) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58).

[9] Although BZX Equities also offers the SWPA routing strategy, its description is formatted differently than the EDGX Equities version. In turn, because EDGX is simultaneously proposing to adopt a SWPA routing strategy for its options trading platform (''EDGX Options'') based on the EDGX Equities description, the Exchange believes it is preferable to retain consistency between BZX Options and EDGX Options. Accordingly, the Exchange has proposed to follow the structure of the EDGX Equities description rather than the BZX Equities description.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1(a)(1).

[13] *See* EDGX Rule 11.11(g)(9).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] 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).

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 proposal 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 No. SR–CboeBZX–2018–026 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 No. SR–CboeBZX–2018–026. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also 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 No. SR–CboeBZX–2018–026 and should be submitted on or before May 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–07676 Filed 4–12–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83020; File No. SR–CboeEDGX–2018–011]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 19.3, Criteria for Underlying Securities

April 9, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 29, 2018, Cboe EDGX Exchange, Inc. (the ''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 Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 19.3(b).

(additions are *italicized;* deletions are [bracketed])

* * * * *

Cboe EDGX Exchange, Inc. Rules

* * * * *

Rule 19.3. Criteria for Underlying Securities

(a) (No change).

(b) In addition, the Exchange shall from time to time establish standards to be considered in evaluating potential underlying securities for EDGX Options options transactions. There are many relevant factors which must be considered in arriving at such a determination, and the fact that a particular security may meet the standards established by the Exchange does not necessarily mean that it will be selected as an underlying security. The Exchange may give consideration to maintaining diversity among various industries and issuers in selecting underlying securities. Notwithstanding the foregoing, an underlying security will not be selected unless:

(1)–(4) (No change).

(5) Either:

(A) if the underlying security is a ''covered security'' as defined under Section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least $3.00 for the previous [five]*three* consecutive business days preceding the date on which the Exchange submits a certificate to the Clearing Corporation for listing and trading, as measured by the closing price reported in the primary market in which the underlying security is traded; or

(B) (No change).

(c)–(m) (No change).

* * * * *

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 19.3, Criteria for Underlying Securities, to modify the criteria for listing options on an underlying security as defined in Section 18(b)(1)(A) of the Securities Act of 1933 (hereinafter ''covered security'' or ''covered securities''). This is a competitive filing that is based on a proposal recently submitted by Nasdaq

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

PHLX LLC (''Nasdaq Phlx'') and approved by the Commission.[5]

In particular, the Exchange proposes to modify Rule 19.3(b)(5)(A) to permit the listing of an option on an underlying covered security that has a market price of at least $3.00 per share for the previous three (3) consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation (''OCC'') for listing and trading. The Exchange does not intend to amend any other criteria for listing options on an underlying security in Rule 19.3.

Currently the underlying covered security must have a closing market price of $3.00 per share for the previous five (5) consecutive business days preceding the date on which the Exchange submits a listing certificate to OCC. In the proposed amendment, the market price will still be measured by the closing price reported in the primary market in which the underlying covered security is traded, but the measurement will be the price over the prior three (3) consecutive business day period preceding the submission of the listing certificate to OCC, instead of the prior five (5) business day period.

The Exchange acknowledges that the Options Listing Procedures Plan [6] requires that the listing certificate be provided to OCC no earlier than 12:01 a.m. and no later than 11:00 a.m. (Chicago time) on the trading day prior to the day on which trading is to begin.[7] The proposed amendment will still comport with that requirement. For example, if an initial public offering (''IPO'') occurs at 11:00 a.m. on Monday, the earliest date the Exchange could submit its listing certificate to OCC would be on Thursday by 12:01 a.m. (Chicago time), with the market price determined by the closing price over the three-day period from Monday through Wednesday. The option on the IPO would then be eligible for trading on the Exchange on Friday. The proposed amendment would essentially enable options trading within four (4) business days of an IPO becoming available instead of six (6) business days (five (5) consecutive days plus the day the listing certificate is submitted to OCC).

The Exchange's initial listing standards for equity options in Rule 19.3 (including the current price/time standard of $3.00 per share for five (5) consecutive business days) are substantially similar to the initial listing standards adopted by other options exchanges.[8] At the time EDGX Options received its initial approval from the Commission, as part of its Rules, the Exchange adopted the options industry adopted the ''look back'' period of five consecutive business days, because it determined that the five-day period was sufficient to protect against attempts to manipulate the market price of the underlying security and would provide a reliable test for stability.[9] Surveillance technologies and procedures concerning manipulation have evolved since then to provide adequate prevention or detection of rule or securities law violations within the proposed time frame, and the Exchange represents that its existing trading surveillances are adequate to monitor the trading of options on the Exchange.[10]

Furthermore, the Exchange notes that the scope of its surveillance program also includes cross-market surveillance for trading that is not just limited to the Exchange. In particular, the Exchange or the Financial Industry Regulatory Authority (''FINRA''), pursuant to a regulatory services agreement on behalf of the Exchange and its affiliate Cboe BZX Exchange, Inc. (''BZX''), operates a range of cross-market equity surveillance patterns to look for potential manipulative behavior, including spoofing, algorithm gaming, marking the close and open, and momentum ignition strategies, as well as more general, abusive behavior related to front running, wash sales, quoting/routing, and Reg SHO violations. These cross-market patterns incorporate relevant data from various markets beyond the Exchange and its affiliates, including data from the New York Stock Exchange (''NYSE'') and from the Nasdaq Stock Market (''Nasdaq'').

Additionally, for options, the Exchange and BZX utilize an array of patterns that monitor manipulation of options, or manipulation of equity securities (regardless of venue) for the purpose of impacting options prices on both the Exchange and BZX options markets (*i.e.,* mini-manipulation strategies). Surveillance coverage is initiated once options begin trading on either the Exchange or BZX. Accordingly, the Exchange believes that the cross-market surveillance performed by the Exchange or FINRA on behalf of the Exchange and BZX, coupled with the Exchange staff's real-time monitoring of similarly violative activity on the Exchange and BZX as described herein, reflects a comprehensive surveillance program that is adequate to monitor for manipulation of the underlying security and overlying option within the proposed three-day look back period.

Furthermore, the Exchange notes that the proposed listing criteria would still require that the underlying security be listed on NYSE, the American Stock Exchange (now known as NYSE American), or the National Market System of The Nasdaq Stock Market (now known as the Nasdaq Global Market) (collectively, the ''Named Markets''), as provided for in the definition of ''covered security'' from Section 18(b)(1)(A) of the 1933 Act. Accordingly, the Exchange believes that the proposed rule change would still ensure that the underlying security meets the high listing standards of a Named Market, and would also ensure that the underlying is covered by the regulatory protections (including market surveillance, investigation and enforcement) offered by these exchanges for trading in covered securities conducted on their facilities.

Furthermore, the Nasdaq had no cases within the past five years where an IPO-related issue for which it had pricing information qualified for the $3.00 price requirement during the first three (3) days of trading and did not qualify for the $3.00 price requirement during the

[5] *See* Securities Exchange Act Release No. 82474 (January 9, 2018), 83 FR 2240 (January 16, 2018) (order approving SR–Phlx–2017–75); *see also* Securities Exchange Act Release No. 82828 (March 8, 2018), 83 FR 11278 (March 14, 2018) (notice of filing and immediate effectiveness of SR–MIAX–2018–06).

[6] The Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11a(2)(3)(B) of the Securities Exchange Act of 1934 (a/k/a the Options Listing Procedures Plan (''OLPP'')) is a national market system plan that, among other things, sets forth procedures governing the listing of new options series. See Securities Exchange Act Release No. 44521 (July 6, 2001), 66 FR 36809 (July 13, 2001) (Order approving OLPP). The sponsors of OLPP include OCC; Cboe BZX Exchange, Inc. (formerly BATS Exchange, Inc.); BOX Options Exchange LLC; Cboe C2 Exchange, Inc. (formerly C2 Options Exchange, Incorporated); Cboe Exchange, Inc. (formerly Chicago Board Options Exchange, Incorporated); Cboe EDGX Exchange, Inc. (formerly EDGX Exchange, Inc.); Miami International Securities Exchange, LLC; MIAX PEARL, LLC; The Nasdaq Stock Market LLC; NASDAQ BX, Inc.; Nasdaq PHLX LLC; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; NYSE American, LLC; and NYSE Arca, Inc.

[7] *See* OLPP at page 3.

[8] *See, e.g.,* Phlx Rule 1009, Commentary .01; *see also* MIAX Rule 402(b)(5) and BOX Rule 5020(b)(5).

[9] *See* Securities Exchange Act Release No. 75650 (August 7, 2015), 80 FR 48600 (August 13, 2015) (SR–EDGX–2015–18) (order approving rules governing the trading of options on the Cboe EDGX Exchange).

[10] Such surveillance procedures generally focus on detecting securities trading subject to opening price manipulation, closing price manipulation, layering, spoofing or other unlawful activity impacting an underlying security, the option, or both. The Exchange has price movement alerts, unusual market activity and order book alerts active for all trading symbols. These real-time patterns are active for the new security as soon as the IPO begins trading.

first five (5) days.[11] In other words, none of these qualifying issues fell below the $3.00 threshold within the first three (3) or five (5) days of trading. As such, the Exchange believes that its existing surveillance technologies and procedures, coupled with Nasdaq's findings related to the IPO-related issues as described herein, adequately address potential concerns regarding possible manipulation or price stability within the proposed timeframe.

The Exchange also believes that the proposed look back period can be implemented in connection with the other initial listing criteria for underlying covered securities. In particular, the Exchange recognizes that it may be difficult to verify the number of shareholders in the days immediately following an IPO due to the fact that stock trades generally clear within two business days (T+2) of their trade date and therefore the shareholder count will generally not be known until T+2.[12] The Exchange notes that the current T+2 settlement cycle was recently reduced from T+3 on September 5, 2017 in connection with the Commission's amendments to Rule 15c6–1(a) to adopt the shortened settlement cycle,[13] and the look back period of three (3) consecutive business days proposed herein reflects this shortened T+2 settlement period. As proposed, stock trades would clear within T+2 of their trade date (*i.e.,* within three (3) business days) and therefore the number of shareholders could be verified within three (3) business days, thereby enabling options trading within four (4) business days of an IPO (three (3) consecutive business days plus the day the listing certificate is submitted to OCC).

Furthermore, the Exchange notes that it can verify the shareholder count with various brokerage firms that have a large retail customer clientele. Such firms can confirm the number of individual customers who have a position in the new issue. The earliest that these firms can provide confirmation is usually the day after the first day of trading (T+1) on an unsettled basis, while others can confirm on the third day of trading (T+2). The Exchange has confirmed with some of these brokerage firms who provide shareholder numbers to the Exchange that they are T+2 after an IPO. For the foregoing reasons, the Exchange believes that basing the proposed three (3) business day look back period on the T+2 settlement cycle would allow for sufficient verification of the number of shareholders.

The proposed rule change will apply to all covered securities that meet the criteria of Rule 19.3. Pursuant to Rule 19.3, the Exchange establishes guidelines to be considered in evaluating the potential underlying securities for Exchange option transactions.[14] However, the fact that a particular security may meet the guidelines established by the Exchange does not necessarily mean that it will be approved as an underlying security.[15] As part of the established criteria, the issuer must be in compliance with any applicable requirement of the Securities Exchange Act of 1934.[16] Additionally, there are many relevant factors that are considered in arriving at a determination to approve an underlying security.[17] Even if the proposed option meets the objective criteria, the Exchange may decide not to list, or place limitations or conditions upon listing.[18] The Exchange believes that these measures, together with its existing surveillance procedures, provide adequate safeguards in the review of any covered security that may meet the proposed criteria for consideration of the option within the timeframe contained in this proposal.

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.[19] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[20] 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)[21] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes to its listing standards for covered securities would allow the Exchange to more quickly list options on a qualifying covered security that has met the $3.00 eligibility price without sacrificing investor protection. As discussed above, the Exchange believes that its existing trading surveillances provide a sufficient measure of protection against potential price manipulation within the proposed three (3) consecutive business day timeframe. The Exchange also believes that the proposed three (3) consecutive business day timeframe would continue to be a reliable test for price stability in light of Nasdaq's findings that none of the IPO-related issues on Nasdaq within the past five years that qualified for the $3.00 per share price standard during the first three trading days fell below the $3.00 threshold during the fourth or fifth trading day. Furthermore, the established guidelines to be considered by the Exchange in evaluating the potential underlying securities for Exchange option transactions,[22] together with existing trading surveillances, provide adequate safeguards in the review of any covered security that may meet the proposed criteria for consideration of the option within the proposed timeframe.

In addition, the Exchange believes that basing the proposed timeframe on the T+2 settlement cycle adequately addresses the potential difficulties in confirming the number of shareholders of the underlying covered security. Having some of the largest brokerage firms that provide these shareholder counts to the Exchange confirm that they are able to provide these numbers within T+2 further demonstrates that the 2,000 shareholder requirement can be sufficiently verified within the proposed timeframe. For the foregoing reasons, the Exchange believes that the

[11] There were over 750 IPO-related issues on Nasdaq within the past five years. Out of all of the issues with pricing information, there was only one issue that had a price below $3 during the first five consecutive business days. The Exchange notes, however, that Nasdaq allows for companies to list on the Nasdaq Capital Market at $2.00 or $3.00 per share in some instances, which was the case for this particular issue. *See* Nasdaq Rule 5500 Series for initial listing standards on the Nasdaq Capital Market; *see also* Release No. 82474 in *supra* note 5.

[12] The number of shareholders of record can be validated by large clearing agencies such as The Depository Trust and Clearing Corporation (''DTCC'') upon the settlement date (*i.e.,* T+2).

[13] *See* Securities Exchange Act Release No. 78962 (September 28, 2016), 81 FR 69240 (October 5, 2016) (Amendment to Securities Transaction Settlement Cycle) (File No. S7–22–16).

[14] *See* Rule 19.3(b). The Exchange established specific criteria to be considered in evaluating potential underlying securities for Exchange option transactions.

[15] *Id.*

[16] *See* Rule 19.3(b)(3).

[17] *See* Rule 19.3(b).

[18] *Id.*

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *Id.*

[22] *See supra* notes 14–18.

proposed amendments will remove and perfect the mechanism of a free and open market and a national market system by providing an avenue for investors to swiftly hedged their investment in the stock in a shorter amount of time than what is currently in place.[23]

Finally, it should be noted that a price/time standard for the underlying security was first adopted when the listed options market was in its infancy, and was intended to prevent the proliferation of options being listed on low-priced securities that presented special manipulation concerns and/or lacked liquidity needed to maintain fair and orderly markets.[24] When options trading commenced in 1973, the Commission determined that it was necessary for securities underlying options to meet certain minimum standards regarding both the quality of the issuer and the quality of the market for a particular security.[25] These standards, including a price/time standard, were imposed to ensure that those issuers upon whose securities options were to be traded were widely-held, financially sound companies whose shares had trading volume and float substantial enough so as not to be readily susceptible to manipulation.[26] At the time, the Commission determined that the imposition of these standards was reasonable in view of the pilot nature of options trading and the limited experience of investors with options trading.[27]

Now more than 40 years later, the listed options market has evolved into a mature market with sophisticated investors. In view of this evolution, the Commission has approved various exchange proposals to relax some of these initial listing standards throughout the years,[28] including reducing the price/time standard in 2003 from $7.50 per share for the majority of business days over a three month period to the current $3.00 per share/five business day standard (''2003 Proposal'').[29] It has been almost fifteen years since the Commission approved the 2003 proposal, and both the listed options market and exchange technologies have continued to evolve since then. In this instance, the Exchange is only proposing a modest reduction of the current five (5) business day standard to three (3) business days to correspond to the securities industry's move to a T+2 standard settlement cycle.[30] The $3.00 per share standard and all other initial options listing criteria in Rule 19.3 will remain unchanged by this proposal. For the reasons discussed herein, the Exchange therefore believes that the proposed three (3) business day period will be beneficial to the marketplace without sacrificing investor protections.

(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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by Nasdaq Phlx that was recently approved by the Commission.[31] The proposed rule change will reduce the number of days to list options on an underlying security, and is intended to bring new options listings to the marketplace quicker.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written 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)[32] of the Act and Rule 19b–4(f)(6) thereunder.[33]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[34] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[35] 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 states that waiver of the 30-day operative delay would allow the Exchange greater flexibility in bringing new options listing to the marketplace more quickly, which will be beneficial to the marketplace permit fair competition among the exchanges by allowing the Exchange to modify the criteria for listing an option on an underlying covered security which is currently allowed on Nasdaq Phlx.[36] Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[37]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing,

[23] This proposed rule change does not alter any obligations of issuers or other investors of an IPO that may be subject to a lock-up or other restrictions on trading related securities.

[24] *See* Securities Exchange Act Release No. 29628 (August 29, 1991), 56 FR 43949–01 (September 5, 1991) (SR–AMEX–86–21; SR–CBOE–86–15; SR–NYSE–86–20; SR–PSE–86–15; and SR–PHLX–86–21) (''1991 Approval Order'') at 43949 (discussing the Commission's concerns when options trading initially commenced in 1973).

[25] *See* 1991 Approval Order at 43949.

[26] *Id.*

[27] *Id.*

[28] *See, e.g.,* 1991 Approval Order (modifying a number of initial listing criteria, including the reduction of the price/time standard from $10 per share each day during the preceding three calendar months to $7.50 per share for the majority of days during the same period).

[29] *See* Securities Exchange Act Release Nos. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (SR–CBOE–2002–62); 47352 (February 11, 2003), 68 FR 8319 (February 20, 2003) (SR–PCX–2003–06); 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003) (SR–ISE–2003–04); 47613 (April 1, 2003), 68 FR 17120 (April 8, 2003) (SR–Amex–2003–19); and 47794 (May 5, 2003), 68 FR 25076 (May 9, 2003) (SR–Phlx–2003–27).

[30] *See supra* note 13.

[31] *See supra* note 5.

[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[34] 17 CFR 240.19b–4(f)(6).

[35] 17 CFR 240.19b–4(f)(6)(iii).

[36] *See supra* note 5.

[37] 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).

including whether the proposal 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 No. SR–CboeEDGX–2018–011 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 No. SR–CboeEDGX–2018–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also 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 No. SR–CboeEDGX–2018–011 and should be submitted on or before May 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–07675 Filed 4–12–18; 8:45 am]

BILLING CODE 8011–01–P

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83018; File No. SR–CboeBZX–2018–025]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 19.3, Criteria for Underlying Securities

April 8, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 29, 2018, Cboe BZX Exchange, Inc. (the ''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 Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 19.3(b).

(additions are *italicized;* deletions are [bracketed])

* * * * *

Cboe BZX Exchange, Inc.

Rules

* * * * *

Rule 19.3. Criteria for Underlying Securities

(a) (No change).

(b) In addition, the Exchange shall from time to time establish standards to be considered in evaluating potential underlying securities for BZX Options options transactions. There are many relevant factors which must be considered in arriving at such a determination, and the fact that a particular security may meet the standards established by the Exchange does not necessarily mean that it will be selected as an underlying security. The Exchange may give consideration to maintaining diversity among various industries and issuers in selecting underlying securities. Notwithstanding the foregoing, an underlying security will not be selected unless:

(1)–(4) (No change).

(5) Either:

(A) if the underlying security is a ''covered security'' as defined under Section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least $3.00 for the previous [five]*three* consecutive business days preceding the date on which the Exchange submits a certificate to the Clearing Corporation for listing and trading, as measured by the closing price reported in the primary market in which the underlying security is traded; or

(B) (No change).

(c)–(m) (No change).

* * * * *

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 19.3, Criteria for Underlying Securities, to modify the criteria for listing options on an underlying security as defined in Section 18(b)(1)(A) of the Securities Act of 1933 (hereinafter ''covered security'' or ''covered securities''). This is a competitive filing that is based on a proposal recently submitted by Nasdaq PHLX LLC (''Nasdaq Phlx'') and approved by the Commission.[5]

In particular, the Exchange proposes to modify Rule 19.3(b)(5)(A) to permit the listing of an option on an underlying covered security that has a market price of at least $3.00 per share for the previous three (3) consecutive business days preceding the date on which the Exchange submits a certificate to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 82474 (January 9, 2018), 83 FR 2240 (January 16, 2018) (order approving SR–Phlx–2017–75); *see also* Securities Exchange Act Release No. 82828 (March 8, 2018), 83 FR 11278 (March 14, 2018) (notice of filing and immediate effectiveness of SR–MIAX–2018–06).

Options Clearing Corporation (''OCC'') for listing and trading. The Exchange does not intend to amend any other criteria for listing options on an underlying security in Rule 19.3.

Currently the underlying covered security must have a closing market price of $3.00 per share for the previous five (5) consecutive business days preceding the date on which the Exchange submits a listing certificate to OCC. In the proposed amendment, the market price will still be measured by the closing price reported in the primary market in which the underlying covered security is traded, but the measurement will be the price over the prior three (3) consecutive business day period preceding the submission of the listing certificate to OCC, instead of the prior five (5) business day period.

The Exchange acknowledges that the Options Listing Procedures Plan [6] requires that the listing certificate be provided to OCC no earlier than 12:01 a.m. and no later than 11:00 a.m. (Chicago time) on the trading day prior to the day on which trading is to begin.[7] The proposed amendment will still comport with that requirement. For example, if an initial public offering (''IPO'') occurs at 11:00 a.m. on Monday, the earliest date the Exchange could submit its listing certificate to OCC would be on Thursday by 12:01 a.m. (Chicago time), with the market price determined by the closing price over the three-day period from Monday through Wednesday. The option on the IPO would then be eligible for trading on the Exchange on Friday. The proposed amendment would essentially enable options trading within four (4) business days of an IPO becoming available instead of six (6) business days (five (5) consecutive days plus the day the listing certificate is submitted to OCC).

The Exchange's initial listing standards for equity options in Rule 19.3 (including the current price/time standard of $3.00 per share for five (5) consecutive business days) are substantially similar to the initial listing standards adopted by other options exchanges.[8] At the time BZX Options received its initial approval from the Commission, as part of its Rules, the Exchange adopted the options industry adopted the ''look back'' period of five consecutive business days, because it determined that the five-day period was sufficient to protect against attempts to manipulate the market price of the underlying security and would provide a reliable test for stability.[9] Surveillance technologies and procedures concerning manipulation have evolved since then to provide adequate prevention or detection of rule or securities law violations within the proposed time frame, and the Exchange represents that its existing trading surveillances are adequate to monitor the trading of options on the Exchange.[10]

Furthermore, the Exchange notes that the scope of its surveillance program also includes cross-market surveillance for trading that is not just limited to the Exchange. In particular, the Exchange or the Financial Industry Regulatory Authority (''FINRA''), pursuant to a regulatory services agreement on behalf of the Exchange and its affiliate Cboe EDGX Exchange, Inc. (''EDGX''), operates a range of cross-market equity surveillance patterns to look for potential manipulative behavior, including spoofing, algorithm gaming, marking the close and open, and momentum ignition strategies, as well as more general, abusive behavior related to front running, wash sales, quoting/routing, and Reg SHO violations. These cross-market patterns incorporate relevant data from various markets beyond the Exchange and its affiliates, including data from the New York Stock Exchange (''NYSE'') and from the Nasdaq Stock Market (''Nasdaq'').

Additionally, for options, the Exchange and EDGX utilize an array of patterns that monitor manipulation of options, or manipulation of equity securities (regardless of venue) for the purpose of impacting options prices on both the Exchange and EDGX options markets (*i.e.,* mini-manipulation strategies). Surveillance coverage is initiated once options begin trading on either the Exchange or EDGX. Accordingly, the Exchange believes that the cross-market surveillance performed by the Exchange or FINRA on behalf of the Exchange and EDGX, coupled with the Exchange staff's real-time monitoring of similarly violative activity on the Exchange and EDGX as described herein, reflects a comprehensive surveillance program that is adequate to monitor for manipulation of the underlying security and overlying option within the proposed three-day look back period.

Furthermore, the Exchange notes that the proposed listing criteria would still require that the underlying security be listed on NYSE, the American Stock Exchange (now known as NYSE American), or the National Market System of The Nasdaq Stock Market (now known as the Nasdaq Global Market) (collectively, the ''Named Markets''), as provided for in the definition of ''covered security'' from Section 18(b)(1)(A) of the 1933 Act. Accordingly, the Exchange believes that the proposed rule change would still ensure that the underlying security meets the high listing standards of a Named Market, and would also ensure that the underlying is covered by the regulatory protections (including market surveillance, investigation and enforcement) offered by these exchanges for trading in covered securities conducted on their facilities.

Furthermore, the Nasdaq had no cases within the past five years where an IPO-related issue for which it had pricing information qualified for the $3.00 price requirement during the first three (3) days of trading and did not qualify for the $3.00 price requirement during the first five (5) days.[11] In other words, none of these qualifying issues fell below the $3.00 threshold within the first three (3) or five (5) days of trading. As such, the Exchange believes that its existing surveillance technologies and procedures, coupled with Nasdaq's

[6] The Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11a(2)(3)(B) of the Securities Exchange Act of 1934 (a/k/a the Options Listing Procedures Plan (''OLPP'')) is a national market system plan that, among other things, sets forth procedures governing the listing of new options series. See Securities Exchange Act Release No. 44521 (July 6, 2001), 66 FR 36809 (July 13, 2001) (Order approving OLPP). The sponsors of OLPP include OCC; Cboe BZX Exchange, Inc. (formerly BATS Exchange, Inc.); BOX Options Exchange LLC; Cboe C2 Exchange, Inc. (formerly C2 Options Exchange, Incorporated); Cboe Exchange, Inc. (formerly Chicago Board Options Exchange, Incorporated); Cboe EDGX Exchange, Inc. (formerly EDGX Exchange, Inc.); Miami International Securities Exchange, LLC; MIAX PEARL, LLC; The Nasdaq Stock Market LLC; NASDAQ BX, Inc.; Nasdaq PHLX LLC; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; NYSE American, LLC; and NYSE Arca, Inc.

[7] *See* OLPP at page 3.

[8] *See, e.g.,* Phlx Rule 1009, Commentary .01; *see also* MIAX Rule 402(b)(5) and BOX Rule 5020(b)(5).

[9] *See* Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031) (order approving rules governing the trading of options on the Cboe BZX Exchange).

[10] Such surveillance procedures generally focus on detecting securities trading subject to opening price manipulation, closing price manipulation, layering, spoofing or other unlawful activity impacting an underlying security, the option, or both. The Exchange has price movement alerts, unusual market activity and order book alerts active for all trading symbols. These real-time patterns are active for the new security as soon as the IPO begins trading.

[11] There were over 750 IPO-related issues on Nasdaq within the past five years. Out of all of the issues with pricing information, there was only one issue that had a price below $3 during the first five consecutive business days. The Exchange notes, however, that Nasdaq allows for companies to list on the Nasdaq Capital Market at $2.00 or $3.00 per share in some instances, which was the case for this particular issue. *See* Nasdaq Rule 5500 Series for initial listing standards on the Nasdaq Capital Market; *see also* Release No. 82474 in *supra* note 5.

findings related to the IPO-related issues as described herein, adequately address potential concerns regarding possible manipulation or price stability within the proposed timeframe.

The Exchange also believes that the proposed look back period can be implemented in connection with the other initial listing criteria for underlying covered securities. In particular, the Exchange recognizes that it may be difficult to verify the number of shareholders in the days immediately following an IPO due to the fact that stock trades generally clear within two business days (T+2) of their trade date and therefore the shareholder count will generally not be known until T+2.[12] The Exchange notes that the current T+2 settlement cycle was recently reduced from T+3 on September 5, 2017 in connection with the Commission's amendments to Rule 15c6–1(a) to adopt the shortened settlement cycle,[13] and the look back period of three (3) consecutive business days proposed herein reflects this shortened T+2 settlement period. As proposed, stock trades would clear within T+2 of their trade date (*i.e.,* within three (3) business days) and therefore the number of shareholders could be verified within three (3) business days, thereby enabling options trading within four (4) business days of an IPO (three (3) consecutive business days plus the day the listing certificate is submitted to OCC).

Furthermore, the Exchange notes that it can verify the shareholder count with various brokerage firms that have a large retail customer clientele. Such firms can confirm the number of individual customers who have a position in the new issue. The earliest that these firms can provide confirmation is usually the day after the first day of trading (T+1) on an unsettled basis, while others can confirm on the third day of trading (T+2). The Exchange has confirmed with some of these brokerage firms who provide shareholder numbers to the Exchange that they are T+2 after an IPO. For the foregoing reasons, the Exchange believes that basing the proposed three (3) business day look back period on the T+2 settlement cycle would allow for sufficient verification of the number of shareholders.

The proposed rule change will apply to all covered securities that meet the criteria of Rule 19.3. Pursuant to Rule 19.3, the Exchange establishes guidelines to be considered in evaluating the potential underlying securities for Exchange option transactions.[14] However, the fact that a particular security may meet the guidelines established by the Exchange does not necessarily mean that it will be approved as an underlying security.[15] As part of the established criteria, the issuer must be in compliance with any applicable requirement of the Securities Exchange Act of 1934.[16] Additionally, there are many relevant factors that are considered in arriving at a determination to approve an underlying security.[17] Even if the proposed option meets the objective criteria, the Exchange may decide not to list, or place limitations or conditions upon listing.[18] The Exchange believes that these measures, together with its existing surveillance procedures, provide adequate safeguards in the review of any covered security that may meet the proposed criteria for consideration of the option within the timeframe contained in this proposal.

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.[19] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [20] 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) [21] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes to its listing standards for covered securities would allow the Exchange to more quickly list options on a qualifying covered security that has met the $3.00 eligibility price without sacrificing investor protection. As discussed above, the Exchange believes that its existing trading surveillances provide a sufficient measure of protection against potential price manipulation within the proposed three (3) consecutive business day timeframe. The Exchange also believes that the proposed three (3) consecutive business day timeframe would continue to be a reliable test for price stability in light of Nasdaq's findings that none of the IPO-related issues on Nasdaq within the past five years that qualified for the $3.00 per share price standard during the first three trading days fell below the $3.00 threshold during the fourth or fifth trading day. Furthermore, the established guidelines to be considered by the Exchange in evaluating the potential underlying securities for Exchange option transactions,[22] together with existing trading surveillances, provide adequate safeguards in the review of any covered security that may meet the proposed criteria for consideration of the option within the proposed timeframe.

In addition, the Exchange believes that basing the proposed timeframe on the T+2 settlement cycle adequately addresses the potential difficulties in confirming the number of shareholders of the underlying covered security. Having some of the largest brokerage firms that provide these shareholder counts to the Exchange confirm that they are able to provide these numbers within T+2 further demonstrates that the 2,000 shareholder requirement can be sufficiently verified within the proposed timeframe. For the foregoing reasons, the Exchange believes that the proposed amendments will remove and perfect the mechanism of a free and open market and a national market system by providing an avenue for investors to swiftly hedged their investment in the stock in a shorter amount of time than what is currently in place.[23]

Finally, it should be noted that a price/time standard for the underlying security was first adopted when the listed options market was in its infancy,

[12] The number of shareholders of record can be validated by large clearing agencies such as The Depository Trust and Clearing Corporation (''DTCC'') upon the settlement date (*i.e.,* T+2).

[13] *See* Securities Exchange Act Release No. 78962 (September 28, 2016), 81 FR 69240 (October 5, 2016) (Amendment to Securities Transaction Settlement Cycle) (File No. S7–22–16).

[14] *See* Rule 19.3(b). The Exchange established specific criteria to be considered in evaluating potential underlying securities for Exchange option transactions.

[15] *Id.*

[16] *See* Rule 19.3(b)(3).

[17] *See* Rule 19.3(b).

[18] *Id.*

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *Id.*

[22] *See supra* notes 14–18.

[23] This proposed rule change does not alter any obligations of issuers or other investors of an IPO that may be subject to a lock-up or other restrictions on trading related securities.

and was intended to prevent the proliferation of options being listed on low-priced securities that presented special manipulation concerns and/or lacked liquidity needed to maintain fair and orderly markets.[24] When options trading commenced in 1973, the Commission determined that it was necessary for securities underlying options to meet certain minimum standards regarding both the quality of the issuer and the quality of the market for a particular security.[25] These standards, including a price/time standard, were imposed to ensure that those issuers upon whose securities options were to be traded were widely-held, financially sound companies whose shares had trading volume and float substantial enough so as not to be readily susceptible to manipulation.[26] At the time, the Commission determined that the imposition of these standards was reasonable in view of the pilot nature of options trading and the limited experience of investors with options trading.[27]

Now more than 40 years later, the listed options market has evolved into a mature market with sophisticated investors. In view of this evolution, the Commission has approved various exchange proposals to relax some of these initial listing standards throughout the years,[28] including reducing the price/time standard in 2003 from $7.50 per share for the majority of business days over a three month period to the current $3.00 per share/five business day standard (''2003 Proposal'').[29] It has been almost fifteen years since the Commission approved the 2003 proposal, and both the listed options market and exchange technologies have continued to evolve since then. In this instance, the Exchange is only proposing a modest reduction of the current five (5) business day standard to three (3) business days to correspond to the securities industry's move to a T+2 standard settlement cycle.[30] The $3.00 per share standard and all other initial options listing criteria in Rule 19.3 will remain unchanged by this proposal. For the reasons discussed herein, the Exchange therefore believes that the proposed three (3) business day period will be beneficial to the marketplace without sacrificing investor protections.

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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by Nasdaq Phlx that was recently approved by the Commission.[31] The proposed rule change will reduce the number of days to list options on an underlying security, and is intended to bring new options listings to the marketplace quicker.

(B) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written 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)[32] of the Act and Rule 19b–4(f)(6) thereunder.[33]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[34] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[35] 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 states that waiver of the 30-day operative delay would allow the Exchange greater flexibility in bringing new options listing to the marketplace more quickly, which will be beneficial to the marketplace permit fair competition among the exchanges by allowing the Exchange to modify the criteria for listing an option on an underlying covered security which is currently allowed on Nasdaq Phlx.[36] Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[37]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 No. SR-CboeBZX–2018–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

[24] *See* Securities Exchange Act Release No. 29628 (August 29, 1991), 56 FR 43949–01 (September 5, 1991) (SR–AMEX–86–21; SR–CBOE–86–15; SR–NYSE–86–20; SR–PSE–86–15; and SR–PHLX–86–21) (''1991 Approval Order'') at 43949 (discussing the Commission's concerns when options trading initially commenced in 1973).

[25] *See* 1991 Approval Order at 43949.

[26] *Id.*

[27] *Id.*

[28] *See, e.g.,* 1991 Approval Order (modifying a number of initial listing criteria, including the reduction of the price/time standard from $10 per share each day during the preceding three calendar months to $7.50 per share for the majority of days during the same period).

[29] *See* Securities Exchange Act Release Nos. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (SR–CBOE–2002–62); 47352 (February 11, 2003), 68 FR 8319 (February 20, 2003) (SR–PCX–2003–06); 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003) (SR–ISE–2003–04); 47613 (April 1, 2003), 68 FR 17120 (April 8, 2003) (SR–Amex–2003–19); and 47794 (May 5, 2003), 68 FR 25076 (May 9, 2003) (SR–Phlx–2003–27).

[30] *See supra* note 13.

[31] *See supra* note 5.

[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[34] 17 CFR 240.19b–4(f)(6).

[35] 17 CFR 240.19b–4(f)(6)(iii).

[36] *See supra* note 5.

[37] 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).

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–CboeBZX–2018–025. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also 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 No. SR–CboeBZX–2018–025 and should be submitted on or before May 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–07673 Filed 4–12–18; 8:45 am]

BILLING CODE 8011–01–P

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83014; File No. SR–CboeBZX–2017–023]

Self-Regulatory Organizations; CboeBZX Exchange, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the iShares Gold Strategy ETF Under Exchange Rule 14.11(i)

April 9, 2018.

I. Introduction

On December 21, 2017, CboeBZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the iShares Gold Strategy ETF (''Fund''), a series of the iShares U.S. ETF Trust (''Trust''), under Exchange Rule 14.11(i) (''Managed Fund Shares''). The proposed rule change was published for comment in the **Federal Register** on January 11, 2018.[3] On February 22, 2018, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On February 28, 2018, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. On April 4, 2018, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as modified by Amendment No. 1.[6] The Commission has received no comments on the proposal. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82444 (Jan. 5, 2018), 83 FR 1438.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 82758, 83 FR 8717 (Feb. 28, 2018). The Commission designated April 11, 2018, as the date by which it should approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] In Amendment No. 2, the Exchange: (1) Made changes to reflect that the Fund's name changed; (2) represented that the Adviser (as defined below) will erect and maintain fire walls with respect to its current and future broker-dealer affiliates; (3) stated that the Fund's investments in fixed income instruments may not comply with Exchange Rule 14.11(i)(4)(C)(ii); (4) modified and clarified the Fund's permitted investments, including with respect to the listed and over-the-counter derivatives and the fixed income instruments that the Fund may invest in; (5) represented that at least 80% of the Fund's investments in Gold Futures (as defined below), as calculated using gross notional exposure, will be in CME-listed or LME-listed gold futures or other exchange-traded gold futures with a similar liquidity profile; (6) represented that all of the Listed Gold Derivatives (as defined below) held by the Fund will trade on markets that are a member of, or affiliated with a member of, the Intermarket Surveillance Group, or with which the Exchange has in place a comprehensive surveillance sharing agreement; (7) represented that all exchange-traded products held by the Fund will be listed on U.S. national securities exchanges; (8) stated that the Fund's investments in derivatives will primarily consist of Gold Futures and clarified the circumstances under which the Fund may invest in other specified derivatives; (9) represented that the Fund will not hold mortgage-backed or other asset-backed government obligations; (10) clarified that the Fund will not invest in sovereign debt obligations of emerging market countries; (11) represented that all Fixed Income Investments (as defined below) held by the Fund will be investment grade and will not include instruments with a maturity longer than 397 days; (12) clarified the Cash Equivalents (as defined below) in which the Fund may invest; (13) stated that up to 25% of the total assets of the Fund may be indirectly held through the Subsidiary (as defined below); (14) made representations relating to the Fund's investments in derivatives, including that such investments will be made consistent with the Investment Company Act of 1940 and the Fund's objective and policies, that the Fund does not intend to make investments for the purposes of enhancing leverage, and that the Fund will take certain actions to mitigate and disclose leveraging risk; (15) stated where pricing information for the Fund's permitted investments will be publicly available; (16) made additional representations regarding the Fund, including where information relating to the Fund and the Shares will be made available; (17) provided additional justification for why the Fund's proposed investments are consistent with the Act, including why it is consistent with the Act for the Fund to hold fixed income instruments in a manner that may not comply with Exchange Rule 14.11(i)(4)(C)(ii); (18) represented that the Fixed Income Investments of the Fund will meet the requirements of Exchange Rule 14.11(i)(4)(C)(ii)(e); (19) made additional representations regarding the ability of the Exchange and the Financial Industry Regulatory Authority, on behalf of the Exchange, to surveil trading in the Shares and certain of the underlying investments; and (20) made other clarifications, corrections, and technical changes. Amendment No. 2 is available at: *https://www.sec.gov/comments/sr-cboebzx-2017-023/cboebzx2017023-3383514-162149.pdf.*

II. Exchange's Description of the Proposal, as Modified by Amendment No. 2

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This Amendment No. 2 to SR–CboeBZX–2017–023 amends and replaces in its entirety Amendment No.

1 to the proposal, which was submitted on February 28, 2018, which amended and replaced in its entirety the proposal as originally submitted on December 23, 2017. The Exchange submits this Amendment No. 2 in order to clarify certain points and add additional details about the Fund.

The Exchange proposes to list and trade the Shares under Exchange Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.[7] The Fund is a series of, and the Shares will be offered by, the Trust, which was established as a Delaware statutory trust on June 21, 2011. BlackRock Fund Advisors (the ''Adviser'') will serve as the investment adviser to the Fund. The Trust is registered with the Commission as an open-end management investment company and has filed a registration statement on behalf of the Fund on Form N–1A (''Registration Statement'') with the Commission.[8]

As a result of the instruments that will be indirectly held by the Fund, the Adviser, which is a member of the National Futures Association (''NFA''), will register as a commodity pool operator[9] with respect to the Fund. If the Fund retains any sub-adviser in the future, such sub-adviser will register as a commodity pool operator or commodity trading adviser, if required by Commodity Futures Trading Commission (''CFTC'') regulations. The Fund will be subject to regulation by the CFTC and NFA and applicable disclosure, reporting and recordkeeping rules imposed upon commodity pools.

Exchange Rule 14.11(i)(7) 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 broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[10] In addition, Exchange Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Exchange Rule 14.11(i)(7) is similar to Exchange Rule 14.11(b)(5)(A)(i) (which applies to index-based funds); however, Exchange Rule 14.11(i)(7) in connection with the establishment 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 is not a registered broker-dealer, but is affiliated with multiple broker-dealers and has implemented and will maintain ''fire walls'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. In the event that (a) the Adviser becomes registered as a broker-dealer or newly affiliated with another 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 such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Exchange submits this proposal in order to allow the Fund to hold listed derivatives (*i.e.,* Listed Gold Derivatives, as defined below) in a manner that does not comply with Exchange Rule 14.11(i)(4)(C)(iv)(b)[11] and to employ a cash management strategy which include fixed income instruments that do not necessarily comply with Exchange Rule 14.11(i)(4)(C)(ii). Otherwise, the Fund will comply with all other listing requirements on an initial and continued listing basis under Exchange Rule 14.11(i) for Managed Fund Shares.

iShares Gold Strategy ETF

The Fund will seek to provide exposure, on a total return basis, to the price performance of gold. The Fund will seek to achieve its investment objective by investing primarily in a combination of (i) exchange-traded gold futures contracts (''Gold Futures'')[12] and exchange-listed options or listed swaps that correlate to the investment returns of physical gold (such other listed derivatives together with Gold Futures, ''Listed Gold Derivatives''),[13] based on the notional value of such derivative instruments; (ii) over-the-counter (''OTC'') derivatives that correlate to the investment returns of physical gold (''OTC Gold Derivatives''),[14] based on the notional value of such derivative instruments; and (iii) exchange-traded products

[7] The Commission originally approved Exchange Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018) and subsequently approved generic listing standards for Managed Fund Shares under Exchange Rule 14.11(i)(4)(C) in Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR–BATS–2015–100) (''Generic Listing Rules'').

[8] *See* Registration Statement on Form N–1A for the Trust, filed with the Commission on November 1, 2017 (File Nos. 333–179904 and 811–22649). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Adviser and open-end management companies advised by the Adviser under the Investment Company Act of 1940 (15 U.S.C. 80a–1). *See* Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812–13601).

[9] As defined in Section 1a(11) of the Commodity Exchange Act.

[10] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[11] Exchange Rule 14.11(i)(4)(C)(iv)(b) provides that ''the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).''

[12] At least 80% of the Fund's Gold Futures investment, as calculated using gross notional exposure, will be in CME-listed gold futures, LME-listed gold futures, or other exchange-traded gold futures with a similar liquidity profile.

[13] All of the Listed Gold Derivatives held by the Fund will trade on markets that are a member of the Intermarket Surveillance Group (''ISG'') or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[14] OTC Gold Derivatives include only OTC forwards, options, and swaps.

(''ETPs'') [15] backed by or linked to physical gold (''Gold ETPs,'' and collectively with Listed Gold Derivatives and OTC Gold Derivatives, the ''Gold Investments''). While the Fund may invest in Gold Futures, Listed Gold Derivatives, or OTC Gold Derivatives, the Fund's investments in derivatives will primarily consist of Gold Futures. Should Gold Futures become unavailable or illiquid or under such other circumstances the Adviser deems to be in the best interest of shareholders of the Fund, however, the Fund may invest in other Listed Gold Derivatives or OTC Gold Derivatives.

In seeking total return, the Fund will additionally aim to generate interest income and capital appreciation through a cash management strategy consisting of repurchase agreements, reverse repurchase agreements, money market instruments, certificates of deposit issued against funds deposited in a bank or savings and loan association, bankers acceptances, bank time deposits, commercial paper, investments in government obligations, including U.S. government and agency securities,[16] treasury inflation-protected securities, and sovereign debt obligations of non-U.S. countries excluding emerging market countries (''Non-U.S. Sovereign Debt'') [17] (collectively, ''Fixed Income Investments'') [18] and cash and Cash Equivalents[19] (collectively, with Fixed Income Investments, ''Cash Management Holdings'').[20] The Fund will be an actively managed exchange-traded fund and will not seek to replicate the performance of a specified index.

The Fund's investment strategy related to the Gold Investments will seek to maximize correlation with the Bloomberg Composite Gold Index (the ''Bloomberg Benchmark''), which is comprised of exchange-traded gold futures contracts and one or more ETPs backed by or linked to physical gold. The Bloomberg Benchmark is designed to track the price performance of gold. Although the Fund generally will hold, among other instruments, the same futures contracts under the same futures rolling schedule, and the same ETPs backed by or linked to physical gold, as those included in the Bloomberg Benchmark, the Fund is not obligated to invest in any such futures contracts or ETPs included in, and does not seek to track the performance of, the Bloomberg Benchmark.

The Fund expects to seek to gain exposure to Gold Investments by investing through a wholly-owned subsidiary organized in the Cayman Islands (the ''Subsidiary''). The Subsidiary is advised by the Adviser. Unlike the Fund, the Subsidiary is not an investment company registered under the Investment Company Act of 1940 (the ''1940 Act''). The Subsidiary has the same investment objective as the Fund. References below to the holdings of the Fund, including any restrictions thereon that are described within this proposal, are inclusive of the direct holdings of the Fund as well as the indirect holdings of the Fund through the Subsidiary, which may constitute up to 25% of the total assets of the Fund.

In order to achieve its investment objective, under Normal Market Conditions,[21] the aggregate gross notional value of Listed Gold Derivatives is generally not expected to exceed 75%, but may, in certain circumstances, approach 100%, of the Fund (including gross notional values). As noted above, Exchange Rule 14.11(i)(4)(C)(iv)(b) prohibits the Fund from holding listed derivatives based on any five or fewer underlying reference assets in excess of 65% of the weight of the portfolio (including gross notional exposures) and from holding listed derivatives based on any single underlying reference asset in excess of 30% of the weight of its portfolio (including gross notional exposures). The Exchange is proposing to allow the Fund to hold up to 100% of the weight of its portfolio (including gross notional exposures) in listed derivatives based on a single underlying reference asset (physical gold) through its investment in Listed Gold Derivatives. Allowing the Fund to hold a greater portion of its portfolio in Listed Gold Derivatives than permitted by the Generic Listing Rules would mitigate the Fund's dependency on holding OTC derivative instruments, which would reduce the Fund's operational burden by allowing the Fund to primarily use listed futures contracts and other listed derivatives to achieve its investment objective and would also reduce counter-party risk associated with holding OTC instruments. The Exchange also notes that holding listed derivatives instead of OTC derivatives would reduce the risk of manipulation because all of the Listed Gold Derivatives the Fund may invest in will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Under Normal Market Conditions, the Fund generally will hold Gold Investments (which include Listed Gold Derivatives, OTC Gold Derivatives,[22] and Gold ETPs [23]) and Cash Management Holdings. The Exchange represents that, except for the 65% and 30% limitations in Exchange Rule 14.11(i)(4)(C)(iv)(b) and except for the Cash Management Holdings that may

[15] As defined in Exchange Rule 11.8(e)(1)(A), ETP means any security listed pursuant to Exchange Rule 14.11. All ETPs will be listed on a U.S. national securities exchange.

[16] The Fund will not hold mortgage-backed or other asset-backed government obligations.

[17] An ''emerging market country'' is a country that, at the time of investment, is considered an emerging market country for purposes of constructing a major emerging market securities index.

[18] All of the Fixed Income Investments held by the Fund will be investment grade and will not include instruments with a maturity longer than 397 days.

[19] As defined in Exchange Rule 14.11(i)(4)(C)(iii)(b), Cash Equivalents are short-term instruments with maturities of less than three months, which includes only the following: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

[20] The Fund's Cash Management Holdings will consist of both fixed income securities, as described in Exchange Rule 14.11(i)(4)(C)(ii), and Cash Equivalents, as described in Exchange Rule 14.11(i)(4)(C)(iii). The Exchange is proposing to allow the Fund to hold such fixed income instruments in a manner that may not meet the requirements of Exchange Rule 14.11(i)(4)(C)(ii). The Fixed Income Investments portion of the Fund's Cash Management Holdings will be only those instruments that are included in Cash Equivalents (with the exception of Non-U.S. Sovereign Debt), but are not considered Cash Equivalents because they have maturities of three months or longer. The Exchange believes, however, that because these instruments, including Non-U.S. Sovereign Debt, are highly liquid and of high credit quality, they are less susceptible than other types of fixed income instruments both to price manipulation and volatility and that the holdings as proposed are generally consistent with the policy concerns which Rule 14.11(i)(4)(C)(ii) is intended to address.

[21] As defined in Exchange Rule 14.11(i)(3)(E), the term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[22] The aggregate gross notional value of the Fund's holdings in OTC Gold Derivatives will not exceed 20% of the weight of the portfolio (including gross notional exposures) in compliance with Exchange Rule 14.11(i)(4)(C)(v).

[23] The Fund's holdings in Gold ETPs will comply with the requirements of Exchange Rule 14.11(i)(4)(C)(i)(a).

not meet the requirements of Exchange Rule 14.11(i)(4)(C)(ii), the Fund's proposed investments will satisfy, on an initial and continued listing basis, all of the Generic Listing Rules and all other applicable requirements for Managed Fund Shares under Exchange Rule 14.11(i).

The Fund's investments, including derivatives, will be made consistent with the 1940 Act and the Fund's investment objective and policies, and the Fund does not intend to make investments for the purposes of enhancing leverage (although certain derivatives and other investments may have a leveraging effect).[24] That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2Xs and 3Xs) of the Fund's ''appropriate broad-based securities market index'' (as defined in Form N–1A).

The Trust is required to comply with Rule 10A–3 under the Act [25] for the initial and continued listing of the Shares of the Fund. In addition, the Exchange represents that the Shares of the Fund will meet and be subject to all other requirements of the Generic Listing Rules and other applicable continued listing requirements for Managed Fund Shares under Exchange Rule 14.11(i), including those requirements regarding the Disclosed Portfolio (as defined in the Exchange rules) and the requirement that the Disclosed Portfolio and the net asset value (''NAV'') will be made available to all market participants at the same time,[26] intraday indicative value,[27] suspension of trading or removal,[28] trading halts,[29] disclosure,[30] and firewalls.[31] Further, at least 100,000 Shares will be outstanding upon the commencement of trading.[32] Moreover, all of the Listed Gold Derivatives and Gold ETPs the Fund may invest in will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[33] Additionally, the Exchange or Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, are able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference assets and intraday indicative values, and the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Fund. The Trust, on behalf of the Fund, has represented to the Exchange that it will advise the Exchange of any failure by the Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Availability of Information

As noted above, the Fund will comply with the requirements under the Generic Listing Rules for Managed Fund Shares related to Disclosed Portfolio, NAV, and the intraday indicative value. Additionally, the intra-day, closing and settlement prices of exchange-traded portfolio assets, including the Gold ETPs and Listed Gold Derivatives, will be readily available from the exchanges trading such securities or derivatives, as the case may be, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Intraday price quotations on OTC Gold Derivatives and Fixed Income Investments are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay or in real-time for a paid fee. Price information for Cash Equivalents will be available from major market data vendors. The Disclosed Portfolio will be available on the Fund's website (*www.ishares.com*) free of charge. The Fund's website will include a form of the prospectus for the Fund and additional information related to NAV and other applicable quantitative information. Information regarding market price and trading volume of the Shares will be continuously available throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume for the Shares will be published daily in the financial section of newspapers. Trading in the Shares may be halted for market conditions or for reasons that, in the view of the Exchange, make trading inadvisable. 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. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions. The Exchange prohibits the distribution of material non-public information by its employees. Quotation and last sale information for the Shares will be available via the CTA high-speed line.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (2) Exchange Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the intraday indicative value and the Disclosed Portfolio will be disseminated; (4) the risks involved in trading the Shares during the Pre-Opening [34] and After

[24] The Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of a fund, including a fund's use of derivatives, may give rise to leverage, causing a fund to be more volatile than if it had not been leveraged. The Fund's investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. To mitigate leveraging risk, the Fund will segregate or earmark liquid assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulations, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. *See* 15 U.S.C. 80a-18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979); Dreyfus Strategic Investing, Commission No-Action Letter (June 22, 1987); Merrill Lynch Asset Management, L.P., Commission No-Action Letter (July 2, 1996).

[25] 17 CFR 240.10A–3.

[26] *See* Exchange Rules 14.11(i)(4)(A)(ii) and 14.11(i)(4)(B)(ii).

[27] *See* Exchange Rule 14.11(i)(4)(B)(i).

[28] *See* Exchange Rule 14.11(i)(4)(B)(iii).

[29] *See* Exchange Rule 14.11(i)(4)(B)(iv).

[30] *See* Exchange Rule 14.11(i)(6).

[31] *See* Exchange Rule 14.11(i)(7).

[32] *See* Exchange Rule 14.11(i)(4)(A)(i).

[33] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[34] The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

Hours Trading Sessions [35] when an updated intraday indicative value will not be calculated or publicly disseminated; (5) the requirement that Exchange members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction in Shares; and (6) trading information.

The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act. The Information Circular will also reference that the Fund will be subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's website.

2. *Statutory Basis*

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [36] in general and Section 6(b)(5) of the Act [37] in particular because the Exchange believes that the proposed rule change is 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 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 given that the Shares will meet each of the initial and continued listing criteria in Exchange Rule 14.11(i) with the exception of (a) Exchange Rule 14.11(i)(4)(C)(iv)(b), which requires that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures), and (b) Exchange Rule 14.11(i)(4)(C)(ii) related to fixed income securities. The Exchange believes that the liquidity in the spot gold [38] and the underlying derivatives markets, in particular the market for Gold Futures,[39] minimize the risk for manipulation in the underlying gold market, which mitigates the risk of manipulation in Listed Gold Derivatives and the concerns related to the susceptibility to manipulation of an underlying reference asset that Exchange Rule 14.11(i)(4)(C)(iv)(b) is intended to address. Further, at least 80% of the Fund's Gold Futures investment, as calculated using gross notional exposure, will be in CME-listed gold futures, LME-listed gold futures, or other exchange-traded gold futures with a similar liquidity profile. As such, the Exchange believes that the liquidity in the spot gold and Gold Futures markets acts to prevent manipulation in Listed Gold Derivatives and will act to prevent manipulation in the Shares. Further, allowing the Fund to hold a greater portion of its portfolio in Listed Gold Derivatives would mitigate the Fund's dependency on holding OTC instruments, which would reduce the Fund's operational burden by allowing the Fund to primarily use listed futures contracts and other listed derivatives to achieve its investment objective and would also reduce counter-party risk associated with holding OTC instruments. The Exchange also notes that Listed Gold Derivatives are traded on markets with surveillance procedures and price transparency. Trading in the Shares is subject to the Exchange's surveillance procedures for derivative securities products. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

While Exchange Rule 14.11(i)(4)(C)(ii) includes rules intended to ensure that the fixed income securities included in a fund's portfolio are sufficiently large, diverse, and have sufficient publicly available information regarding the issuances, the Exchange believes that such concerns are mitigated by the types of instruments that the Fund would hold. The Fixed Income Investments portion of the Fund's Cash Management Holdings includes only those instruments that are included in Cash Equivalents (with the exception of Non-U.S. Sovereign Debt), but are not considered Cash Equivalents because they have maturities of three months or longer.[40] The Exchange believes, however, that because these instruments, including Non-U.S. Sovereign Debt, are highly liquid and investment grade, they are less susceptible than other types of fixed income instruments both to price manipulation and volatility and that the holdings as proposed are generally consistent with the policy concerns which Rule 14.11(i)(4)(C)(ii) is intended to address. The Cash Equivalents portion of the Cash Management Holdings will meet Exchange Rule 14.11(i)(4)(C)(iii), which allows a fund to hold Cash Equivalents without limitation. Because the Cash Management Holdings will consist of both high-quality fixed income securities described above and other instruments that meet the definition of Cash Equivalents, the Exchange believes that the policy concerns that Exchange Rule 14.11(i)(4)(C)(ii) is intended to address are otherwise mitigated and that the Fund should be permitted to hold its Cash Management Holdings in a manner that may not comply with Exchange Rule 14.11(i)(4)(C)(ii).[41]

All of the Listed Gold Derivatives and Gold ETPs the Fund may invest in will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange, or FINRA, on behalf of the Exchange, or both, will communicate with ISG, other markets or entities who are members or affiliates of the ISG, or other markets or entities with which the Exchange has entered into a comprehensive surveillance sharing agreement regarding trading in the Shares and the underlying Listed Gold Derivatives and Gold ETPs held by the Fund.[42] The Exchange, FINRA, on behalf of the Exchange, or both, may obtain information regarding trading in the Shares and the Listed Gold Derivatives and Gold ETPs via the ISG from other markets or entities who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing

[35] The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

[36] 15 U.S.C. 78f.

[37] 15 U.S.C. 78f(b)(5).

[38] According to the London Precious Metals Clearing Limited, there was an average of $29.8 billion and $25.3 billion cleared daily by its five member firms in January and February of 2018, respectively, which represents only a part of the total spot gold trading volumes. *See http://www.lbma.org.uk/clearing-statistics.*

[39] For the months of February and March of 2018, CME-listed gold futures traded an average of approximately $40 billion in daily notional value, while LME-listed gold futures traded an average of approximately $280 million in daily notional value.

[40] The Fixed Income Investments will not include instruments with a maturity longer than 397 days.

[41] The Exchange notes that the Fixed Income Investments portion of the Fund will meet the requirement of Rule 14.11(i)(4)(C)(ii)(e).

[42] FINRA conducts cross-market surveillances on behalf of the exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

agreement.[43] Additionally, the Exchange or FINRA, on behalf of the Exchange, are able to access, as needed, trade information for certain fixed income instruments reported to TRACE. The Exchange further notes that other than Rule 14.11(i)(4)(C)(ii) and Rule 14.11(i)(4)(C)(iv)(b), the Fund will meet and be subject to all other requirements of the Generic Listing Rules and other applicable continued listing requirements for Managed Fund Shares under Exchange Rule 14.11(i), including those requirements regarding the Disclosed Portfolio and the requirement that the Disclosed Portfolio and the NAV will be made available to all market participants at the same time, intraday indicative value, suspension of trading or removal, trading halts, disclosure, and firewalls. Further, at least 100,000 Shares will be outstanding upon the commencement of trading.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 rather will facilitate the listing and trading of an additional actively-managed exchange-traded fund that will enhance competition among both market participants and listing venues, 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[44] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[45] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As noted above, the Fund's investments in listed derivatives will not comply with Rule 14.11(i)(4)(C)(iv)(b). Under the proposal, the Fund could hold up to 100% of the weight of its portfolio (including gross notional exposures) in listed derivatives based on a single underlying reference asset (physical gold) through its investment in Listed Gold Derivatives. According to the Exchange, the liquidity in the spot gold market and the underlying derivatives markets, and in particular the market for Gold Futures,[46] minimizes the risk for manipulation in the underlying gold market, which in turn mitigates the risk of manipulation in Listed Gold Derivatives and the concerns that Rule 14.11(i)(4)(C)(iv)(b) is intended to address. The Commission notes that the Fund's investments in derivatives will primarily consist of Gold Futures, and at least 80% of the Fund's investment in Gold Futures, as calculated using gross notional exposure, will be in CME-listed gold futures, LME-listed gold futures, or other exchange-traded gold futures with a similar liquidity profile. In addition, the Commission notes that all of the Listed Gold Derivatives the Fund may invest in will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, as noted above, the Fund's Fixed Income Investments may not comply with Rule 14.11(i)(4)(C)(ii).[47] The Exchange states that the types of fixed income instruments that the Fund will hold are highly liquid and of high credit quality and are, therefore, less susceptible to price manipulation and volatility than other types of fixed income instruments. The Commission notes that the Fixed Income Investments will consist of only those instruments that are included in the definition of ''Cash Equivalents'' as set forth in Rule 14.11(i)(4)(C)(iii), with the exception of Non-U.S. Sovereign Debt, but are not considered Cash Equivalents because they have maturities of three months or longer. The Commission further notes that the Fixed Income Investments will all be investment grade and will have a maturity of 397 days or less, and that the Fund will not invest in mortgage-backed or other asset-backed government obligations or sovereign debt obligations of emerging market countries.

The Commission also notes that, other than Rule 14.11(i)(4)(C)(iv)(b) with respect to the Listed Gold Derivatives and Rule 14.11(i)(4)(C)(ii) with respect to the Fixed Income Investments, the Fund will meet all other requirements of Rule 14.11(i). The Commission believes that these proposed initial and continued listing requirements, including the requirements with respect to Listed Gold Derivatives and Fixed Income Investments, are designed to mitigate the potential for manipulation of the Shares.

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[48] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the CTA high-speed line. Further, as required by Rule 14.11(i)(4)(B)(i), the Intraday Indicative Value (as defined in Rule 14.11(i)(3)(C)) will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours (as defined in Rule 1.5(w)). Information regarding market price and trading volume of the Shares will be continually available throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume for the Shares will be published daily in the financial section of newspapers. The intra-day, closing, and settlement prices of exchange-traded portfolio assets, including the Gold ETPs and Listed Gold Derivatives, will be readily available from the exchanges trading such securities or derivatives, as the case may be, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Intraday

[43] *See* note 33, *supra*.

[44] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[45] 15 U.S.C. 78f(b)(5).

[46] *See supra* notes 38 and 39 and accompanying text.

[47] The Exchange represents that the Fixed Income Investments will meet the requirement in Rule 14.11(i)(4)(C)(ii)(e) that any non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio.

[48] 15 U.S.C. 78k–1(a)(1)(C)(iii).

price quotations on OTC Gold Derivatives and Fixed Income Investments are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay or in real-time for a paid fee. Price information for Cash Equivalents will be available from major market data vendors. In addition, the Fund's website will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission also believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. As required by Rule 14.11(i)(4)(A)(ii), 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 (as defined in Rule 14.11(i)(3)(B)) will be made available to all market participants at the same time. The Exchange represents that the Disclosed Portfolio will be available on the Fund's website free of charge. Further, trading in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will also be subject to Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares of a Fund may be halted.

The Exchange states that it prohibits the distribution of material, non-public information by its employees. The Exchange states that the Adviser is not a registered broker-dealer but the Adviser is affiliated with multiple broker-dealers and has implemented and will maintain ''fire walls'' with respect to such broker-dealers regarding access to information concerning the composition of and/or changes to the Fund's portfolio. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[49]

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. In support of this proposal, the Exchange represents that:

(1) Other than Rule 14.11(i)(4)(C)(iv)(b) and Rule 14.11(i)(4)(C)(ii), the Fund will comply with all other requirements under Rule 14.11(i) for Managed Fund Shares on an initial and continued listing basis.

(2) The Fund's investments in derivatives will primarily consist of Gold Futures. However, should Gold Futures become unavailable or illiquid or under such other circumstances the Adviser deems to be in the best interest of shareholders of the Fund, the Fund may invest in other Listed Gold Derivatives or OTC Gold Derivatives.

(3) At least 80% of the Gold Futures held by the Fund, as calculated using gross notional exposure, will be in CME-listed gold futures, LME-listed gold futures, or other exchange-traded gold futures with a similar liquidity profile.

(4) All of the Listed Gold Derivatives and Gold ETPs held by the Fund will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(5) All of the Fixed Income Investments held by the Fund will be investment grade and will have a maturity of 397 days or less. The Fixed Income Investments will be consist of only those instruments that are included in the definition of ''Cash Equivalents'' (with the exception of Non-U.S. Sovereign Debt), but are not considered Cash Equivalents because they have maturities of three months or longer. The Fund will not invest in mortgage-backed or other asset-backed government obligations or sovereign debt obligations of emerging market countries.

(6) At least 100,000 Shares will be outstanding upon the commencement of trading.

(7) Trading of the Shares on the Exchange will be subject to the Exchange's surveillance procedures for derivative securities products, and these procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

(8) The Exchange, or FINRA, on behalf of the Exchange, or both, will communicate with ISG, other markets or entities who are members or affiliates of the ISG, or other markets or entities with which the Exchange has entered into a comprehensive surveillance sharing agreement regarding trading in the Shares and the underlying Listed Gold Derivatives and Gold ETPs held by the Fund.[50] The Exchange, FINRA, on behalf of the Exchange, or both, may obtain information regarding trading in the Shares, the Listed Gold Derivatives, and Gold ETPs via the ISG from other markets or entities who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Additionally, the Exchange or FINRA, on behalf of the Exchange, are able to access, as needed, trade information for certain fixed income instruments reported to TRACE.

(9) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) Exchange Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value and Disclosed Portfolio will be disseminated; (d) the risks involved in trading the Shares during the Pre-Opening and After Hours Trading Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that Exchange members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction in Shares; and (f) trading information.

(10) The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.

(11) For initial and continued listing of the Shares, the Trust is required to comply with Rule 10A–3 under the Act.[51]

The Exchange represents that all statements and representations made in the filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference assets and intraday indicative values, and the applicability of Exchange listing rules specified in the filing shall constitute continued listing requirements for the Fund. In addition, the Trust, on behalf of the Fund, has represented to the Exchange that it will advise the Exchange of any failure by the Fund or the Shares to comply with the

[49] *See* Rule 14.11(i)(4)(B)(ii)(b).

[50] *See supra* note 42.

[51] *See* 17 CFR 240.10A–3.

continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

This approval order is based on all of the Exchange's statements and representations, including those set forth above and in Amendment No. 2 to the proposed rule change.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act [52] and Section 11A(a)(1)(C)(iii) of the Act [53] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 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–CboeBZX–2017–023 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–2017–023. 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–CboeBZX–2017–023, and should be submitted on or before May 4, 2018.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the **Federal Register**. The Commission notes that Amendment No. 2 clarified the application of Exchange Rule 14.11(i) to the Fund's investments. Amendment No. 2 also provided other clarifications and additional information to the proposed rule change. The changes and additional information in Amendment No. 2 assisted the Commission in finding that the proposal is consistent with the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[54] to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[55] that the proposed rule change (SR–CboeBZX–2017–023), as modified by Amendment No. 2 be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–07670 Filed 4–12–18; 8:45 am]

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[52] 15 U.S.C. 78f(b)(5).

[53] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[54] 15 U.S.C. 78s(b)(2).

[55] *Id.*

[56] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83016; File No. SR–Phlx–2018–26]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule

April 9, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2018, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Sections VIII, X, and XI of the Exchange's Pricing Schedule, as described below.

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

The Exchange proposes to amend several sections of its Pricing Schedule to harmonize its colocation,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

connectivity, and direct connectivity services and fees with the rules of Nasdaq BX, Inc. (''BX''). The Exchange also proposes to update or eliminate certain obsolete or extraneous language from its Pricing Schedule.

The Exchange, along with its sister exchanges, BX, The Nasdaq Stock Market LLC (''Nasdaq''), Nasdaq ISE, LLC (''Nasdaq ISE''), Nasdaq MRX, LLC (''Nasdaq MRX''), and Nasdaq GEMX, LLC (''Nasdaq GEMX'') (collectively, the ''Nasdaq, Inc. Exchanges''), offer certain colocation, connectivity, and direct connectivity services to their customers on a shared basis, meaning that a customer may utilize theses services to gain access to any or all of the Nasdaq, Inc. Exchanges. The Nasdaq, Inc. Exchanges only charge customers once for these shared services, even to the extent that customers use the services to connect to more than one of the Nasdaq, Inc. Exchanges.

The amendments that the Exchange proposes herein are intended principally to ensure that the shared services that the Exchange offers, and the fees that it charges for such services, are uniform across the Nasdaq, Inc. Exchanges' rulebooks and reflect relevant changes that have been made already to the rules of BX. The amendments also update or remove certain language from the Exchange's Pricing Schedule that refers to obsolete terms or expired time-limited programs or that is otherwise extraneous.

The first amendment that the Exchange proposes is to Section VIII of its Pricing Schedule, entitled ''NASDAQ PSX FEES.'' The Exchange proposes to amend the text under the heading ''Testing Facilities'' to eliminate extraneous provisions that were inadvertently and erroneously included in the Rule but have no intended meaning or purpose there. These provisions are subsections (b) and (c). Subsection (b) defines terms, specifically ''Active Connection,'' ''Idle Connection,'' and ''Period of Inactivity,'' that are not utilized elsewhere in the Rule. Subsection (c) lists exceptions to the testing fees and these exceptions are not applicable to the Exchange's Test Facility. The Exchange proposes that existing subsection (d) be renumbered as new subsection (b). The Exchange also proposes that new subsection (b) delete reference to an obsolete waiver of installation fees for installations ordered prior to March 2014. Furthermore, the Exchange proposes to remove obsolete references to the Exchange having two testing environments—one located in Carteret, New Jersey and another located in Ashburn, Virginia—because the Ashburn environment has been decommissioned. Lastly, the Exchange proposes to specify that connectivity to the Exchange's testing facility will also provide for connectivity to the testing facilities of any or all of the other Nasdaq, Inc. Exchanges, including those of not only Nasdaq and BX, but also Nasdaq ISE, Nasdaq MRX, and Nasdaq GEMX.[3]

Second, the Exchange proposes to amend Section X, which lists the schedule of fees that the Exchange charges for colocation services, to harmonize that schedule with BX Rule 7034. The proposed changes are as follows:

- The Exchange proposes to amend Section X(a), under the heading ''Cabinet with Power,'' to update the installation and monthly fees it charges to customers to rent powered cabinet space in its colocation facilities. The proposed changes are as follows: (i) For super high density cabinets, the Exchange proposes to decrease its installation fee from $7,000 to $4,500 and its monthly fee from $13,000 to $8,000; (ii) for high density cabinets, it proposes to decrease its monthly fee from $7,000 to $4,500; (iii) for medium-high density cabinets, it proposes to decrease its monthly fees from $6,000 to $3,500; (iv) for medium density cabinets, it proposes to decrease its monthly fees from $5,000 to $2,500; (v) for low density cabinets, it proposes to decrease its monthly fees from $4,000 to $2,000; and (vi) for half cabinets, it proposes to decrease its monthly fees from $3,000 to $2,000. These changes will render this subsection of the Pricing Schedule consistent with BX Rule 7034(a).
- The Exchange proposes to amend Section X(a) to remove the paragraph entitled ''Temporary Fee Reduction for Cabinets with Power,'' as this fee reduction program has expired.
- The Exchange proposes to amend Section X(a), under the heading ''Multi-Firm Cabinet Charge,'' to state that the additional charge is per cabinet, per firm, which will render this provision consistent with a corresponding provision in Nasdaq Rule 7034(a).
- The Exchange proposes to amend Section X(b), under the heading ''External Telco/Inter-Cabinet Connectivity,'' to update the monthly fees it charges for external telecommunications and inter-cabinet connectivity, as follows: (i) for a category 6 cable patch, a DS–3 connection, and a fiber connection, the Exchange proposes to increase its monthly fees from $300 to $350; and (ii) for a POTS Line, the Exchange proposes to increase the monthly fee from $0 to $50. These changes will render this paragraph of the Pricing Schedule consistent with a corresponding paragraph in BX Rule 7034(b).
- The Exchange proposes to amend Section X(b), under the heading ''Connectivity to Phlx,'' to update the fees it charges for fiber connectivity to the Exchange, as follows: (i) For a 10Gb fiber connection to the Exchange, the Exchange proposes to increase the monthly fee from $5,000 to $10,000; (ii) for a 40Gb fiber connection to the Exchange, it proposes to increase the monthly fee from $15,000 to $20,000; (iii) for a 1Gb fiber connection to the Exchange, it proposes to increase the monthly fee from $1,000 to $2,500; (iv) for a 1Gb copper connection to the Exchange, it proposes to increase the monthly fee from $1,000 to $2,500; (v) the Exchange proposes to add a 1Gb Ultra fiber connection to the Exchange for an installation fee of $1,500 and a monthly fee of $2,500; and (vi) the Exchange proposes to remove obsolete language regarding an expired fee waiver program. These changes will render this paragraph of the Pricing Schedule consistent with corresponding paragraphs in BX Rule 7034(b). The Exchange also proposes an amendment to this provision to specify that connectivity to the Exchange will also provide for connectivity to any or all of the other Nasdaq, Inc. Exchanges, including not only to Nasdaq and BX, but also to Nasdaq ISE, LLC, Nasdaq MRX, LLC, and Nasdaq GEMX, LLC. This proposal mirrors existing language in Rule BX Rule 7034(b).
- The Exchange proposes to amend Section X(b) to add a new paragraph under a heading entitled ''Connectivity to Third Party Services.'' This proposed paragraph will provide for connectivity via colocation to market data feeds from other markets and exchanges,[4] Securities Information Processors (''SIPs'')[5] data, and other non-exchange services. The proposed connectivity and associated fees are as follows: (i) For a 10Gb Ultra fiber connection, the Exchange proposes to charge a $1,500

[3] The Exchange proposes to amend Section VII.E of the Pricing Schedule to make a similar change.

[4] For example, Third Party Connectivity will support connectivity to the FINRA/Nasdaq Trade Reporting Facility, BZX and BYX Depth Feeds, and NYSE Feeds. A customer must separately subscribe to the third party services to which it connects with a Third Party Connectivity subscription.

[5] The SIPs link the U.S. markets by processing and consolidating all protected bid/ask quotes and trades from every registered exchange trading venue and FINRA into a single data feed, and they disseminate and calculate critical regulatory information, including the National Best Bid and Offer, Limit Up Limit Down price bands, short sale restrictions and regulatory halts.

installation fee and an ongoing monthly fee of $5,000; (ii) for a 1Gb Ultra fiber connection, it proposes to charge a $1,500 installation fee and an ongoing monthly fee of $2,000; and (iii) for a 1Gb Ultra or a 10Gb Ultra connection for UTP only, it proposes to charge a $100 installation fee and an ongoing monthly fee of $100. All of the foregoing fees will be waived for two connections per client to UTP SIP feeds only (UQDF and UTDF). The Exchange notes that the proposed paragraph parallels BX Rule 7034(b).

• The Exchange proposes to amend Section X(b), under the heading ''Market Data Connectivity,'' to add prefatory language that exists in the analogous portion of BX Rule 7034(b). The language merely notes that the Market Data feeds listed in the provision are delivered to the Nasdaq Data Center via a fiber optic network. Additionally, the Exchange proposes to re-categorize and update the names of the certain CBOE/Bats/Direct Edge data feeds because the names listed in the current Pricing Schedule are obsolete. Similarly, the Exchange proposes to delete a $1,000 installation fee that presently applies to the Direct Edge feeds because the Direct Edge feeds are now offerings of CBOE, along with the BZX and BYX feeds. Going forward, a single, one-time $1,000 installation fee will apply to subscribers to any or all of the CBOE data feeds. Finally, the Exchange proposes to delete from the asterisked footnote to this paragraph the word ''telco'' from the phrase ''Pricing is for telco connectivity only.'' These proposals will render this paragraph consistent with corresponding text in BX and Nasdaq Rules 7034(b).

• The Exchange proposes to amend Section X(b) to add a new paragraph that will provide for multicast market data feeds from other markets to be delivered to the Nasdaq Data Center via wireless microwave or millimeter wave networks. The Exchange notes that Nasdaq already provides such data feeds to its customers. The proposed data feeds, and their corresponding installation and monthly fees, are as follows: (i) NYSE Equities (Arca Integrated), for an installation fee of $5,000 and a monthly fee of $10,000; (ii) NYSE Equities (NYSE Integrated), for an installation fee of $5,000 and a monthly fee of $10,000; (iii) BATS Multicast PITCH (BZX and BYZ), for an installation fee of $2,500 and a monthly fee of $7,500; (iv) Direct EDGE Depth of Book (EDGA, EDGX), for an installation fee of $2,500 and a monthly fee of $7,500; (v) CME Multicast Total (including CME Equities Futures Data, CME Fixed Income Futures Data, and CME Metal Futures Data), for an installation fee of $5,000 and a monthly fee of $23,500; (vi) CME Equities Futures Data Only, for a $5,000 installation fee and a monthly fee of $10,000; (vii) CME Fixed Income Futures Data Only, for a $5,000 installation fee and a monthly fee of $10,000; and (viii) CME Metals Futures Data Only, for a $5,000 installation fee and a monthly fee of $3,500.[6] As to the monthly fee for these services, the proposal provides that subscribers will receive discounts based upon the number of subscriptions they maintain.[7] The Exchange proposes to add this paragraph to render this paragraph of Section X(b) consistent with corresponding paragraphs in BX Rule 7034(b).

• The Exchange proposes to amend Section X(d), under the heading ''Additional Charges/Services,'' to update the installation fee it charges for super high density cabinet kits. Specifically, the Exchange proposes to decrease the fee from $7,000 to $4,500. The Exchange also proposes to amend the installation fee for Copper Patch Cords that is set forth in this paragraph from $4.50 + ''$1.50'' per ''meter'' to $4.50 + ''$0.50'' per ''foot.'' These changes will render this paragraph of the Schedule of Fees consistent with the corresponding paragraph in BX Rule 7034(d).

Third, the Exchange proposes to amend Section XI of the Exchange's Pricing Schedule, entitled ''Direct Connectivity to Phlx.'' This Section of the Pricing Schedule describes the means by which customers may connect directly to the Exchange's main or satellite data centers via a third party vendor's telecommunications circuit. The proposed changes to this Section are as follows:

• The Exchange proposes to update the structure of Chapter XI so that it will parallel the structure of BX Rule 7051. Specifically, the Exchange proposes to place the existing text of Section XI into a subsection (a), to be entitled ''Direct Circuit Connection to Phlx.'' It also proposes to add two additional subsections, as described below.

• The Exchange proposes to amend the text of Chapter XI (as reorganized in proposed subsection (a) and re-titled ''Direct Circuit Connection to Phlx'') so that it is fully consistent with BX Rule 7051(a) in terms of both the direct circuit connections that it offers to its customers as well as the associated fees that it charges for such connections. The proposed changes are as follows: (i) For 10Gb direct circuit connections to Phlx, the Exchange proposes to increase the installation fee from $1,000 to $1,500 and the monthly fee from $5,000 to $7,500; (ii) for 1Gb direct circuit connections to Phlx, the Exchange proposes to increase the installation fee from $1,000 to $1,500 and the monthly fee from $1,000 to $2,500; (iii) the Exchange proposes to add a 1Gb Ultra direct circuit connection for an installation fee of $1,500 and a monthly fee of $2,500; and (iv) the Exchange proposes to specify that direct circuit connectivity to the Exchange will also provide for direct circuit connectivity to any or all of the other Nasdaq, Inc. Exchanges, including not only Nasdaq and BX, but also Nasdaq ISE, Nasdaq MRX, and Nasdaq GEMX.

• The Exchange proposes to add a new subsection (b) to Section XI, entitled ''Direct Circuit Connection to Third Party Services.'' Through this subsection, which is an analogue to BX Rule 7051(b), the Exchange will offer its customers direct circuit connections to third party services, including the same third party services to which it proposes to connect customers through colocation, as set forth in proposed Section X(b) (described above). Specifically, the Exchange proposes to offer the following services and charge the following fees for them: (i) A 10Gb Ultra direct circuit connection for an installation fee of $1,500 and a monthly fee of $5,000; (ii) a 1Gb Ultra direct circuit connection for an installation fee of $1,500 and a monthly fee of $2,000; (iii) a 1Gb Ultra or 10Gb Ultra direct circuit connection (for UTP only) for an installation fee of $100 and a monthly fee of $100; (iv) an optional cable router for a $925 installation fee; and (v) a monthly fee of $150 per ''U'' of cabinet space rented.[8] For direct circuit connectivity to UTP SIP feeds only, the installation and monthly fees will be

[6] The Exchange proposes to charge subscribers to any or all of the CME Data Feeds a single $5,000 installation fee. In other words, a subscriber to the CME Fixed Income Futures Data Feed and the CME Metals Futures Data Feed will only pay a single $5,000 installation fee for access to both feeds.

[7] The proposed Rule paragraph provides that subscribers with three to five microwave or millimeter wave wireless subscriptions under Section X(b) will receive a 5% discount on all such subscriptions. Meanwhile, subscribers with six to ten microwave or millimeter wave wireless subscriptions under Section X(b) will receive a 10% discount on all such subscriptions. Subscribers with eleven to fourteen microwave or millimeter wave wireless subscriptions under Section X(b) will receive a 15% discount on all such subscriptions. Finally, subscribers with fifteen or more microwave or millimeter wave wireless subscriptions under Section X(b) will receive a 20% discount on all such subscriptions.

[8] These fees will be based on a height unit of approximately 1.75 inches high, commonly called a ''U'' space and a maximum power of 125 Watts per U space.

waived for the first two connections per client.

The Exchange proposes to add a new subsection (c) to Section XI, entitled ''Point of Presence (POP) Connectivity.'' This subsection, which is an analogue to BX Rule 7051(c), provides for customers to connect directly to the Exchange through a ''Point of Presence'' or ''POP'' that is located at one of the Exchange's satellite data centers, rather than in the Exchange's main data center. Each such POP, in turn, has a fully redundant connection to the Exchange's primary data center. The proposed services and associated fees are as follows: (i) The Exchange proposes to offer a 10Gb POP connection to Phlx for an installation fee of $1,500 and a monthly fee of $7,500; (ii) it proposes to offer a 1Gb Ultra POP connection to Phlx for an installation fee of $1,500 and a monthly fee of $2,500; and (iii) the Exchange proposes to state that the POP connectivity provided under this subsection also provides POP connectivity to any or all of the other Nasdaq, Inc. Exchanges.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that its proposals to update its schedule of shared connectivity, direct circuit connectivity, and colocation services that it provides in concert with its sister Nasdaq, Inc. Exchanges, and for which the Nasdaq, Inc. Exchanges charge a single fee, is reasonable because the proposals will ensure that the Exchange's Pricing Schedule, as it applies to such services and fees, will be consistent with the applicable schedules and rules of the other Nasdaq, Inc. Exchanges. The Exchange also notes that the proposals will provide consistencies across the Nasdaq, Inc. Exchanges for the same services. The proposed amendments to the Exchange's Pricing Schedule reflect changes and updates that have been made already to the BX Rules. For example, each of the proposed changes to the Exchange's connectivity, direct connectivity, and colocation fees will harmonize the Exchange's fees with those of BX.

The Exchange believes that the foregoing proposals provide for the equitable allocation of fees because the connectivity and colocation services to which these fees apply are shared services for which customers pay once, regardless of whether the customers choose to use these services to connect only to Phlx or also to any or all of the other Nasdaq, Inc. Exchanges. Moreover, the other Nasdaq, Inc. Exchanges already offer these shared services to their customers and do so at the same prices that the Exchange now proposes to charge. As such, the proposals will ensure that the fees that the Exchanges charges its customers for shared services are the same fees that the other Nasdaq, Inc. Exchanges charge their customers (including their customers who are also Phlx Members) for the same shared services. In other words, the proposals would ensure that a customer of the Exchange that wishes to, say, purchase direct connectivity to all of the Nasdaq, Inc. Exchanges will not pay more to do so through Phlx than it would pay if it purchased that same connectivity from Nasdaq, and vice versa.

The proposed fees and fee changes, moreover, are equitably allocated because the proposals align these fees with the costs that the Exchange incurs to provide the shared services, including the costs of developing, installing, maintaining, and upgrading equipment and systems relating to connectivity and colocation services. Finally, the proposed fees are equitably allocated because all member firms that subscribe to a particular connectivity option under the amended Rules will be assessed the same fee.

The proposals, similarly, are not unfairly discriminatory because the shared services they entail will be available to all similarly situated clients, while the fees and fee changes they entail will apply uniformly to such clients to the extent that they choose to utilize the shared services.

The Exchange's proposal to eliminate the $1,000 installation fee that presently applies to the Direct Edge feeds is reasonable because the Direct Edge feeds are now offerings of CBOE, along with the BZX and BYX feeds. The Exchange believes it is equitable, going forward, to charge a single, one-time $1,000 installation fee to subscribers to any or all of the CBOE data feeds, including the BZX Depth, BYX Depth, EDGA Depth, and EDGX Depth feeds. This proposal is not unfairly discriminatory because it will apply to all similarly situated customers of the CBOE data feeds.

Lastly, the Exchange's other proposals—to eliminate certain language from the Exchange's Pricing Schedule that is extraneous, eliminate references to expired fee reduction or waiver programs, and update references to third party data feeds to reflect their current names—are consistent with Section 6(b) of the Act,[11] in general, and further the objectives of Section 6(b)(5) of the Act,[12] in particular, in that they are 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. These proposals are non-controversial because maintaining a current and accurate Pricing Schedule serves the interests of the public and investors and because the proposals will not impact competition or limit access to or availability of the Exchange or its systems. The proposals also reflect changes that BX has already made to its rulebook.

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.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may connect to third parties instead of directly connecting to the Exchange, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed changes to the charges assessed for colocation, connectivity, and direct circuit connectivity are consistent with the fees already assessed by other Nasdaq, Inc. Exchanges for the same shared services. The Exchange does not believe that the proposed changes will impair the ability

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

of members or competing order execution venues to maintain their competitive standing in the financial markets.

Furthermore, the Exchange does not expect that its proposals to eliminate or replace expired or obsolete language from its Rulebook or to eliminate an obsolete $1,000 Direct Edge installation fee will have any impact on competition.

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 [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [16] 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. The Commission notes that the proposal updates the Exchange's rules to reflect current and accurate information with respect to the Exchange's services and fees. The Commission also notes that the proposal harmonizes the Exchange's services and fees with those of the other Nasdaq, Inc. Exchanges, and that BX recently made similar changes to its rules.[17] Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2018–26 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–2018–26. 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–Phlx–2018–26, and should be submitted on or before May 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

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[13] 15 U.S.C. 78s(b)(3)(A).

[14] 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.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] *See* Securities Exchange Act Release No. 82628 (February 5, 2018), 83 FR 5818 (February 9, 2018) (SR–BX–2018–006).

[18] 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).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83015; File No. SR–CboeEDGX–2018–010]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on the Exchange's Equity Options Platform

April 9, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 2, 2018, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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 filed a proposal to amend the fee schedule applicable to Members [5] and non-Members of the Exchange pursuant to EDGX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule for its equity options platform (''EDGX Options'') to modify pricing for certain orders routed away from the Exchange and executed at various away options exchanges. Particularly, the Exchange proposes to amend routing fees for Directed ISO orders (as defined below), routed Non-Customer [6] orders in Penny Pilot Securities and routed Customer orders to ARCA, C2, BZX Options, ISE, ISE Gemini, MIAX Pearl or NOM in Penny and Non-Penny Pilot Securities. The Exchange currently charges the following rates for these orders: (i) Directed Intermarket Sweep Orders (''ISOs'') (that are not otherwise specified in the Fee Schedule), which yield fee code D4, are charged $0.75 per contract, (ii) Non-Customer orders in Penny Pilot Securities, which yield fee code RN, are charged $0.85 per contract; (iii) Customer orders to ARCA, C2, BZX Options, ISE, ISE Gemini, MIAX Pearl or NOM in Penny Pilot Securities, which yield fee code RQ, are charged $0.70 per contract; and (iv) Customer orders to ARCA, C2, BZX Options ISE, ISE Gemini, MIAX Pearl or NOM in Non-Penny Pilot Securities, which yield fee code RR, are charged $1.10 per contract. The Exchange is proposing to amend those rates as follows: (i) The fee for Directed ISO Orders would be increased to $0.85 per contract; (ii) the fee for Non-Customer Orders in Non-Penny [sic] Pilot Securities would be increased to $0.90 per contract; (iii) the fee for Customer orders to ARCA, C2, BZX Options, ISE, ISE Gemini, MIAX Pearl or NOM in Penny Pilot Securities would be increased to $0.85 and (iv) the fee for Customer orders to ARCA, C2, BZX Options, ISE, ISE Gemini, MIAX Pearl or NOM in Non-Penny Pilot Securities would be increased to $1.25. The Exchange notes that the proposed amounts are in line with amounts assessed for similar transaction on other exchanges.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

Particularly, the Exchange believes its proposed fees are reasonable taking into account routing costs and also notes that the proposed changes are in line with amounts assessed by other exchanges.[10] The Exchange believes the proposed changes to its fees are equitable and not unfairly discriminatory because the proposed changes apply equally to all Members. The Exchange notes that routing through the Exchange is voluntary and also notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed routing fees will not impose an undue burden on competition because the Exchange will uniformly assess the affected routing fees on all Members. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value or if they view the proposed fee as excessive. Further, excessive fees for participation would serve to impair an exchange's ability to compete for order flow and members rather than burdening competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[6] ''Non-Customer'' applies to any transaction that is not a Customer Order. ''Customer'' applies to any transaction identified by a Member for clearing in the Customer range at the OCC, excluding any transaction for a Broker Dealer or a ''Professional'' as defined in Exchange Rule 16.1.

[7] *See e.g.,* NYSE Arca Options Fees and Charges, Routing Fees.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] *See e.g.,* NYSE Arca Options Fees and Charges, Routing Fees.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

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–2018–010 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–2018–010. 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–2018–010 and should be submitted on or before May 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–07671 Filed 4–12–18; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83012; File No. SR–PEARL–2018–08]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Implement an Equity Rights Program

April 9, 2018.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 6, 2018, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 is filing a proposal to implement an equity rights program.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, 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 implement an equity rights program (''Program'') pursuant to which units representing the right to acquire equity in the Exchange's parent holding company, Miami International Holdings, Inc. (''MIH'') would be issued to a participating Member in exchange for payment of an initial purchase price or the prepayment of certain ERP Exchange Fees[3] and the achievement of certain liquidity volume thresholds on the Exchange over a 32-month period. The purpose of the Program is to promote the long-term interests of MIAX PEARL by providing incentives designed to encourage future MIH owners and MIAX PEARL market participants to contribute to the growth and success of MIAX PEARL, by being active liquidity providers and takers to provide enhanced levels of trading volume to MIAX PEARL's market, through an opportunity to increase their proprietary interests in MIAX PEARL's enterprise value.

Members that participate in the Program will have two options to choose from: (i) An offering of I-Units; and/or (ii) an offering of J-Units.[4]

I-Units Option

Members that participate in the I-Unit option of the Program will be issued for each unit (i) 31,870 shares of MIH common stock and (ii) warrants to purchase 384,474 shares of common stock of MIH in exchange for such participant Member's initial cash capital contribution of $215,122.50, and with such warrants being exercisable upon the achievement by the participating Member of certain volume thresholds on the Exchange during a 32-month measurement period commencing May 1, 2018. A total of 2 I-Units will be offered. The total equity ownership of MIH common stock held by any one

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ERP Exchange fees consist of: (a) Transaction fees as set forth in Section 1)a of the MIAX PEARL Exchange Fee Schedule; (b) membership fees as set forth in Section 3 of the MIAX PEARL Exchange Fee Schedule; (c) system connectivity fees as set forth in Section 5 of the MIAX PEARL Exchange Fee Schedule; and (d) market data fees as set forth in Section 6 of the MIAX PEARL Exchange Fee Schedule (collectively, the ''ERP Exchange Fees'').

[4] The Program which provides equity-like consideration in exchange for market making or the provision of liquidity, order flow or volume is open to market participants generally. All MIAX PEARL Members may participate subject to their satisfaction of eligibility requirements. To be designated as a participant Member, an applicant must: (i) Be a Member in good standing of MIAX PEARL; (ii) qualify as an ''accredited investor'' as such term is defined in Regulation D of the Securities Act of 1933; and (iii) have executed all required documentation for Program participation. Members may elect to participate in either or both of the options. If either the I-Unit or the J-Unit option is oversubscribed, the units in the oversubscribed option will be allocated on a pro-rata basis that may result in a fractional allocation.

participant Member will be subject to a cap of 19.9%.[5]

The warrants will vest in seven (7) tranches: (i) One (1) tranche, upon initial investment; and (ii) six (6) tranches during a measurement period of months 1–32 of the Program. In addition, the participant Members may earn or lose the right to exercise warrants on a pro-rata basis based upon meeting volume commitments during the measurement periods, as detailed below.

Upon the initial investment, the participant Member would receive common shares equal to 31,870 shares of the common stock and 10% of the warrants will vest. A participant Member will be eligible to earn the remaining warrants during measurement periods provided that the participant has achieved a specified percentage of the total national average daily volume of options contracts reported to The Options Clearing Corporation (''OCC'') (''OCC ADV'') on MIAX PEARL of all option classes listed on MIAX PEARL.[6]

The remaining six (6) tranches, of 90% of the warrants, will vest during the following measurement periods: (i) 5.63% of the warrants resulting from months 1–2, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per I-Unit;[7] (ii) 16.87% of the warrants resulting from months 3–8, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per I-Unit; (iii) 16.87% of the warrants resulting from months 9–14, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per I-Unit; (iv) 16.87% of the warrants resulting from months 15–20, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per I-Unit; (v) 16.88% of the warrants resulting from months 21–26, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per I-Unit; and (vi) 16.88% of the warrants resulting from months 27–32, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per I-Unit. If a participant Member reaches 100% of the volume commitment during a tranche's measurement period, the Member will earn 100% of the warrants applicable to such measurement period. If a participant Member reaches less than 100% but at least 70% of the volume commitment during a tranche's measurement period, the Member will earn a reduced amount of warrants on a pro-rata basis applicable to such measurement period. If a participant Member fails to reach a minimum of 70% of the volume commitment during a tranche's measurement period, the Member will lose all right to that tranche of warrants. Notwithstanding, in the event a participant Member has not satisfied the volume commitment for any one measurement period (other than measurement period 6), the participant Member will have an opportunity to vest those warrants if such participant Member applies a portion of the Member's over-performance from the measurement period immediately following the prior measurement period to ensure a minimum of 70% of the volume commitment in the prior period and in addition has satisfied the volume commitment for the measurement period immediately following. If a participant Member exceeds 100% of the volume commitment during a tranche's measurement period, the Member is able to earn, on a pro-rata basis, warrants not earned by other participant Members.

J-Units Option

Members that participate in the J-Unit option of the Program will be issued for each unit warrants to purchase 416,344 shares of common stock of MIH in exchange for the prepayment of ERP Exchange Fees in the amount of $250,000 for the 32-month period commencing May 1, 2018, and with such warrants being exercisable upon the achievement by the participating Member of certain volume thresholds on the Exchange during a 32-month measurement period commencing May 1, 2018. A total of 25 J-Units will be offered. The total equity ownership of MIH common stock held by any one participant Member will be subject to a cap of 19.9%.

The warrants will vest in six (6) tranches during the following measurement periods: (i) 6.25% of the warrants resulting from months 1–2, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per J-Unit;[8] (ii) 18.75% of the warrants resulting from months 3–8, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per J-Unit; (iii) 18.75% of the warrants resulting from months 9–14, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per J-Unit; (iv) 18.75% of the warrants resulting from months 15–20, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per J-Unit; (v) 18.75% of the warrants resulting from months 21–26, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per J-Unit; and (vi) 18.75% of the warrants resulting from months 27–32, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per J-Unit. If a participant Member reaches 100% of the volume commitment during any one tranche's measurement period, the Member will earn 100% of the warrants applicable to

[5] *See* Ninth Article (b)(i)(B), Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc., effective October 16, 2015 (providing that no Exchange Member, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, shares constituting more than twenty percent (20%) of any class of capital stock of the Corporation). *See also* Ninth Article (b)(i)(C), Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc., effective October 16, 2015 (providing that no Person, either alone or together with its Related Persons, at any time may, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, vote or cause the voting of shares of the capital stock of the Corporation or give any consent or proxy with respect to shares representing more than twenty percent (20%) of the voting power of the then issued and outstanding capital stock of the Corporation, nor may any Person, either alone or together with its Related Persons, enter into any agreement, plan or other arrangement with any other Person, either alone or together with its Related Persons, under circumstances that would result in the shares of capital stock of the Corporation that are subject to such agreement, plan or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of shares of the capital stock of the Corporation which would represent more than twenty percent (20%) of said voting power.). Any purported transfer of shares or ownership of shares in violation of the ownership cap by a stockholder would be subject to the limitations of the Certificate of Incorporation, including the non-recognition of voting rights of shares in excess of the cap and a redemption right by MIH for excess shares. *See also* Ninth Article (d) and (e), Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc., effective October 16, 2015.

[6] If an options class is not listed on MIAX PEARL, then the trading volume in that options class will be omitted from the calculation of % OCC ADV. Priority Customer-to-Priority Customer Crossing transactions where no fees are paid to the Exchange, special strategies, and contracts as to which a Member acts solely as clearing agent will not be counted in the number of option contracts executed on the Exchange by any Member. (Incidental Priority Customer-to-Priority Customer transactions, that are not crossing transactions, will be counted in the number of options contracts executed on the Exchange by a Member.) Special strategies for the purpose of calculating trading volume include: (i) Dividend strategy; (ii) merger strategy; (iii) short stock interest strategy; (iv) reversal and conversion strategies; (v) jelly roll strategy; and (vi) similar strategies offered by an options exchange that are subject to a fee cap. Trading in special strategies currently is not available on MIAX PEARL. Special strategies will be omitted from the calculation of % OCC ADV to the extent it is possible to identify such transactions.

[7] The first measurement period will begin on May 1, 2018 and end June 30, 2018. Therefore, May 1, 2018 through June 30, 2018 will count as months 1–2 for purposes of the measurement period.

[8] The first measurement period will begin on May 1, 2018 and end June 30, 2018. Therefore, May 1, 2018 through June 30, 2018 will count as months 1–2 for purposes of the measurement period.

such measurement period. If a participant Member reaches less than 100% but at least 70% of the volume commitment during a tranche's measurement period, the Member will earn a reduced amount of warrants on a pro-rata basis applicable to such measurement period. If a participant Member fails to reach a minimum of 70% of the volume commitment during the measurement period, the Member will lose all right to that tranche of warrants. Notwithstanding, in the event a participant Member has not satisfied the volume commitment for any one measurement period (other than measurement period 6), the participant Member will have an opportunity to vest those warrants if such participant Member applies a portion of the Member's over-performance from the measurement period immediately following the prior measurement period to ensure a minimum of 70% of the volume commitment in the prior period, and in addition has satisfied the volume commitment for the measurement periods immediately following. If a participant Member exceeds 100% of the volume commitment during any one tranche's measurement period, the Member is able to earn, on a pro-rata basis, warrants not earned by other participant Members.

A participant Member will prepay the ERP Exchange Fees. Once a participant Member has prepaid ERP Exchange Fees for the 32-month period, each month the participant Member may execute contracts and accumulate such ERP Exchange Fees based on the prevailing MIAX PEARL Fee Schedule in effect at the time. Once a J-Unit participant Member has incurred ERP Exchange Fees whereby the total accumulated ERP Exchange Fees equal the prepaid amount of such ERP Exchange Fees, all subsequently incurred ERP Exchange Fees will be billed and collected at the appropriate rates as defined in the MIAX PEARL Fee Schedule.

Provisions Applicable to Both I-Units and J-Units

A Member of the Exchange and its Affiliate as defined in the Fee Schedule of MIAX PEARL [9] may together participate in the Program as follows. In order to participate in the Program with a participant Member an Appointed Market Maker or Appointed EEM must be designated as such as of April 27, 2018 pursuant to the procedure for appointing an Appointed Market Maker or Appointed EEM set forth in the MIAX PEARL Fee Schedule. An Appointed Market Maker or Appointed EEM may not otherwise be a participant Member of the Program. Notwithstanding the ability to change the designation of an Appointed Market Maker or Appointed EEM as set forth in the Fee Schedule of MIAX PEARL for MIAX PEARL Fee Schedule purposes, no such change in designation may be made for purposes of the Program and any designation of an Appointed Market Maker or Appointed EEM as of April 27, 2018 shall remain in effect for purposes of the Program for the duration of the Program.[10] An Affiliate of a Member with at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A (a ''Corporate Affiliate''), is not required to follow the procedure set forth on the MIAX PEARL Fee Schedule for designation of an Appointed Market Maker or Appointed EEM and will together be deemed a participant Member in the Program for so long as it maintains such corporate affiliation with the other Member. Alternatively, a Corporate Affiliate of a Member may directly join the Program and be a separate participant Member of the Program. Volume thresholds and other aspects of the Program may be met by the Member and its Affiliate who will together constitute a participant Member in the Program. In the case where a Member and its Corporate Affiliate separately joined the Program as participant Members volume thresholds and other aspects of the Program must be met separately by the Member and its Corporate Affiliate.

Each participant Member will have a standard piggyback registration right to include the common shares and the common shares issuable upon exercise of the warrants should MIH file a Registration Statement under the Securities Act of 1933. Each participant Member will also have the right to participate pro rata in all future offerings of MIH securities for so long as the participant Member holds at least 51% of the common shares purchased by the participating Member directly or issuable upon the exercise of warrants included in at least one J-Unit. MIH will have the right of first refusal to purchase any common shares or warrant shares that a participant Member decides to transfer or sell. Other participant Members will have the secondary right of first refusal to purchase any common shares or warrant shares that a participant Member decides to transfer or sell.

All applicants will be subject to the same eligibility and designation criteria, and all participant Members will participate in the Program on the same terms, conditions and restrictions. To be designated as a participant Member, an applicant must: (i) Be a Member in good standing of MIAX PEARL; (ii) qualify as an ''accredited investor'' as such term is defined in Regulation D of the Securities Act of 1933; [11] and (iii) have executed all required documentation for Program participation. Participant Members must have executed the definitive documentation, satisfied the eligibility criteria required of Program participants enumerated above, and tendered the minimum cash investment or prepayment of fees by April 27, 2018, with a closing to occur on April 30, 2018.

As discussed above, the purpose of the Program is to encourage Members to direct greater trade volume to MIAX

[9] For purposes of the MIAX PEARL Fee Schedule, the term ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, (''Affiliate''), or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX PEARL Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX PEARL Market Maker) that has been appointed by a MIAX PEARL Market Maker, pursuant to the following process. A MIAX PEARL Market Maker appoints an EEM and an EEM appoints a MIAX PEARL Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to *membership@miaxoptions.com* no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. *See* MIAX PEARL Fee Schedule Definitions.

[10] A participant Member who changes a designation of an Appointed Market Maker or Appointed EEM during the Program will be effective with respect to transactions on the Exchange other than the Program.

[11] The purpose of this criterion relates to the ability of MIH to sell shares of common stock pursuant to an exemption from registration under the Securities Act of 1933. The definition of ''accredited investor'' under Rule 501(a)(1) of the Securities Act of 1933 includes any broker or dealer registered pursuant to Section 15 of the Act. MIAX PEARL Rule 200(b) requires a Member to be registered as a broker or dealer pursuant to Section 15 of the Act, therefore all MIAX PEARL Members will satisfy this criterion.

PEARL to enhance trading volume in MIAX PEARL's market. Increased volume will provide for greater liquidity and enhanced price discovery, which benefits all market participants. Other exchanges have engaged in the practice of incentivizing increased order flow in order to attract liquidity providers through equity sharing arrangements.[12] In addition, Miami International Securities Exchange, LLC (''MIAX Options''), an affiliate of the Exchange, previously adopted substantially similar programs to incentivize increased order flow in order to attract liquidity providers through an equity sharing arrangement.[13] The Program similarly intends to attract order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from these other market participants. The Program will similarly reward the liquidity providers that provide this additional volume with a potential proprietary interest in MIAX PEARL.

The specific volume thresholds of the Program's measurement periods were set based upon business determinations and analysis of current volume levels. The volume thresholds are intended to incentivize firms to increase the number of orders that are sent to MIAX PEARL to achieve the next threshold. Increasing the number of orders that are sent to MIAX PEARL will in turn provide tighter and more liquid markets, and therefore attract more business as well.

The Exchange's proposal to include certain non-transaction fees within the definition of ERP Exchange Fees and thus render them eligible for prepayment under the Program is designed to offer broader Member participation in the Program. Since the Exchange operates with a maker-taker pricing structure, Members that are only ''makers'' on the Exchange could receive significant transaction rebates on a monthly basis, which could obviate the need to pre-pay transaction fees under the Program. However, by including certain regular, monthly recurring non-transaction fees as eligible for prepayment under the Program, the Exchange believes that it is creating an incentive for Members that conduct this type of business on the Exchange to participate in the Program, thereby broadening the number of Members that could potentially participate in the Program.

Finally, the Exchange notes that it is not proposing to offer participant Members the right to appoint a director or an observer to the MIH Board and/or the MIAX PEARL Board when a participating Member acquires a certain number of units, which is different than the programs that MIAX Options has offered its Members in the past.[14] The Exchange believes that, for business reasons, such a right is not a relevant component for this Program, and thus has determined not to include such a right.

MIAX PEARL will initiate the measurement period on May 1, 2018. The Exchange will notify Members of the implementation of the Program and the dates of the enrollment period by Regulatory Circular, and will post a copy of this rule filing on its website. Any MIAX PEARL Member that is interested in participating in the Program may contact MIAX PEARL for more information and legal documentation and will be required to enter into a nondisclosure agreement regarding this additional Program information.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[15] in general, and furthers the objectives of Section 6(b)(5) of the Act[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms 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) of the Act[17] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[18] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

In particular, the proposed rule change is equitable and not unfairly discriminatory, because all Members may elect to participate (or elect to not participate) in the Program and earn units on the same terms and conditions, assuming they satisfy the same eligibility criteria as described above. The eligibility criteria are objective; thus, all Members have the ability to satisfy them. The Board also has authorized MIAX PEARL to offer common shares in MIH to any Member that requests designation to participate in the Program and otherwise satisfies the eligibility criteria to ensure that all Members will have the opportunity to own common shares and thus participate in the Program if they so choose. In addition, participant Members will earn warrants on a pro-rata basis upon meeting fixed volume threshold amounts during the measurement periods that will apply to all participant Members.

The Exchange believes that the methodology used to calculate the volume thresholds is fair, reasonable and not unfairly discriminatory because it is based on objective criteria that are designed to omit from the calculation functionality that is not available on the Exchange and types of transactions that are subject to little or no transaction fees. Specifically, the Exchange believes excluding Priority Customer-to-Priority Customer Crossing transactions where no fees are paid to the Exchange, special strategies, and contracts as to which a Member acts solely as clearing agent from the number of option contracts executed on the Exchange by any Member is reasonable and not unfairly discriminatory because participating Members could otherwise game the volume thresholds by executing excess volumes in these types of transactions in which either no transaction fees are charged on the Exchange, or the transaction is subject to a fee cap. The Program is designed to reward participating Members for bringing their orders and quotes to the Exchange to be executed on the Exchange. The Exchange believes it is appropriate to exclude special strategies from the OCC volume calculation since those transactions are not executed on the Exchange. The Exchange believes that omitting clearing only transactions from

[12] *See, e.g.,* Securities Exchange Act Release Nos. 62358 (June 22, 2010), 75 FR 37861 (June 30, 2010) (SR–NSX–2010–06); 64742 (June 24, 2011), 76 FR 38436 (June 30, 2011) (SR–NYSEAmex–2011–018); 69200 (March 21, 2013), 78 FR 18657 (March 27, 2013) (SR–CBOE–2013–31); 74114 (January 22, 2015), 80 FR 4611 (January 28, 2015) (SR–BOX–2015–03); and 74576 (March 25, 2015), 80 FR 17122 (March 31, 2015) (SR–BOX–2015–16).

[13] *See* Securities Exchange Act Release Nos. 70498 (September 25, 2013), 78 FR 60348 (October 1, 2013) (SR–MIAX–2013–43); 74095 (January 20, 2015), 80 FR 4011 (January 26, 2015) (SR–MIAX–2015–02); 74225 (February 12 [sic], 2015), 80 FR 7897 (February 12, 2015) (SR–MIAX–2015–05); and 80909 (June 12, 2017), 82 FR 27743 (June 16, 2017) (SR–MIAX–2017–28).

[14] *Id.*

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(4).

the calculation to be fair and reasonable because the fact that a Member is clearing a trade is coincidental to the choice of where to execute that trade. And, because clearing only transactions are not executed on MIAX PEARL, they do not fall within the intended transactions that qualify for the Program. In addition, if the Exchange were to reward the party clearing a trade, the Exchange would possibly be double counting that trade—once for the executing party and once for the clearing party. Furthermore, the Exchange believes that counting incidental Priority Customer-to-Priority Customer transactions, which are not crossing transactions, in the number of options contracts executed on the Exchange by a Member is fair and reasonable because in these situations the Priority Customer is not necessarily choosing to execute against another Priority Customer in order to avoid a transaction fee.

The Exchange believes that its proposal to allow Affiliates to participate in the Program is fair, reasonable and not unfairly discriminatory because it is being offered to all Members of the Exchange on the same terms and conditions. The Exchange believes that allowing both traditional Corporate Affiliates and also Appointed Market Makers and Appointed EEMs to participate in the Program is reasonable and appropriate because it will provide those participants with a potentially greater opportunity to achieve the volume thresholds in the Program. Also, the Exchange believes that allowing Appointed Market Makers and Appointed EEMs to participate in the Program expands access to the Program to Members that might not otherwise, individually on their own, participate in the Program, which will benefit all market participants by providing greater liquidity on the Exchange, all of which perfects the mechanism for a free and open market and national market system.

The Exchange believes the Program is equitable and reasonable because an increase in volume and liquidity would benefit all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the Program. Additionally, the Exchange believes the proposed rule change is consistent with the Act because, as described above, the Program is designed to bring greater volume and liquidity to the Exchange, which will benefit all market participants by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX PEARL does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will improve competition by providing market participants with another option when determining where to execute orders and post liquidity.

The Exchange believes that the proposed change would increase both intermarket and intramarket competition by incenting participant Members to direct their orders to the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded here. To the extent that there is an additional competitive burden on non-participant Members, the Exchange believes that this is appropriate because the Program should incent Members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

Given the robust competition for volume among options markets, many of which offer the same products, implementing a program to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller options markets, such as MIAX PEARL, which is competing for volume with much larger exchanges that dominate the options trading industry. MIAX PEARL has a modest percentage of the average daily trading volume in options, so it is unlikely that the Program could cause any competitive harm to the options market or to market participants. Rather, the Program is an attempt by a small options market to attract order volume away from larger competitors by adopting an innovative pricing strategy, as evidenced by the volume thresholds of the Program that represent fractions of 1% of OCC ADV. The Exchange notes that if the Program resulted in a modest percentage increase in the average daily trading volume in options executing on MIAX PEARL, while such percentage would represent a large volume increase for MIAX PEARL, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the Program will help further competition, because market participants will have yet another option in determining where to execute orders and post liquidity if they factor the benefits of MIAX PEARL equity participation into the determination. The Exchange notes that other exchanges have engaged in the practice of incentivizing increased order flow in order to attract liquidity providers through equity sharing arrangements.[19] In addition, MIAX Options previously adopted substantially similar programs to incentivize increased order flow in order to attract liquidity providers through an equity sharing arrangement.[20]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[21] and Rule 19b–4(f)(2)[22] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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:

[19] *See supra* note 12.

[20] *See supra* note 13.

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

[22] 17 CFR 240.19b–4(f)(2).

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–PEARL–2018–08 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–PEARL–2018–08. 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–PEARL–2018–08 and should be submitted on or before May 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–07669 Filed 4–12–18; 8:45 am]

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[23] 17 CFR 200.30–3(a)(12).

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36181]

Kasgro Rail Corp.—Lease and Operation Exemption—KJ Rail Logistics LLC

Kasgro Rail Corp. (Kasgro), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from KJ Rail Logistics LLC (KJR), a noncarrier, and operate approximately 1.6 miles of rail line located in LaPorte County, Ind., between milepost 0.0 and milepost 1.6 (the Line). The Line connects with CSX Transportation, Inc., at milepost 0.0.

According to Kasgro, it has entered into a lease agreement with KJR for the right to provide common carrier service over the Line and will contract with KJR to provide rail service on the property. Kasgro states that it currently leases and operates another rail line approximately 3.5 miles in length in Lawrence County, PA.[1]

Kasgro certifies that its projected annual revenues as a result of the transaction will not exceed $5 million or those that would qualify it as a Class III rail carrier. Kasgro further states that the proposed transaction does not contain any provision that may limit future interchange with a third-party connecting carrier.

The transaction may be consummated on or after April 28, 2018, the effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than April 20, 2018 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 36181, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kasgro's representative, Jeffrey O. Moreno, Thompson Hine LLP, 1919 M Street NW, Suite 700, Washington, DC 20036.

According to Kasgro, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting under 49 CFR 1105.8(b).

[1] *See Kasgro Rail Corp.—Lease & Operation Exemption—EASX Corp.,* FD 33882 (STB served June 22, 2000).

Board decisions and notices are available on our website at ''*WWW.STB.GOV.*''

Decided: April 10, 2018. By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–07760 Filed 4–12–18; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Neighborhood Environmental Survey

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. It is not a new collection, but an extension to the Neighborhood Environmental Survey initially publish in **Federal Register**/Thursday, June 12, 2014/Notices. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 30, 2017. The purpose of this research is to conduct a nation-wide survey to update the scientific evidence of relationship between aircraft noise exposure and its effects on communities around airports.

There were four responses to the 60-day **Federal Register** Notice. The notice received comments from Airport Noise Report, Old Naples Association, a community-based organization at Naples Florida, and two Massachusetts residents.

DATES: Written comments should be submitted by May 14, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs,

Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall at (940) 594–5913, or by email at: *Barbara.L.Hall@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0762.

Title: Neighborhood Environmental Survey.

Form Numbers: None.

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 November 30, 2017 (74 FR 46292). This Neighborhood Environmental Survey is necessary to update the relationship between aircraft noise exposure and its effect on communities around United States civilian airports. This survey will collect data on residents' annoyance from a representative sample of households surrounding airports chosen from a representative sample, and relate the annoyance level to the noise exposure for that address. The FAA will use the information from this collection to derive the empirical data to support potential updates to or validation of the national aviation noise policy.

Respondents: 12,656 respondents affected by airport noise.

Frequency: One time per respondent.

Estimated Average Burden per Response: Five minutes for a mail survey, twenty minutes for a telephone.

Estimated Total Annual Burden: 1,637 hours.

Issued in Fort Worth, TX, on April 4, 2018.

Barbara Hall,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2018–07662 Filed 4–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land Use Assurance; Arlington Municipal Airport, Arlington, WA

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

ACTION: Notice.

SUMMARY: Notice is being given that the FAA is considering a proposal from the City of Arlington Airport Director to change certain portions of the airport from aeronautical use to non-aeronautical use at Arlington Municipal Airport, Arlington, WA. The proposal consists of approximately 52,500 square feet on the west side of the airfield adjacent to 51st Avenue, Northeast.

DATES: Comments are due within 30 days of the date of the publication of this notice in the **Federal Register**. Written comments can be provided to Ms. Cayla D. Morgan, Environmental Protection Specialist, Seattle Airports District Office, 2200 216th Street, Des Moines, WA 98198.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Ryan, Airport Director, City of Arlington, 18204 59th Avenue NE, Arlington, WA 98223; or Ms. Cayla D. Morgan, Environmental Protection Specialist, Seattle Airports District Office, 2200 S 216th Street, Des Moines, 98198, (206) 231–4130. Documents reflecting this FAA action may be reviewed at the above locations.

SUPPLEMENTARY INFORMATION: Under the provisions of Title 49, U.S.C. 47153(c), and 47107(h)(2), the FAA is considering a proposal from the Airport Director, City of Arlington, to change a portion of the Arlington Municipal Airport from aeronautical use to non-aeronautical use. The proposal consists of approximately 52,000 square feet on the west side of the airport adjacent to 51st Avenue, Northeast.

The property consists of two oddly shaped triangular section of land that are not large enough to support construction of an aircraft hangar or ramp. It is currently an unused parking area. The airport is proposing an Airport Observation Area for aviation educational purposes. The airport will continue to own the property so there will be no proceeds associated with this release from a land use provision. The FAA concurs that the parcels are no longer needed for aeronautical purposes. The proposed use of this property is compatible with other airport operations in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in **Federal Register** on February 16, 1999.

Issued in Des Moines, Washington, on April 6, 2018.

Kevin Yarnell,

Acting Manager, Seattle Airports District Office.

[FR Doc. 2018–07663 Filed 4–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aircraft Registration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew a previously approved information collection. The information collected is used by the FAA to register aircraft or hold an aircraft in trust. The information required to register and prove ownership of an aircraft is required from any person wishing to register an aircraft. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 30, 2018. No comments were received.

DATES: Written comments should be submitted by May 14, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to

enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall at (940) 594–5913, or by email at: *Barbara.L.Hall@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0042.

Title: Aircraft Registration.

Form Numbers: 8050–1, 8050–2, 8050–4, 8050–98, 8050–88, 8050–88A, 8050–117, 8050–117.

Type of Review: Renewal of an information collection.

Background: Public Law 103–272 states that all aircraft must be registered before they may be flown. It sets forth registration eligibility requirements and provides for application for registration as well as suspension and/or revocation of registration. The information collected is used by the FAA to register an aircraft or hold an aircraft in trust. The information requested is required to register and prove ownership.

Respondents: Approximately 146,757 registrants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 32 minutes.

Estimated Total Annual Burden: 103,982 hours.

Issued in Fort Worth, TX, on April 4, 2018.

Barbara Hall,

FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2018–07659 Filed 4–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification: Air Carriers and Commercial Operators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information collected will be used to issue air carrier operating certificates and to establish minimum safety standards for the operation of the air carriers to whom such certificates are issued. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 28, 2017. There were no responses to the 60-day **Federal Register** Notice.

DATES: Written comments should be submitted by May 14, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall at (940) 594–5913, or by email at: *Barbara.L.Hall@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0593.

Title: Certification: Air Carriers and Commercial Operators.

Form Numbers: FAA Form 8400–6.

Type of Review: Renewal of an information collection.

Background: The request for clearance reflects requirements necessary under parts 135, 121, and 125 to comply with part 119. The FAA will use the information it collects and reviews to ensure compliance and adherence to regulations and, if necessary, to take enforcement action on violators of the regulations.

Respondents: Approximately 2,177 air carriers and commercial operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 2.45 hours.

Estimated Total Annual Burden: 8,865 hours.

Issued in Fort Worth, TX, on April 4, 2018.

Barbara Hall,

FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2018–07661 Filed 4–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2018–0008]

Surface Transportation Project Delivery Program; Utah Department of Transportation Audit Report

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice; Request for comment.

SUMMARY: The Moving Ahead for Progress in the 21st Century Act (MAP–21) established the Surface Transportation Project Delivery Program that allows a State to assume FHWA's environmental responsibilities for environmental review, consultation, and compliance under the National Environmental Policy Act (NEPA) for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. This program mandates annual audits during each of the first 4 years of State participation to ensure compliance with program requirements. This notice announces and solicits comments on the first audit report for the Utah Department of Transportation (UDOT).

DATES: Comments must be received on or before May 14, 2018.

ADDRESSES: Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590. You may also submit comments electronically at *www.regulations.gov.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page

that appears after submitting comments electronically. Anyone can search the electronic form of all comments in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). The DOT posts these comments, without edits, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Deirdre Remley, Office of Project Development and Environmental Review, (202) 366–0524, *Deirdre.Remley@dot.gov,* or Mr. Jomar Maldonado, Office of the Chief Counsel, (202) 366–1373, *Jomar.Maldanado@dot.gov,* Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at *www.regulations.gov.*

Background

The Surface Transportation Project Delivery Program, codified at 23 United States Code (U.S.C.) 327, commonly known as the NEPA Assignment Program, allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely liable for carrying out the responsibilities it has assumed, in lieu of the FHWA. The UDOT published its application for NEPA assumption on October 9, 2015, and made it available for public comment for 30 days. After considering public comments, UDOT submitted its application to FHWA on December 1, 2015. The application served as the basis for developing a memorandum of understanding (MOU) that identifies the responsibilities and obligations that UDOT would assume. The FHWA published a notice of the draft MOU in the **Federal Register** on November 16, 2016, with a 30-day comment period to solicit the views of the public and Federal agencies. After the close of the comment period, FHWA and UDOT considered comments and proceeded to execute the MOU. Effective January 17, 2017, UDOT assumed FHWA's responsibilities under NEPA, and the responsibilities for NEPA-related Federal environmental laws described in the MOU.

Section 327(g) of Title 23, U.S.C., requires the Secretary to conduct annual audits during each of the first 4 years of State participation. After the fourth year, the Secretary shall monitor the State's compliance with the written agreement. The results of each audit must be made available for public comment. This notice announces the availability of the first audit report for UDOT and solicits public comment on same.

Authority: Section 1313 of Pub. L. 112–141; Section 6005 of Pub. L. 109–59; 23 U.S.C. 327; 23 CFR 773.

Issued on: April 4, 2018.

Brandye L. Hendrickson,

Acting Administrator, Federal Highway Administration.

Surface Transportation Project Delivery Program

Draft FHWA Audit of the Utah Department of Transportation

January 17–June 9, 2017

Executive Summary

This report summarizes the results of the Federal Highway Administration's (FHWA) first audit of the Utah Department of Transportation's (UDOT) National Environmental Policy Act (NEPA) review responsibilities and obligations that FHWA has assigned and UDOT has assumed pursuant to 23 United States Code (U.S.C.) 327. Throughout this report, FHWA uses the term ''NEPA Assignment Program'' to refer to the program codified at 23 U.S.C. 327. Under the authority of 23 U.S.C. 327, UDOT and FHWA executed a memorandum of understanding (MOU) on January 17, 2017, to memorialize UDOT's NEPA responsibilities and liabilities for Federal-aid highway projects and certain other FHWA approvals for transportation projects in Utah. Except for one project, which FHWA retained, FHWA's only NEPA responsibilities in Utah are oversight and review of how UDOT executes its NEPA Assignment Program obligations. The section 327 MOU covers environmental review responsibilities for projects that require the preparation of environmental assessments (EAs), environmental impact statements (EIS), and non-designated documented categorical exclusions (DCE). A separate MOU, pursuant to 23 U.S.C. 326, authorizes UDOT's environmental review responsibilities for other categorical exclusions (CE), commonly known as CE Program Assignment. This audit does not cover the CE Program Assignment responsibilities and projects.

As part of its review responsibilities under 23 U.S.C. 327, FHWA formed a team in April 2017 to plan and conduct an audit of NEPA responsibilities UDOT assumed. Prior to the on-site visit, the Audit Team reviewed UDOT's NEPA project files, UDOT's response to FHWA's pre-audit information request (PAIR), and UDOT's self-assessment of its NEPA Program. The Audit Team reviewed additional documents and conducted interviews with UDOT staff in Utah on June 5–9, 2017.

The UDOT entered into NEPA Assignment Program after almost 9 years of experience making FHWA NEPA CE determinations pursuant to 23 U.S.C. 326 (beginning August 2008). The UDOT's environmental review procedures are compliant for CEs, and UDOT is implementing procedures and processes for DCEs, EAs, and EISs as part of its new responsibilities under the NEPA Assignment Program. Overall, the Audit Team found that UDOT is successfully adding DCE, EA, and EIS project review responsibilities to an already successful CE review program. The Audit Team did not identify any non-compliance observations. This report describes five observations as well as several successful practices the Audit Team found. The Audit Team finds UDOT is carrying out the responsibilities it has assumed and is in substantial compliance with the provisions of the MOU.

Background

The NEPA Assignment Program allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal-aid highway projects. Under 23 U.S.C. 327, a State that assumes these Federal responsibilities becomes solely responsible and solely liable for carrying them out. Effective January 17, 2017, UDOT assumed FHWA's responsibilities under NEPA and other related environmental laws. Examples of responsibilities UDOT has assumed in addition to NEPA include section 7 consultation under the Endangered Species Act and consultation under section 106 of the National Historic Preservation Act.

Following this first audit, FHWA will conduct three more annual audits to satisfy provisions of 23 U.S.C. 327(g) and Part 11 of the MOU. Audits are the primary mechanism through which FHWA may oversee UDOT's compliance with the MOU and the NEPA Assignment Program requirements. This

includes ensuring compliance with applicable Federal laws and policies, evaluating UDOT's progress toward achieving the performance measures identified in MOU Section 10.2, and collecting information needed for the Secretary's annual report to Congress. The FHWA must present the results of each audit in a report and make it available for public comment in the Federal Register.

The Audit Team consisted of NEPA subject matter experts (SME) from the FHWA Utah Division, as well as from FHWA offices in Sacramento, California, Washington, District of Columbia, Atlanta, Georgia, and Austin, Texas. These experts received training on how to evaluate implementation of the NEPA Assignment Program. In addition, the FHWA Utah Division designated an environmental specialist to serve as a NEPA Assignment Program liaison to UDOT.

Scope and Methodology

The Audit Team conducted an examination of UDOT's NEPA project files, UDOT responses to the PAIR, and UDOT self-assessment. The audit also included interviews with staff and reviews of UDOT policies, guidance, and manuals pertaining to NEPA responsibilities. All reviews focused on objectives related to the six NEPA Assignment Program elements: program management; documentation and records management; quality assurance/quality control (QA/QC); legal sufficiency; training; and performance measurement.

The focus of the audit was on UDOT's process and program implementation. Therefore, while the Audit Team reviewed project files to evaluate UDOT's NEPA process and procedures, the team did not evaluate UDOT's project-specific decisions to determine if they were, in FHWA's opinion, correct or not. The Audit Team reviewed 14 NEPA Project files with DCEs, EAs, and EISs, representing all projects in process or initiated after the MOU's effective date. The Audit Team also interviewed environmental staff in all four UDOT regions as well as their headquarters office.

The PAIR consisted of 24 questions about specific elements in the MOU. The Audit Team used UDOT's response to the PAIR to develop specific follow-up questions for the on-site interviews with UDOT staff.

The Audit Team conducted 18 on-site and 3 phone interviews. Interview participants included staff from each of UDOT's four regional offices and UDOT headquarters. The Audit Team invited UDOT staff, middle management, and executive management to participate to ensure the interviews represented a diverse range of staff expertise, experience, and program responsibility.

Throughout the document reviews and interviews, the Audit Team verified information on the UDOT section 327 NEPA Assignment Program including UDOT policies, guidance, manuals, and reports. This included the NEPA QA/QC Guidance, the NEPA Assignment Training Plan, and the NEPA Assignment Self-Assessment Report.

The Audit Team compared the procedures outlined in UDOT environmental manuals and policies to the information obtained during interviews and project file reviews to determine if there are discrepancies between UDOT's performance and documented procedures. The team documented observations under the six NEPA Assignment Program topic areas. Below are the audit results.

Overall, UDOT has carried out the environmental responsibilities it assumed through the MOU and the application for the NEPA Assignment Program, and as such the Audit Team finds that UDOT is substantially compliant with the provisions of the MOU.

Observations and Successful Practices

This section summarizes the Audit Team's observations of UDOT's NEPA Assignment Program implementation, including successful practices UDOT may want to continue or expand. Successful practices are positive results that FHWA would like to commend UDOT on developing. These may include ideas or concepts that UDOT has planned but not yet implemented. Observations are items the Audit Team would like to draw UDOT's attention to, which may benefit from revisions to improve processes, procedures, or outcomes. The UDOT may have already taken steps to address or improve upon the Audit Team's observations, but at the time of the audit they appeared to be areas where UDOT could make improvements. This report addresses all six MOU topic areas as separate discussions. Under each area, this report discusses successful practices followed by observations.

This audit report provides an opportunity for UDOT to begin implementing actions to improve their program. The FHWA will consider the status of areas identified for potential improvement in this audit's observations as part of the scope of Audit #2. The second Audit Report will include a summary discussion that describes progress since the last audit.

Program Management

The UDOT has made progress toward meeting the initial requirements of the MOU for the NEPA Assignment Program under 23 U.S.C. 327, including implementing the updated Manual of Instruction (MOI), a QA/QC Plan, a Training Plan, and addressing the findings from a Self-Assessment Report.

Successful Practices

The Audit Team found that UDOT understands its project-level responsibility for DCEs, EAs, and EISs that FHWA assigned to UDOT through the NEPA Assignment Program. The UDOT has established a vision and direction for incorporating the NEPA Assignment Program into its overall project development process. This was clear in the PAIR responses and in interviews with staff in the regions and at UDOT's central office, commonly known as ''the Complex.''

The UDOT reorganized environmental staff to align employee roles with the new responsibilities under the NEPA Assignment Program. Staff at the Complex are responsible for EAs and EISs. Regional environmental staff coordinate their NEPA work through Program Managers at the Complex. Environmental staff also share resources and use the subject matter expertise of staff in other regional offices or at the Complex. Some staff responsibilities have changed under the NEPA Assignment Program, but positions have remained the same. Prior to assuming responsibilities under the NEPA Assignment Program, regional staff reported to the pre-construction department in their regional office. Following assumption of the NEPA Assignment Program, Environmental Managers in the regions report to Environmental Program Managers at the Complex. In anticipation of assuming NEPA responsibilities, UDOT hired an Environmental Performance Manager who is responsible for overseeing UDOT's policies, manuals, guidance, and training under the NEPA Assignment Program.

Observations

Observation #1: Communication of UDOT policy and procedures to staff

Most SMEs and regional environmental staff were not aware of the latest policies and procedures regarding the NEPA Assignment Program. During interviews, some staff at the regional offices and at the Complex said they heard about changes at quarterly environmental meetings. Some regional staff said they expect to hear about changes from their Managers

in the regional office, but they often feel they do not receive all necessary information. Other regional staff said they receive updated memoranda and other communications about the NEPA Assignment Program through their Program Manager at the Complex. Some SMEs indicated they were unaware of how their specialty fits into the overall NEPA process. There does not seem to be a clear understanding among all staff about the differences between UDOT's responsibilities under 23 U.S.C. 326 and 23 U.S.C. 327 and how this affects staff members' roles and responsibilities in carrying out section 327.

Observation #2: Section 4(f) terms regarding determinations of use

During review of the NEPA Project files, the Audit Team found some determinations labeled ''n/a,'' suggesting Section 4(f) was not applicable when there was a historic site/historic property identified in the Section 106 determination of eligibility/finding of effect (DOE/FOE). In other examples, the files correctly indicate ''yes'' or ''no'' whether there is or is not a Section 4(f) use. When the DOE/FOE identifies historic properties that are eligible for inclusion in the National Register of Historic Places, UDOT would also need to evaluate whether the action will constitute a use under Section 4(f), per FHWA policy (see ''3.2 Assessing Use of Section 4(f) Properties'' in FHWA ''Section 4(f) Policy Paper,'' 2012). Therefore, the correct determination should be ''yes'' or ''no'' instead of ''n/a''.

Documentation and Records Management

The Audit Team reviewed UDOT's NEPA Project documents for 14 projects under the NEPA Assignment Program. The UDOT maintains a complete final record for DCEs, EAs, and EISs. There are inconsistencies about how, when, and where staff maintain supporting draft and deliberative documentation, and staff either do not have or are not aware of protocols for recordkeeping.

Successful Practices

ProjectWise is a document database UDOT uses to maintain final project records for DCEs, EAs, and EISs. Though it was not developed specifically for producing and maintaining environmental documents, ProjectWise is accessible to all staff and can store complete NEPA documentation. During interviews, UDOT environmental staff demonstrated they understood the minimum documentation that should be included in the final ProjectWise record, and the Audit Team verified that the minimum documentation is in NEPA Project file reviews.

In interviews, some UDOT staff shared that they document decisions made verbally for the project record. This shows that some staff understand the importance of having a written record of decision points in the NEPA processes that may happen through phone conversations and in-person meetings.

Environmental Managers at the Complex have taken steps to implement consistent records management on EAs and EISs in ProjectWise by adding stipulations to consultant contracts that require them to follow records management protocols in their final project files.

Observations

Observation #3: UDOT recordkeeping and file management

Some environmental staff interviewed during the audit said they store draft files, supporting information, and deliberative documentation on personal drives, on local servers, and/or in hardcopy filing cabinets. Thus, outside of ProjectWise, UDOT recordkeeping and file management is inconsistent, which may indicate the lack of specific protocols for managing supporting documents that inform NEPA decisions and other environmental determinations. Such practices can make document retrieval and review difficult because the location of UDOT's file of record is unclear. This issue can also raise concerns about document retention practices and the completeness of administrative records for projects needing them.

Staff at the regional offices and at the Complex said ProjectWise does not include organizational tools such as subfolders or adequate search capabilities. ProjectWise was not created specifically for environmental documentation. It is a document management system, and although it allows for subfolders with environmental documents storage, UDOT does not use this function nor does it have adequate functionality for searching files or tracking project environmental process milestones.

Quality Assurance/Quality Control

The UDOT is in the early stages of the section 327 program, and because there is not yet sufficient data on project approvals, the team was not able to fully evaluate the effectiveness of the QA/QC component of the program. The Audit Team made the following observations.

Successful Practices

The UDOT has implemented some successful practices to ensure the quality of its NEPA documents. The UDOT developed a QA/QC plan to help environmental staff and consultants ensure documents are developed, reviewed, and approved in accordance with QA/QC procedures. The UDOT's use of DCE, EA, and EIS QA/QC checklists supports process standardization. Though regional environmental staff do not manage EAs or EISs under the NEPA Assignment Program, several staff said they were aware there is a QA/QC checklist for reviewing these documents. They were also aware that Managers at the Complex review and submit the checklist and final document to UDOT's Deputy Director for final approval.

Regional environmental staff can contact Program Managers at the Complex to get procedural and technical assistance on topics or documentation requirements outside of their technical expertise area. Throughout the audit interviews, several staff said they felt comfortable calling Managers at the Complex with questions.

Observations

Observation #4: QA/QC documentation

Although most environmental staff were aware of the QA/QC plan and checklists, the Audit Team learned through interviews that there is varied understanding about roles and procedures as they relate to documenting QA/QC approvals. Managers demonstrated that they understand the various roles and procedures for obtaining signature approval for final documents, but regional staff had a varied understanding of these procedures. Environmental staff outside of the Complex were also uncertain of whether a new checklist was developed for DCEs, or if the EA/EIS checklist is used for DCE QA/QC.

Legal Sufficiency

Successful Practices

Through interviews, the Audit Team learned of the following successful practices: UDOT has extended the legal sufficiency process it has in place for Section 326 CE assignment to accommodate the section 327 NEPA Assignment Program by contracting with outside counsel who have extensive experience in NEPA, other environmental laws, and Federal environmental litigation. The UDOT Environmental Managers can work directly with outside counsel without the need to go through the Utah

Attorney General's (AG) Office. An Assistant AG assigned to UDOT is kept apprised of all communications between UDOT staff and outside counsel. Outside counsel expects early legal involvement for all controversial projects. The UDOT, an Assistant AG, and outside counsel held an ''organizational meeting'' earlier this year and expect to hold regular, quarterly meetings.

Training

The UDOT's Training Coordinator is in the early stages of establishing a Training Management Program (''UDOT U'') for all UDOT employees. This program will include the following components: (1) core competencies for all UDOT employees; (2) training for all UDOT employees through UDOT U; (3) a portal for tracking training completed by UDOT employees; (4) SME identification and validation of training needs; and (5) leadership input on priorities and budgets for all disciplines. The UDOT could incorporate NEPA Assignment Program training needs into UDOT U in the future, and the Training Coordinator has plans to work with the environmental group on its specific needs.

Successful Practices

Through interviews and the PAIR response, the Audit Team learned that UDOT delivered several discipline-based (e.g., Noise, Section 4f, Section 7, Air Quality, and Legal Sufficiency) training courses to staff and consultants. The Audit Team learned that UDOT has used the annual conference to inform staff and consultants about the NEPA Assignment Program and the responsibilities that UDOT has assumed.

Observations

Observation #5: UDOT's training plan coordination

The UDOT developed a NEPA Assignment Program Training Plan, as required by the MOU, but through interviews the Audit Team found that Environmental Managers developed the plan with minimal coordination with the UDOT Training Coordinator, SMEs, or regional staff. In interviews, the Audit Team learned that some SMEs did not get opportunities to attend training on topics outside their subject area, including NEPA. An understanding of NEPA compliance is important for all environmental staff, including SMEs. Although ''UDOT U'' has offered environmental training on specific topics such as stormwater and permitting, the NEPA Assignment Program training plan is not integrated into ''UDOT U.''

Performance Measures

The Environmental Performance Manager has begun collecting and tracking performance data, such as the completeness of project records, timeline for completion of environmental documents, and whether QA/QC was performed for each document. The Environmental Performance Manager indicated that the results of this audit will be used to help revise manuals and procedures and that the self-assessment informed some changes. For example, the MOI has been updated to clarify which documents need to be updated and uploaded in projects files.

Successful Practices

The UDOT surveyed resource agency partners about how it is implementing responsibilities under the NEPA Assignment Program. Managers said they are striving to improve UDOT's relationships with partner agencies despite having different missions and perspectives. The environmental group will continue to survey its partners in the future, and will modify the survey as needed to help improve UDOT's environmental processes and relationships with resource agencies.

Next Steps

The FHWA provided this draft audit report to UDOT for a 14-day review and comment period. The Audit Team considered UDOT comments in developing this draft audit report. The FHWA will publish a notice in the Federal Register for a 30-day comment period in accordance with 23 U.S.C. 327(g). No later than 60 days after the close of the comment period, FHWA will respond to all comments submitted to finalize this draft audit report pursuant to 23 U.S.C. 327(g)(B). The FHWA will publish the final audit report in the Federal Register.

[FR Doc. 2018–07751 Filed 4–12–18; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Departmental Offices Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, section 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue NW, Washington, DC, on May 1, 2018 at 9:30 a.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee of the Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, section 10(d) and Public Law 103–202, section 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, section 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, section 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, section 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions and financing estimates. This briefing will give the press an opportunity to ask questions about financing projections. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the

meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622–1876.

Dated: April 6, 2018.

Fred Pietrangeli,

Director for Office of Debt Management.

[FR Doc. 2018–07507 Filed 4–12–18; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Government Securities: Call for Large Position Reports

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Notice of Call for Large Position Reports.

SUMMARY: The U.S. Department of the Treasury (''Department'' or ''Treasury'') called for the submission of Large Position Reports by those entities whose positions in the 2¼% Treasury Notes of November 2027 equaled or exceeded $4.58 billion as of January 12, 2018.

DATES: Large Position Reports must be received by 12:00 p.m. Eastern Time on April 16, 2018.

ADDRESSES: The reports must be submitted to the Federal Reserve Bank of New York, Government Securities Dealer Statistics Unit, 6th Floor, 33 Liberty Street, New York, New York 10045; or faxed to 212–720–5025.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena, Kurt Eidemiller, Kevin Hawkins, or John Garrison; Government Securities Regulations Staff, Department of the Treasury, at 202–504–3632.

SUPPLEMENTARY INFORMATION: In a press release issued on April 10, 2018, and in this **Federal Register** notice, the Treasury called for Large Position Reports from entities whose positions in the 2¼% Treasury Notes of November 2027 equaled or exceeded $4.58 billion as of Friday, January 12, 2018. Entities whose positions in this note equaled or exceeded the $4.58 billion threshold must submit a report to the Federal Reserve Bank of New York. This call for Large Position Reports is pursuant to Treasury's large position reporting rules under the Government Securities Act regulations (17 CFR part 420), promulgated pursuant to 15 U.S.C. 780–5(f). Entities with positions in this note below $4.58 billion are not required to file reports. Reports must be received by the Government Securities Dealer Statistics Unit of the Federal Reserve Bank of New York before 12:00 p.m. Eastern Time on Monday, April 16, 2018, and must include the required position and administrative information. The reports may be faxed to (212) 720–5025 or delivered to the Bank at 33 Liberty Street, 6th floor.

The 2¼% Treasury Notes of November 2027, Series F–2027, have a CUSIP number of 9128283F5, a STRIPS principal component CUSIP number of 9128203W5, and a maturity date of November 15, 2027.

The press release, a copy of a sample Large Position Report, which appears in Appendix B of the rules at 17 CFR part 420, and supplementary formula guidance are available at *www.treasurydirect.gov/instit/statreg/gsareg/gsareg.htm.*

Non-media questions about Treasury's large position reporting rules should be directed to Treasury's Government Securities Regulations Staff at (202) 504–3632. Questions regarding the method of submission of Large Position Reports should be directed to the Government Securities Dealer Statistics Unit of the Federal Reserve Bank of New York at (212) 720–7993 or (212) 720–8107.

The collection of large position information has been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB Control Number 1530–0064.

Clay Berry,

Deputy Assistant Secretary for Capital Markets.

[FR Doc. 2018–07803 Filed 4–11–18; 11:15 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that a meeting of the Federal Advisory Committee on Prosthetics and Special-Disabilities Programs will be held on April 30, 2018 and May 1, 2018, in Room 430 at VA Central Office, 810 Vermont Avenue NW, Washington, DC 20420. The meeting will convene at 8:30 a.m. on both days, and will adjourn at 4:30 p.m. on April 30 and at 12 noon on May 1. This meeting is open to the public.

The purpose of the Committee is to advise the Secretary of VA on VA's prosthetics programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also provides advice to the Secretary to serve Veterans with spinal cord injuries, blindness or visual impairments, loss of extremities or loss of function, deafness or hearing impairment, and other serious incapacities in terms of daily life functions.

On April 30, the Committee will receive briefings on Academic Affiliations in Associated Health; Workforce Management Service and Human Resources; Modernization in Veterans Health Administration; Chiropractic Care Services; Clinical Orthotic and Prosthetic Services. On May 1, the Committee members will receive briefings from the Physical Medicine and Rehabilitation, Polytrauma System of Care; Access to Care; and Spinal Cord Injury and Disorders

No time will be allocated for receiving oral presentations from the public; however, members of the public may direct questions or submit written statements for review by the Committee in advance of the meeting to Judy Schafer, Ph.D., Designated Federal Officer, Veterans Health Administration, Patient Care Services, Rehabilitation and Prosthetic Services (10P4R), VA, 810 Vermont Avenue NW, Washington, DC 20420, or by email at *Judy.Schafer@va.gov.* Because the meeting is being held in a Government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Therefore, you should allow an additional 30 minutes before the meeting begins. Any member of the public wishing to attend the meeting should contact Dr. Schafer at (202) 461–7315.

Dated: April 9, 2018.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–07645 Filed 4–12–18; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 83 Friday,

No. 72 April 13, 2018

Part II

The President

Memorandum of April 6, 2018—Ending ''Catch and Release'' at the Border of the United States and Directing Other Enhancements to Immigration Enforcement

Federal Register
Vol. 83, No. 72
Friday, April 13, 2018

Presidential Documents

Title 3—

The President

Memorandum of April 6, 2018

Ending ''Catch and Release'' at the Border of the United States and Directing Other Enhancements to Immigration Enforcement

Memorandum for the Secretary of State[,] the Secretary of Defense[,] the Attorney General[,] the Secretary of Health and Human Services[, and] the Secretary of Homeland Security

Section 1. *Purpose.* (a) Human smuggling operations, smuggling of drugs and other contraband, and entry of gang members and other criminals at the border of the United States threaten our national security and public safety. The backlog of immigration-related cases in our administrative system is alarmingly large and has hindered the expeditious adjudication of outstanding cases. Border-security and immigration enforcement personnel shortages have become critical.

(b) In Executive Order 13767 of January 25, 2017 (Border Security and Immigration Enforcement Improvements), I directed the Secretary of Homeland Security to issue new policy guidance regarding the appropriate and consistent use of detention authority under the Immigration and Nationality Act (INA), including the termination of the practice known as ''catch and release,'' whereby aliens are released in the United States shortly after their apprehension for violations of our immigration laws. On February 20, 2017, the Secretary issued a memorandum taking steps to end ''catch and release'' practices. These steps have produced positive results. Still, more must be done to enforce our laws and to protect our country from the dangers of releasing detained aliens into our communities while their immigration claims are pending.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct as follows:

Sec. 2. *Ending ''Catch and Release''.* (a) Within 45 days of the date of this memorandum, the Secretary of Homeland Security, in coordination with the Secretary of Defense, the Attorney General, and the Secretary of Health and Human Services, shall submit a report to the President detailing all measures that their respective departments have pursued or are pursuing to expeditiously end ''catch and release'' practices. At a minimum, such report shall address the following:

(i) All measures taken pursuant to section 5(a) of Executive Order 13767 to allocate all legally available resources to construct, operate, control, or modify—or establish contracts to construct, operate, control, or modify—facilities to detain aliens for violations of immigration law at or near the borders of the United States;

(ii) All measures taken pursuant to section 5(b) of Executive Order 13767 to assign asylum officers to immigration detention facilities for the purpose of accepting asylum referrals and conducting credible fear determinations and reasonable fear determinations;

(iii) All measures taken pursuant to section 6 of Executive Order 13767 to ensure the detention of aliens apprehended for violations of immigration law;

(iv) All measures taken pursuant to section 11(a) of Executive Order 13767 to ensure that the parole and asylum provisions of Federal immigration

law are not illegally exploited to prevent the removal of otherwise removable aliens;

(v) All measures taken pursuant to section 11(b) of Executive Order 13767 to ensure that asylum referrals and credible fear determinations pursuant to section 235(b)(1) of the INA (8 U.S.C. 1125(b)(1)) and 8 CFR 208.30, and reasonable fear determinations pursuant to 8 CFR 208.31, are conducted in a manner consistent with those provisions;

(vi) All measures taken pursuant to section 6 of Executive Order 13768 of January 25, 2017 (Enhancing Public Safety in the Interior of the United States), to ensure the assessment and collection of all authorized fines and penalties from aliens unlawfully present in the United States and from those who facilitate their unlawful presence in the United States;

(vii) A detailed list of all existing facilities, including military facilities, that could be used, modified, or repurposed to detain aliens for violations of immigration law at or near the borders of the United States; and

(viii) The number of credible fear and reasonable fear claims received, granted, and denied—broken down by the purported protected ground upon which a credible fear or reasonable fear claim was made—in each year since the beginning of fiscal year 2009.

(b) Within 75 days of the date of this memorandum, the Attorney General and the Secretary of Homeland Security, in consultation with the Secretary of Defense and the Secretary of Health and Human Services, shall submit a report to the President identifying any additional resources or authorities that may be needed to expeditiously end ''catch and release'' practices.

Sec. 3. *Return of Removable Aliens to Their Home Countries or Countries of Origin.* Within 60 days of the date of this memorandum, the Secretary of State and the Secretary of Homeland Security shall submit a report to the President detailing all measures, including diplomatic measures, that are being pursued against countries that refuse to expeditiously accept the repatriation of their nationals. The report shall include all measures taken pursuant to section 12 of Executive Order 13768 to implement the sanctions authorized by section 243(d) of the INA (8 U.S.C. 1253(d)), or a detailed explanation as to why such sanctions have not yet been imposed.

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

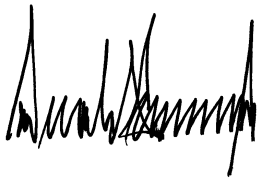
(i) the authority granted by law to an executive department or agency, or the head thereof; or

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

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

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

(d) The Secretary of State is hereby authorized and directed to publish this memorandum in the *Federal Register.*



THE WHITE HOUSE,
Washington, April 6, 2018

[FR Doc. 2018–07962
Filed 4–12–18; 11:15 am]
Billing code 4710–10–P

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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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