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Contents

Federal Register

Vol. 82, No. 6

Tuesday, January 10, 2017

Agriculture Department
See Grain Inspection, Packers and Stockyards Administration
See Rural Utilities Service

Alcohol and Tobacco Tax and Trade Bureau
RULES
Civil Monetary Penalty Inflation Adjustments:
Alcoholic Beverage Labeling Act, 2892–2893

Bureau of Consumer Financial Protection
PROPOSED RULES
Supplemental Standards of Ethical Conduct for Employees of the Bureau of Consumer Financial Protection, 2921–2929

Centers for Disease Control and Prevention
NOTICES
Meetings:
Advisory Committee to the Director, Centers for Disease Control and Prevention—Health Disparities Subcommittee, 2997

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2997–2998

Chemical Safety and Hazard Investigation Board
NOTICES
Meetings; Sunshine Act, 2945

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2998–2999

Coast Guard
RULES
Anchorage Regulations:
Special Anchorage Areas; Marina del Rey Harbor, Marina del Rey, CA, 2893–2896
PROPOSED RULES
Special Local Regulations:
Mavericks Surf Competition, Half Moon Bay, CA, 2930–2933
NOTICES
Update to Alternative Planning Criteria National Guidelines, 3016

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2945–2946

Commodity Futures Trading Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2963

Defense Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2970
Arms Sales, 2964–2975
Charter Amendments, Establishments or Renewals:
United States Naval Academy Board of Visitors, 2966
Meetings:
National Intelligence University Board of Visitors, 2964

Education Department
NOTICES
Meetings:
National Advisory Committee on Institutional Quality and Integrity, 2975–2977

Energy Department
RULES
Energy Efficiency Standards:
Design and Construction of New Federal Low-Rise Residential Buildings' Baseline Standards Update, 2857–2868

Environmental Protection Agency
RULES
Pesticide Tolerances:
Tetraconazole, 2900–2906
Protection of Visibility:
Requirements for State Plans, 3078–3129
Tolerance Exemptions:
Butanedioic acid, 2-methylene-, telomer with sodium phosphinate (1:1), acidified, potassium salts, 2897–2900
PROPOSED RULES
Funding Availability:
Applications for Credit Assistance under the Water Infrastructure Finance and Innovation Act (WIFIA) Program, 2933–2938

Export-Import Bank
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2977

Federal Aviation Administration
RULES
Class D and E Airspace, Amendments; Class E Airspace, Revocations:
Roswell, NM, 2871–2873
Class E Airspace, Amendments:
Algona, IA; Ankeny, IA; Atlantic, IA; Belle Plane, IA; Creston, IA; Estherville, IA; Grinnell, IA; Guthrie Center, IA; Oelwein, IA, 2868–2870
Land O' Lakes, WI; Manitowish Waters, WI; Merrill, WI; Oconto, WI; Phillips, WI; Platteville, WI; Solon Springs, WI; Superior, WI; West Bend, WI, 2873–2875
VOR Federal Airway V–506; Amendments:
Kotzebue, AK;, 2870–2871
NOTICES
Airport Property Releases:
South Texas Regional Airport, Hondo, TX, 3071

Meetings:
RTCA Drone Advisory Committee, 3071
Thirty First RTCA 216 Aeronautical Systems Security Plenary, 3071–3072
Petitions for Exemption; Summaries, 3072
Petitions for Exemption; Summaries:
AgrowSoft, LLC, 3072–3073

Federal Emergency Management Agency
NOTICES
Guidance:
Tribal Declarations Pilot, 3016–3017

Federal Financial Institutions Examination Council
NOTICES
Appraisal Subcommittee Proposed Revised Policy Statements, 2977–2995

Federal Highway Administration
NOTICES
Final Federal Agency Actions:
Proposed Highway in North Carolina, 3073–3074

Federal Labor Relations Authority
RULES
Availability of Official Information, 2849–2857

Federal Motor Carrier Safety Administration
RULES
Commercial Driver's License Requirements:
Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators; Correction, 2915–2916

Federal Reserve System
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2995–2997
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 2997
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 2995

Fish and Wildlife Service
NOTICES
Endangered Species Recovery Permit; Applications, 3019–3023

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Citizen Petitions and Petitions for Stay of Action Subject to the Federal Food, Drug, and Cosmetic Act, 2999–3001
Guidance:
Annual Reporting by Prescription Drug Wholesale Distributors and Third-Party Logistics Providers, 3004–3005
Recommendations for Assessment of Blood Donor Eligibility, Donor Deferral and Blood Product Management in Response to Ebola Virus, 3002–3004

Foreign-Trade Zones Board
NOTICES
Subzone Status; Approvals:
Jos. A. Bank Manufacturing Co., Hampstead and Eldersburg, MD, 2946

Grain Inspection, Packers and Stockyards Administration
NOTICES
Designation Opportunities:
Casa Grande, AZ, Area, 2939–2940
Designations:
Fremont Grain Inspection Department, Inc. to provide Class X or Class Y Weighing Services, 2939

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See Indian Health Service
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Requests for Information:
Organizations Utilizing Business Models Supporting Private Sector Vaccine Management, 3006–3007
Statement of Organization, Functions, and Delegations of Authority, 3005–3006

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services

Indian Health Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Environmental Health Assessment of Tribal Child Care Centers in the Pacific Northwest, 3007–3008
Funding Opportunities:
Indian Health Professions Preparatory, Indian Health Professions Pre-Graduate and Indian Health Professions Scholarship Programs, 3008–3013

Industry and Security Bureau
RULES
Certain Persons and Modification of Certain Entries to the Entity List; Additions and Removals, 2883–2889
Export Administration Regulations:
Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control under the United States Munitions List, 2875–2883

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain New Pneumatic Off-the-Road Tires from India, 2946–2949
Certain New Pneumatic Off-the-Road Tires from Sri Lanka, 2949–2951
Opportunity to Request Administrative Review, 2951–2953
Council Establishments:
U.S. Department of Commerce Advisory Council on Trade Enforcement and Compliance, 2953–2954

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Document Cameras and Software for Use Therewith, 3024–3025

Justice Department
NOTICES
Membership Applications:
National Commission on Forensic Science; Additional Statistician Commission, 3025–3026

Land Management Bureau
RULES
Onshore Oil and Gas Operations:
Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order Number 1, Approval of Operations, 2906–2915
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3023–3024

Management and Budget Office
NOTICES
Discount Rates for Cost-Effectiveness Analysis of Federal Programs, 3026–3027

National Archives and Records Administration
NOTICES
Records Schedules; Availability, 3027–3028

National Endowment for the Arts
NOTICES
Meetings:
Arts Advisory Panel, 3028
Federal Advisory Committee on International Exhibitions, 3028

National Foundation on the Arts and the Humanities
See National Endowment for the Arts

National Institutes of Health
NOTICES
Meetings:
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 3014
National Institute of Environmental Health Sciences, 3014
National Library of Medicine, 3013
Office of Dietary Supplements Strategic Plan for 2017–2021, 3013–3014

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Inseason Adjustment to the 2017 Bering Sea and Aleutian Islands Pollock, Atka Mackerel, and Pacific cod Total Allowable Catch Amounts, 2916–2920
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2962–2963
List of Foreign Fisheries, 2961–2962
Requests for Nominations:
Western and Central Pacific Fisheries Commission Permanent Advisory Committee, 2960–2961
Takes of Threatened or Endangered Marine Mammals Incidental to Specific Activities:
Commercial Fishing Operations; Proposed Issuance of Permit, 2954–2960

National Park Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Park Service Visitor Survey Card, 3024

Nuclear Regulatory Commission
NOTICES
Environmental Assessments; Availability, etc.:
FirstEnergy Nuclear Operating Company; Davis-Besse Nuclear Power Station, Unit No. 1, 3028–3030

Postal Service
RULES
Production or Disclosure of Material or Information, 2896

Rural Utilities Service
NOTICES
Grant Application Deadlines and Funding Levels, 2940–2945

Securities and Exchange Commission
NOTICES
Applications:
Hartford Funds Exchange-Traded Trust, et al., 3056–3058
Krane Funds Advisors, LLC, et al., 3044–3045
Meetings; Sunshine Act, 3030
Self-Regulatory Organizations; Proposed Rule Changes:
International Securities Exchange, LLC, 3055–3056
ISE Gemini, LLC, 3034–3035, 3043–3044
ISE Mercury, LLC, 3058–3061
National Securities Clearing Corp., 3030–3034
New York Stock Exchange LLC, 3045–3052, 3067–3068
NYSE Arca, Inc., 3042, 3061–3067
NYSE MKT LLC, 3035–3042, 3052–3055, 3068–3069

State Department
RULES
International Traffic in Arms Regulations:
Revision of U.S. Munitions List Category XV, 2889–2892
NOTICES
Culturally Significant Objects Imported for Exhibition:
Abstract Experiments—Latin American Art on Paper after 1950 Exhibition, 3070
Alfred Sisley (1839–1899): Impressionist Master, 3070–3071
Seurat's Circus Sideshow Exhibition, 3069
Designations as Global Terrorists:
Hamza bin Laden, 3070
Ibrahim al-Banna, aka Shaykh Ibrahim Muhammad Salih al-Banna, aka Ibrahim Muhammad Salih al-Banna, aka Ibrahim Muhamad Salih al-Banna, aka Abu Ayman al-Masri, 3070
Meetings:
Funding Initiatives to End Modern Slavery, 3069–3070

Substance Abuse and Mental Health Services Administration

NOTICES
Meetings:
National Advisory Council, 3015–3016

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
NOTICES
Interest Rate Paid on Cash Deposited to Secure U.S. Immigration and Customs Enforcement Immigration Bonds, 3074

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Citizenship and Integration Direct Services Grant Program, 3018
Record of Abandonment of Lawful Permanent Resident Status, 3017

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application Requirements to Receive VA Dental Insurance Plan Benefits, 3075
Meetings:
Advisory Committee on Former Prisoners of War, 3074–3075

Separate Parts In This Issue

Part II
Environmental Protection Agency, 3078–3129

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
2411 2849
Proposed Rules:
9401 2921

10 CFR
435 2857

14 CFR
71 (4 documents) ... 2868, 2870, 2871, 2873

15 CFR
740 2875
742 2875
744 2883
750 2875
774 2875

22 CFR
121 2889

27 CFR
16 2892

33 CFR
110 2893
Proposed Rules:
100 2930

39 CFR
265 2896

40 CFR
51 3078
52 3078
180 (2 documents) 2897, 2900
Proposed Rules:
35 2933

43 CFR
3160 2906

49 CFR
383 2915
384 2915

50 CFR
679 2916

Rules and Regulations

Federal Register
Vol. 82, No. 6
Tuesday, January 10, 2017

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. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2411

Availability of Official Information

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: This rulemaking amends the regulations that the Federal Labor Relations Authority (FLRA) follows in processing records under the Freedom of Information Act (FOIA) to comply with the FOIA Improvement Act of 2016. The amendments would clarify and update procedures for requesting information from the FLRA and procedures that the FLRA follows in responding to requests from the public.

DATES: Effective January 24, 2017.

FOR FURTHER INFORMATION CONTACT: If you have any comments or questions, please contact Fred B. Jacob, Solicitor, Chief FOIA Officer, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424; (202) 218–7999; fax: (202) 343–1007; or email: *solmail@flra.gov.*

SUPPLEMENTARY INFORMATION: On June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016. The Act specifically requires all agencies to review and update their FOIA regulations in accordance with its provisions, and the FLRA is making changes to its regulations accordingly. Among other things, the Act addresses a range of procedural issues that affect agency FOIA regulations, including requirements that agencies establish a minimum of 90 days for requesters to file an administrative appeal and that they provide dispute-resolution services at various times throughout the FOIA process. In addition to some minor non-substantive changes to correct typographical errors, make small stylistic adjustments for clarification, and streamline the language of some procedural provisions, the FLRA is making the following changes:

- Section 2411.4 is amended to emphasize the ability to view records electronically on the FLRA's Web site. Because all of the FLRA's disclosable records under 5 U.S.C. 552(a)(2) are available on the FLRA's Web site, section 2411.4 is also amended to eliminate the procedure for requesting use of a computer terminal at the FLRA's headquarters or one of its regional offices. Finally, section 2411.4 is amended to reflect the requirement under the FOIA Improvement Act of 2016 that agencies make available for public inspection, in electronic format, records that have been requested three or more times.
- Section 2411.6 is amended to notify requesters that they may contact the FLRA's Chief FOIA Officer or FOIA Public Liaison to discuss and to receive assistance in processing records requests. This section also updates the information that is listed in the agency's public FOIA logs to include, among other things, whether any exemptions were applied in processing a request. The section additionally describes the agency's consultation, referral, and coordination efforts with other agencies in processing FOIA requests.
- Section 2411.7 is amended to describe that the agency will inform a requester of the availability of the FLRA's FOIA Public Liaison to assist in processing his or her request.
- Section 2411.8 describes the time limits for processing FOIA requests and provides instances in which fees will not be assessed if an agency component fails to comply with deadlines listed in 5 U.S.C. 552(a)(4)(A). The section is amended to further describe exceptions under this rule, including, for instance, when unusual circumstances are present and when large numbers of documents are necessary to respond to the request. This section is also amended to explain that in the case of a denial, the agency will notify the requester of additional assistance that is available, specifically from the FLRA's FOIA Public Liaison and the Office of Government Information Services (OGIS).
- Section 2411.10, describing how a requester can appeal a denied request, is amended to provide the requester with 90 calendar days to appeal. This section also now notifies a requester of the dispute-resolution services offered by OGIS.
- Section 2411.11 is amended to again notify requesters of the availability of OGIS and its dispute-resolution services.
- Section 2411.12 is amended to state that no search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review. This section is also amended to elaborate on how a requester may submit a fee waiver, as well as to describe the obligations on the requester when a fee waiver is denied. Additionally, the section is amended to explain the consequences of failing to pay fees, such as the agency closing the matter without further processing the request.
- Section 2411.15 is amended to incorporate the additional reporting requirements related to the agency's FOIA annual report, including that the report will provide raw statistical data to the public.

This rule is internal and procedural rather than substantive. It does not create a right to obtain FLRA records, nor does it create any additional right or privilege not already available to the public as a result of the FOIA Improvement Act of 2016. It merely adopts the improvements mandated in the Act and builds upon the previous agency procedures for processing FOIA-related requests.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FLRA has determined that this regulation, as amended, will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulations contain no additional information-collection or record-keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

Public Participation

This rule is published as a final rule. It is exempt from public comment, pursuant to 5 U.S.C. 553(b)(A), as a rule of ''agency organization, procedure, or practice.'' If you wish to contact the agency, please do so at the above listed address. However, 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.

List of Subjects in 5 CFR Part 2411

Freedom of Information Act.

For the reasons stated in the preamble, the Authority amends 5 CFR part 2411 as follows:

PART 2411—AVAILABILITY OF OFFICIAL INFORMATION

■ 1. The authority citation for part 2411 is revised to read as follows:

Authority: 5 U.S.C. 552, as amended; Freedom of Information Improvement Act of 2016, Pub. L. 114–185, 130 Stat. 528; Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act), Pub. L. 110–175, 121 Stat. 2524.

■ 2. Revise § 2411.1 to read as follows:

§ 2411.1 Purpose.

This part contains the rules that the Federal Labor Relations Authority (FLRA), including the three-Member Authority component (Authority), the General Counsel of the FLRA (General Counsel), the Federal Service Impasses Panel (Panel), and the Inspector General of the FLRA (IG), follow in processing requests for information under the Freedom of Information Act, as amended, 5 U.S.C. 552 (FOIA) These regulations should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget. Requests by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with the Authority's Privacy Act regulations, *see* 5 CFR part 2412, as well as under this subpart.

■ 3. Revise § 2411.2 to read as follows:

§ 2411.2 Scope.

(a) For the purpose of this part, the term record and any other term used in reference to information includes any information that would be subject to the requirements of 5 U.S.C. 552 when maintained by the Authority, the General Counsel, the Panel, or the IG in any format, including an electronic format. All written requests for information from the public that are not processed under parts 2412 and 2417 of this chapter will be processed under this part. The Authority, the General Counsel, the Panel, and the IG may each continue, regardless of this part, to furnish the public with the information that it has furnished in the regular course of performing its official duties, unless furnishing the information would violate the Privacy Act of 1974, 5 U.S.C. 552a, or another law.

(b) When the subject of a record, or the subject's representative, requests the record from a Privacy Act system of records, as that term is defined by 5 U.S.C. 552a(a)(5), and the FLRA retrieves the record by the subject's name or other personal identifier, the FLRA will handle the request under the procedures and subject to the fees set out in part 2412. When a third party requests access to those records, without the written consent of the subject of the record, the FLRA will process the request under this part.

(c) Nothing in 5 U.S.C. 552 or this part requires that the Authority, the General Counsel, the Panel, or the IG, as appropriate, create a new record in order to respond to a request for the records.

■ 4. Revise § 2411.3 to read as follows:

§ 2411.3 Delegation of authority.

(a) Chief FOIA Officer. The Chairman of the FLRA designates the Chief FOIA Officer, who has agency-wide responsibility for the efficient and appropriate compliance with the FOIA. The Chief FOIA Officer monitors the implementation of the FOIA throughout the agency.

(b) Authority/General Counsel/Panel/IG. Regional Directors of the Authority, the FOIA Officer of the Office of the General Counsel, Washington, DC, the Solicitor of the Authority, the Executive Director of the Panel, and the IG are delegated the exclusive authority to act upon all requests for information, documents, and records that are received from any person or organization under § 2411.5(a) and (b).

(c) FOIA Public Liaison(s). The Chief FOIA Officer shall designate the FOIA Public Liaison(s), who shall serve as the supervisory official(s) to whom a FOIA requester can raise concerns about the service that the FOIA requester has received following an initial response.

■ 5. Amend § 2411.4 by revising paragraphs (a) through (c) and (e) and (f) to read as follows:

§ 2411.4 Information policy.

(a)(1) It is the policy of the Authority, the General Counsel, the Panel, and the IG to make available for public inspection in an electronic format:

(i) Final decisions and orders of the Authority and administrative rulings of the General Counsel; procedural determinations, final decisions and orders of the Panel; factfinding and arbitration reports; and reports and executive summaries of the IG;

(ii) Statements of policy and interpretations that have been adopted by the Authority, the General Counsel, the Panel, or the IG and that are not published in the **Federal Register**;

(iii) Administrative staff manuals and instructions to staff that affect a member of the public (except those establishing internal operating rules, guidelines, and procedures for the investigation, trial, and settlement of cases);

(iv) Copies of all records, regardless of form or format, that have been released to any person under 5 U.S.C. 552(a)(3) and that:

(A) Because of the nature of their subject matter, the Authority, the General Counsel, the Panel, or the IG determines have become, or are likely to become, the subject of subsequent requests for substantially the same records; or

(B) Have been requested three or more times; and

(v) A general index of the records referred to in paragraph (a)(i)–(iv) of this section.

(2) It is the policy of the Authority, the General Counsel, the Panel, and the

IG to make promptly available for public inspection in an electronic format, upon request by any person, other records where the request reasonably describes such records and otherwise conforms to the procedures of this part.

(b)(1) Any person may examine and copy items in paragraphs (a)(1)(i) through (iv) of this section, at each regional office of the Authority and at the offices of the Authority, the General Counsel, the Panel, and the IG, respectively, in Washington, DC, under conditions prescribed by the Authority, the General Counsel, the Panel, and the IG, respectively, and at reasonable times during normal working hours, so long as it does not interfere with the efficient operations of the Authority, the General Counsel, the Panel, or the IG. To the extent required to prevent a clearly unwarranted invasion of personal privacy, identifying details may be deleted and, in each case, the justification for the deletion shall be fully explained in writing. On the released portion of the record, the amount of information deleted, and the exemption under which the deletion is made, shall be indicated unless an interest protected by the exemption would be harmed.

(2) All records covered by this section are available on the FLRA's Web site (*https://www.flra.gov/elibrary*).

(c) The Authority, the General Counsel, the Panel, and the IG shall maintain and make available for public inspection in an electronic format the current indexes and supplements to the records that are required by 5 U.S.C. 552(a)(2) and, as appropriate, a record of the final votes of each Member of the Authority and of the Panel in every agency proceeding. Any person may examine and copy such document or record of the Authority, the General Counsel, the Panel, or the IG at the offices of either the Authority, the General Counsel, the Panel, or the IG, as appropriate, in Washington, DC, under conditions prescribed by the Authority, the General Counsel, the Panel, or the IG at reasonable times during normal working hours, so long as it does not interfere with the efficient operations of the Authority, the General Counsel, the Panel, or the IG.

* * * * *

(e)(1) The formal documents constituting the record in a case or proceeding are matters of official record and, until destroyed pursuant to applicable statutory authority, are available to the public for inspection and copying at the appropriate regional office of the Authority, or the offices of the Authority, the General Counsel, the Panel, or the IG in Washington, DC, as appropriate, under conditions prescribed by the Authority, the General Counsel, the Panel, or the IG at reasonable times during normal working hours so long as it does not interfere with the efficient operations of the Authority, the General Counsel, the Panel, or the IG.

(2) The Authority, the General Counsel, the Panel, or the IG, as appropriate, shall certify copies of the formal documents upon request made a reasonable time in advance of need and payment of lawfully prescribed costs.

(f)(1) Copies of forms prescribed by the General Counsel for the filing of charges and petitions may be obtained without charge from any regional office of the Authority or on the Authority's Web site at: *https://www.flra.gov/resources-training/resources/forms-checklists.*

(2) Copies of forms prescribed by the Panel for the filing of requests may be obtained without charge from the Panel's offices in Washington, DC or on the Authority's Web site at: *https://www.flra.gov/resources-training/resources/forms-checklists.*

(3) Copies of optional forms for filing exceptions or appeals with the Authority may be obtained without charge from the Office of Case Intake and Publication at the Authority's offices in Washington, DC or on the Authority's Web site at: *https://www.flra.gov/resources-training/resources/forms-checklists.*

■ 6. Revise § 2411.5 to read as follows:

§ 2411.5 Procedure for obtaining information.

(a) Any person who desires to inspect or copy any records, documents, or other information of the Authority, the General Counsel, the Panel, or the IG, covered by this part, other than those specified in § 2411.4(a)(1) and (c), shall submit an electronic written request via the FOIAOnline system at *https://foiaonline.regulations.gov* or a written, facsimiled, or email request (*see* office and email addresses listed at *https://www.flra.gov/foia_contact* and in Appendix A to 5 CFR Chapter XIV) as follows:

(1) If the request is for records, documents, or other information in a regional office of the Authority, it should be made to the appropriate Regional Director;

(2) If the request is for records, documents, or other information in the Office of the General Counsel and located in Washington, DC, it should be made to the FOIA Officer, Office of the General Counsel, Washington, DC;

(3) If the request is for records, documents, or other information in the offices of the Authority in Washington, DC, it should be made to the Solicitor of the Authority, Washington, DC;

(4) If the request is for records, documents, or other information in the offices of the Panel in Washington, DC, it should be made to the Executive Director of the Panel, Washington, DC; and

(5) If the request is for records, documents or other information in the offices of the IG in Washington, DC, it should be made to the IG, Washington, DC.

(b) Each request under this part should be clearly and prominently identified as a request for information under the FOIA and, if submitted by mail or otherwise submitted in an envelope or other cover, should be clearly identified as such on the envelope or other cover. A request shall be considered an agreement by the requester to pay all applicable fees charged under § 2411.13, up to $25.00, unless the requester seeks a waiver of fees. When making a request, the requester may specify a willingness to pay a greater or lesser amount. Fee charges will be assessed for the full allowable direct costs of document search, review, and duplication, as appropriate, in accordance with § 2411.13. If a request does not comply with the provisions of this paragraph, it shall not be deemed received by the appropriate Regional Director, the FOIA Officer of the General Counsel, the Solicitor of the Authority, the Executive Director of the Panel, or the IG, as appropriate.

■ 7. Revise § 2411.6 to read as follows:

§ 2411.6 Identification of information requested.

(a) *Reasonably describe and identify records.* Each request under this part shall reasonably describe the records being sought in a way that the FLRA can be identify and locate them. A request shall be legible and include all pertinent details that will help identify the records sought. Before submitting a request, a requester may contact the FLRA's Chief FOIA Officer or FOIA Public Liaison to discuss the records that he or she seeks and to receive assistance in describing the records.

(b) *Agency efforts to further identify records.* If the description does not meet the requirements of paragraph (a) of this section, the officer processing the request shall so notify the person making the request and indicate the additional information needed. Every reasonable effort shall be made to assist in the identification and location of the

records sought. A requester who is attempting to reformulate or modify his or her request may discuss the request with the FLRA's Chief FOIA Officer or FOIA Public Liaison.

(c) *Public logs.* Upon receipt of a request for records, the appropriate Regional Director, the FOIA Officer of the General Counsel, the Solicitor of the Authority, the Executive Director of the Panel, or the IG, as appropriate, shall enter it in a public log. The log shall state: The request number; the date received; the nature of the records requested; the action taken on the request; the agency's response date; any exemptions that were applied (if applicable) and their descriptions; and whether any fees were charged for processing the request.

(d) *Consultation, referral, and coordination.* When reviewing records located in response to a request, the Authority, the General Counsel, the Panel, or the IG will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the Authority, the General Counsel, the Panel, or the IG will proceed in one of the following ways:

(1) *Consultation.* When records originated with the Authority, the General Counsel, the Panel, or the IG, but contain within them information of interest to another agency or other Federal Government component, the Authority, the General Counsel, the Panel, or the IG will typically consult with that other entity prior to making a release determination.

(2) *Referral.* (i) When the Authority, the General Counsel, the Panel, or the IG believes that a different agency or component is best able to determine whether to disclose the record, the Authority, the General Counsel, the Panel, or the IG will typically refer the responsibility for responding to the request regarding that record to that agency or component. Ordinarily, the agency or component that originated the record is presumed to be the best agency or component to make the disclosure determination. However, if the FLRA and the originating agency or component jointly agree that the FLRA is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever the Authority, the General Counsel, the Panel, or the IG refers any part of the responsibility for responding to a request to another Federal agency, it must document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA contact information.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national-security interests. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the Authority, the General Counsel, the Panel, or the IG should coordinate with the originating agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by the Authority, the General Counsel, the Panel, or the IG.

■ 8. Revise § 2411.7 to read as follows:

§ 2411.7 Format of disclosure.

(a) After a determination has been made to grant a request in whole or in part, the appropriate Regional Director, the FOIA Officer of the General Counsel, the Solicitor of the Authority, the Executive Director of the Panel, or the IG, as appropriate, will notify the requester in writing. The notice will describe the manner in which the record will be disclosed and will inform the requester of the availability of the Authority's FOIA Public Liaison to offer assistance. The appropriate Regional Director, the FOIA Officer of the General Counsel, the Solicitor of the Authority, the Executive Director of the Panel, or the IG, as appropriate, will provide the record in the form or format requested if the record is readily reproducible in that form or format, provided the requester has agreed to pay and/or has paid any fees required by § 2411.13 of this part. The appropriate Regional Director, the FOIA Officer of the General Counsel, the Solicitor of the Authority, the Executive Director of the Panel, or the IG, as appropriate, will determine on a case-by-case basis what constitutes a readily reproducible format. These offices will make a reasonable effort to maintain their records in commonly reproducible forms or formats.

(b) Alternatively, the appropriate Regional Director, the FOIA Officer of the General Counsel, the Solicitor of the Authority, the Executive Director of the Panel, or the IG, as appropriate, may make a copy of the releasable portions of the record available to the requester for inspection at a reasonable time and place. The procedure for such an inspection will not unreasonably disrupt the operations of the office.

■ 9. Amend § 2411.8 by revising paragraphs (a) introductory text, (b), (c) introductory text, (c)(1) and (2), (c)(5), (d), and (e) to read as follows:

§ 2411.8 Time limits for processing requests.

(a) The 20-day period (excepting Saturdays, Sundays, and legal public holidays), established in this section, shall commence on the date on which the request is first received by the appropriate component of the agency (Regional Director, the FOIA Officer of the Office of the General Counsel, the Solicitor of the Authority, the Executive Director of the Panel, or the IG), but in any event not later than 10 days after the request is first received by any FLRA component responsible for receiving FOIA requests under part 2411. The 20-day period does not run when:

* * * * *

(b) A request for records shall be logged in by the appropriate Regional Director, the FOIA Officer of the General Counsel, the Solicitor of the Authority, the Executive Director of the Panel, or the IG, as appropriate, pursuant to § 2411.6(c). All requesters must reasonably describe the records sought. An oral request for records shall not begin any time requirement. A written request for records sent to other than the appropriate officer will be forwarded to that officer by the receiving officer, but, in that event, the applicable time limit for response shall begin as set forth in paragraph (a) of this section.

(c) Except as provided in § 2411.11, the appropriate Regional Director, the FOIA Officer of the General Counsel, the Solicitor of the Authority, the Executive Director of the Panel, or the IG, as appropriate, shall, within 20 working days following receipt of the request, as provided by paragraph (a) of this section, respond in writing to the requester, determining whether, or the extent to which, the request shall be complied with.

(1) If all of the records requested have been located, and a final determination has been made with respect to disclosure of all of the records requested, the response shall so state.

(2) If all of the records have not been located, or a final determination has not been made with respect to disclosure of all of the records requested, the response shall state the extent to which the records involved shall be disclosed pursuant to the rules established in this part.

* * * * *

(5) Search fees shall not be assessed to requesters (or duplication fees in the case of an educational or noncommercial scientific institution,

whose purpose is scholarly or scientific research; or a representative of the news media requester, as defined by § 2411.13(a)(8)) under this subparagraph if an agency component fails to comply with any of the deadlines in 5 U.S.C. 552(a)(4)(A), except as provided in the following paragraphs (c)(5)(i) through (iii):

(i) If the Authority, the General Counsel, the Panel, or the IG has determined that unusual circumstances apply (as the term is defined in § 2411.11(b)) and the Authority, the General Counsel, the Panel, or the IG provided a timely written notice to the requester in accordance with § 2411.11(a), a failure described in this paragraph (c)(5) is excused for an additional 10 days. If the Authority, the General Counsel, the Panel, or the IG fails to comply with the extended time limit, the Authority, the General Counsel, the Panel, or the IG may not assess any search fees (or, in the case of a requester described in § 2411.13(a)(8), duplication fees).

(ii) If the Authority, the General Counsel, the Panel, or the IG determines that unusual circumstances apply and more than 5,000 pages are necessary to respond to the request, the Authority, the General Counsel, the Panel, or the IG may charge search fees or, in the case of requesters defined in § 2411.13(a)(6) through (8), may charge duplication fees, if the following steps are taken. The Authority, the General Counsel, the Panel, or the IG must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the Authority, the General Counsel, the Panel, or the IG may charge all applicable fees incurred in the processing of the request.

(iii) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(d) If a request will take longer than 10 days to process:

(1) An individualized tracking number will be assigned to the request and provided to the requester; and

(2) Using the tracking number, the requester can find, by calling 202–218–7999 or visiting *https://foiaonline.regulations.gov,* status information about the request including:

(i) The date on which the agency originally received the request; and

(ii) An estimated date on which the agency will complete action on the request.

(e) If any request for records is denied in whole or in part, the response required by paragraph (c) of this section shall notify the requester of the denial. Such denial shall specify the reason therefore, set forth the name and title or position of the person responsible for the denial, and notify the person making the request of the right to appeal the denial under the provisions of § 2411.10. Such denial shall also notify the requester of the assistance available from the FLRA's FOIA Public Liaison and the dispute resolution services offered by the Office of Government Information Services of the National Archives and Records Administration (OGIS).

■ 10. Amend § 2411.9 by revising paragraphs (a), (b), (d), (e)(2), (f), (g) introductory text, (h)(1), (3), and (4), (i), and (j) to read as follows:

§ 2411.9 Business information.

(a) *In general.* Business information obtained by the FLRA from a submitter will be disclosed under the FOIA only under this section.

(b) *Definitions.* For purposes of this section:

(1) Business information means commercial or financial information obtained by the FLRA from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) Submitter means any person or entity from whom the FLRA obtains business information, directly or indirectly. The term includes corporations; state, local, and tribal governments; and foreign governments.

* * * * *

(d) Notice to submitters. The FLRA shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information wherever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice shall either describe the business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) * * *

(2) The FLRA has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) Opportunity to object to disclosure. The FLRA will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received by the FLRA until after it has made its disclosure decision shall not be considered by the FLRA. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(g) Notice of intent to disclose. The FLRA shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever the FLRA decides to disclose business information over the objection of a submitter, the FLRA shall give the submitter written notice, which shall include:

* * * * *

(h) * * *

(1) The FLRA determines that the information should not be disclosed;

* * * * *

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600, (52 FR 23781, 3 CFR, 1987 Comp. p. 235); or

(4) The designation made by the submitter under paragraph (c) of this section appears to be obviously frivolous—except that, in such a case, the FLRA shall, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) Notice of FOIA lawsuit. Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the FLRA shall promptly notify the submitter.

(j) Corresponding notice to requesters. Whenever the FLRA provides a

submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the FLRA shall also notify the requester(s). Whenever the FLRA notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, the FLRA shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the FLRA shall notify the requester(s).

■ 11. Revise § 2411.10 to read as follows:

§ 2411.10 Appeal from denial of request.

(a)(1) When a request for records is denied, in whole or in part, a requester may appeal the denial by submitting a written appeal by mail or online that is postmarked, or in the case of an electronic submission, transmitted, within 90 calendar days after the requester receives notification that the request has been denied or after the requester receives any records being made available, in the event of partial denial. The appeal should clearly identify the agency determination that is being appealed and the assigned request number.

(i) If the denial was made by the Solicitor or the IG, the appeal shall be filed with the Chairman of the Authority in Washington, DC.

(ii) If the denial was made by a Regional Director or by the FOIA Officer of the General Counsel, the appeal shall be filed with the General Counsel in Washington, DC.

(iii) If the denial was made by the Executive Director of the Panel, the appeal shall be filed with the Chairman of the Panel.

(2) The Chairman of the Authority, the General Counsel, or the Chairman of the Panel, as appropriate, shall, within 20 working days (excepting Saturdays, Sundays, and legal public holidays) from the time of receipt of the appeal, except as provided in § 2411.11, make a determination on the appeal and respond in writing to the requester, determining whether, or the extent to which, the request shall be granted. An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(i) If the determination is to grant the request and the request is expected to involve an assessed fee in excess of $250.00, the determination shall specify or estimate the fee involved, and it shall require prepayment of any charges due in accordance with the provisions of § 2411.13(a) before the records are made available.

(ii) Whenever possible, the determination relating to a request for records that involves a fee of less than $250.00 shall be accompanied by the requested records when there is no history of the requester having previously failed to pay fees in a timely manner. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Authority, the General Counsel, the Panel, or the IG.

(b) If, on appeal, the denial of the request for records is upheld in whole or in part by the Chairman of the Authority, the General Counsel, or the Chairman of the Panel, as appropriate, the person making the request shall be notified of the reasons for the determination, the name and title or position of the person responsible for the denial, and the provisions for judicial review of that determination under 5 U.S.C. 552(a)(4). The determination will also inform the requester of the mediation services offered by the OGIS as a non-exclusive alternative to litigation. Mediation is a voluntary process. If the FLRA agrees to participate in the mediation services provided by the OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

(c) Even though no appeal is filed from a denial in whole or in part of a request for records by the person making the request, the Chairman of the Authority, the General Counsel, or the Chairman of the Panel, as appropriate, may, without regard to the time limit for filing of an appeal, sua sponte initiate consideration of a denial under this appeal procedure by written notification to the person making the request. In such event, the time limit for making the determination shall commence with the issuance of such notification.

(d) Before seeking judicial review of the FLRA's denial of a request, a requester generally must first submit a timely administrative appeal.

■ 12. Revise § 2411.11 to read as follows:

§ 2411.11 Modification of time limits.

(a) In unusual circumstances, as specified in this section, the time limits prescribed with respect to initial determinations or determinations on appeal may be extended by written notice from the agency component handling the request (either initial or on appeal) to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. As appropriate, the notice shall provide the requester with an opportunity to limit the scope of the request so that it may be processed within the time limit or an opportunity to arrange with the processing agency component an alternative time frame for processing the request or a modified request. No such notice shall specify a date that would result in a total extension of more than 10 working days. To aid the requester, the FOIA Public Liaison shall assist in the resolution of any disputes between the requester and the processing agency component, and shall notify the requester of the requester's right to seek dispute resolution services from the OGIS.

(b) As used in this section, ''unusual circumstances'' means, but only to the extent reasonably necessary to the proper processing of the particular request:

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

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

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(c) Expedited processing of a request for records, or an appeal of a denial of a request for expedited processing, shall be provided when the requester demonstrates a compelling need for the information and in other cases as determined by the officer processing the request. A requester seeking expedited processing can demonstrate a compelling need by submitting a statement certified by the requester to be true and correct to the best of such person's knowledge and belief and that satisfies the statutory and regulatory definitions of compelling need. Requesters shall be notified within 10 calendar days after receipt of such a request whether expedited processing, or an appeal of a denial of a request for expedited processing, was granted. As used in this section, ''compelling need'' means:

(1) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

■ 13. Revise § 2411.12 to read as follows:

§ 2411.12 Effect of failure to meet time limits.

Failure by the Authority, the General Counsel, the Panel, or the IG either to deny or grant any request under this part within the time limits prescribed by the FOIA, as amended and these regulations shall be deemed to be an exhaustion of the administrative remedies available to the person making this request.

■ 14. Amend § 2411.13 by revising paragraphs (a)(1), (a)(3) through (8), (b), (c)(2) through (4), (d)(2) through (5), (e) through (h), and adding paragraph (j) to read as follows:

§ 2411.13 Fees.

(a) * * *

(1) The term *direct costs* means those expenditures that the Authority, the General Counsel, the Panel, or the IG actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of the rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

* * * * *

(3) The term *duplication* refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, audio-visual materials, or machine-readable documentation, among others.

(4) The term *review* refers to the process of examining documents located in response to a commercial-use request (see paragraph (a)(5) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.,* doing all that is necessary to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term *commercial-use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Authority, the General Counsel, the Panel, or the IG will look first to the use to which a requester will put the document requested. Where the Authority, the General Counsel, the Panel, or the IG has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Authority, the General Counsel, the Panel, or the IG may seek additional clarification before assigning the request to a specific category.

(6) The term *educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education that operates a program or programs of scholarly research.

(7) The term *non-commercial scientific institution* refers to an institution that is not operated on a commercial basis as that term is referenced in paragraph (a)(5) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(8) The term *representative of the news media* refers to any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news-media entities include television or radio stations broadcasting to the public at large and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public including news organizations that disseminate solely on the Internet. These examples are not intended to be all-inclusive. Moreover, as methods of news delivery evolve, such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the FLRA may also consider the past publication record of the requester in making such a determination.

(b) *Exceptions to fee charges.* (1) With the exception of requesters seeking documents for a commercial use, the Authority, the General Counsel, the Panel, or the IG will provide the first 100 pages of duplication and the first two hours of search time without charge. The word *pages* in this paragraph refers to paper copies of standard size, usually 8½ by 11. The term *search time* in this paragraph is based on a manual search for records. In applying this term to searches made by computer, when the cost of the search as set forth in paragraph (d)(2) of this section equals the equivalent dollar amount of two hours of the salary of the person performing the search, the Authority, the General Counsel, the Panel, or the IG will begin assessing charges for the computer search. No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(2) The Authority, the General Counsel, the Panel, or the IG will not charge fees to any requester, including commercial-use requesters, if the cost of collecting the fee would be equal to or greater than the fee itself.

(3) As provided in § 2411.8(c)(5), the Authority, the General Counsel, the Panel, or the IG will not charge search fees (or duplication fees if the requester is an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media, as described in this section), when the time limits are not met.

(4)(i) The Authority, the General Counsel, the Panel, or the IG will provide documents without charge or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and is not primarily in the commercial interest of the requester.

(ii) In determining whether disclosure is in the ''public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government'' under paragraph (b)(4)(i) of this section, the Authority, the General Counsel, the Panel, and the IG will consider the following factors:

(A) *The subject of the request.* The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote or attenuated;

(B) *The informative value of the information to be disclosed.* The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be

''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding;

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

(D) *The significance of the contribution to the public understanding.* The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. The Authority, the General Counsel, the Panel, and the IG shall not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is ''important'' enough to be made public.

(iii) In determining whether disclosure ''is not primarily in the commercial interest of the requester'' under paragraph (b)(4)(i) of this section, the Authority, the General Counsel, the Panel, and the IG will consider the following factors:

(A) *The existence and magnitude of a commercial interest.* The processing agency component will identify any commercial interest of the requester (with reference to the definition of ''commercial use'' in paragraph (a)(5) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity in the administrative process to provide explanatory information regarding this consideration; and,

(B) *The primary interest in disclosure.* A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The Authority, the General Counsel, the Panel, and the IG ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(iv) A request for a fee waiver based on the public interest under paragraph (b)(4)(i) of this section must address these factors as they apply to the request for records in order to be considered by the Authority, the General Counsel, the Panel, or the IG.

(v) Requests for a waiver or reduction of fees should be made when the request is first submitted to the Authority, the General Counsel, the Panel, or the IG. A requester may submit a fee-waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees, and that waiver is denied, the requester must pay any costs incurred up to the date on which the fee-waiver request was received.

(vi) When only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(c) * * *

(2) A request for documents from an educational or non-commercial scientific institution will be charged for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(3) The Authority, the General Counsel, the Panel, or the IG shall provide documents to requesters who are representatives of the news media for the cost of duplication alone, excluding charges for the first 100 pages.

(4) The Authority, the General Counsel, the Panel, or the IG shall charge requesters who do not fit into any of the categories of this section fees that recover the full direct cost of searching for and duplicating records that are responsive to the request, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. Requests from record subjects for records about themselves filed in Authority, General Counsel, Panel, or IG systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974, which permits fees only for duplication.

(d) * * *

(2) *Computer searches for records.* The actual direct cost of providing the service, including the cost of operating computers and other electronic equipment, and the salary (*i.e.,* basic pay plus 16 percent of that rate to cover benefits) of the employee conducting the search.

(3) *Review of records.* The salary rate (*i.e.,* basic pay plus 16 percent of that rate to cover benefits) of the employee(s) conducting the review. This charge applies only to requesters who are seeking documents for commercial use, and only to the review necessary at the initial administrative level to determine the applicability of any relevant FOIA exemptions, and not at the administrative-appeal level of an exemption already applied.

(4) *Duplication of records.* Twenty-five cents per page for paper-copy duplication of documents, which the Authority, the General Counsel, the Panel, and the IG have determined is the reasonable direct cost of making such copies, taking into account the average salary of the operator and the cost of the duplication machinery. For copies of records produced on tapes, disks, or other media, the Authority, the General Counsel, the Panel, or the IG shall charge the actual cost of production, including operator time. When paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials, including operator time. For all other forms of duplication, the Authority, the General Counsel, the Panel, and the IG will charge the direct costs, including operator time.

(5) *Forwarding material to destination.* Postage, insurance, and special fees will be charged on an actual-cost basis.

(e) *Aggregating requests.* When the Authority, the General Counsel, the Panel, or the IG reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Authority, the General Counsel, the Panel, or the IG will aggregate any such requests and charge accordingly.

(f) *Charging interest.* Interest at the rate prescribed in 31 U.S.C. 3717 may be charged to those requesters who fail to pay fees charged, beginning on the 31st

day following the billing date. Receipt of a fee by the Authority, the General Counsel, the Panel, or the IG, whether processed or not, will stay the accrual of interest.

(g) *Advance payments.* The Authority, the General Counsel, the Panel, or the IG will not require a requester to make an advance payment, *i.e.,* payment before work is commenced or continued on a request, unless:

(1) The Authority, the General Counsel, the Panel, or the IG estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. In those circumstances, the Authority, the General Counsel, the Panel, or the IG will notify the requester of the likely cost and obtain satisfactory assurance of full payment, where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (*i.e.,* within 30 days of the date of the billing), in which case the Authority, the General Counsel, the Panel, or the IG requires the requester to pay the full amount owed plus any applicable interest, as provided in this section, or demonstrate that the requester has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester. When the Authority, the General Counsel, the Panel, or the IG has a reasonable basis to believe that a requester has misrepresented his or her identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity. When the Authority, the General Counsel, the Panel, or the IG acts under paragraph (g)(1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (*i.e.,* 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extension of these time limits) will begin only after the Authority, the General Counsel, the Panel, or the IG has received fee payments described in this section. If the requester does not pay the advance payment within 30 calendar days after the date of the fee determination, the request will be closed.

(h) When a person other than a party to a proceeding before the FLRA makes a request for a copy of a transcript or recording of the proceeding, the Authority, the General Counsel, the Panel, or the IG, as appropriate, will handle the request under this part.

* * * * *

(j) The fee schedule of this section does not apply to fees charged under any statute that specifically requires the Authority, the General Counsel, the Panel, or the IG to set and collect fees for particular types of records. In instances in which records responsive to a request are subject to a statutorily based fee-schedule program, the Authority, the General Counsel, the Panel, or the IG will inform the requester of the contact information for that program.

■ 15. Revise § 2411.14 to read as follows.

§ 2411.14 Record retention and preservation.

The Authority, the General Counsel, the Panel, and the IG shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until such time as disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

■ 16. Revise § 2411.15 to read as follows:

§ 2411.15 Annual report.

Each year, on or around February 1, as requested by the Department of Justice's Office of Information Policy, the Chief FOIA Officer of the FLRA shall submit a report of the activities of the Authority, the General Counsel, the Panel, and the IG with regard to public information requests during the preceding fiscal year to the Attorney General of the United States and the Director of the OGIS. The report shall include those matters required by 5 U.S.C. 552(e), and it shall be made available electronically. The Chief FOIA Officer of the FLRA shall make each such report available for public inspection in an electronic format. In addition, the Chief FOIA Officer of the FLRA shall make the raw statistical data used in each report available in a timely manner for public inspection in an electronic format, which shall be available—

(a) Without charge, license, or registration requirement;

(b) In an aggregated, searchable format; and

(c) In a format that may be downloaded in bulk.

Dated: December 20, 2016.

Carol Waller Pope,

Chairman.

[FR Doc. 2016–31121 Filed 1–9–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

10 CFR Part 435

[Docket No. EERE–2016–BT–STD–0003]

RIN 1904–AD56

Energy Efficiency Standards for the Design and Construction of New Federal Low-Rise Residential Buildings' Baseline Standards Update

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) is publishing this final rule to implement provisions in the Energy Conservation and Production Act (ECPA) that require DOE to update the baseline Federal energy efficiency performance standards for the construction of new Federal low-rise residential buildings. This rule updates the baseline Federal residential standard to the International Code Council (ICC) 2015 International Energy Conservation Code (IECC).

DATES: This rule is effective March 13, 2017.

The incorporation by reference of a certain publication listed in this rule was approved by the Director of the Federal Register as of March 13, 2017.

All Federal agencies shall design new Federal buildings that are low-rise residential buildings, for which design for construction began on or after January 10, 2018, using the 2015 IECC as the baseline standard for 10 CFR part 435.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *https://www.regulations.gov/docketBrowser?rpp=25&po=0&D=EERE-2016-BT-STD-0003*]. All documents in the docket are listed in the *regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available. The *regulations.gov* site contains simple instructions on how to access all documents, including public comments, in the docket.

A link to the docket Web page can be found at *http://www.regulations.gov/#!docketDetail;D=EERE-2016-BT-STD-0003*. This Web page will contain a link to the docket for this rule on the *www.regulations.gov* site. The *www.regulations.gov* Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Mr. Nicolas Baker at (202) 586–8215 or by email: *nicolas.baker@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Nicolas Baker, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Federal Energy Management Program, Mailstop EE–5F, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8215, email: *nicolas.baker@ee.doe.gov.*

Kavita Vaidyanathan, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–33, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–0669, email: *kavita.vaidyanathan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This final rule incorporates by reference the following standard into 10 CFR part 435: ICC International Energy Conservation Code (IECC), 2015 Edition (''IECC 2015''), May 30, 2014.

Copies of this standard are available from the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, 1–800–422–7233, *http://www.iccsafe.org/.*

Also, a copy of this standard is available for inspection at U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, Federal Energy Management Program, 8th Floor, 956 L'Enfant Plaza SW., Suite 8000, Washington, DC 20024. For information on the availability of this standard at DOE, contact Mr. Cyrus Nasseri at (202) 586–9138, or email *Cyrus.nasseri@ee.doe.gov.*

This standard is discussed in greater detail in section VI.N of this document.

Table of Contents

I. Executive Summary of the Final Rule
II. Introduction
III. Synopsis of the Final Rule
  A. Updated Definition of New Federal Building
  B. Adding Explicit Mention of Mechanical Ventilation Requirements in the 2015 IECC
  C. Expanding the List of Energy End-Uses that must be included in the 30 Percent Savings Calculation
  D. Other Energy Efficiency Requirements
  E. Synopsis of Changes to the IECC Between the 2009 and 2015 Versions
IV. Compliance Date
V. Reference Resources
  A. Resources for Low-Rise Residential Buildings.
VI. Regulatory Analysis
  A. Review Under Executive Order 12866, ''Regulatory Planning and Review''
  B. Administrative Procedure Act
  C. Review Under the Regulatory Flexibility Act
  D. Review Under the Paperwork Reduction Act of 1995
  E. Review Under the National Environmental Policy Act of 1969
  F. Review Under Executive Order 13132, ''Federalism''
  G. Review Under Executive Order 12988, ''Civil Justice Reform''
  H. Review Under the Unfunded Mandates Reform Act of 1995
  I. Review Under the Treasury and General Government Appropriations Act of 1999
  J. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''
  K. Review Under the Treasury and General Government Appropriations Act, 2001
  L. Review Under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''
  M. Review Under Section 32 of the Federal Energy Administration Act of 1974
  N. Description of Materials Incorporated by Reference
VII. Congressional Notification
VIII. Approval of the Office of the Secretary

I. Executive Summary of the Final Rule

Section 305 of the Energy Conservation and Production Act (ECPA), as amended, requires DOE to determine whether the energy efficiency standards for new Federal buildings should be updated to reflect revisions to the IECC based on the cost-effectiveness of the revisions. (42 U.S.C. 6834(a)(3)(B)) Accordingly, DOE conducted a cost-effectiveness analysis that found the 2015 IECC to be cost-effective. DOE's assumptions and methodology for the cost-effectiveness of this rule are based on DOE's cost-effectiveness analysis of 2015 IECC, as well as DOE's Environmental Assessment (EA) for this rulemaking.[1] Therefore, in this final rule, DOE updates the energy efficiency standards for new Federal buildings to the 2015 IECC for buildings for which design for construction began on or after one year after the rule is published in the **Federal Register**. (42 U.S.C. 6834(a)(3)(A)). Federal buildings are defined as follows: ''any building to be constructed by, or for the use of, any Federal agency. Such term shall include buildings built for the purpose of being leased by a Federal agency, and privatized military housing.'' (42 U.S.C. 6832(6)). This term does not include renovations or modifications to existing buildings.

[1] The Environmental Assessment (EA) (DOE/EA–2020) is entitled, ''Environmental Assessment for Final Rule, 10 CFR part 435, 'Energy Efficiency Standards for New Federal Low-Rise Residential Buildings,' Baseline Standards Update''. The EA may be found in the docket for this rulemaking and at *https://energy.gov/sites/prod/files/2016/12/f34/EA-2020-FEA-2016.pdf.*

II. Introduction

ECPA, as amended, requires DOE to establish building energy efficiency standards for all new Federal buildings. (42 U.S.C. 6834(a)(1)) The standards established under section 305(a)(1) of ECPA must contain energy efficiency measures that are technologically feasible, economically justified, and meet the energy efficiency levels in the applicable voluntary consensus energy codes specified in section 305. (42 U.S.C. 6834(a)(1)–(3))

Under section 305 of ECPA, the referenced voluntary consensus code for low-rise residential buildings is the International Code Council (ICC) International Energy Conservation Code (IECC). (42 U.S.C. 6834(a)(2)(A)). DOE codified this referenced code as the baseline Federal building standard in its existing energy efficiency standards found in 10 CFR part 435. Also pursuant to section 305 of ECPA, DOE must establish, by rule, revised Federal building energy efficiency performance standards for new Federal buildings that require such buildings to be designed to achieve energy consumption levels that are at least 30 percent below the levels established in the referenced code (baseline Federal building standard), if life-cycle cost-effective. (42 U.S.C. 6834(a)(3)(A)(i)(I))

Under section 305 of ECPA, not later than one year after the date of approval of each subsequent revision of the ASHRAE Standard or the IECC, DOE must determine whether to amend the baseline Federal building standards with the revised voluntary standard based on the cost-effectiveness of the revised voluntary standard. (42 U.S.C. 6834(a)(3)(B)) It is this requirement that this rulemaking addresses. ICC has updated the IECC from the version currently referenced in DOE's regulations at 10 CFR part 435. In this rule, DOE revises the latest baseline Federal building standard for 10 CFR part 435 from the 2009 IECC to the 2015 IECC. DOE notes that although ICC published an update to the IECC in 2012, this rule updates 10 CFR part 435 to the 2015 IECC directly, without requiring agencies to comply with the 2012 IECC. DOE notes however that because development of the IECC is incremental from version to version, the 2015 IECC does include all content in

the 2012 IECC that was not specifically removed or modified during the development of the 2015 IECC. DOE evaluated the 2012 IECC as well and found it to be technologically feasible and economically justified.[2]

Section 306(a) of ECPA provides that each Federal agency and the Architect of the Capitol must adopt procedures to ensure that new Federal buildings will meet or exceed the Federal building energy efficiency standards established under section 305. (42 U.S.C. 6835(a)) ECPA Section 306(b) bars the head of a Federal agency from expending Federal funds for the construction of a new Federal building unless the building meets or exceeds the applicable baseline Federal building energy standards established under section 305. (42 U.S.C. 6835(b)) Specifically, all new Federal buildings [3] must be designed to achieve the baseline standards in the International Energy Conservation Code for low-rise residential buildings (and ASHRAE Standard 90.1 for commercial and multi-family high-rise residential buildings) and achieve energy consumption levels at least 30 percent below these minimum baseline standards, where life-cycle cost-effective. (42 U.S.C. 6834(a)(3)(A)). This requirement does not extend to renovations or modifications to existing buildings.

III. Synopsis of the Final Rule

DOE is issuing this action as a final rule. As indicated in this preamble, DOE must determine whether the energy efficiency standards for new Federal buildings should be updated to reflect revisions to the 2015 IECC based on the cost-effectiveness of the revisions. (42 U.S.C. 6834(a)(3)(B)) In this final rule, DOE determines that the energy efficiency standards for new Federal buildings should be updated to reflect the 2015 revisions to the IECC based on the cost-effectiveness of the revisions.

DOE reviewed the IECC for DOE's state building codes program and determined that the 2015 version of the IECC would achieve greater energy efficiency than the prior version (the 2012 version). (See 80 FR 33250 (June 11, 2015)) DOE also reviewed the 2012 version of the IECC and determined that the 2012 version would achieve greater energy efficiency than the prior version (the 2009 version currently referenced in 10 CFR part 435). (See 77 FR 29322 (May 17, 2012)) Both these determinations were subject to notice and comment. See 79 FR 57915 (September 26, 2014) and 76 FR 42688 (July 19, 2011) respectively for the 2015 IECC and 2012 preliminary determinations. DOE found that the 2015 version of the IECC would save 0.87% more source energy than the 2012 version of the IECC [4] and that the 2012 version of the IECC would save 24% more source energy than the 2009 version of the IECC.[5]

In DOE's determination for the state building codes program, and again in this rule, DOE states that the cost-effectiveness of revisions to the voluntary codes is considered through DOE's statutorily directed involvement in the codes process. See 80 FR 33250. Section 307 of ECPA requires DOE to participate in the ICC code development process and to assist in determining the cost-effectiveness of the voluntary standards. (42 U.S.C. 6836) DOE is required to periodically review the economic basis of the voluntary building energy codes and participate in the industry process for review and modification, including seeking adoption of all technologically feasible and economically justified energy efficiency measures. (42 U.S.C. 6836(b))

In addition to DOE's consideration of the cost-effectiveness of the 2015 IECC through its participation in the codes development process, DOE conducted an independent analysis of the cost-effectiveness of the 2015 IECC compared to the 2012 IECC and 2009 IECC. The results of the analysis are discussed in section A. Review Under Executive Order 12866, ''Regulatory Planning and Review''.[6] DOE's assumptions and methodology for the cost-effectiveness of this rule are based on DOE's cost-effectiveness analysis of the 2015 IECC, as well as DOE's Environmental Assessment (EA) for this rulemaking.[7]

In this rule, DOE updates the energy efficiency standards applicable to new Federal buildings based on the determinations made by DOE as to the energy efficiency improvements of the 2015 IECC [8] and 2012 IECC,[9] as compared to the predecessor version (the 2009 IECC), and based on the considerations of cost-effectiveness incorporated into the codes processes, DOE's involvement in those processes, and DOE's own cost-effectiveness analysis. This final rule amends 10 CFR part 435 to update the referenced baseline Federal energy efficiency performance standards. This final rule does not make any changes to the overall requirement that agencies must design buildings to meet the baseline standard and, if life-cycle cost-effective, achieve savings of at least 30% below the baseline standard. The statutory requirement to achieve savings of at least 30% below the levels established for the 2012 and 2015 IECC updates, applies to Federal agencies in the determinations they make for individual buildings, but not to DOE's overall determination for the purpose of this rule.

Three changes made to 10 CFR part 435 in this rule warrant further discussion. These changes are: (1) Updated the definition of ''Federal buildings'' to meet the requirements of 42 U.S.C. 6832(6); (2) explicit reference to the new mechanical ventilation requirements found in the 2015 IECC to § 435.4; and (3) expanded list of energy end-uses that must be considered in the 30 percent savings calculation. Each of these changes is discussed in this preamble. DOE is also providing a synopsis of the major changes made to

[2] See DOE's determination for the 2012 IECC at *http://www.gpo.gov/fdsys/pkg/FR-2012-05-17/pdf/2012-12000.pdf.* See DOE's analysis of the cost-effectiveness of the 2012 IECC at *https://www.energycodes.gov/sites/default/files/documents/NationalResidentialCostEffectiveness.pdf.* See DOE's analysis of the cost savings of the 2009 IECC and 2012 IECC at *https://www.energycodes.gov/sites/default/files/documents/NationalResidentialEnergyAnalysis.pdf.*

[3] 42 U.S.C. 6832 defines ''Federal buildings'' as any building to be constructed by, or for the use of, any Federal agency. Such term shall include buildings built for the purpose of being leased by a Federal agency, and privatized military housing. DOE's codifications of this definition in 10 CFR 435 and 10 CFR 433 include a second sentence defining ''new buildings'', resulting in the definition of ''new Federal buildings'' as ''New Federal building means any building to be constructed by, or for the use of, any Federal agency which is not legally subject to State or local building codes or similar requirements. A new building is a building constructed on a site that previously did not have a building or a complete replacement of an existing building from the foundation up.''

[4] *Determination Regarding Energy Efficiency Improvements in the 2015 International Energy Conservation Code (IECC); Notice of determination,* 80 FR 33250 (June 11, 2015)

[5] Energy savings of the 2012 IECC over the 2009 IECC are shown in Table 1 of Energy Use Savings for a Typical New Residential Dwelling Unit Based on the 2009 and 2012 IECC as Compared to the 2006 IECC—Letter Report (PNNL–88603) (available at *https://www.energycodes.gov/sites/default/files/documents/NationalResidentialEnergyAnalysis.pdf,* rather than the actual published determination.

[6] *National Cost-Effectiveness of the Residential Provisions of the 2015 IECC,* Mendon, V.V. *et al.* PNNL–24240, Pacific Northwest National Laboratory, June 2015. *https://www.energycodes.gov/sites/default/files/documents/2015IECC_CE_Residential.pdf.*

[7] The Environmental Assessment (EA) (DOE/EA–2020) is entitled, ''Environmental Assessment for Final Rule, 10 CFR part 435, 'Energy Efficiency Standards for New Federal Low-Rise Residential Buildings,' Baseline Standards Update''. The EA may be found in the docket for this rulemaking and at *https://energy.gov/sites/prod/files/2016/12/f34/EA-2020-FEA-2016.pdf.*

[8] *Determination Regarding Energy Efficiency Improvements in the 2015 International Energy Conservation Code (IECC); Notice of determination.* 80 FR 33250 (June 11, 2015).

[9] *Updating State Residential Building Energy Efficiency Codes,* 77 FR 29322 (May 17, 2012).

the IECC between the 2009 IECC and the 2015 IECC to provide more detail regarding what the change in baseline standard means.

A. Updated Definition of New Federal Building

The definition of ''New Federal building'' in 10 CFR part 435 has not previously been updated to match what is found in 42 U.S.C. 6832(6). The Energy Independence and Security Act of 2007 (EISA 2007) updated the definition of ''Federal building'' to include privatized military family housing and leased buildings. This rule makes that update by revising the definition of ''New Federal building'' to mean ''any new building (including a complete replacement of an existing building from the foundation up) to be constructed by, or for the use of, any federal agency.[10] Such term shall include buildings built for the purpose of being leased by a federal agency, and privatized military housing.'' DOE believes that the main impact of this definition change for this rule will be that privatized military housing will now be required to follow the requirements of 10 CFR part 435 for energy efficiency instead of using prevailing energy efficiency standards. For example, privatized military family housing constructed in the state of Georgia must meet the requirements of 10 CFR part 435, which may or may not be the same as the Georgia energy code. This change is made solely to bring 10 CFR part 435 into agreement with 42 U.S.C. 6832(6).

B. Adding Explicit Mention of Mechanical Ventilation Requirements in the 2015 IECC

The 2015 IECC includes explicit mechanical ventilation requirements for new homes. Previous editions of the IECC (prior to the 2012 IECC, but including the 2009 IECC) referred to in 10 CFR part 435 did not explicitly require mechanical ventilation. DOE believes that ensuring adequate ventilation is critical to ensuring good indoor air quality and has therefore explicitly added a mention of this requirement in 10 CFR part 435. DOE believes the main impact of this change will be to require agencies to use the newest residential ventilation standards. The 2015 IECC explicitly mentions the 2015 International Mechanical Code (IMC) [11] and the 2015 International Residential Code (IRC) [12] as optional sources of ventilation requirements. The 2015 IECC also allows ''other approved means'' of mechanical ventilation.

Specifically, Section R403.5 of the 2015 IECC requires that ''the building shall be provided with ventilation that meets the requirements of the International Residential Code or International Mechanical Code, as applicable, or with other approved means of ventilation. Outdoor air intakes and exhausts shall have automatic or gravity dampers that close when the ventilation system is not operating''. Section R403.5.1 of the 2015 IECC also requires that ''Mechanical ventilation system fans shall meet the requirements of Table R403.5.1.'' Table R403.5.1 sets minimum efficacy for range hoods, in-line fans, and bathroom and utility room fans. DOE's 2012 IECC determination (previously footnoted) states that the 2009 IECC does not require any mechanical ventilation. Section R403.5 of the 2012 IECC refers to the 2012 International Residential Code and International Mechanical Code which, in tandem with the 2012 IECC, require that a mechanical ventilation system meet these requirements or other approved means of ventilation in new homes.

DOE believes that the primary technical authority on residential ventilation is the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 62.2 committee. Their latest standard—ASHRAE Standard 62.2–2013,[13] is the source of many of the requirements in the 2015 IMC and 2015 IRC and could therefore be used as an ''other approved means'' by agencies. If agencies wish to develop their own mechanical ventilation standards, they may choose to request an interpretation from the ASHRAE Standard 62.2 committee as to whether or not the agency's own standard is an acceptable substitute. Agencies may submit a request for interpretation to the committee using the procedures outlined at *https://www.ashrae.org/standards-research--technology/standards-forms--procedures/how-to-request-an-interpretation.* Neither the 2015 IMC, nor 2015 IRC, nor ASHRAE Standard 62.2–2013 are incorporated by reference in this rule as they are options that an agency may choose to use.

C. Expanding the List of Energy End-Uses That Must Be Included in the 30 Percent Savings Calculation

Under the current 10 CFR 435.4, Federal agencies that are designing new Federal buildings that are low-rise residential buildings must only consider space heating, space cooling and domestic water heating when making the 30% savings calculation required in 10 CFR part 435 because the 2004 IECC and 2009 IECC only included those requirements. In addition to those three elements, the 2015 IECC includes explicit mechanical ventilation requirements that, the energy used for mechanical ventilation should be included in the 30 percent savings calculation required in 10 CFR part 435 as well. Also, both the 2015 IECC and the 2009 IECC (the current baseline standard for 10 CFR part 435) contain requirements for high-efficacy lighting and, therefore, lighting should be included in the 30 percent savings calculation as well. DOE believes that the impact of this change on agencies should be minimal as ventilation and lighting end-uses should be part of the output of any residential whole building simulation tool that an agency might be using for its calculations.

This rule also updates the methodology used in the 30 Percent Savings Calculation by directing agencies to use the Simulated Performance Alternative in the 2015 IECC as opposed to the Simulated Performance Alternative in the 2009 IECC. Updates to the Simulation Performance Alternative in the 2015 IECC from the Simulated Performance Alternative in the 2009 IECC include three clarifications to the documentation, calculation procedure, and calculation software tools sections that point out that all subsections in these sections must be addressed, as well as a number of editorial changes to call out specific sections in the 2015 IECC. There were also a few more technical changes to the Simulated Performance Alternative, including a change to the calculation method for the internal shade fraction, a change to the treatment of air exchange rates, a change to the default heating system assumption in cases where electric heating without a heat pump is used, and a change in how thermal distribution system efficiency is treated. There are also new requirements for compliance documentation associated with the Simulated Performance Alternative in the 2015 IECC. These

[10] 42 U.S.C. 6832 defines ''Federal agency'' as ''any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, including the United States Postal Service, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.''

[11] The 2015 IMC is available for read-only viewing at *http://codes.iccsafe.org/app/book/toc/2015/I-Codes/2015%20IMC%20HTML/index.html.*

[12] The 2015 IRC is available for read-only viewing at *http://codes.iccsafe.org/app/book/toc/2015/I-Codes/2015%20IRC%20HTML/index.html.*

[13] Standard 62.2–2013 is available for read-only viewing at *https://www.ashrae.org/standards-research--technology/standards--guidelines/other-ashrae-standards-referenced-in-code.*

requirements, while part of the 2015 IECC, do not apply to Federal buildings as they are associated with applications for building permits and certificates of occupancy required from local code officials.

D. Other Energy Efficiency Requirements

DOE also notes that there are a number of statutory provisions, regulations, Executive Orders, and memoranda of understanding that govern energy consumption in new Federal buildings. These include, but are not limited to, the Executive Order 13693 (80 FR 15871 (March 25, 2015)); sections 323, 431, 433, 434, and 523 of the Energy Independence and Security Act of 2007 (EISA 2007); section 109 of the Energy Policy Act of 2005 (Pub. L. 109–58); and 10 CFR parts 433 and 435. This rule supports and does not supplant these other applicable requirements and goals for new Federal buildings. For example, by designing buildings to meet the 2015 IECC baseline, Federal agencies also help achieve the energy intensity reductions mandated under section 431 of EISA 2007.

Of particular significance is the Administration's Climate Action Plan, (CAP), issued June 2013, in which the President affirmed that the Federal government must position itself as a leader in clean energy and energy efficiency, and pledged that Federal agencies must surpass previous greenhouse gas reduction achievements, through a combination of consuming 20 percent of Federal electricity from renewable sources by 2020, and by pursuing greater energy efficiency in Federal buildings.[14] Additionally, the President directed that efficiency standards for appliances and Federal buildings set in the first and second terms combined would reduce carbon pollution by at least 3 billion metric tons cumulatively by 2030—equivalent to nearly one-half of the carbon pollution from the entire U.S. energy sector for one year. This rule, which DOE estimates will avoid cumulative emissions of 690,200 metric tons of carbon dioxide through 2030, directly supports the Administration's undertaking to make energy efficiency in Federal buildings an essential stratagem in the government's enduring achievement of the greenhouse gas reduction goals set out in the CAP.

E. Synopsis of Changes to the IECC Between the 2009 and 2015 IECC

The IECC is updated every three years by the International Code Council (ICC). Between the 2009 IECC and the 2015 IECC, the ICC also issued the 2012 IECC. DOE, as part of its determination process, evaluates each new version of the IECC for low-rise residential buildings. The following summaries are taken directly from DOE's determinations and supporting analyses for the 2012 IECC[15] and 2015 IECC.[16]

2012 IECC Changes

In creating the 2012 IECC, ICC processed 27 sets of approved code change proposals. Overall, DOE found that the majority of changes in the 2012 IECC appear to be positive (*i.e.,* have a positive impact on energy savings) within the context of the determination analysis. Of the 27 sets of changes:

- 14 were considered beneficial;
- 9 were considered neutral;
- 2 were considered detrimental; and
- 2 were considered to have an unquantifiable impact.

In the 2012 IECC, DOE noted the following 14 sets of improvements:

1. Increases in prescriptive insulation levels of walls, roofs and floors,
2. Decrease (improvement) in U-factor allowances for fenestration,
3. Decrease (improvement) in allowable Solar Heat Gain Coefficient (SHGC) for fenestration in warm climates,
4. Infiltration control: Mandated whole house pressure test with strict allowances for air leakage rates,
5. Wall insulation when structural sheathing is used,
6. Ventilation fan efficiency,
7. Lighting—Increased fraction of lamps required to be high-efficacy,
8. Air distribution systems—leakage control requirements,
9. Hot water pipe insulation and length requirements,
10. Skylight definition change,
11. Penalizing electric resistance heating in the performance compliance path,
12. Fireplace air leakage control,
13. Insulating covers for in-ground spas, and
14. Baffles for attic insulation.

DOE also noted the following two changes that decrease the efficiency of the 2012 IECC:

1. Steel-framed wall insulation, and
2. Air barrier location.

DOE also noted another two changes the effect of which was unclear:

1. Fenestration SHGC requirement in climate zone 4, and
2. Interior shading assumptions in the performance compliance path.

DOE also noted nine additional changes that had no apparent impact on the energy performance of the 2012 IECC:

1. Clarification of the scope of the residential building section of the IECC,
2. Definition of a whole house ventilation system,
3. A requirement for the results of the air leakage test to be put on the certificate,
4. Inclusion of Visual Transmittance (VT) in the code,
5. Clarification of recessed lighting leakage rates,
6. Introduction of ASHRAE Test Procedure 193 for HVAC equipment leakage test rates,
7. Introduction of a new test standard for home ventilation systems,
8. Clarification for the requirement for thermal distribution system design in the Simulated Performance Alternative, and
9. Moving of a requirement for sizing of equipment from an IRC reference into the IECC.

All of these changes are discussed in more detail in DOE's 2012 Determination.

2015 IECC Changes

In creating the 2015 IECC, ICC processed 76 approved code change proposals. Overall, DOE found that the vast majority of changes in the 2015 IECC appear to be neutral (*i.e.,* have no direct impact on energy savings) within the context of the determination analysis. DOE also found that beneficial changes (*i.e.,* increased energy savings) outweigh any changes with a detrimental effect on energy efficiency in residential buildings. Of the 76 total changes:

- 6 were considered beneficial;
- 62 were considered neutral;
- 5 were considered negligible;
- 2 were considered detrimental; and
- 1 was considered to have an unquantifiable impact.

The 6 changes considered beneficial are:

[14] The President's Climate Action Plan, Office of the Executive Office of the President, *https://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf,* June 2013.

[15] See determination at *http://www.gpo.gov/fdsys/pkg/FR-2012-05-17/pdf/2012-12000.pdf.* See analysis of energy savings at *https://www.energycodes.gov/sites/default/files/documents/NationalResidentialEnergyAnalysis.pdf.*

[16] See determination at *https://www.regulations.gov/document?D=EERE-2014-BT-DET-0030-0007.*

Nature of change	Reason for evaluation
Increases insulation requirements for return ducts in attics from R–6 to R–8.	Modestly reduces conduction losses from return ducts in attics.
Adds requirements for demand-activated control on hot water circulation systems and heat trace systems. Makes IECC, IRC, and IPC consistent and clarifies requirements for these systems.	Demand activated control reduces the runtime of circulation pumps.
Deletes requirement for domestic hot water (DHW) pipe insulation to kitchen and the generic requirement on long/large-diameter pipes. However, adds DHW pipe insulation for ¾-inch pipes.	Energy lost due to the elimination of hot water pipe insulation on the kitchen pipe is typically more than made up by added insulation requirements for pipes ¾ inches in diameter, the most common size for trunk lines.
Adds demand control requirements for recirculating systems that use a cold water supply pipe to return water to the tank.	Demand activated control reduces the runtime of circulation pumps.
Revises language requiring the code to apply to historic buildings if no ''compromise to the historic nature and function of the building'' occurs.	Additional buildings must meet the code requirements.
Adds requirement for outdoor setback control for hot water boilers that controls the boiler water temperature based on the outdoor temperature.	Lowering boiler water temperature during periods of moderate outdoor temperature reduces energy consumption of the boiler.

The two changes were considered detrimental were:

Nature of change	Reason for evaluation
Slightly increases sunroom U-factor	Applies to only climate zones 2 and 3; impacts only thermally isolated sunrooms.
Defines a new ''Tropical'' climate zone and adds an optional compliance path for semi-conditioned residential buildings with a list of pre-defined criteria to be deemed as code compliant in this climate zone.	Exception to code requirements applicable to a small number of homes in tropical areas.

The remaining 68 changes were primarily editorial in nature. These changes are discussed in more detail in Table III.1 in DOE's 2015 IECC Determination.

IV. Compliance Date

This final rule applies to new Federal low-rise residential buildings for which design for construction begins on or after one year from the publication date of this rulemaking in the **Federal Register**. (42 U.S.C. 6834(a)(1)) Such buildings must be designed to exceed the energy efficiency level of the appropriate updated voluntary standard by 30 percent if life-cycle cost-effective. However, at a minimum, such buildings must achieve the energy efficiency equal to that of the appropriate updated voluntary standard. One year lead time before the design for construction begins is consistent with DOE's previous updates to the energy efficiency baselines and the original statutory mandate for Federal building standards. One year lead time before design for construction begins helps minimize compliance costs to agencies, which may have planned buildings in various stages of design, and allows for design changes to more fully consider life-cycle cost-effective measures (as opposed to having to revise designs in development, which may make incorporation of energy efficiency measure more difficult or expensive).

V. Reference Resources

The Department originally prepared this list of resources to help Federal agencies achieve building energy efficiency levels of at least 30 percent below the 2009 IECC. The Department has reviewed these resources and believes that they continue to be useful for helping agencies maximize their energy efficiency levels. The Department has updated this resource list as appropriate. These resources come in many forms and in a variety of media. Resources are provided for all buildings, and also specifically for low-rise residential buildings.

A. Resources for Low-Rise Residential Buildings

1. Energy Efficient Products—U.S. DOE Federal Energy Management Program and U.S. Environmental Protection Agency (EPA) ENERGY STAR Program

http://energy.gov/eere/femp/energy-and-water-efficient-products

Federal agencies are required to specify Federal Energy Management Program (FEMP) designated or ENERGY STAR equipment, including building mechanical and lighting equipment and builder-supplied appliances, for purchase and installation in all new construction. 42 U.S.C. 8259b(b) Although this rule does not specifically address the use of this equipment, ENERGY STAR and FEMP-Designated products are generally more energy efficient than the corresponding requirements of the 2015 IECC, and may be used to achieve part of the savings required of Federal building designs. Therefore, DOE lists this Web site as a potential resource.

2. Life-Cycle Cost Analysis—U.S. DOE Federal Energy Management Program

http://energy.gov/sites/prod/files/2015/06/f23/ashb15.pdf

The life-cycle cost analysis rules promulgated in 10 CFR part 436 Subpart A *Life-Cycle Cost Methodology and Procedures* conform to requirements in the Federal Energy Management Improvement Act of 1988 (Pub. L. 100–615) and subsequent energy conservation legislation, as well as Executive Order 13693, *Planning for Federal Sustainability in the Next Decade.* The life-cycle cost guidance and required discount rates and energy price projections are determined annually by FEMP and the Energy Information Administration, and are published in the Annual Supplement to The National Institute of Standards and Technology Handbook 135: ''Energy

Price Indices and Discount Factors for Life-Cycle Cost Analysis''.

3. ENERGY STAR Buildings—U.S. Environmental Protection Agency and U.S. Department of Energy

(*http://www.energystar.gov/homes*)

ENERGY STAR is a government-backed program helping businesses and individuals protect the environment through superior energy efficiency. The EPA program requirements for ENERGY STAR-labeled homes, effective as of the date of this rule, provide a useful guide for meeting the Federal energy efficiency standard for low-rise residential buildings.

4. Passive House Institute US

http://www.phius.org/home-page

This Web site provides information on designing and building very low energy homes.

5. Energy Efficient Home Design—U.S. DOE Building Technologies Program

http://energy.gov/energysaver/energy-efficient-home-design

This Web site provides information on energy efficient home design strategies, and technologies to support energy efficiency in residences.

6. 2012 National Green Building Standard—ICC and NAHB

http://shop.iccsafe.org/2012-national-green-building-standard-icc-700-2012.html

This standard provides requirements for building high-efficiency and green homes and multi-family buildings.

7. LEED for Homes—US Green Building Council

http://www.usgbc.org/articles/getting-know-leed-homes-design-and-construction

This certification system provides requirements for building high-efficiency and green homes and multi-family buildings.

8. Green Globes—The Green Building Initiative

http://www.thegbi.org/

This certification provides requirements for building high-efficiency and green multi-family buildings.

9. 2015 IECC—ICC

http://shop.iccsafe.org/codes/2015-international-codes-and-references/2015-international-energy-conservation-coder-1.html

The baseline energy efficiency standard for low-rise residential buildings is the 2015 IECC.

10. Whole Building Design Guide—National Institute of Building Sciences

http://www.wbdg.org/

A portal providing one-stop access to up-to-date information on a wide range of building-related guidance, criteria and technology from a ''whole buildings'' perspective.

VI. Regulatory Analysis

A. Review Under Executive Order 12866, ''Regulatory Planning and Review''

This final rule is a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review by the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB). OMB has completed its review. As discussed previously in this rule, DOE is required to determine, based on the cost-effectiveness, whether the standards for Federal buildings should be updated to reflect an amendment to the IECC standard. As stated in this preamble, DOE complied with the statutory language by analyzing the cost-effectiveness of the 2015 IECC, and through DOE's involvement in the ICC code development process, including consideration of the cost-effectiveness of the 2015 IECC.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. 76 FR 3281 (January 21, 2011). E.O. 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866.

Review under Executive Order 12866 requires an analysis of the economic effect of the rule. For this purpose, DOE estimated incremental first cost (in this case, the difference between the cost of a building designed to meet the 2015 IECC and a building designed to meet the 2009 IECC) for the Federal low-rise residential buildings sector, as well as life-cycle cost net savings. DOE determined that the total incremental first cost estimate is an increase of $4.1 million per year, with an average first cost increase of $2,051 per household. DOE estimated $14.8 million in annual life-cycle cost (LCC) net savings for the entire Federal low-rise residential buildings sector with an average life-cycle cost net savings of $7,421 per household.

DOE's assumptions and methodology for the cost-effectiveness of this rule are based on DOE's cost-effectiveness analysis of the 2015 IECC,[17] as well as DOE's Environmental Assessment (EA) for this rulemaking.[18] The EA identified a rate of new Federal residential construction of 4,936 homes per year. As described in the EA, this estimate is derived from consideration of data from a number of sources. DOE's cost-effectiveness analysis of the 2015 IECC provides tables for the first cost increase, the energy savings, and the life cycle costs associated with the 2015 IECC versus the 2012 IECC and 2009 IECC by climate zone. DOE's cost-effectiveness report does not provide national average values, but does provide sufficient weighting data so that these national averages can be calculated. The weighting data provided in the cost-effectiveness report is used to generate the rows labeled ''National Average'' in Tables 1, 2, and 3 in this preamble.

Table 1 lists the increased first costs associated with the 2015 IECC for a standard 2,400 ft^2 prototypical home and a standard 1,200 ft^2 prototypical apartment/condo building. DOE believes that the majority of Federal low-rise residential construction will be single family homes built by the Department of Defense (or their

[17] DOE's Cost Effectiveness report on the 2015 IECC is ''National Cost-Effectiveness of the Residential Provisions of the 2015 IECC'', PNNL–24240, Mendon *et al,* June 2015. Available at *https://www.energycodes.gov/sites/default/files/documents/2015IECC_CE_Residential.pdf.*

[18] The Environmental Assessment (EA) (DOE/EA–2020) is entitled, ''Environmental Assessment for Final Rule, 10 CFR part 435, 'Energy Efficiency Standards for New Federal Low-Rise Residential Buildings,' Baseline Standards Update''. The EA may be found in the docket for this rulemaking and at *https://energy.gov/sites/prod/files/2016/12/f34/EA-2020-FEA-2016.pdf.*

privatization contractors), but there is a possibility that some Federal low-rise multi-family buildings could be built,[19] so the results of DOE's first cost analysis are shown in full. The 2015 IECC does increase the first cost of construction of new homes and apartments/condos compared to the 2009 IECC in all climate zones in the United States.

TABLE 1—TOTAL INCREMENTAL FIRST COST FOR 2015 IECC COMPARED TO THE 2009 IECC

Climate zone	2,400 ft² house			1,200 ft² apartment/condo [a]	
	Slab-on-grade	Unheated basement, or crawlspace	Heated basement	Slab, unheated basement, or crawlspace	Heated basement
1	$1,585	$1,553	$1,553	$848	$848
1-tropical [b]	1,152	1,152	1,152	848	848
2	1,920	1,888	1,888	968	968
3	2,495	2,463	2,463	1,175	1,175
4	2,005	1,973	1,973	1,012	1,012
5	1,493	1,461	1,715	827	865
6	2,718	2,686	2,686	1,266	1,266
7	2,718	2,686	2,686	1,266	1,266
8	2,718	2,686	2,686	1,266	1,266
National Average	2,060	2,028	2,081	1,026	1,034
Foundation Weight [c]	0.479	0.379	0.142	0.858	0.142

[a] For multifamily homes with an oil-fired boiler, an additional incremental cost of $30.55 for the outdoor air temperature reset applies to all climate zones.

[b] This cost applies to 35% of all new single-family homes in the tropical climate zone. The tropical climate zone accounts for around 50% of all new single-family construction starts in climate zone 1.

[c] Foundation weights from Table 1.3 of the 2015 IECC Cost-Effectiveness Report.

The first cost data shown in Table 1 can be further aggregated by foundation type using the foundation type weightings found in the 2015 IECC Cost-Effectiveness report (and also shown in Table 1 in the row labeled ''Foundation Weights''). The results of that weighting indicate that the typical first cost of a home would be $2,051 and that of an apartment/condo would be $1,027. These first cost increases should be compared to the estimated first cost of new Federal low-rise residential construction, but that information is not typically publicly available. Instead, DOE has chosen to compare these costs to typical costs in the private sector.

The National Association of Realtors (NAR) in a press release dated September 21, 2015 states that the median U.S. single family home price was $230,200 in August 2015.[20] The $2,051 cost increase represents approximately 0.9% of the average cost of a new home. As previously stated, DOE does not believe that a large fraction of Federal low-rise construction falls under this rule, but for comparison, the same NAR press release lists the price for condominiums at $217,400. The $1,027 cost increase for condominiums represents a 0.5% increase. Any increase in first cost would be accompanied by a reduction in energy costs and an increase in life cycle cost savings.

The estimated energy cost savings associated with the 2015 IECC is shown in Table 2. This table is based on a combination of single-family homes and apartments/condos as described in DOE's cost-effectiveness report. While the weighting of homes and apartments/condos may not be identical in the private and Federal sectors, the trends are similar for both single-family homes and apartments/condos. The 2015 IECC saves a considerable amount of energy costs over the 2009 IECC in all climate zones in the United States.

TABLE 2—AVERAGE ANNUAL ENERGY COST SAVINGS FOR THE 2015 IECC COMPARED TO THE 2009 IECC

Climate zone	Average annual energy cost savings ($/residence-yr)
1	$179
2	220
3	256
4	353
5	353
6	497
7	841
8	1,199

TABLE 2—AVERAGE ANNUAL ENERGY COST SAVINGS FOR THE 2015 IECC COMPARED TO THE 2009 IECC—Continued

Climate zone	Average annual energy cost savings ($/residence-yr)
National Average	315

The life-cycle cost impact of the 2015 IECC is shown in Table 3. Again, these values represent the combination of single-family homes and apartments/condos, but the trends are clear. The 2015 IECC has large life cycle cost-savings in all climate zones in the U.S.

TABLE 3—TOTAL LIFE CYCLE COST SAVINGS FOR THE 2015 IECC COMPARED TO THE 2009 IECC

Climate zone	Total life cycle cost savings ($/residence-yr)
1	+$4,418
2	+5,725
3	+6,569
4	+8,088
5	+7,697
6	+11,231
7	+17,525

[19] DOE's main source of Federal construction information, the Federal Real Property Profile, does list Family Housing and Barracks/Apartments as separate categories but does not differentiate Barracks/Apartments on the basis of number of stories. DOE assumes the all Family Housing would fall under this rule, while Barracks/Apartments are regulated under the Federal building energy efficiency standards for commercial and high-rise multi-family buildings. While Barracks may be envisioned long low buildings containing rows of cots, this vision is driven primarily by old-style barracks from the past. DOD's new training barracks tend to combine sleeping accommodations, class rooms, and physical training facilities and are therefore designed by DOD using the Federal commercial and high-rise multi-family requirements.

[20] See *http://www.realtor.org/news-releases/2015/09/existing-home-sales-stall-in-august-prices-moderate.*

TABLE 3—TOTAL LIFE CYCLE COST SAVINGS FOR THE 2015 IECC COMPARED TO THE 2009 IECC—Continued

Climate zone	Total life cycle cost savings ($/residence-yr)
8	+24,003
National Average	+7,421

Multiplying the estimated 4936 new Federal homes per year by the national average values in Tables 1, 2, and 3 provides a summary of annual cost increases, energy savings, and first cost-increases for the entire Federal low-rise sector shown in Table 4.

TABLE 4—ANNUAL NATIONAL AVERAGE FIRST COST INCREASE, ENERGY SAVINGS, AND LIFE CYCLE COST SAVINGS FOR FEDERAL LOW RISE RESIDENTIAL SECTOR FOR THE 2015 IECC COMPARED TO 2009 IECC

Metric	Annual national average fist cost increase (million)
Incremental First Cost Increase	$9.24
Energy Savings	1.55
Life Cycle Cost Savings	36.6

B. Administrative Procedure Act

DOE notes that the determination regarding the 2015 IECC in the context of State building codes was subject to notice and comment in evaluating the voluntary consensus codes. See 79 FR 57915 (September 26, 2014) for the preliminary determination and 80 FR 33250 (June 11, 2015) for the final determination. DOE also notes that the determination regarding the 2012 IECC in the context of State building codes was subject to notice and comment in evaluating the voluntary consensus codes. See 76 FR 42688 (July 19, 2011) for the preliminary determination and 77 FR 29322 (May 17, 2012) for the final determination. The determinations made in the context of the State codes are equally applicable in the context of Federal buildings. DOE finds that providing notice and comment on the determinations again in the context of Federal buildings would be unnecessary. The fact that the voluntary consensus codes apply to Federal buildings as opposed to the general building stock does not require a different evaluation of energy efficiency and cost-effectiveness. Additionally, DOE notes that this rule, which updates energy efficiency performance standards for the design and construction of new Federal buildings, is a rule relating to public property, and therefore is not subject to the rulemaking requirements of the Administrative Procedure Act, including the requirement to publish a notice of proposed rulemaking. (See 5 U.S.C. 553(a)(2))

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking,* 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process, 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.*

DOE has determined that a notice of proposed rulemaking is not required by 5 U.S.C. 553 or any other law for issuance of this rule. As such, the analytical requirements of the Regulatory Flexibility Act do not apply.

D. Review Under the Paperwork Reduction Act of 1995

This rulemaking will impose no new information or record keeping requirements. Accordingly, Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq*).

E. Review Under the National Environmental Policy Act of 1969

The Department prepared an Environmental Assessment (EA) (DOE/EA–2020) entitled, ''Environmental Assessment for Final Rule, 10 CFR part 435, 'Energy Efficiency Standards for New Federal Low-Rise Residential Buildings,' Baseline Standards Update,'' [21] pursuant to the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR parts 1500–1508), the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), and DOE's NEPA Implementing Procedures (10 CFR part 1021).

The EA addresses the possible incremental environmental effects attributable to the application of the final rule. The only anticipated impact would be a decrease in outdoor air pollutants resulting from decreased fossil fuel burning for energy use in Federal buildings. Therefore, DOE has issued a Finding of No Significant Impact (FONSI), pursuant to NEPA, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with NEPA (10 CFR part 1021).

To identify the potential environmental impacts that may result from implementing the final rule on new Federal low-rise residential buildings, DOE compared the requirements of the final rule updating energy efficiency performance standard for Federal new low-rise residential buildings to 2015 IECC with the ''no-action alternative'' of using the current Federal standards (the 2009 IECC). This comparison is identical to that undertaken by DOE in its determinations of energy savings of those standards and codes.

Accordingly, DOE concludes in the EA that new Federal buildings designed and constructed to the 2015 IECC will use less energy than new Federal buildings designed and constructed to the 2009 IECC because the 2015 IECC is more efficient than 2009 IECC. This decrease in energy usage translates to reduced emissions of carbon dioxide (CO_2), nitrogen oxides (NO_X), and mercury (Hg) over the thirty-year period examined in the EA. Cumulative emission reductions for 30 years of construction (2018 through 2047) and 30 years of energy reduction for each building built during that period can be estimated at up to 4,114,800 metric tons of CO_2, up to 3,147 metric tons of NO_X, and up to 0.0338 metric tons of Hg. DOE conducted a separate calculation to determine emissions reductions relative to the targets identified in the CAP. This calculation showed that the cumulative reduction in CO_2 emissions through 2030 amounts to 690,220 metric tons of CO_2.[22]

[21] The EA may be found in the docket for this rulemaking and at *https://energy.gov/sites/prod/files/2016/12/f34/EA-2020-FEA-2016.pdf.*

[22] See discussion of CAP calculations in footnote 12 on page 23 of the EA for this rule. The EA may be found in the docket for this rulemaking and at *https://energy.gov/sites/prod/files/2016/12/f34/EA-2020-FEA-2016.pdf.*

F. Review Under Executive Order 13132, ''Federalism''

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations, 65 FR 13735. DOE examined this rule and determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

G. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct, rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://energy.gov/gc/office-general-counsel*). This final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year by State, local, and tribal governments, in the aggregate, or by the private sector, so these requirements under the Unfunded Mandates Reform Act do not apply.

I. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''

The Department has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988) that this rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

K. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. Review Under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the

action and their expected benefits on energy supply, distribution, and use. DOE's Energy Information Administration (EIA) estimates that new construction in the residential sector will range from average about 81 million households in the US in 2016, with a growth rate of roughly 0.8% per year which is equivalent to about 648,000 new households per year.[23] This rule is expected to incrementally reduce the energy usage of approximately 4936 [24] units of Federal low-rise residential construction annually. Thus, the rule represents approximately 0.76% of the expected annual U.S. construction in 2017, and less in every succeeding year. This final rule would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

M. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), DOE must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788) Section 32 provides that where a proposed rule authorizes or requires use of commercial standards, the NOPR must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Department of Justice (DOJ) and the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

Although section 32 specifically refers to the proposed rule stage, DOE is meeting these requirements at the final rule stage because there was no proposed rule for this action. This final rule incorporates testing methods contained in the following commercial standard: ICC 2015 IECC, International Energy Conservation Code, 2014, International Code Council, ISBN 978–1–60983–486–9.

DOE has evaluated these standards and notes that the IECC Standard is developed under ICC's governmental consensus standard procedures, and is under a three-year maintenance cycle. ICC has established a program for regular publication of errata and revisions, including procedures for timely, documented, consensus action on requested changes to the IECC. The 2015 IECC was published in 2014. However, DOE is unable to conclude whether the IECC fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review). DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

N. Description of Materials Incorporated by Reference

In this rule, DOE incorporates by reference the ICC 2015 IECC, International Energy Conservation Code, Copyright 2014. This U.S. standard provides minimum requirements for energy efficient designs for low-rise residential buildings. Copies of this standard are available from the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, 1–888–422–7233, *http://www.iccsafe.org.*

VII. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 435

Buildings and facilities, Energy conservation, Federal buildings and facilities, Housing, Incorporation by reference.

Issued in Washington, DC, on December 28, 2016.

David J. Friedman,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, the Department of Energy amends part 435 of chapter II of title 10 of the Code of Federal Regulations as set forth below:

PART 435—ENERGY EFFICIENCY STANDARDS FOR THE DESIGN AND CONSTRUCTION OF NEW FEDERAL LOW-RISE RESIDENTIAL BUILDINGS

■ 1. The authority citation for part 435 continues to read as follows:

Authority: 42 U.S.C. 6831–6832; 6834–6836; 42 U.S.C. 8253–54, 42 U.S.C. 7101 *et seq.*

■ 2. Section 435.2 is amended by:
■ a. Adding in alphabetical order the definition of ''IECC Baseline Building 2015''; and
■ b. Revising the definition of ''New Federal building''.

The revision and addition read as follows:

§ 435.2 Definitions.

* * * * *

IECC Baseline Building 2015 means a building that is otherwise identical to the proposed building but is designed to meet, but not exceed, the energy efficiency specifications in the ICC IECC 2015 (incorporated by reference, see § 435.3).

* * * * *

New Federal building means any new building (including a complete replacement of an existing building from the foundation up) to be constructed by, or for the use of, any federal agency. Such term shall include buildings built for the purpose of being leased by a federal agency, and privatized military housing.

* * * * *

■ 3. Revise § 435.3(b) to read as follows:

§ 435.3 Materials incorporated by reference.

* * * * *

(b) *ICC.* International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, 1–888–422–7233, or go to *http://www.iccsafe.org/.*

(1) ICC International Energy Conservation Code (IECC), 2004 Supplement Edition (''IECC 2004''), January 2005, IBR approved for §§ 435.2, 435.4, 435.5;

(2) ICC International Energy Conservation Code (IECC), 2009 Edition (''IECC 2009''), January 2009, IBR approved for §§ 435.2, 435.4, 435.5.

(3) ICC International Energy Conservation Code (IECC), 2015 Edition (''IECC 2015''), published May 30, 2014, IBR approved for §§ 435.2, 435.4, 435.5.

■ 4. Section 435.4 is amended by:
■ a. Revising the introductory text of paragraph (a)(2);
■ b. Adding paragraph (a)(3); and
■ c. Revising paragraph (b).

The revisions and addition reads as follows:

§ 435.4 Energy efficiency performance standard.

(a) * * *

(2) All Federal agencies shall design new Federal buildings that are low-rise residential buildings, for which design for construction began on or after

[23] See Table A4 of the 2016 Annual Energy Outlook at *http://www.eia.gov/forecasts/aeo/.*

[24] See Environmental Assessment for this rule for origin of the 4936 homes estimate.

August 10, 2012, but before January 10, 2018 to:

* * * * *

(3) All Federal agencies shall design new Federal buildings that are low-rise residential buildings, for which design for construction began on or after January 10, 2018 to:

(i) Meet the IECC 2015, (incorporated by reference, see § 435.3), including the mandatory mechanical ventilation requirements in Section R403.6 of the 2015 IECC; and

(ii) If life-cycle cost-effective, achieve energy consumption levels, calculated consistent with paragraph (b) of this section, that are at least 30 percent below the levels of the IECC Baseline Building 2015.

(b)(1) For new Federal low-rise residential buildings whose design for construction began before January 10, 2018, energy consumption for the purposes of calculating the 30 percent savings shall include space heating, space cooling, and domestic water heating.

(2) For new Federal low-rise residential buildings whose design for construction began on or after before January 10, 2018, energy consumption for the purposes of calculating the 30 percent savings shall include space heating, space cooling, lighting, mechanical ventilation, and domestic water heating.

* * * * *

■ 5. Revise § 435.5 to read as follows:

§ 435.5 Performance level determination.

(a) For new Federal buildings for which design for construction began on or after January 3, 2007, but before August 10, 2012, each Federal agency shall determine energy consumption levels for both the IECC Baseline Building 2004 and proposed building by using the Simulated Performance Alternative found in section 404 of the IECC 2004 (incorporated by reference, see § 435.3).

(b) For new Federal buildings for which design for construction began on or after August 10, 2012, but before January 10, 2018, each Federal agency shall determine energy consumption levels for both the IECC Baseline Building 2009 and proposed building by using the Simulated Performance Alternative found in section 405 of the IECC 2009 (incorporated by reference, see § 435.3).

(c) For new Federal buildings for which design for construction began on or after January 10, 2018 each Federal agency shall determine energy consumption levels for both the IECC Baseline Building 2015 and proposed building by using the Simulated Performance Alternative found in section R405 of the IECC 2015 (incorporated by reference, see § 435.3).

[FR Doc. 2017–00025 Filed 1–9–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–8833; Airspace Docket No. 16–ACE–8]

Amendment of Class E Airspace for the Following Iowa Towns; Algona, IA; Ankeny, IA; Atlantic, IA; Belle Plane, IA; Creston, IA; Estherville, IA; Grinnell, IA; Guthrie Center, IA; and Oelwein, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E surface area at Ankeny Regional Airport, Ankeny, IA; and Class E airspace extending upward from 700 feet above the surface at Algona Municipal Airport, Algona, IA; Ankeny Regional Airport; Atlantic Municipal Airport, Atlantic, IA; Belle Plaine Municipal Airport, Belle Plaine, IA; Creston Municipal Airport, Creston, IA; Estherville Municipal Airport, Estherville, IA; Grinnell Regional Airport, Grinnell, IA; Guthrie County Regional Airport, Guthrie Center, IA; and Oelwein Municipal Airport, Oelwein, IA. Decommissioning of non-directional radio beacons (NDB), cancellation of NDB approaches, and implementation of area navigation (RNAV) procedures have made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at these airports. Additionally, the geographic coordinates for Algona Municipal Airport, Atlantic Municipal Airport, and Grinnell Regional Airport are being adjusted to coincide with the FAA's aeronautical database. The name of Belle Plaine, IA, is also being adjusted to correct a misspelling in the legal description.

DATES: Effective 0901 UTC, April 27, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E surface area at Ankeny Regional Airport, Ankeny, IA; and Class E airspace extending upward from 700 feet above the surface at Algona Municipal Airport, Algona, IA; Ankeny Regional Airport; Atlantic Municipal Airport, Atlantic, IA; Belle Plaine Municipal Airport, Belle Plaine, IA; Creston Municipal Airport, Creston, IA; Estherville Municipal Airport, Estherville, IA; Grinnell Regional Airport, Grinnell, IA; Guthrie County Regional Airport, Guthrie Center, IA; and Oelwein Municipal Airport, Oelwein, IA.

History

On September 23, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM), (81 FR 65583) Docket No. FAA–2016–8833, to amend Class E surface area at

Ankeny Regional Airport, Ankeny, IA; and Class E airspace extending upward from 700 feet above the surface at Algona Municipal Airport, Algona, IA; Ankeny Regional Airport; Atlantic Municipal Airport, Atlantic, IA; Belle Plaine Municipal Airport, Belle Plaine, IA; Creston Municipal Airport, Creston, IA; Estherville Municipal Airport, Estherville, IA; Grinnell Regional Airport, Grinnell, IA; Guthrie County Regional Airport, Guthrie Center, IA; and Oelwein Municipal Airport, Oelwein, IA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies:

Class E surface area airspace within a 4.2-mile radius (increased from the 4-mile radius) of Ankeny Regional Airport, Ankeny, IA;

Class E airspace extending upward from 700 feet above the surface:

By removing the 10-mile extension northwest of Algona Municipal Airport, Algona, IA, and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database;

Within a 6.7-mile radius (reduced from the previous 7.1-mile radius) of Ankeny Regional Airport, Ankeny, IA, and removing the extensions 9.3 miles northeast and 11.1 miles north of the airport;

Within a 7.2-mile radius (increased from the 6.8-mile radius) of Atlantic Municipal Airport, Atlantic, IA, with an extension to the northeast from the 7.2-mile radius to 9.2 miles, and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database;

Within a 6.5-mile radius (reduced from the previous 7.5-mile radius) of Belle Plaine Municipal Airport, Belle Plaine, IA, and correcting city designation from Belle Plane to Belle Plaine;

By removing the 11-mile extension south of Creston Municipal Airport, Creston, IA;

By removing the 7.4-mile extensions south and northwest of Estherville Municipal Airport, Estherville, IA;

Within a 6.5-mile radius (reduced from the previous 7.6-mile radius) of Grinnell Regional Airport, Grinnell, IA, and updating the geographical coordinates of the airport to coincide with the FAA's aeronautical database;

By adding an extension to the north from the 6.4-mile radius to 9.8 miles of Guthrie County Regional Airport, Guthrie Center, IA;

And within a 6.4-mile radius (reduced from the previous 7.3-mile radius) of Oelwein Municipal Airport, Oelwein, IA.

Airspace reconfiguration is necessary due to the decommissioning of the Mapleton NDB, cancellation of NDB approaches, and implementation of RNAV procedures at the airport and for the safety and management of the standard instrument approach procedures for IFR operations at these airports.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE IA E2 Ankeny, IA [Amended]

Ankeny Regional Airport, IA
(Lat. 41°41′29″ N., long. 93°33′59″ W.)

Within a 4.2-mile radius of Ankeny Regional Airport, excluding that portion within the Des Moines Class C airspace area.

* * * * *

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

* * * * *

ACE IA E5 Algona, IA [Amended]

Algona Municipal Airport, IA
(Lat. 43°04′41″ N., long. 94°16′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Algona Municipal Airport.

* * * * *

ACE IA E5 Ankeny, IA [Amended]

Ankeny Regional Airport, IA
(Lat.41°41′29″ N., long. 93°33′59″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Ankeny Regional Airport, excluding that portion within the Des Moines Class C airspace area.

ACE IA E5 Atlantic, IA [Amended]

Atlantic Municipal Airport, IA

(Lat. 41°24′14″ N., long. 95°02′56″ W.)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Atlantic Municipal Airport and within 1.8 miles each side of the 022° bearing from the airport extending from the 7.2-mile radius to 9.2 miles northeast of the airport.

* * * * *

ACE IA E5 Belle Plaine, IA [Amended]

Belle Plaine Municipal Airport, IA
(Lat. 41°52′44″ N., long. 92°17′04″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Belle Plaine Municipal Airport, excluding that portion which overlies the Cedar Rapids, IA, Class E airspace area.

* * * * *

ACE IA E5 Creston, IA [Amended]

Creston Municipal Airport, IA
(Lat. 41°01′17″ N., long. 94°21′48″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Creston Municipal Airport.

* * * * *

ACE IA E5 Estherville, IA [Amended]

Estherville Municipal Airport, LA
(Lat. 43°24′27″ N long. 94°44′47″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Estherville Municipal Airport.

* * * * *

ACE IA E5 Grinnell, IA [Amended]

Grinnell Regional Airport, IA
(Lat. 41°42′36″ N., long. 92°44′10″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Grinnell Regional Airport.

ACE IA E5 Guthrie Center, IA [Amended]

Guthrie County Regional Airport, IA
(Lat. 41°41′13″ N., long. 93°26′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Guthrie County Regional Airport, and within 2 miles each side of the 360° bearing from the airport extending from the 6.4-mile radius to 9.8 miles north of the airport.

* * * * *

ACE IA E5 Oelwein, IA [Amended]

Oelwein Municipal Airport, IA
(Lat. 42°40′51″ N., long. 91°58′28″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Oelwein Municipal Airport.

Issued in Fort Worth, Texas, on December 28, 2016.

Thomas L. Lattimer,

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

[FR Doc. 2017–00186 Filed 1–9–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–3193; Airspace Docket No. 15–AAL–3]

RIN 2120–AA66

Amendment of VOR Federal Airway V–506; Kotzebue, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Alaskan VHF Omnidirectional Range (VOR) Federal airway V–506 by lowering the floor of class E controlled airspace due to the establishment of a lower global navigation satellite system (GNSS) Minimum Enroute Altitude (MEA). This action allows for maximum use of the airspace within the National Airspace System in Alaska.

DATES: Effective date 0901 UTC, March 2, 2017. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Kenneth Ready, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the air traffic service route structure in Alaska to maintain the efficient flow of air traffic.

History

On March 7, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) (81 FR 11694), Docket No. FAA–2016–3193, to amend VOR Federal airway V–506 by lowering the floor of Class E controlled airspace due to the establishment of a lower GNSS MEA on a segment of the route. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received.

Discussion of Comment

The comment received generally asked whether there would be any safety issues by lowering the floor of Class E airspace?

The FAA finds the proposed modification is in accordance with the criteria and guidelines in FAA Order 7400.2, and it does not introduce new or increased safety risk into the National Airspace System, including Visual Flight Rules (VFR) operations and Instrument Flight Rules (IFR) operations.

For VFR operations, the modified Class G (uncontrolled) airspace stratum would extend upward from the surface to 7,499 feet mean sea level (MSL). The maximum terrain and obstruction elevation in this area is 5,300 feet MSL. The depth of the Glass G airspace stratum will therefore remain at least 2,199 feet, which exceeds the minimum airspace necessary for VFR cruise flight over non-congested areas in accordance with 14 CFR 91.119. It should also be noted, VFR flight is permitted within Class E airspace, with the only additional or different requirement (from Class G airspace) being increased cloud clearance and visibility minima.

Additionally, no safety issues or increased risk would be introduced for

IFR operations. The airspace modification would lower the floor of Class E (controlled) airspace along the specific portion of V–506 from 9,500 feet MSL to 7,500 feet MSL. This action would lower the minimum altitude for air traffic control services and accommodate the minimum GNSS (MEA) for the airway of 8,000 feet MSL, while maintaining a 500 foot airspace buffer between IFR aircraft and uncontrolled airspace. The airway would provide a buffer of greater than 2,000 feet between IFR aircraft and the maximum terrain and obstacle elevation. Lastly it would provide IFR aircraft experiencing icing conditions the ability to fly 2,000 feet lower than previously allowed, and remain within controlled airspace.

Alaskan VOR Federal Airways are published in paragraph 6010(b) of FAA Order 7400.11A dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Alaskan VOR Federal airways listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to modify VOR Federal airwayV–506 in the vicinity of Kotzebue, AK, due to the establishment of a lower GNSS Minimum Enroute Altitude. The route modifications are outlined below.

V–506: V–506 extends from the intersection of Kodiak, AK, VOR/DME 107° radial and the Anchorage Oceanic CTA/FIR boundary to the Barrow, AK, VOR/DME. A portion of the route segment between the Hotham, AK, NDB and the Barrow, AK, VOR/DME is amended to a lower MEA from 95 MSL to 75 MSL.

All radials in the regulatory text route descriptions below are stated in True degrees.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of amending Alaskan VHF Omnidirectional Range (VOR) Federal airway V–506 by lowering the floor of class E controlled airspace due to the establishment of a lower global navigation satellite system (GNSS) Minimum Enroute Altitude (MEA) qualifies for categorical exclusion under the National Environmental Policy Act, its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F. Environmental Impacts: Policies and Procedures, Paragraph 5–6.5a which categorically excludes from further environmental review Rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). This action is not expected to cause any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016 and effective September 15, 2016, is amended as follows:

Paragraph 6010(b) Alaskan VOR Federal Airways

* * * * *

V–506 [Amended]

From INT Kodiak, AK, 107° radial and the Anchorage Oceanic CTA/FIR boundary, 37 miles 20 MSL, 24 miles 12 AGL, Kodiak; 50 miles 12 AGL, 50 miles 95 MSL, 51 miles 12 AGL, King Salmon, AK; 51 miles 12 AGL, 84 miles 70 MSL, 63 miles 12 AGL, Bethel, AK; Nome, AK; 35 miles 12 AGL, 71 miles 55 MSL, 53 miles 12 AGL, Kotzebue, AK; Hotham, AK, NDB; 69 miles 12 AGL, 124 miles 75 MSL, 98 miles 12 AGL, Barrow, AK.

* * * * *

Issued in Washington, DC, on January 3, 2017.

Gemechu Gelgelu,

Acting Manager, Airspace Policy Group.

[FR Doc. 2017–00077 Filed 1–9–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–7488; Airspace Docket No. 15–ASW–19]

Amendment of Class D and Class E Airspace and Revocation of Class E Airspace; Roswell, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace, Class E surface area airspace, and Class E airspace extending upward from 700 feet above the surface at Roswell, NM. This action is necessary due to advances Global Positioning System (GPS) capabilities and implementation of area navigation (RNAV) procedures at Roswell International Air Center, Roswell, NM. Additionally, this action removes Class

E airspace designated as an extension at Roswell International Air Center. This action also updates the name and geographic coordinates of the airport and the Chisum VHF omnidirectional range collocate tactical air navigation (VORTAC) to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, April 27, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class D and Class E airspace at Roswell International Air Center, Roswell, NM.

History

On March 28, 2016, the FAA published in the **Federal Register** (81 FR 17116) Docket No. FAA–2015–7488, a notice of proposed rulemaking (NPRM) to modify Class D airspace, Class E surface area airspace, Class E airspace extending upward from 700 feet above the surface, and remove Class E airspace designated as an extension at Roswell International Air Center, Roswell, NM. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. Subsequent to publication, the FAA found that the geographic coordinates for the Chisum VORTAC needed to be adjusted to coincide with the FAA's aeronautical database. That adjustment has been incorporated in this action.

Class D and E airspace designations are published in paragraph 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace extending upward from 700 feet above the surface at Roswell International Air Center, Roswell, NM. Cancellation of the standard instrument approach procedures (SIAPs), advances in GPS capabilities, and implementation of RNAV procedures at Roswell International Air Center (formerly Roswell Industrial Air Center), is necessary for the safety and management of IFR operations at the airport.

The class E airspace area extending upward from 700 feet above the surface at the airport is reduced from a 12.7-mile radius to a 7.4-mile radius, with the extension to the northwest being reduced from 4 miles to 1.7 miles each side of the Chisum VORTAC 278° radial extending from the 7.4-mile radius to 11 miles vice 23 miles; and the extension to the northeast being removed. Additionally, the Class E airspace designated as an extension at the airport is removed as it is no longer needed. All modifications to the Class E airspace are in accordance with airspace requirements specified in FAA Joint Order 7400.2K. The airport name and geographic coordinates are amended in the existing Class D and Class E airspace areas to be in concert with the FAA's aeronautical database. The geographic coordinates for the Chisum VORTAC noted in Class E airspace extending upward from 700 feet above the surface are also adjusted.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASW NM D Roswell, NM [Amended]

Roswell International Air Center, NM
(Lat. 33°18′06″ N., long. 104°31′50″ W.)

That airspace extending upward from the surface to and including 6,200 feet MSL within a 5-mile radius of Roswell International Air Center. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASW NM E2 Roswell, NM [Amended]

Roswell International Air Center, NM
(Lat. 33°18′06″ N., long. 104°31′50″ W.)

Within a 5-mile radius of Roswell International Air Center. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

ASW NM E4 Roswell, NM [Removed]

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

* * * * *

ASW NM E5 Roswell, NM [Amended]

Roswell International Air Center, NM
(Lat. 33°18′06″ N., long. 104°31′50″ W.)

Chisum VORTAC
(Lat. 33°20′15″ N., long. 104°37′16″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Roswell International Air Center, and within 1.7 miles each side of the Chisum VORTAC 278° radial extending from the 7.4-mile radius of the airport to 11 miles northwest of the airport.

Issued in Fort Worth, Texas, on December 28, 2016.

Thomas L. Lattimer,

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

[FR Doc. 2017–00184 Filed 1–9–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–8830; Airspace Docket No. 16–AGL–18]

Amendment of Class E Airspace for the Following Wisconsin Towns; Land O' Lakes, WI; Manitowish Waters, WI; Merrill, WI; Oconto, WI; Phillips, WI; Platteville, WI; Solon Springs, WI; Superior, WI; and West Bend, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward from 700 feet above the surface at Kings Land O' Lakes Airport, Land O' Lakes, WI; Manitowish Waters Airport, Manitowish Waters, WI; Merrill Municipal Airport, Merrill, WI; Oconto-J. Douglas Bake Municipal Airport, Oconto, WI; Price County Airport, Phillips, WI; Platteville Municipal Airport, Platteville, WI; Solon Springs Municipal Airport, Solon Springs, WI; Richard I. Bong Airport, Superior, WI; and West Bend Municipal Airport, West Bend, WI. Decommissioning of non-directional radio beacons (NDBs), cancellation of NDB approaches, and implementation of area navigation (RNAV) procedures have made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at these airports. This action also updates the geographic coordinates for Kings Land O' Lakes Airport; Manitowish Waters Airport; Oconto-J. Douglas Bake Municipal Airport; and Solon Springs Municipal Airport to coincide with the FAA's aeronautical database. The name of Oconto-J. Douglas Bake Municipal Airport (formerly Oconto Municipal Airport) is also adjusted to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, April 27, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace extending upward from 700 feet above the surface at Kings Land O' Lakes Airport, Land O' Lakes, WI; Manitowish Waters Airport, Manitowish Waters, WI; Merrill Municipal Airport, Merrill, WI; Oconto-J. Douglas Bake Municipal Airport, Oconto, WI; Price County Airport, Phillips, WI; Platteville Municipal Airport, Platteville, WI; Solon Springs Municipal Airport, Solon Springs, WI; Richard I. Bong Airport, Superior, WI; and West Bend Municipal Airport, West Bend, WI.

History

On September 8, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM), (81 FR 62044) Docket No. FAA–2016–8830, to modify Class E airspace

extending upward from 700 feet above the surface at Kings Land O' Lakes Airport, Land O' Lakes, WI; Manitowish Waters Airport, Manitowish Waters, WI; Merrill Municipal Airport, Merrill, WI; Oconto-J. Douglas Bake Municipal Airport, Oconto, WI; Price County Airport, Phillips, WI; Platteville Municipal Airport, Platteville, WI; Solon Springs Municipal Airport, Solon Springs, WI; Richard I. Bong Airport, Superior, WI; and West Bend Municipal Airport, West Bend, WI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace extending upward from 700 feet above the surface at the following airports:

Within a 6.4-mile radius (reduced from the 7-mile radius) of Kings Land O' Lakes Airport, Land O' Lakes, WI, and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database;

Within a 6.3-mile radius (reduced from the 7-mile radius) of Manitowish Waters Airport, Manitowish, WI, and removing the 9-mile segment southeast of the airport, and updating the geographic coordinates of the airport to coincide with the FAA's database;

Within a 6.6-mile radius (reduced from the 7-mile radius) of Merrill Municipal Airport, Merrill, WI;

By removing the 7-mile segment extending from the 6.3-mile radius southeast of Oconto-J. Douglas Bake Municipal Airport, Oconto, WI, and updating the name and geographic coordinates of the airport to coincide with the FAA's aeronautical database;

By removing the 7-mile segments extending from the 6.6-mile radius southwest and northeast of Price County Airport, Phillips, WI;

Within a 6.4-mile radius (reduced from the 7.4-mile radius) of Platteville Municipal Airport, Platteville, WI, with an extension southeast of the airport from the 6.4-mile radius to 10.2 miles;

Within a 6.3-mile radius (reduced from the 6.6-mile radius) of Solon Springs Municipal Airport, Solon Springs, WI, and removing the 7.4-mile segment north of the airport, and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database;

Within an 8.5-mile radius (increased from a 6.7-mile radius) of Richard I. Bong Airport, Superior, WI, and removing the 12.2-mile segment southeast of the airport;

And within a 6.8-mile radius (reduced from the 7.4-mile radius) of the West Bend Municipal Airport, West Bend, WI, reducing existing segment extending from the 6.8-mile radius to 11.4 miles southwest, and adding segments extending from the 6.8-mile radius to 7 miles northeast and 10 miles northwest of the airport.

Airspace reconfiguration is necessary due to the decommissioning of NDBs, cancellation of NDB approaches, or implementation of RNAV standard instrument procedures at these airports. Controlled airspace is necessary for the safety and management of the standard instrument approach procedures for IFR operations at these airports.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

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

* * * * *

AGL WI E5 Land O' Lakes, WI [Amended]

Kings Land O' Lakes Airport, WI
(Lat. 46°09′15″ N., long. 89°12′43″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Kings Land O'Lakes Airport.

* * * * *

AGL WI E5 Manitowish Waters, WI [Amended]

Manitowish Waters Airport, WI
(Lat. 46°07′13″ N., long. 89°52′56″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Manitowish Waters Airport.

* * * * *

AGL WI E5 Merrill, WI [Amended]

Merrill Municipal Airport, WI
(Lat. 45°11′56″ N., long. 89°42′46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Merrill Municipal Airport.

* * * * *

AGL WI E5 Oconto, WI [Amended]

Oconto-J. Douglas Bake Municipal Airport, WI

(Lat. 44°52′27″ N., long. 87°54′35″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Oconto-J. Douglas Bake Municipal Airport.

* * * * *

AGL WI E5 Phillips, WI [Amended]

Price County Airport, WI
(Lat. 45°42′32″ N., long. 90°24′09″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Price County Airport.

AGL WI E5 Platteville, WI [Amended]

Platteville Municipal Airport, WI
(Lat. 42°41′22″ N., long. 90°26′40″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Platteville Municipal Airport, and within 4 miles each side of the 145° bearing from the airport extending from the 6.4-mile radius to 10.2 miles southeast of the airport.

* * * * *

AGL WI E5 Solon Springs, WI [Amended]

Solon Springs Municipal Airport, WI
(Lat. 46°18′53″ N., long. 91°48′59″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Solon Springs Municipal Airport.

* * * * *

AGL WI E5 Superior, WI [Amended]

Richard I. Bong Airport, WI.
(Lat. 46°41′23″ N., long. 92°05′41″ W.)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Richard I. Bong Airport.

* * * * *

AGL WI E5 West Bend, WI [Amended]

West Bend Municipal Airport, WI
(Lat. 43°25′20″ N., long. 88°07′41″ W.)

West Bend VOR
(Lat. 43°25′19″ N., long. 88°07′31″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of West Bend Municipal Airport, and within 2 miles each side of the 239° bearing from the airport extending from the 6.8-mile radius to 11.4 miles southwest of the airport, and within 1.2 miles each side of the West Bend VOR 052° radial extending from the 6.8-mile radius to 7 miles northeast of the airport, and within 1.3 miles each side of the West Bend VOR 303° radial extending from the 6.8-mile radius to 10 miles northwest of the airport, excluding that airspace within the Hartford, WI, Class E airspace area.

Issued in Fort Worth, Texas, on December 28, 2016.

Thomas L. Lattimer,

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

[FR Doc. 2017–00191 Filed 1–9–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742, 750, and 774

[Docket No. 150325297–6180–02]

RIN 0694–AG59

Revisions to the Export Administration Regulations (EAR): Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule addresses issues raised in, and public comments on, the interim final rule that was published on May 13, 2014, as well as additional clarifications and corrections. The May 13 rule added controls to the Export Administration Regulations (EAR) for spacecraft and related items that the President has determined no longer warrant control under United States Munitions List (USML) Category XV—spacecraft and related items.

This is the third final rule BIS has published related to the May 13 rule and completes the regulatory action for the interim final rule. These changes were also informed by comments received in response to the May 13 rule that included a request for comments, as well as interagency discussions on how best to address the comments. The changes made in this final rule are grouped into four types of changes: Changes to address the movement of additional spacecraft and related items from the USML to the Commerce Control List (CCL), as a result of changes in aperture size for spacecraft that warrant ITAR control, in response to public comments and further U.S. Government review; changes to address the movement of the James Webb Space Telescope (JWST) from the USML to the CCL; other corrections and clarifications to the spacecraft interim final rule; and addition of .y items to Export Control Classification Number 9A515.

This final rule is being published in conjunction with the publication of a Department of State, Directorate of Defense Trade Controls (DDTC) final rule, which makes changes, including corrections and clarifications, to the provisions adopted in the State Department's own May 13, 2014 rule. The State May 13 rule revised USML Category XV (22 CFR 121.1) to control those articles the President has determined warrant control on the USML. Both May 13 rules and the subsequent related rules are part of the President's Export Control Reform Initiative. This rule is also part of Commerce's retrospective regulatory review plan under Executive Order (EO) 13563 (see the **SUPPLEMENTARY INFORMATION** section of this rule for information on the availability of the plan).

DATES: This rule is effective on January 15, 2017.

FOR FURTHER INFORMATION CONTACT: For questions about the ECCNs included in this rule, contact Dennis Krepp, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: 202–482–1309, email: *Dennis.Krepp@bis.doc.gov.* For general questions about the regulatory changes pertaining to satellites, spacecraft, and related items, contact the Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, at 202–482–2440 or email: *rpd2@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

This final rule addresses issues raised in, and public comments on, the interim final rule, *Revisions to the Export Administration Regulations (EAR): Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML),* that was published on May 13, 2014 (79 FR 27417) (May 13 rule), and makes corrections and clarifications. The May 13 rule added controls to the Export Administration Regulations (EAR) for spacecraft and related items that the President has determined no longer warrant control under United States Munitions List (USML) Category XV—spacecraft and related items. The vast majority of the changes included in the May 13 rule have been implemented as published in the interim final rule and are not republished in this final rule. A full description of those changes can be found in the Background section and the regulatory text of the May 13 rule. BIS also published corrections and clarifications to the May 13 rule in a final rule published on November 12, 2014 (79 FR 67055) and in a final rule published on July 13, 2015 (80 FR 39950).

This final rule is being published in conjunction with the publication of a Department of State, Directorate of Defense Trade Controls (DDTC) final rule, which makes changes, including corrections and clarifications, to the provisions adopted in the May 13 State

rule (79 FR 27180). The State May 13 rule revised USML Category XV (22 CFR 121.1) to control those articles the President has determined warrant control on the USML. Both May 13 rules and the subsequent related rules are part of the President's Export Control Reform Initiative.

The changes included in this Commerce final rule complete the regulatory action begun by the May 13 rule and are also informed by comments received in response to that rule. The changes made in this Commerce final rule are grouped into four types of changes: (1) Changes to address the movement of additional spacecraft and related items from the USML to the CCL, as a result of changes in aperture size for spacecraft that warrant ITAR control, in response to public comments and further U.S. Government review; (2) changes to address the movement of the James Webb Space Telescope (JWST) from the USML to the CCL; (3) other corrections and clarifications to the spacecraft interim final rule; and (4) addition of .y items to Export Control Classification Number (ECCN) 9A515. Note that certain ECCNs may be referenced in more than one of the (1) through (4) sections, but for ease of reference the description of those changes to those ECCNs, such as ECCN 9E515, are grouped with the related changes under sections (1) through (4), as applicable.

(1) Changes To Address the Movement of Additional Spacecraft and Related Items From the USML to the CCL, as a Result of Changes in Aperture Size for Spacecraft That Warrant ITAR Control, in Response to Public Comments and Further U.S. Government Review

This final rule makes several changes to the EAR to address the movement of additional spacecraft and related items from the USML to the CCL, as a result of the Department of State's responding to comments on its interim final rule, which specifically asked for additional public comments on this issue. The Department of State in its May 13 interim final rule noted:

> Commenting parties recommended the aperture threshold for civil and commercial remote sensing satellites in paragraph (a)(7)(i) be increased from 0.35 meters to a threshold more appropriate for current world capabilities and market conditions. The Department [of State] did not accept this recommendation at this time. However, it, along with other agencies, understands that the technology and civil and commercial applications in this area are evolving. Thus, the Department has committed to reviewing during the six months after the publication of this rule whether further amendments to the USML controls on civil and commercial remote sensing satellites are warranted, and seeks additional public comment on this matter.

For a discussion of the changes made to the ITAR in response to the related public comments, see the corresponding Department of State rule published today.

The changes described below are the EAR changes needed to address the movement of these additional spacecraft (under ECCNs 9A515.a.1 to .a.4 and 9A004.u) and related items (under 9A515.g) from the USML to the CCL. Adopting a more permissive aperture size (meaning more spacecraft items would no longer warrant ITAR control) was strongly advocated by commenters in response to the Commerce interim final rule. The public believed additional changes were needed to appropriately control spacecraft and related items that warranted ITAR control, with respect to aperture size, while moving those that did not warrant ITAR control to the CCL, consistent with the stated objectives in the May 13 final rules. State and the other agencies reviewing the comments agreed that some additional spacecraft and related items did not warrant ITAR control. This Commerce rule makes conforming changes to the EAR to ensure that appropriate controls are in place for such additional spacecraft and related items that did not warrant ITAR control, based on the review of the public comments and additional U.S. Government review. BIS anticipates an increase of approximately 10 to 20 license applications per year as a result of these changes to the EAR.

Because of the more sensitive nature of these additional spacecraft and related items that are being moved to the CCL, additional changes are needed to the EAR to effectively control these items. In certain cases, this means imposing more restrictive requirements compared to other 9x515 items. These additional requirements are described below, including a description of the parameters for the items moved to the CCL.

In § 740.20, paragraph (g) (License Exception STA eligibility requests for 9x515 and ''600 series'' end items), this final rule revises paragraph (g)(1) as a conforming change to the changes made to ECCN 9A515.a, described below. To maintain the same scope of paragraph (g)(1), this final rule removes the text that referred to ECCN 9A515.a and adds in its place text referencing ''spacecraft'' in 9A515.a.1, .a.2, .a.3, or .a.4, or items in 9A515.g. The spacecraft in ECCN 9A515.a.5 are eligible for License Exception STA without a § 740.20(g) request. As a conforming change, this final rule adds ECCN 9E515.b, .d, .e, or .f as eligible for § 740.20(g) License Exception STA eligibility requests. Because the scope of revised paragraph (g) includes items other than end items, this final rule also revises the heading of paragraph (g) to remove the term ''end items'' and add in its place the term ''items.'' However, the items eligible to be submitted under the § 740.20(g) process are still limited to those specific ECCNs and ''items'' paragraphs identified in paragraph (g).

The spacecraft transferred to the CCL in this final rule are subject to special regional stability license requirements. Therefore, in § 742.6 (Regional stability), this final rule makes revisions to five paragraphs. The final rule revises paragraph (a)(1), adds a new paragraph (a)(8), revises paragraph (b)(1)(i), and adds paragraphs (b)(5) and (b)(6). These changes are described below.

In § 742.6, paragraph (a)(1) (RS Column 1 license requirements in general), this final rule adds a reference to new paragraph (a)(8). New paragraph (a)(8) (Special RS Column 1 license requirement applicable to certain spacecraft and related items) is an RS Column 1 license requirement, which is specific to certain spacecraft and related items. This paragraph specifies that a license is required for all destinations, including Canada, for spacecraft and related items classified under ECCN 9A515.a.1, .a.2., .a.3., .a.4., .g, and ECCN 9E515.f. Although the license requirement for these specified ECCN 9x515 items is more restrictive than for those 9x515 items on the CCL prior to publication of this rule, the license review policy is the same as those for other 9x515 items. As a conforming change, this final rule revises the fourth sentence of paragraph (b)(1)(i) to add a reference to paragraph (a)(8), because that sentence references the ECCN 9x515 license requirements, which now include those special RS license requirements in paragraph (a)(8).

This final rule adds two new paragraphs, paragraph (b)(5) (Spacecraft for launch) and paragraph (b)(6) (Remote sensing spacecraft) to specify the requirements that apply for license applications involving spacecraft and remote sensing spacecraft. Consistent with the requirements in paragraph (y) in Supplement No. 2 to part 748 Unique Application and Submission Requirements, this final rule adds paragraphs (b)(5)(i) and (b)(5)(ii) to specify when applications to export or reexport a ''spacecraft'' controlled under ECCN 9A515.a for launch in or by a country will *or* may require a technology transfer control plan (TCP) approved by the Department of Defense

(DoD), an encryption technology control plan approved by the National Security Agency (NSA), and DoD monitoring of all launch activities. Paragraph (b)(5)(i) specifies that this is a requirement for all such applications for countries that are not a member of the North Atlantic Treaty Organization (NATO) or a major non-NATO ally of the United States. This final rule adds a similar requirement under paragraph (b)(5)(ii), but with the key distinction that it may be required for countries that are a member of NATO or a major non-NATO ally of the United States.

Also in § 742.6, this final rule adds a new paragraph (b)(6) (Remote sensing spacecraft) to make applicants aware that any application for ''spacecraft'' described in ECCN 9A515.a.1,.a.2, a.3, or .a.4, for sensitive remote sensing components described in 9A515.g, or for ''technology'' described in ECCN 9E515.f, may require a government-to-government agreement at the discretion of the U.S. Government. A government-to-government agreement may be required for any destination at the sole discretion of the U.S. Government.

In § 750.4 (Procedures for processing license applications), as conforming changes to the changes described above to § 742.6, this final rule makes the following two changes: adds a new paragraph (b)(8), and adds a new paragraph (d)(2)(iv). These changes are described in the next two paragraphs.

In § 750.4, consistent with the requirements in paragraph (y) in Supplement No. 2 to part 748 Unique Application and Submission Requirements, this final rule adds a new paragraph (b)(8) (Satellites for launch) to include a requirement for license applications involving a satellite for launch. Applicants must obtain approval by the DoD of a technology transfer control plan and the approval of the NSA of an encryption technology control plan. In addition, the applicant will also be required to make arrangements with the DoD for monitoring of all launch activities. These existing DoD and NSA requirements in regards to satellites for launch are in addition to the EAR licensing requirements, but any license authorized under the EAR for satellites for launch must also be done in accordance with those DoD and NSA requirements to be authorized under an EAR license. Therefore, this final rule adds this requirement to § 750.4(b)(8), which will eliminate the need to add this requirement as a license condition for any license for satellites for launch. These DoD and NSA TCP approval requirements existed under the ITAR and are added to the EAR to preserve the status quo. Therefore, although this paragraph adds three new requirements to the EAR for license applications for spacecraft for launch, the requirements are the same as when these spacecraft were formerly under the ITAR, so there will be no increased burden on exporters, reexporters or transferors.

In § 750.4, this final rule adds a new paragraph (d)(2)(iv) (Remote Sensing Interagency Working Group (RSIWG)) to make applicants aware that the RSIWG, chaired by the State Department, will review license applications involving remote sensing spacecraft. These will be any items described in ECCN 9A515.a.1, .a.2, .a.3, or .a.4, sensitive remote sensing components described in 9A515.g, or ''technology'' described in 9E515.f.

ECCN 9A515. This final rule adds a new License Requirement Note, revises the Special Conditions for STA section, revises ''items'' paragraph (a), and adds paragraph (g) in the List of ''items'' controlled section of ECCN 9E515. These changes are described in the next five paragraphs.

Addition of License Requirement Note to 9A515. As a conforming change to the addition of § 742.6(a)(8), described above, this final rule adds a License Requirement Note to the end of the License Requirements section of ECCN 9A515 to specify that the Commerce Country Chart is not used for determining license requirements for commodities classified as 9A515.a.1, .a.2., .a.3., .a.4, and .g. The new License Requirement also includes a cross reference to § 742.6(a)(8) and alerts exporters and reexporters that these commodities are subject to a worldwide license requirement.

In ECCN 9A515, Special Conditions for STA section, this final rule revises paragraph (1). This final rule adds references to the new ''items'' paragraphs of ECCN 9A515.a (9A515.a.1, .a.2, .a.3 and .a.4) and 9A515.g, which would not be eligible for License Exception STA, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for certain 9x515 and ''600 series'' end items). Because these items are commodities that are more sensitive, additional U.S. Government review of the specific commodity is warranted prior to allowing exporters, reexporters or transferors to use License Exception STA. The imposition of this requirement is consistent with the use of the paragraph (g) process for other sensitive items in the 9x515 ECCNs and the ''600 series'' that have been moved to the CCL. Also in the Special Conditions for STA section, this final rule redesignates paragraph (2) as paragraph (3) and adds a new paragraph (2). This final rule adds new paragraph (2) in the Special Conditions for STA section to exclude the use of License Exception if the ''spacecraft'' controlled in ECCN 9A515.a.1, .a.2, .a.3, or .a.4 contains a separable or removable propulsion system enumerated in USML Category IV(d)(2) or USML Category XV(e)(12) and designated MT. This exclusion is being added because the MTCR Category I components identified in this paragraph are separable or removable and therefore for consistency with the intent to exclude MT items from License Exception STA eligibility, this final rule adds this as an additional restriction on the use of License Exception STA.

In ECCN 9A515.a, this final rule revises ''items'' paragraph (a) to add control parameters for the additional spacecraft being moved from the USML to the CCL. Spacecraft moved from the USML to the CCL and classified under ECCN 9A515.a prior to publication of this rule are being moved to new ''items'' paragraph (a)(5). This final rule adds ''items'' paragraphs (a)(1), (a)(2), (a)(3) and (a)(4) to ECCN 9A515 to control the additional spacecraft items being moved to the CCL. The identification of these more sensitive spacecraft items in their own ''items'' level paragraph in ECCN 9A515 (9A515.a.1, .a.2, .a.3., .a.4) will allow for the imposition of more restrictive controls that are needed, while not impacting other spacecraft and related items that do not warrant the more restrictive controls (*e.g.,* 9A515.a.5). These more restrictively controlled items consist of the following: ''spacecraft,'' including satellites, and space vehicles, whether designated developmental, experimental, research or scientific, not enumerated in USML Category XV or described in ECCN 9A004 that have electro-optical remote sensing capabilities and having a clear aperture greater than 0.35 meters, but less than or equal to 0.50 meters (under ECCN 9A515.a.1). It includes those having remote sensing capabilities beyond NIR (under ECCN 9A515.a.2), those having radar remote sensing capabilities (*e.g.,* AESA, SAR, or ISAR) having a center frequency equal to or greater than 1.0 GHz, but less than 10.0 GHz and having a bandwidth equal to or greater than 100 MHz, but less than 300 MHz (under 9A515.a.3). These more sensitive items being moved from the USML to the CCL also include those providing space-based logistics, assembly, or servicing of another ''spacecraft'' (under ECCN 9A515.a.4).

In ECCN 9A515.g, this final rule also adds ''items'' paragraph (g) to 9A515, as related to the changes described above to 9A515.a. Paragraph (g) is added to control remote sensing components that are ''specially designed'' for ''spacecraft'' described in ECCN 9A515.a.1 though 9A515.a.4, which were described above. Similar to the reason for identifying the items in ECCN 9A515.a.1 through .a.4., specifying that these remote sensing components are the ''items'' paragraphs (g)(1) through (g)(3) will allow the imposition of more restrictive controls on these components, without needing to impose the same level of restrictions on 9A515.x items, which is the paragraph under which these components would have been controlled if this new 9A515.g paragraph were not being added. Paragraph (g) controls remote sensing components for space-qualified optics with the largest lateral clear aperture dimension equal to or less than 0.35 meters; or with the largest clear aperture dimension greater than 0.35 meters but less than or equal to 0.50 meters (under ECCN 9A515.g.1). In addition, paragraph (g) controls optical bench assemblies ''specially designed'' for the spacecraft added to ECCN 9A515.a.1 through .a.4 (under ECCN 9A515.g.2), and primary, secondary, or hosted payloads that perform a function of spacecraft added to 9A515.a.1. through .a.4. (under 9A515.g.3).

ECCN 9E515. This final rule adds a new License Requirement Note, revises the Special Conditions for STA section and ''items'' paragraph (a), and adds ''items'' paragraph (f) in the List of ''items'' controlled section of ECCN 9E515. These changes are described in the next five paragraphs:

Addition of License Requirement Note to 9E515. As a conforming change to the addition of § 742.6(a)(8), described above, this final rule adds a License Requirement Note to the end of the License Requirements section of ECCN 9E515 to specify that the Commerce Country Chart is not used for determining license requirements for ''technology'' classified 9E515.f. The new License Requirement also includes a cross reference to § 742.6(a)(8) and alerts exporters and reexporters that this ''technology'' is subject to a worldwide license requirement.

In ECCN 9E515, Special Conditions for STA section, this final rule revises paragraph (1) to add a reference to 9E515.f. This final rule specifies that such technology is not eligible for STA, unless the specific technology has been approved under the § 740.20(g) process by the U.S. Government. This change is made to conform to the addition described below of ''technology'' under ECCN 9E515.f for the additional spacecraft and related components added to 9A515.a and .g described above. In addition, this final rule also specifies that the ''technology'' controlled under ECCN 9E515.b, .d and .e are not eligible for License Exception STA, unless the specific ''technology'' has been approved under the § 740.20(g) process by the U.S. Government. Prior to publication of this final rule, ECCN 9E515.b, .d and .e ''technology'' was excluded from License Exception STA in all cases, which based on public comments and interagency discussions was a more restrictive policy than was needed to protect U.S. national security and foreign policy interests for this ''technology'' classified under ECCN 9E515. Therefore, this final rule makes the other ''technology'' (9E515.b, .d and .e) also eligible for the requests under § 740.20(g), as described above in the changes this final rule makes to paragraph (g) of License Exception STA.

In ECCN 9E515.a, this final rule revises ''items'' paragraph (a) to exclude the ''technology'' for the new commodities added to 9A515.a (.a.1 through .a.4) and .g. ''Required'' ''technology'' for these new commodities added to ECCN 9A515.a and .g will be controlled under ECCN 9E515, but in order to impose more restrictive controls on those ''technologies'' without impacting other 9E515 ''technology,'' this final rule adds this ''technology'' being moved to the CCL to a new ''items'' paragraph (f) to 9E515, as described below.

In ECCN 9E515.f, this final rule adds a new ''items'' paragraph (f) in the List of Items Controlled section to control ''technology'' ''required'' for the ''development,'' ''production,'' installation, repair, overhaul, or refurbishing of commodities that this final rule adds to ECCN 9A515 under ''items'' paragraphs .a.1 through .a.4, or .g. As described above, this final rule is identifying these ''technologies'' in their own ''items'' paragraph in order to allow more restrictive controls to be placed on these items without impacting other ECCN 9E515 ''technology.''

(2) Changes To Address the Movement of the James Webb Space Telescope (JWST) From the USML to the CCL

ECCN 9A004. This final rule revises ECCN 9A004 to add a specific telescope, which was ''subject to the ITAR'' prior to the effective date of this final rule. A determination was made based on the public comments received by the Department of State and the space interagency working group (a group of U.S. Government agencies involved in the export control system and that deal with space related issues) that this specific telescope was within the scope of spacecraft and related items that did not warrant being subject to the ITAR. Therefore, consistent with the stated purpose of the May 13 rule, as well as section 38(f) of the Arms Export Control Act (AECA), the Department of State has moved this telescope, the James Webb Space Telescope (JWST), which is being developed, launched, and operated under the supervision of the U.S. National Aeronautics and Space Administration (NASA), to the CCL. The ''parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for use in or with the JWST are also being moved from the ITAR and will be subject to the EAR, as of the effective date of the State and Commerce final rules.

To control the JWST and the ''specially designed'' ''parts,'' ''components,'' ''accessories,'' and ''attachments'' for the JWST, this final rule adds two new ''items'' paragraph to ECCN 9A004. First, this final rule adds a new ''items'' paragraph (u) to 9A004 to control the JWST (the specific telescope) that is being moved to the CCL from the USML. Second, this final rule adds a new ''items'' paragraph (v) to control the ''specially designed'' ''parts,'' ''components,'' ''accessories,'' or ''attachments'' for use in or with the JWST. The commodities this final rule adds to ECCN 9A004.v include the primary and secondary payloads of the JWST.

This final rule also specifies in the control parameters in the new paragraph (v)(1) to (v)(4) that the ''parts,'' ''components,'' ''accessories,'' and ''attachments'' specified in paragraph (v) do not include items that are ''subject to the ITAR,'' microelectronic circuits, items in ECCNs 7A004 and 7A104, or in any ECCN containing ''space qualified'' as a control criterion (*See* ECCN 9A515.x.4). As a conforming change, this final rule revises the phrase ''ECCN 9A004.x'' in paragraph (y) to add a reference to the ''parts,'' ''components,'' ''accessories,'' and ''attachments'' in paragraph (v) that this final rule adds. This final rule revises the phrase, so it now specifies ''ECCN 9A004.v or .x,'' which is being done to account for the fact that paragraphs (v) and (x) will contain certain ''specially designed'' ''parts,'' ''components,'' ''accessories,'' and ''attachments'' for items enumerated in ECCN 9A004 and that the new items being added to paragraph (v) and (x) could be reclassified under 9A004.y, if subsequently the specific item is

identified in an interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e) as warranting control in 9A004.y. BIS anticipates an increase of approximately 20 license applications per year as a result of these changes to the EAR.

In addition to the change to ECCN 9A004, this final rule makes changes to three 9x515 ECCNs to reflect that the JWST and the ''specially designed'' ''parts,'' ''components,'' ''accessories,'' and ''attachments'' for the JWST are being added to 9A004. This final rule makes these conforming changes to ECCNs 9A515, 9B515 and 9E515. These are not substantive changes. These changes are described in the next three paragraphs.

ECCN 9A515. This final rule revises the third sentence of the Related Controls paragraph in the List of Items Controlled section of ECCN 9A515 to add a reference to the JWST. This final rule also revises the Note to ECCN 9A515.a to specify items in ECCN 9A004 are not within the scope of 9A515.a. A reference to ECCN 9A004 needs to be added because the description of this Note to ECCN 9A515.a would otherwise include the JWST. This final rule revises ''items'' paragraph (b) in ECCN 9A515, to add a reference to ECCN 9A004.u for the JWST. This conforming change is needed to specify that ground control systems and training simulators ''specially designed'' for telemetry, tracking and control of the JWST are also within the scope of ECCN 9A515.b. For similar reasons, this final rule revises ''items'' paragraph (e) to add a reference to ECCN 9A004.u. This conforming change is made to specify that the microelectronic circuits and discrete electronic components described in ECCN 9A515.e include those ''specially designed'' for the JWST. This final rule also makes some changes to the .y paragraph in ECCN 9A515, which are discussed further below.

ECCN 9B515. This final rule revises ''items'' paragraph (a) in the List of Items Controlled section to add a reference to ECCN 9A004.u. This conforming change is needed to specify that the test, inspection, and production ''equipment'' ''specially designed'' for the ''production'' or ''development'' of the JWST are also classified under ECCN 9B515.a. For similar reasons, this final rule revises the Note to ECCN 9B515.a to add a reference to ECCN 9A004.u. This conforming change is intended to specify that ECCN 9B515.a includes equipment, cells, and stands ''specially designed'' for the analysis or isolation of faults in the JWST, in addition to the other commodities enumerated in the Note to ECCN 9A515.a.

ECCN 9E515. This final rule also revises the third sentence in the ''Related Controls'' paragraph in the List of Items Controlled section in ECCN 9E515 to add a reference to the JWST. This sentence will alert persons classifying technology for the JWST to see ECCNs 9E001 and 9E002.

(3) Other Corrections and Clarifications to Interim Spacecraft Final Rule

ECCN 9A515. This final rule adds two sentences at the end of the introductory text in the ''items'' paragraph in the List of Items Controlled section of ECCN 9A515, consistent with the notes to USML Category XV. The introductory paragraph clarifies when ''spacecraft'' and other items described in ECCN 9A515 remain subject to the EAR even if exported, reexported, or transferred (in-country) with defense articles ''subject to the ITAR'' integrated into and included therein as integral parts of the item. This introductory paragraph includes some application examples and some qualifiers for when the ITAR jurisdiction would reapply to such defense articles. This final rule adds two new sentences to clarify two additional instances where the jurisdiction of the ITAR would be applicable in such scenarios. The first new sentence is being added to clarify that the removal of a defense article subject to the ITAR from the spacecraft is a retransfer under the ITAR—meaning the removal of a defense article would require an ITAR authorization. The ITAR authorization requirement would apply regardless of which CCL authorization the spacecraft is exported under the EAR. The second sentence clarifies that transfer of technical data regarding the defense article subject to the ITAR integrated into the spacecraft would require an ITAR authorization.

ECCN 9B515. This final rule revises the License Requirements section of ECCN 9B515 to add a missile technology (MT) control. The MT control is being added to impose a license requirement on equipment in ECCN 9B515.a that is for the ''development'' or ''production'' of commodities in USML Category XV(e)(12) and XV(e)(19) that are MT controlled. This change is made to conform to the Missile Technology Control Regime (MTCR) Annex and the corresponding MT controls in USML Category XV (MTCR Annex, Category I: Item 2.B.2.). BIS anticipates an increase of approximately 10 license applications per year as a result of this change to the EAR, along with the conforming MT change made to ECCN 9E515 described in the next paragraph.

ECCN 9E515. This final rule, as a conforming change to the change to ECCN 9B515, revises the MT Control paragraph in the License Requirements section on ECCN 9E515. This final rule revises the MT Control paragraph in ECCN 9E515 to add technology for items in 9B515.a that are controlled for MT reasons. This change is made to conform to the MTCR Annex and the corresponding MT controls in USML Category XV (MTCR Annex, Category I: Item 2.E.1.).

(4) Addition of .y Items to ECCN 9A515

This final rule adds five .y paragraphs (ECCN 9A515.y.2, .y.3., .y.4, .y.5, and .y.6) as additional commodities specified under paragraph (y) in this ECCN. As noted in the introductory text of paragraph (y), the U.S. Government through the § 748.3(e) process will identify the items that warrant being classified under 9x515.y, such as the commodities being specified under ECCN 9A515.y.2 to .y.6 in this final rule. Specifically, the following space grade or for spacecraft applications commodities: thermistors (ECCN 9A515.y.2); RF microwave bandpass ceramic filters (dielectric resonator bandpass filters) (9A515.y.3); space grade or for spacecraft applications hall effect sensors (9A515.y.4); subminiature (SMA and SMP) plugs and connectors, TNC plugs and cable and connector assemblies with SMA plugs and connectors (9A515.y.5); and flight cable assemblies (9A515.y.6) have been identified in interagency-cleared commodity classifications (CCATS) pursuant to § 748.3(e) as warranting control in 9A515.y.2 to .y.6. The additions described above for ECCN 9A515.y.2 to y.6 are the second set of approved populations of .y controls being added to 9A515. As stated in the May 13 rule, as well as the July 13 rule (which added ECCN 9A515.y.1), BIS (along with State and Defense) will continue to populate the 9A515.y with additional entries as additional classification determinations are made in response to requests from the public under § 748.3(e).

As required by Executive Order (EO) 13563, BIS intends to review this rule's impact on the licensing burden on exporters. Commerce's full plan is available at: *http://open.commerce.gov/news/2011/08/23/plan-retrospective-analysis-existing-rules.* Data are routinely collected on an ongoing basis, including through the comments to be submitted and as a result of new information and results from AES data. These results and data have been, and

will continue to form, the basis for ongoing reviews of the rule and assessments of various aspects of the rule. As part of its plan for retrospective analysis under EO 13563, BIS intends to conduct periodic reviews of this rule and to modify, or repeal, aspects of this rule, as appropriate, and after public notice and comment. Some of the changes described above are limited to corrections or clarifications of what was included in the May 13 rule. BIS estimates that the substantive changes described above will result in an increase of 30–40 license applications per year, which is within the previous estimate made for the number of license applications that BIS anticipated receiving as a result of the movement of these spacecraft and related items to the CCL under the May 13 rule.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 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, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are expected to increase slightly as a result of this rule. The expected increase in total burden hours is expected to be minimal and to not exceed the existing estimates for burden hours associated with the PRA and OMB control number 0694–0088. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act (APA) requiring prior notice and the opportunity for public comment because they are either unnecessary or contrary to the public interest. The following revisions are non-substantive or are limited to ensure consistency with the intent of the May 13, 2014 interim final rule, and thus prior notice and the opportunity for public comment is unnecessary. ECCNs 9A004, 9A515, 9B515, and 9E515 are revised to make clarifications to the EAR to ensure consistency with the intent of the May 13, 2014 interim final rule for purposes of what spacecraft and related items warranted ITAR control and what spacecraft items were intended to be moved to the EAR, as well as for consistency with the MTCR Annex for certain changes made to ECCNs 9B515 and 9E515. This includes the changes made to §§ 740.20(g), 742.6(a)(1), (a)(8), (b)(1)(i), (b)(5) and (b)(6), and 750.4(b)(4), (b)(8) and (d)(2)(iv) to ensure appropriate controls are in place under the EAR for the additional spacecraft and related items that are moved to the CCL in this final rule in response to public comments and additional U.S. Government review of those comments. Finally, as contemplated in the May 13 rule, BIS has added five entries to the .y paragraph of ECCN 9A515, which were added as a result of the § 748.3(e) process. For purposes of the APA, there is good cause, and it is in the public interest to incorporate this change so the public can benefit from understanding the classification of the items. These revisions are important to implement as soon as possible so the public will be aware of the correct text and meaning of current EAR provisions.

BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3). As mentioned previously, the revisions made by this rule are non-substantive or are limited to ensure consistency with the intent of the May 13, 2014 interim final rule and are important to implement as soon as possible so the public will be aware of the correct text and meaning of current EAR provisions.

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for these amendments by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable.

List of Subjects

15 CFR Parts 740 and 750

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 2. Section 740.20 is amended by revising the heading of paragraph (g) and paragraph (g)(1) to read as follows:

§ 740.20 License exception strategic trade authorization (STA).

* * * * *

(g) *License Exception STA eligibility requests for 9x515 and ''600 series'' items*—(1) *Applicability.* Any person may request License Exception STA eligibility for end items described in ECCN 0A606.a, ECCN 8A609.a, ECCN 8A620.a or .b, ''spacecraft'' in ECCN

9A515.a.1, .a.2, .a.3, .a.4, or .g, that provide space-based logistics, assembly or servicing of any spacecraft (*e.g.,* refueling), ECCN 9A610.a, or ECCN 9E515.b, .d, .e, or .f.

* * * * *

PART 742—[AMENDED]

■ 3. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 4. Section 742.6 is amended:
■ a. By revising paragraph (a)(1);
■ b. By adding paragraph (a)(8);
■ c. By revising the fourth sentence of paragraph (b)(1)(i); and
■ d. By adding paragraphs (b)(5) and (6), to read as follows:

§ 742.6 Regional stability.

(a) * * *

(1) *RS Column 1 license requirements in general.* A license is required for exports and reexports to all destinations, except Canada, for all items in ECCNs on the CCL that include RS Column 1 in the Country Chart column of the ''License Requirements'' section. Transactions described in paragraphs (a)(2), (a)(3), or (a)(8) of this section are subject to the RS Column 1 license requirements set forth in those paragraphs rather than the license requirements set forth in this paragraph (a)(1).

* * * * *

(8) *Special RS Column 1 license requirement applicable to certain spacecraft and related items.* A license is required for all destinations, including Canada, for spacecraft and related items classified under ECCN 9A515.a.1, .a.2., .a.3., .a.4., .g, and ECCN 9E515.f.

(b) * * *

(1) * * *

(i) *** Applications for export or reexport of items classified under any 9x515 or ''600 series'' ECCN requiring a license in accordance with paragraph (a)(1) or (a)(8) of this section will also be reviewed consistent with United States arms embargo policies in § 126.1 of the ITAR (22 CFR 126.1) if destined to a country set forth in Country Group D:5 in Supplement No. 1 to part 740 of the EAR. * * *

* * * * *

(5) *Spacecraft for launch.* (i) Applications to export or reexport a ''spacecraft'' controlled under ECCN 9A515.a for launch in or by a country that is not a member of the North Atlantic Treaty Organization (NATO) or a major non-NATO ally of the United States (as defined in 22 CFR 120.31 and 120.32), will require a technology transfer control plan approved by the Department of Defense, an encryption technology control plan approved by the National Security Agency, and Department of Defense monitoring of all launch activities.

(ii) Applications to export or reexport a ''spacecraft'' controlled under ECCN 9A515.a for launch in or by a country that is a member of the North Atlantic Treaty Organization (NATO) or a major non-NATO ally of the United States (as defined in 22 CFR 120.31 and 120.32), may require a technology transfer control plan approved by the Department of Defense, an encryption technology control plan approved by the National Security Agency, or Department of Defense monitoring of launch activities.

(6) *Remote sensing spacecraft.* Applications to export or reexport a ''spacecraft'' described in ECCN 9A515.a.1,.a.2, a.3, or .a.4, sensitive remote sensing components described in 9A515.g, or ''technology'' described in ECCN 9E515.f may require a government-to-government agreement at the discretion of the U.S. Government.

* * * * *

PART 750—[AMENDED]

■ 5. The authority citation for 15 CFR part 750 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 6. Section 750.4 is amended:
■ a. By adding paragraph (b)(8); and
■ b. By adding paragraph (d)(2)(iv) to read as follows:

§ 750.4 Procedures for processing license applications.

* * * * *

(b) * * *

(8) *Satellites for launch.* Applicant must obtain approval by the Department of Defense of a technology transfer control plan and the National Security Agency of an encryption technology transfer control plan and must make arrangements with the Department of Defense for monitoring of all launch activities.

* * * * *

(d) * * *

(2) * * *

(iv) *Remote Sensing Interagency Working Group (RSIWG).* The RSIWG, chaired by the State Department, reviews license applications involving remote sensing spacecraft described in ECCN 9A515.a.1, .a.2, .a.3, or .a.4, sensitive remote sensing components described in 9A515.g, or ''technology'' described in ECCN 9E515.f.

* * * * *

PART 774—[AMENDED]

■ 7. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 8. In Supplement No. 1 to Part 774, Category 9—Aerospace and Propulsion, ECCN 9A004 is amended:
■ a. By revising the License Requirements table;
■ b. By adding ''items'' paragraph u. and v. to the List of Items Controlled section; and
■ c. By revising ''items'' paragraph y. in the List of Items Controlled section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

9A004 Space launch vehicles and ''spacecraft,'' ''spacecraft buses,'' ''spacecraft payloads,'' ''spacecraft'' on-board systems or equipment, and terrestrial equipment, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS and AT

Control(s)	*Country chart* (see Supp. No. 1 to part 738)
NS applies to 9A004.u, .v, .w and .x.	NS Column 1
AT applies to 9A004.u, .v, .w, .x and .y.	AT Column 1

* * * * *

List of Items Controlled

* * * * *

u. The James Webb Space Telescope (JWST) being developed, launched, and operated under the supervision of the U.S. National Aeronautics and Space Administration (NASA).

v. ''Parts,'' ''components,'' ''accessories'' and ''attachments'' that are ''specially designed'' for the James Webb Space Telescope and that are *not:*

v.1. Enumerated or controlled in the USML;

v.2. Microelectronic circuits;

v.3. Described in ECCNs 7A004 or 7A104; *or*

v.4. Described in an ECCN containing ''space-qualified'' as a control criterion (*See* ECCN 9A515.x.4).

* * * * *

y. Items that would otherwise be within the scope of ECCN 9A004.v or .x but that have been identified in an interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e) as warranting control in 9A004.y.

■ 9. In Supplement No. 1 to Part 774, Category 9—Aerospace and Propulsion, ECCN 9A515 is amended:

■ a. By adding a License Requirement Note at the end of the License Requirements section;

■ b. By revising the Special Conditions for STA section;

■ c. By revising the Related Controls paragraph in the List of Items Controlled section;

■ d. By revising the introductory text to the ''items'' paragraph in the List of items Controlled section;

■ e. By revising ''items'' paragraphs a. and b. in the List of Items Controlled section;

■ f. By revising the introductory text of paragraphs d. and e. in the List of Items Controlled section;

■ g. By adding ''items'' paragraph g. in the list of Items Controlled section; and

■ h. By adding ''items'' paragraphs y.2., y.3., y.4., y.5. and y.6. to read as follows:

9A515 ''Spacecraft'' and related commodities, as follows (see List of Items Controlled).

License Requirements

* * * * *

License Requirement Note: The Commerce Country Chart is not used for determining license requirements for commodities classified in ECCN 9A515.a.1, .a.2., .a.3., .a.4, and .g. See § 742.6(a)(8), which specifies that such commodities are subject to a worldwide license requirement.

* * * * *

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for ''spacecraft'' in ECCN 9A515.a.1, .a.2, .a.3, or .a.4, or items in 9A515.g, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for certain 9x515 and ''600 series'' items). (2) License Exception STA may not be used if the ''spacecraft'' controlled in ECCN 9A515.a.1, .a.2, .a.3, or .a.4 contains a separable or removable propulsion system enumerated in USML Category IV(d)(2) or USML Category XV(e)(12) and designated MT. (3) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9A515.

List of Items Controlled

Related Controls: Spacecraft, launch vehicles and related articles that are enumerated in the USML, and technical data (including ''software'') directly related thereto, and all services (including training) directly related to the integration of any satellite or spacecraft to a launch vehicle, including both planning and onsite support, or furnishing any assistance (including training) in the launch failure analysis or investigation for items in ECCN 9A515.a, are ''subject to the ITAR.'' All other ''spacecraft,'' as enumerated below and defined in § 772.1, are subject to the controls of this ECCN. See also ECCNs 3A001, 3A002, 3A991, 3A992, 6A002, 6A004, 6A008, and 6A998 for specific ''space-qualified'' items, 7A004 and 7A104 for star trackers, and 9A004 for the International Space Station (ISS), James Webb Space Telescope (JWST), and ''specially designed'' ''parts'' and ''components'' therefor. See USML Category XI(c) for controls on microwave monolithic integrated circuits (MMICs) that are ''specially designed'' for defense articles. See ECCN 9A610.g for pressure suits used for high altitude aircraft.

* * * * *

Items: ''Spacecraft'' and other items described in ECCN 9A515 remain subject to the EAR even if exported, reexported, or transferred (in-country) with defense articles ''subject to the ITAR'' integrated into and included therein as integral parts of the item. In all other cases, such defense articles are subject to the ITAR. For example, a 9A515.a ''spacecraft'' remains ''subject to the EAR'' even when it is exported, reexported, or transferred (in-country) with a ''hosted payload'' described in USML Category XV(e)(17) incorporated therein. In all other cases, a ''hosted payload'' performing a function described in USML Category XV(a) always remains a USML item. The removal of the defense article subject to the ITAR from the spacecraft is a retransfer under the ITAR and would require an ITAR authorization, regardless of the CCL authorization the spacecraft is exported under. Additionally, transfer of technical data regarding the defense article subject to the ITAR integrated into the spacecraft would require an ITAR authorization.

* * * * *

a. ''Spacecraft,'' including satellites, and space vehicles, whether designated developmental, experimental, research or scientific, not enumerated in USML Category XV or described in ECCN 9A004, that:

a.1. Have electro-optical remote sensing capabilities and having a clear aperture greater than 0.35 meters, but less than or equal to 0.50 meters;

a.2. Have remote sensing capabilities beyond NIR (*i.e.,* SWIR, MWIR, or LWIR);

a.3. Have radar remote sensing capabilities (*e.g.,* AESA, SAR, or ISAR) having a center frequency equal to or greater than 1.0 GHz, but less than 10.0 GHz and having a bandwidth equal to or greater than 100 MHz, but less than 300 MHz;

a.4. Provide space-based logistics, assembly, or servicing of another ''spacecraft''; *or*

a.5. Are not described in ECCN 9A515.a.1, .a.2, .a.3 or .a.4.

Note: ECCN 9A515.a includes commercial communications satellites, remote sensing satellites, planetary rovers, planetary and interplanetary probes, and in-space habitats, not identified in ECCN 9A004 or USML Category XV(a).

b. Ground control systems and training simulators ''specially designed'' for telemetry, tracking, and control of the ''spacecraft'' controlled in paragraphs 9A004.u or 9A515.a.

* * * * *

d. Microelectronic circuits (*e.g.,* integrated circuits, microcircuits, or MOSFETs) and discrete electronic components rated, certified, or otherwise specified or described as meeting or exceeding all the following characteristics and that are ''specially designed'' for defense articles, ''600 series'' items, or items controlled by ECCNs 9A004.v or 9A515:

* * * * *

e. Microelectronic circuits (*e.g.,* integrated circuits, microcircuits, or MOSFETs) and discrete electronic components that are rated, certified, or otherwise specified or described as meeting or exceeding the characteristics in either paragraph e.1 or e.2, AND ''specially designed'' for defense articles controlled by USML Category XV or items controlled by ECCNs 9A004.u or 9A515:

* * * * *

g. Remote sensing components ''specially designed'' for ''spacecraft'' described in ECCNs 9A515.a.1 through 9A515.a.4 as follows:

g.1. Space-qualified optics (*i.e.,* lens, mirror, membrane having active properties (*e.g.,* adaptive, deformable)) with the largest lateral clear aperture dimension equal to or less than 0.35 meters; or with the largest clear aperture dimension greater than 0.35 meters but less than or equal to 0.50 meters;

g.2. Optical bench assemblies ''specially designed'' for ECCN 9A515.a.1, 9A515.a.2, 9A515.a.3, or 9A515.a.4 ''spacecraft;'' *or*

g.3. Primary, secondary, or hosted payloads that perform a function of ECCN 9A515.a.1, 9A515.a.2, 9A515.a.3, or 9A515.a.4 ''spacecraft.''

* * * * *

y. * * *

y.2. Space grade or for spacecraft applications thermistors;

y.3. Space grade or for spacecraft applications RF microwave bandpass ceramic filters (Dielectric Resonator Bandpass Filters);

y.4. Space grade or for spacecraft applications hall effect sensors;

y.5. Space grade or for spacecraft applications subminiature (SMA and SMP) plugs and connectors, TNC plugs and cable and connector assemblies with SMA plugs and connectors; and

y.6. Space grade or for spacecraft applications flight cable assemblies.

■ 10. In Supplement No. 1 to Part 774, Category 9—Aerospace and Propulsion, ECCN 9B515 is amended:

■ a. By revising the License Requirements section; and

■ b. By revising ''items'' paragraph a. in the List of Items Controlled section to read as follows:

9B515 Test, inspection, and production ''equipment'' ''specially designed'' for ''spacecraft'' and related commodities, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, RS, AT

Control(s)	*Country chart* (see Supp. No. 1 to part 738)
NS applies to entire entry.	NS Column 1
MT applies to equipment in 9B515.a for the ''development'' or ''production'' of commodities in USML Category XV(e)(12) and XV(e)(19) that are MT controlled.	MT Column 1
RS applies to entire entry.	RS Column 1
AT applies to entire entry.	AT Column 1

* * * * *

Items:

a. Test, inspection, and production ''equipment'' ''specially designed'' for the ''production'' or ''development'' of commodities enumerated in ECCNs 9A004.u, 9A515.a, or USML Category XV(a) or XV(e).

NOTE: ECCN 9B515.a includes equipment, cells, and stands ''specially designed'' for the analysis or isolation of faults in commodities enumerated in ECCNs 9A004.u or 9A515.a, or USML Category XV(a) or XV(e).

* * * * *

■ 11. In Supplement No. 1 to Part 774, Category 9—Aerospace and Propulsion, ECCN 9E515 is amended:

■ a. By revising the License Requirements table;

■ b. By adding a License Requirement Note at the end of the License Requirements section;

■ c. By revising paragraph (1) in the Special Conditions for STA section;

■ d. By revising the Related Controls paragraph in the List of Items Controlled section;

■ e. By revising ''items'' paragraph a. in the List of Items Controlled section; and

■ f. By adding ''items'' paragraph f. in the list of Items Controlled section to read as follows:

9E515 ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, repair, overhaul, or refurbishing of ''spacecraft'' and related commodities, as follows (see List of Items Controlled).

License Requirements

* * * * *

Control(s)	*Country chart* (see Supp. No. 1 to part 738)
NS applies to entire entry except 9E515.y.	NS Column 1
MT applies to technology for items in 9A515.d, 9A515.e.2 and 9B515.a controlled for MT reasons.	MT Column 1
RS applies to entire entry except 9E515.y.	RS Column 1
AT applies to entire entry.	AT Column 1

LICENSE REQUIREMENT NOTE: The Commerce Country Chart is not used for determining license requirements for ''technology'' classified ECCN 9E515.f. See § 742.6(a)(8), which specifies that such ''technology'' is subject to a worldwide license requirement.

* * * * *

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for ECCN 9E515.b, .d, .e, or .f unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for certain 9x515 and ''600 series'' items).

* * *

List of Items Controlled

Related Controls: Technical data directly related to articles enumerated in USML Category XV are subject to the control of USML paragraph XV(f). See also ECCNs 3E001, 3E003, 6E001, and 6E002 for specific ''space-qualified'' items. See ECCNs 9E001 and 9E002 for technology for the International Space Station, the James Webb Space Telescope (JWST) and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor. See USML category XV(f) for controls on technical data and defense services related to launch vehicle integration.

* * * * *

Items:

a. ''Technology'' ''required'' for the ''development,'' ''production,'' installation, repair (including on-orbit anomaly resolution and analysis beyond established procedures), overhaul, or refurbishing of commodities controlled by ECCN 9A515 (except 9A515.a.1, .a.2, .a.3, .a.4, .b, .d, .e, or .g), ECCN 9B515, or ''software'' controlled by ECCN 9D515.a.

* * * * *

f. ''Technology'' ''required'' for the ''development,'' ''production,'' installation, repair (including on-orbit anomaly resolution and analysis beyond established procedures), overhaul, or refurbishing of commodities controlled by ECCN 9A515.a.1, .a.2, .a.3, .a.4, or .g.

* * * * *

Dated: December 27, 2016.

Kevin J. Wolf,

Assistant Secretary of Commerce for Export Administration.

[FR Doc. 2016–31755 Filed 1–9–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 161221999–6999–01]

RIN 0694—AH23

Addition of Certain Persons and Revisions to Entries on the Entity List; and Removal of a Person From the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding five persons to the Entity List. The five persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These five persons will be listed on the Entity List under the destination of Turkey. This final rule also removes one entity from the Entity List under the destination of India as the result of a request for removal received by BIS and a review of information provided in the removal request in accordance with the procedure for requesting removal or modification of an Entity List entity. Finally, this rule is also revising five existing entries in the Entity List, under the destinations of Armenia, Greece, Pakistan, Russia and the United Kingdom (U.K.). Four of these entries are modified to reflect the removal from the Entity List of the entity located in India. The license requirement for the entry under the destination of Russia is being revised to conform with a general license issued by the Department of the Treasury's Office of Foreign Assets Control on December 20, 2016.

DATES: This rule is effective January 10, 2017.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744) identifies entities and other persons reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The EAR imposes additional license requirements on, and limits the availability of most license exceptions for, exports, reexports, and transfers (in-country) to those listed. The ''license review policy'' for each listed entity or other person is identified in the License Review Policy column on the Entity List and the impact on the availability of license exceptions is described in the **Federal Register** notice adding entities or other persons to the Entity List. BIS places entities and other persons on the Entity List pursuant to sections of part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The ERC, composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Additions to the Entity List

This rule implements the decision of the ERC to add five persons to the Entity List. These five persons are being added on the basis of § 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The five entries added to the Entity List are located in Turkey.

The ERC reviewed § 744.11(b) (Criteria for revising the Entity List) in making the determination to add these five persons to the Entity List. Under that paragraph, persons for whom there is reasonable cause to believe, based on specific and articulable facts, that they have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List. Paragraphs (b)(1) through (b)(5) of § 744.11 include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States.

Specifically, two entities, AR Kompozit Kimya and Murat Taskiran, are being added to the Entity List as these entities exported high grade U.S.-origin carbon fiber to Iran in violation of U.S. law (*i.e.,* 50 U.S.C. 1701 thru 1706 and 30 CFR 560.203 & 560.204). The additional three entities located in Turkey, Fulya Kalfatoglu Oguzturk, Ramor Group and Resit Tavan, are being added to the Entity List on the basis of their involvement in the procurement and/or retransfer of U.S.-origin items to Iran for use by the Iranian military.

Pursuant to § 744.11(b) of the EAR, the ERC determined that the conduct of these five entities raises sufficient concern that prior review of exports, reexports or transfers (in-country) of all items subject to the EAR involving these persons, and the possible imposition of license conditions or license denials on shipments to the persons, will enhance BIS's ability to prevent violations of the EAR.

For the five persons added to the Entity List, BIS imposes a license requirement for all items subject to the EAR and a license review policy of presumption of denial. The license requirements apply to any transaction in which items are to be exported, reexported, or transferred (in-country) to any of the persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the persons being added to the Entity List in this rule. The acronym ''a.k.a.'' (also known as) is used in entries on the Entity List to help exporters, reexporters and transferors to better identify listed persons on the Entity List.

This final rule adds the following five persons to the Entity List:

Turkey

(1) *AR Kompozit Kimya,* a.k.a., the following two aliases:

—AR Composites Company Ltd; *and*

—AR Kompozit Kimya Muhendislik Taah Dis Tic Ltd.

Kuyumcukent 2, Plaza Kat 5, No 9, Yenibosna, Istanbul, Turkey;

(2) *Fulya Kalafatoglu Oguzturk,* a.k.a., the following one alias:

—Macide Fulya Kalafatoglu.

Barajyolu Cd Yenisehir Mh Sinpas Koruk Konutlari No 40 Sogut Blok D1 Istanbul, Turkey;

(3) *Murat Taskiran,*

Kuyumcukent 2, Plaza Kat 5, No 9, Yenibosna, Istanbul, Turkey;

(4) *Ramor Group,* a.k.a., the following four aliases:

—Ramor Construction Food and Furniture Incorporation;

—Ramor Ins;

—Ramor Company; *and*

—Ramor Ltd. Co.

Unit 42, Gardenya Plaza 7⁄1, 12th Floor, No: 77, Atasehir, Istanbul, Turkey 34758; *and* 1st.End.ve.Tic.Serbest Bol.Sub. Kopuzlar Cad.No.8 Solingen Zemin Kat Tuzla/Istanbul, Turkey; *and*

(5) *Resit Tavan,*

Turgotozl CD Agaoglu MySkyTowers, A Blok D 12, Istanbul, Turkey 34758.

Removal From the Entity List

This rule implements a decision of the ERC to remove the following entry from the Entity List on the basis of on a removal request received by the BIS: Veteran Avia LLC, located in India. The ERC decided to remove Veteran Avia LLC (India) based on information received by BIS regarding activities at the listed location in India and further review conducted by the ERC.

This final rule implements the decision to remove the following entity located in India from the Entity List:

India

(1) *Veteran Avia LLC,* a.k.a., the following one alias:

—Veteran Airline.

A–107, Lajpat Nagar—I, New Delhi 110024, India and Room No. 34 Import Cargo, IGI Airport Terminal—II, New Delhi 110037, India; and 25B, Camac Street 3E, Camac Court Kolkatta, 700016, India; and Ali's Chamber #202, 2nd Floor Sahar Cargo Complex Andheri East Mumbai, 400099, India. (See also addresses under Armenia, Greece, Pakistan, and U.K).

The removal of the person referenced above, which was approved by the ERC, eliminates the existing license requirements in Supplement No. 4 to part 744 for exports, reexports and transfers (in-country) to this entity. However, the removal of this person from the Entity List does not relieve persons of other obligations under part 744 of the EAR or under other parts of the EAR. Neither the removal of an entity from the Entity List nor the removal of Entity List-based license requirements relieves persons of their obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR which

provides that, ''you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.'' Additionally, this removal does not relieve persons of their obligation to apply for export, reexport or in-country transfer licenses required by other provisions of the EAR. BIS strongly urges the use of Supplement No. 3 to part 732 of the EAR, ''BIS's 'Know Your Customer' Guidance and Red Flags,'' when persons are involved in transactions that are subject to the EAR.

Revisions to Entries on the Entity List

Modification to License Requirements for an Entry on the Entity List

On December 20, 2016, the Department of the Treasury's Office of Foreign Assets Control (OFAC) issued General License No. 11, *Authorizing Certain Transactions With FAU Glavgosekspertiza Rossii,* an entity in the Russian Federation. This general license authorizes transactions otherwise prohibited by Executive Order 13685 (E.O.) of December 19, 2014 that are ordinarily incident and necessary to requesting, contracting for, paying for, receiving, or utilizing a project design review or permit from FAU Glavgosekspertiza Rossii's office(s) in the Russian Federation, provided that the underlying project is located wholly within the Russian Federation, and none of the transactions otherwise violate Executive Order (E.O.) 13685 of December 19, 2014. Any questions regarding to the scope of this general license should be directed to OFAC.

In light of OFAC's General License No. 11, BIS makes a conforming change by modifying the listing for FAU 'Glavgosekspertiza Rossii' on the Entity List under the destination of Russia (the term used in the EAR for the Russian Federation). This final rule modifies the license requirement column for this entity to specify that the Entity List's license requirements do not apply to items subject to the EAR that are related to transactions authorized by OFAC pursuant to new General License No. 11 (transactions that are ordinarily incident and necessary to requesting, contracting for, paying for, receiving or utilizing a project design review or permit from this listed entity's office(s) in Russia, so long as the underlying project occurs wholly within Russia and no transactions otherwise violate E.O. 13685). The listing for Ukraine on the Commerce Country Chart, Supp. No. 1 to part 738 of the EAR, includes a footnote that defines the ''Crimea region of Ukraine'' consistent with section 8(d) of E.O. 13685. FAU 'Glavgosekspertiza Rossii' continues to be listed under both Russia and the Crimea region of Ukraine on the Entity List. This final rule amends only the entry under Russia; it does not make any change to the entry listed under the Crimea region of Ukraine. The license requirement for FAU 'Glavgosekspertiza Rossii' listed under the destination of the Crimea region of Ukraine continues to apply to all items subject to the EAR.

Conforming Changes for an Approved Removal From the Entity List

This final rule revises four entries in the Entity List for the entity Veteran Avia LLC, a.k.a., Veteran Airline, under the destinations of Armenia, Greece, Pakistan and the United Kingdom. As described above, the ERC approved the removal of Veteran Avia LLC (India). Therefore, this final rule makes conforming changes to the remaining four entries for the entity to remove the cross references to India. This final rule does not make any other changes to these four entries, except for revising the **Federal Register** citation column to reflect this conforming change being made to these four entities. The license requirement for the four entries remains all items subject to the EAR, and the license application review policy remains a presumption of denial.

This final rule makes the following revisions to five entries on the Entity List:

Armenia

(1) *Veteran Avia LLC,* a.k.a., the following one alias:

—Veteran Airline.

64, Baghramyam Avenue, Apt 16, Yerevan 0033, Armenia; *and* 1 Eervand Kochari Street Room 1, 375070 Yerevan, Armenia (See also addresses under Greece, Pakistan, and U.K.).

Greece

(1) *Veteran Avia LLC,* a.k.a., the following one alias:

—Veteran Airline.

24, A. Koumbi Street, Markopoulo 190 03, Attika, Greece (See also addresses under Armenia, Pakistan, and U.K.).

Pakistan

(1) *Veteran Avia LLC,* a.k.a., the following one alias:

—Veteran Airline.

Room No. 1, ALC Building, PIA Cargo Complex Jiap, Karachi, Pakistan (See also addresses under Armenia, Greece, and U.K.).

Russia

(1) *FAU 'Glavgosekspertiza Rossii',* a.k.a., the following three aliases:

—Federal Autonomous Institution 'Main Directorate of State Examination';

—General Board of State Expert Review; and

—Glavgosekspertiza.

Furkasovskiy Lane, building 6, Moscow 101000, Russia (See alternate address under Crimea region of Ukraine).

NOTE: As described above, the changes this final rule makes to this Russian entity are limited to the License requirement column for this entry.

United Kingdom

(1) *Veteran Avia LLC,* a.k.a., the following one alias:

—Veteran Airline.

1 Beckett Place, South Hamptonshire, London, U.K. (See also addresses under Armenia, Greece, and Pakistan).

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on January 10, 2017, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

Export Administration Act of 1979

Although the Export Administration Act of 1979 expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act of 1979, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

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

4. For the five persons added to the Entity List in this final rule, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (See 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in-country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, the entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, publishing a proposed rule would give these parties notice of the U.S. Government's intention to place them on the Entity List and would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States, and/or to take steps to set up additional aliases, change addresses, and other measures to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, 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.

5. For the one entry removed from the Entity List in this final rule, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), BIS finds good cause to waive requirements that this rule be subject to notice and the opportunity for public comment because it would be contrary to the public interest.

In determining whether to grant a request for removal from the Entity List, a committee of U.S. Government agencies (the End-User Review Committee (ERC)) evaluates information about and commitments made by listed persons requesting removal from the Entity List, the nature and terms of which are set forth in 15 CFR part 744, Supplement No. 5, as noted in 15 CFR 744.16(b). The information, commitments, and criteria for this extensive review were all established through the notice of proposed rulemaking and public comment process (72 FR 31005 (June 5, 2007) (proposed rule), and 73 FR 49311 (August 21, 2008) (final rule)). This one removal has been made within the established regulatory framework of the Entity List. If the rule were to be delayed to allow for public comment, U.S. exporters may face unnecessary economic losses as they turn away potential sales to the entity removed by this rule because the customer remained a listed person on the Entity List even after the ERC approved the removal pursuant to the rule published at 73 FR 49311 on August 21, 2008. By publishing without prior notice and comment, BIS allows the applicant to receive U.S. exports immediately since the applicant already has received approval by the ERC pursuant to 15 CFR part 744, Supplement No. 5, as noted in 15 CFR 744.16(b).

Removals from the Entity List granted by the ERC involve interagency deliberation and result from review of public and non-public sources, including sensitive law enforcement information and classified information, and the measurement of such information against the Entity List removal criteria. This information is extensively reviewed according to the criteria for evaluating removal requests from the Entity List, as set out in 15 CFR part 744, Supplement No. 5 and 15 CFR 744.16(b). For reasons of national security, BIS is not at liberty to provide to the public detailed information on which the ERC relied to make the decisions to remove this entity. In addition, the information included in the removal request is information exchanged between the applicant and the ERC, which by law (section 12(c) of the Export Administration Act of 1979), BIS is restricted from sharing with the public. Moreover, removal requests from the Entity List contain confidential business information, which is necessary for the extensive review conducted by the U.S. Government in assessing such removal requests.

Section 553(d) of the APA generally provides that rules may not take effect earlier than thirty (30) days after they are published in the **Federal Register**. BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(1) because this rule is a substantive rule which relieves a restriction. This rule's removal of one person from the Entity List removes a requirement (the Entity-List-based license requirement and limitation on use of license exceptions) on this person being removed from the Entity List. The rule does not impose a requirement on any other person for the removal from the Entity List.

In addition, the Department finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act (APA) requiring prior notice and the opportunity for public comment for the five conforming changes included in this rule because they are either unnecessary or contrary to the public interest. These five conforming changes are limited to ensure consistency with a removal included in this rulemaking or consistency with OFAC's General License No. 11, and thus prior notice and the opportunity for public comment are unnecessary. The conforming change to the listing for FAU

'Glavgosekspertiza Rossii' is intended to ensure consistent treatment of this entity under both the EAR and OFAC's sanctions regime. The other four conforming changes are limited to reflecting the removal of Veteran Avia LLC (India). These four changes are needed to correct the cross-referencing parenthetical phrase included in each of these four entries.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the APA or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. As a result, no final regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016); Notice of September 15, 2016, 81 FR 64343 (September 19, 2016); Notice of November 8, 2016, 81 FR 79379 (November 10, 2016).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. By revising, under Armenia, one Armenian entity ''Veteran Avia LLC, a.k.a., the following one alias:—Veteran Airline. 64, Baghramyam Avenue, Apt 16, Yerevan 0033, Armenia; *and* 1 Eervand Kochari Street Room 1, 375070 Yerevan, Armenia (See also addresses under Greece, India, Pakistan, and U.K.)'' ;

■ b. By revising, under Greece, one Greek entity ''Veteran Avia LLC, a.k.a., the following one alias:—Veteran Airline. 24, A. Koumbi Street, Markopoulo 190 03, Attika, Greece (See also addresses under Armenia, India, Pakistan, and U.K.)'' ;

■ c. By removing, under India, one Indian entity, ''Veteran Avia LLC, a.k.a., the following one alias:—Veteran Airline. A–107, Lajpat Nagar—I, New Delhi 110024, India; *and* Room No. 34 Import Cargo, IGI Airport Terminal—II, New Delhi 110037, India; *and* 25B, Camac Street 3E, Camac Court Kolkatta, 700016, India; *and* Ali's Chamber #202, 2nd Floor Sahar Cargo Complex Andheri East Mumbai, 400099, India (See also addresses under Armenia, Greece, Pakistan, and U.K.).'' ;

■ d. By revising, under Pakistan, one Pakistani entity, ''Veteran Avia LLC, a.k.a., the following one alias:—Veteran Airline. Room No. 1, ALC Building, PIA Cargo Complex Jiap, Karachi, Pakistan (See also addresses under Armenia, Greece, India, U.A.E., and U.K.)'';

■ e. By revising, under Russia, one Russian entity ''FAU 'Glavgosekspertiza Rossii', a.k.a., the following three aliases:—Federal Autonomous Institution 'Main Directorate of State Examination';—General Board of State Expert Review; and—Glavgosekspertiza. Furkasovskiy Lane, building 6, Moscow 101000, Russia (See alternate address under Crimea region of Ukraine).'';

■ f. By adding, under Turkey, in alphabetical order, five Turkish entities; and

■ g. By revising, under the United Kingdom, one British entity ''Veteran Avia LLC, a.k.a., the following one alias:—Veteran Airline. 1 Beckett Place, South Hamptonshire, London, U.K. (See also addresses under Armenia, Greece, India, and Pakistan).''

The additions and revisions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	Federal Register citation
*	*	*	*	*
ARMENIA	*	*	*	*
	Veteran Avia LLC a.k.a., the following alias: —Veteran Airline. 64, Baghramyam Avenue, Apt 16, Yerevan 0033, Armenia; *and* 1 Eervand Kochari Street Room 1, 375070 Yerevan, Armenia (See also addresses under Greece, Pakistan, and U.K.).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 44683, 8/1/14. 81 FR 8829, 2/23/16. 82 FR [INSERT FR PAGE NUMBER] 1/10/17.
*	*	*	*	*
GREECE	*	*	*	*
	Veteran Avia LLC a.k.a., the following alias: —Veteran Airline. 24, A. Koumbi Street, Markopoulo 190 03, Attika, Greece (See also addresses under Armenia, Pakistan, and U.K.).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 56003, 9/18/14. 81 FR 8829, 2/23/16. 82 FR [INSERT FR PAGE NUMBER] 1/10/17.
*	*	*	*	*
PAKISTAN	*	*	*	*

Country	Entity	License requirement	License review policy	Federal Register citation
	Veteran Avia LLC, a.k.a., the following one alias: —Veteran Airline. Room No. 1, ALC Building, PIA Cargo Complex Jiap, Karachi, Pakistan (See also addresses under Armenia, Greece, and U.K.).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 56003, 9/18/14. 81 FR 8829, 2/23/16. 82 FR [INSERT FR PAGE NUMBER] 1/10/17.
*	* *	*	*	* * *
RUSSIA	* *	*	*	* * *
	FAU 'Glavgosekspertiza Rossii', a.k.a., the following three aliases: —Federal Autonomous Institution 'Main Directorate of State Examination'; —General Board of State Expert Review; and —Glavgosekspertiza. Furkasovskiy Lane, building 6, Moscow 101000, Russia (See alternate address under Crimea region of Ukraine).	For all items subject to the EAR (see § 744.11 of the EAR), apart from items that are related to transactions that are authorized by the Department of the Treasury's Office of Foreign Assets Control pursuant to General License No. 11 of December 20, 2016. Russia does not include the ''Crimea region of Ukraine,'' as that term is defined in section 8(d) of E.O. 13685.	Presumption of denial	81 FR 61601, 9/7/16. 82 FR [INSERT FR PAGE NUMBER] 1/10/17.
*	* *	*	*	* * *
TURKEY	* *	*	*	* * *
	AR Kompozit Kimya, a.k.a., the following two aliases: —AR Composites Company Ltd; *and* —AR Kompozit Kimya Muhendislik Taah Dis Tic Ltd. Kuyumcukent 2, Plaza Kat 5, No 9, Yenibosna, Istanbul, Turkey.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	82 FR [INSERT FR PAGE NUMBER] 1/10/17.
	* *	*	*	* * *
	Fulya Kalafatoglu Oguzturk, a.k.a., the following one alias: —Macide Fulya Kalafatoglu. Barajyolu Cd Yenisehir Mh Sinpas Koruk Konutlari No 40 Sogut Blok D1 Istanbul, Turkey.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	82 FR [INSERT FR PAGE NUMBER] 1/10/17.
	* *	*	*	* * *
	Murat Taskiran, Kuyumcukent 2, Plaza Kat 5, No 9, Yenibosna, Istanbul, Turkey.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	82 FR [INSERT FR PAGE NUMBER] 1/10/17.
	* *	*	*	* * *
	Ramor Group, a.k.a., the following four aliases: —Ramor Construction Food and Furniture Incorporation; —Ramor Ins; —Ramor Company; *and* —Ramor Ltd. Co. Unit 42, Gardenya Plaza 7/1, 12th Floor, No: 77, Atasehir, Istanbul, Turkey 34758; *and* 1st.End. ve.Tic.Serbest Bol.Sub. Kopuzlar Cad.No.8 Solingen Zemin Kat Tuzla/ Istanbul, Turkey.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	82 FR [INSERT FR PAGE NUMBER] 1/10/17.
	Resit Tavan, Turgotozl CD Agaoglu MySkyTowers, A Blok D 12, Istanbul, Turkey 34758.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	82 FR [INSERT FR PAGE NUMBER] 1/10/17.
*	* *	*	*	* * *
UNITED KINGDOM.	* *	*	*	* * *

Country	Entity	License requirement	License review policy	Federal Register citation
	Veteran Avia LLC a.k.a., the following alias: —Veteran Airline. 1 Beckett Place, South Hamptonshire, London, U.K. (See also addresses under Armenia, Greece, and Pakistan).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 56003, 9/18/14. 81 FR 8829, 2/23/16. 82 FR [INSERT FR PAGE NUMBER] 1/10/17.
*	*	*	*	*

Dated: December 28, 2016.

Alexander K. Lopes, Jr.,

Acting Assistant Secretary for Export Administration.

[FR Doc. 2016–31833 Filed 1–9–17; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice: 9688]

RIN 1400–AD33

International Traffic in Arms Regulations: Revision of U.S. Munitions List Category XV

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: As part of the President's Export Control Reform (ECR) initiative, the Department published an interim final rule on May 13, 2014 that revised Category XV (Spacecraft and Related Articles) of the U.S. Munitions List (USML). After reviewing comments to the interim final rule, the Department of State is amending the International Traffic in Arms Regulations (ITAR) to further revise Category XV of the USML to describe more precisely the articles warranting control in that category.

DATES: This final rule is effective on January 15, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone: (202) 663–2792; email: *DDTCResponseTeam@state.gov*. ATTN: Regulatory Change, USML Category XV.

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The items subject to the jurisdiction of the ITAR, *i.e.,* ''defense articles'' and ''defense services,'' are identified on the ITAR's U.S. Munitions List (USML) (22 CFR 121.1). With few exceptions, items not subject to the export control jurisdiction of the ITAR are subject to the jurisdiction of the Export Administration Regulations (''EAR,'' 15 CFR parts 730–774, which includes the Commerce Control List (CCL) in Supplement No. 1 to part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. Both the ITAR and the EAR impose license requirements on exports and reexports. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR.

All references to the USML in this rule are to the list of defense articles controlled for the purpose of export or temporary import pursuant to the ITAR, and not to the defense articles on the USML that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for the purpose of permanent import under its regulations. *See* 27 CFR part 447. Pursuant to section 38(a)(1) of the Arms Export Control Act (AECA), all defense articles controlled for export or import are part of the USML under the AECA. For the sake of clarity, the list of defense articles controlled by ATF for the purpose of permanent import is the U.S. Munitions Import List (USMIL). The transfer of defense articles from the ITAR's USML to the EAR's CCL for the purpose of export control does not affect the list of defense articles controlled on the USMIL under the AECA for the purpose of permanent import.

The Department published an interim final rule revising USML Category XV on May 13, 2014 (79 FR 27180) and received 11 public comments on the proposed changes to the ITAR. The interim final rule became effective November 10, 2014, and this final rule is making changes in response to the previously received comments received on the interim final rule.

Changes in This Rule

Paragraphs (a)(2), (a)(10), (a)(11), (a)(12), (e)(4), (e)(5), (e)(11)(iv), (e)(12), (e)(20), and Note 3 to paragraph (a) and Note 3 to paragraph (f) are amended to better reflect the intended scope of control with regard to autonomous tracking systems, logistics, propulsion systems, cryocoolers and vibration suppression systems. Paragraphs (a)(7)(i) and (e)(2) are amended to clarify the size of the respective aperture dimension of specific electro-optical remote sensing capabilities and space qualified optics.

Three commenters stated that the aperture dimensions in paragraph (a)(7)(i) (electro-optical satellite systems) should be raised from 0.35m to at or below 1.1m to reflect the commercial market for satellite imagery and account for technical advances in apertures and ground resolution capabilities. The Department acknowledges this comment and that aperture technology is evolving, and has revised (a)(7)(i) to 0.50m to reflect the current status of technology that provides the United States with a critical military or intelligence advantage and warrants control on the USML.

Two commenters stated that (a)(12) should be revised to include a definition of ''spaceflight,'' or an inclusion of the word ''human'' in front of ''spaceflight,'' as well as to clarify that the provision does not control satellites subject to the jurisdiction of the Department of Commerce. The Department disagrees with this comment because the word ''spaceflight'' was removed from paragraph (a) in a November 10, 2014 clean-up rule (79 FR 66608). In addition, the revisions to paragraph (a)(12) herein clarify that the rule does not control satellites subject to the jurisdiction of the Department of Commerce.

Two commenters suggested that (c)(4) be amended to better reflect the controls imposed by both the EAR and Missile Technology Control Regime, and to avoid any regulatory confusion caused by the fact that drones and UAVs are already controlled under Category VIII of the ITAR. The Department acknowledges the comments, and proposed removal of paragraph (c) to Category XII (Fire Control, Range Finder, Optical and Guidance and Control Equipment) (*see* 81 FR 8438, Feb. 18, 2016). All public comments

pertaining to (c) will be addressed in that final rule.

One commenter stated that the aperture dimensions in paragraph (e)(2) should be raised from 0.35m to 1.1m to reflect the commercial market for satellite imagery. The Department acknowledges this comment and that aperture technology is evolving, and has revised the dimension in (e)(2)(ii) to 0.50m to reflect the current status of technology that provides the United States with a critical military or intelligence advantage and warrants control on the USML.

One commenter noted that paragraph (e)(4), which concerns space qualified mechanical cryocoolers, uses the term ''specially designed'' to describe the electronics captured in that provision, but that the words ''specially designed'' are omitted from (e)(5), resulting in certain commercial control electronics being inadvertently caught under the ITAR. The Department agrees with this comment, and has added the words ''specially designed'' to (e)(5).

One commenter expressed concern with possible unintended consequences of the interim final rule on space qualified laser radar, or light detection and ranging (LIDAR). Specifically, while the interim final rule clarified that (e)(7) does not control space qualified LIDAR, the commenter expressed concern that it could still be caught by paragraph (e)(3). The Department clarifies that paragraph (e)(3) could not inadvertently catch space qualified LIDAR, because note 2 to paragraph (e) makes clear that when the articles described in Category XV(e) are ''integrated into and included as an integral part'' of an item subject to the EAR, they are subject to the EAR. A space qualified focal plane array by itself would be caught by (e)(3), but once integrated and integral to an item subject to the EAR, such as an EAR-controlled space qualified LIDAR, the space qualified focal plane array would be subject to the EAR.

One commenter stated that Note 3 to paragraph (f) should be amended to clarify that ''housekeeping'' data from spacecraft are not subject to the ITAR or EAR, and that the ITAR should be updated to reflect the language of Note 2 to Product Group E, Category 9 of the Commerce Control List (CCL). The Department accepts this comment and aligns note 3 to paragraph (f) with the corresponding Note 2 published in Product Group E, Category 9 of the CCL for the purpose of consistency between the USML and CCL.

Two commenters asserted that ITAR § 124.15 imposes ''special export controls'' over and above the standard licensing controls without a corresponding national security consideration, and the provisions should be amended to reflect that the additional scrutiny imposed would only be used in limited and particular circumstances. In addition, the commenters stated that the Departments of State and Commerce should jointly revise the regulatory requirements to remove the de facto pre-licensing requirement for satellite exports subject to the EAR intended for launch in NATO and major non-NATO allied countries. The Department does not accept these comments as § 124.15 only applies to satellites and related items controlled by Category XV of the USML. These controls do not apply to the EAR, which has its own analogous form of controls.

Additional Changes

The Department also makes a number of other revisions to Category XV to limit the controls to those items that provide a critical military or intelligence advantage to the United States and warrant controls on the USML, which are detailed below.

This final rule amends paragraph (a)(2) to clarify that the control applies to spacecraft that perform real-time autonomous detection and tracking of moving objects, other than celestial bodies. The control does not include systems that can track fixed points to determine their own movement based on the relative position of the fixed points over time.

This final rule amends paragraphs (a)(10) and (11) to clarify the nature of the technology and defense articles controlled. Paragraph (a)(10) is revised to control spacecraft that autonomously perform collision avoidance. Paragraph (a)(11) is revised to control sub-orbital craft that incorporate a propulsion system described in either paragraph (e) or Category IV(d)(1)–(6), and are specially designed for atmospheric entry or re-entry. The Department also makes a corresponding change to paragraph (e)(20) to reflect the forms of propulsion controlled in paragraph (a)(11). The Department also removes the Note 3 paragraph (a) regarding attitude control. A new Note 3 to paragraph (a) is added to remove the James Webb Space Telescope from the jurisdiction of the USML and transfer its control to the EAR. A new sentence is also to Note 2 to paragraph (e)(17) removing the primary and secondary payloads of the James Webb Space Telescope from the jurisdiction of the USML and transferring their control to the EAR. Any parts and components of the James Webb Space Telescope that are controlled in other entries of paragraph (e) remain on the USML, except as described in Note 2 to paragraph (e).

This final rule amends paragraphs (e)(4) and (e)(5) to clarify the type of systems controlled. Specifically, the word ''systems'' is added to both provisions to make it clear that the provisions are designed to control ''cold finger systems'' in (e)(4) and ''vibration suppression systems'' and ''active dampening systems'' in (e)(5).

This final rule amends paragraphs (e)(11)(iv) and (e)(12) to clarify the type of propulsions systems controlled. Paragraph (e)(11)(iv) is revised to control electric propulsion systems, such as plasma and ion based systems, that provide greater than 300 milli-Newtons of thrust and a specific impulse greater than 1,500 sec; or that operate at an input power of more than 15kW. Paragraph (e)(12) is revised to control bi-propellants or mono-propellant rocket engines with which provide greater than 150 lbf (*i.e.,* 667.23 N) vacuum thrust.

Regulatory Analysis and Notices

Administrative Procedure Act

The import and export of defense articles and services is a foreign affairs function of the United States government and that rules implementing this function are exempt from §§ 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA). Although this rule is exempt from the rulemaking provisions of the APA and without prejudice to the Department's determination that controlling the import and export of defense services is a foreign affairs function, the Department allowed a 45-day public comment period for the interim final rule. The Department has made additional refinements to what was proposed based on the public comments received, which helps to further the objectives described in the interim final rule that is published as a final rule today. This final rule will be effective on January 15, 2017.

Regulatory Flexibility Act

Since this final rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments.

Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking is not a major rule as defined in 5 U.S.C. 804.

Executive Orders 12372 and 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rulemaking has been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

The Department of State reviewed this rulemaking in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject the Paperwork Reduction Act 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 121

Arms and munitions, Classified information, Exports,Technical assistance.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, part 121 is amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

■ 1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 2. In § 121.1, under Category XV:
■ a. Revise paragraphs (a)(2), (a)(7)(i), and (a)(10) through (12).
■ b. Add Note to paragraph (a)(12).
■ c. Revise Note 3 to paragraph (a).
■ d. Revise paragraphs (e)(2), (4), and (5), (e)(11)(iv), and (e)(12).
■ e. Revise Note 2 to paragraph (e)(17).
■ f. Revise paragraph (e)(20).
■ g. Revise Note 3 to paragraph (f).

The revisions and addition read as follows:

§ 121.1 The United States Munitions List.

* * * * *

Category XV—Spacecraft and Related Articles

(a) * * *

* (2) Autonomously detect and track moving ground, airborne, missile, or space objects other than celestial bodies, in real-time using imaging, infrared, radar, or laser systems;

* * * * *

(7) * * *

(i) Electro-optical visible and near infrared (VNIR) (*i.e.,* 400nm to 1,000nm) or infrared (*i.e.,* greater than 1,000nm to 30,000nm) with less than 40 spectral bands and having a clear aperture greater than 0.50m;

* * * * *

(10) Autonomously perform collision avoidance;

(11) Are sub-orbital, incorporate propulsion systems described in paragraph (e) of this category or Category IV(d)(1)–(6) of this section, and are specially designed for atmospheric entry or re-entry;

(12) Are specially designed to provide inspection or surveillance of another spacecraft, or service another spacecraft via grappling or docking; or

Note to paragraph (a)(12): This paragraph does not control spacecraft that dock exclusively via the NASA Docking System (NDS), which are controlled by ECCN 9A515.a.4.

* * * * *

Note 3 to paragraph (a): This paragraph does not control the James Webb Space Telescope, which is subject to the EAR.

* * * * *

(e) * * *

(2) Space-qualified optics (*i.e.,* lens, mirror or membrane) having one of the following:

(i) Active properties (*e.g.,* adaptive, deformable) with a largest lateral clear aperture dimension greater than 0.35m; or

(ii) A largest lateral clear aperture dimension greater than 0.50m;

* * * * *

(4) Space-qualified mechanical (*i.e.,* active) cryocooler or active cold finger systems, and associated control electronics specially designed therefor;

(5) Space-qualified active vibration suppression systems, including active isolation and active dampening systems, and associated control electronics specially designed therefor;

* * * * *

(11) * * *

(iv) Electric (Plasma/Ion) propulsion systems that provide a thrust greater than 300 milli-Newtons and a specific impulse greater than 1,500 sec; or that operate at an input power of more than 15kW;

(12) Thrusters (*e.g.,* spacecraft or rocket engines) using bi-propellants or mono-propellant that provide greater than 150 lbf (*i.e.,* 667.23 N) vacuum thrust (MT for rocket motors or engines having a total impulse capacity equal to or greater than $8.41 \times 10\wedge 5$ newton seconds);

* * * * *

Note 2 to paragraph (e)(17): An ECCN 9A004 or ECCN 9A515.a spacecraft remains a spacecraft subject to the EAR even when incorporating a hosted payload performing a function described in paragraph (a) of this category. All spacecraft that incorporate primary or secondary payloads that perform a function described in paragraph (a) of this category are controlled by that paragraph. This paragraph does not control primary or secondary payloads of the James Webb Space Telescope, which are subject to the EAR.

* * * * *

(20) Equipment modules, stages, or compartments that incorporate propulsion systems described in paragraph (e) of this category or Category IV(d)(1)–(6) of this section, and can be separated or jettisoned from another spacecraft; or

* * * * *

Note 3 to paragraph (f): Paragraph (f) and ECCNs 9E001, 9E002 and 9E515 do not control the data transmitted to or from a satellite or spacecraft, whether real or simulated, when limited to information about the health, operational status, or measurements or function of, or raw sensor output from, the spacecraft, spacecraft payload(s), or its associated subsystems or components. Such information is not within the scope of information captured within the definition of technology in the EAR for purposes of Category 9 Product Group E. Examples of such information, which are commonly referred to as ''housekeeping data,'' include (i) system, hardware, component configuration, and operation status information pertaining to temperatures, pressures, power, currents, voltages, and battery charges; (ii) spacecraft or payload orientation or position information, such as state vector or ephemeris information; (iii) payload raw mission or science output, such as images, spectra, particle measurements, or field measurements; (iv) command responses; (v) accurate timing information; and (vi) link budget data. The act of processing such telemetry data—*i.e.,* converting raw data into engineering units or readable products—or encrypting it does not, in and of itself, cause the telemetry data to become subject to the ITAR or to ECCN 9E515 for purposes of 9A515, or to ECCNs 9E001 or 9E002 for purposes of 9A004. All classified technical data directly related to items controlled in USML Category XV or ECCNs 9A515, and defense services using the classified technical data, remains subject to the ITAR. This note does not affect controls in USML XV(f), ECCN 9D515, or ECCN 9E515 on software source code or commands that control a spacecraft, payload, or associated subsystems for purposes of 9A515. This note also does not affect controls in ECCNs 9D001, 9D002, 9E001, or 9E002 on software source code or commands that control a spacecraft, payload, or associated subsystems for purposes of 9A004.

* * * * *

Dated: December 22, 2016.

Tom Countryman,

Acting Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2016–31751 Filed 1–9–17; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 16

[Docket No. TTB–2017–0001; Notice No. 170]

Civil Monetary Penalty Inflation Adjustment—Alcoholic Beverage Labeling Act

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

ACTION: Notification of civil monetary penalty adjustment.

SUMMARY: This document informs the public that the maximum penalty for violations of the Alcoholic Beverage Labeling Act (ABLA) is being adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Prior to the publication of this document, any person who violated the provisions of the ABLA was subject to a civil penalty of not more than $19,787, with each day constituting a separate offense. This document announces that this maximum penalty is being increased to $20,111.

DATES: The new maximum civil penalty for violations of the ABLA takes effect on January 10, 2017 and applies to penalties that are assessed after that date.

FOR FURTHER INFORMATION CONTACT: Andrew L. Malone, Public Guidance Program Manager, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; (202) 453–1039, ext. 188.

SUPPLEMENTARY INFORMATION:

Background

Statutory Authority for Federal Civil Monetary Penalty Inflation Adjustments

The Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act), Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461 note, requires the regular adjustment and evaluation of civil monetary penalties to maintain their deterrent effect and helps to ensure that penalty amounts imposed by the Federal Government are properly accounted for and collected. A ''civil monetary penalty'' is defined in the Inflation Adjustment Act as any penalty, fine, or other such sanction that is: (1) For a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; (2) assessed or enforced by an agency pursuant to Federal law; and (3) assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

The Debt Collection Improvement Act of 1996 (the Improvement Act of 1996), Public Law 104–134, section 31001(s), 110 Stat. 1321, enacted on April 26, 1996, amended the Inflation Adjustment Act by requiring civil monetary penalties to be adjusted for inflation.

The Inflation Adjustment Act was further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the Improvements Act of 2015), Public Law 114–74, section 701, 129 Stat. 584, enacted on November 2, 2015. The Improvements Act of 2015 changed the method agencies use to calculate inflation adjustments to civil monetary penalties, as well as the method and frequency of future adjustments. The Improvements Act of 2015 also instructed agencies to apply its method of calculating the inflation adjustment to the original statutory penalty, rather than to penalties as they were adjusted under the Improvement Act of 1996. To account for inflation that took place between the enactment of the original penalties and the enactment of the Improvements Act of 2015, agencies must make a ''catch-up'' first adjustment through an interim final rulemaking that is published no later than July 1, 2016, and takes effect no later than August 1, 2016. Agencies shall adjust civil monetary penalties by the inflation adjustment described in section 5 of the Inflation Adjustment Act no later than January 15 of every year thereafter. The Improvements Act of 2015 also provides that any increase in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such an increase, which are assessed after the date the increase takes effect.

As amended, the Inflation Adjustment Act provides that the inflation adjustment does not apply to civil monetary penalties under the Internal Revenue Code of 1986 or the Tariff Act of 1930.

Alcoholic Beverage Labeling Act

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the Federal Alcohol Administration Act (FAA Act) pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013, (superseding Treasury Department Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

The FAA Act contains the Alcoholic Beverage Labeling Act (ABLA) of 1988, Public Law 100–690, 27 U.S.C. 213–219a, which was enacted on November 18, 1988. Section 204 of the ABLA, codified in 27 U.S.C. 215, requires that a health warning statement appear on the labels of all containers of alcoholic beverages manufactured, imported, or bottled for sale or distribution in the United States, as well as on containers of alcoholic beverages that are manufactured, imported, bottled, or

labeled for sale, distribution, or shipment to members or units of the U.S. Armed Forces, including those located outside the United States.

The health warning statement requirement applies to containers of alcoholic beverages manufactured, imported, or bottled for sale or distribution in the United States on or after November 18, 1989. The statement reads as follows:

GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

Section 204 of the ABLA also specifies that the Secretary of the Treasury shall have the power to ensure the enforcement of the provisions of the ABLA and issue regulations to carry out them out. In addition, section 207 of the ABLA, codified in 27 U.S.C. 218, provides that any person who violates the provisions of the ABLA is subject to a civil penalty of not more than $10,000, with each day constituting a separate offense.

Most of the civil monetary penalties administered by TTB are imposed by the Internal Revenue Code of 1986, and thus are not subject to the inflation adjustment mandated by the Inflation Adjustment Act. The only civil monetary penalty enforced by TTB that is subject to the inflation adjustment is the penalty imposed by the ABLA at 27 U.S.C. 218.

TTB Regulations

The TTB regulations implementing the ABLA are found in 27 CFR part 16, and the regulations implementing the Inflation Adjustment Act with respect to the ABLA penalty are found in 27 CFR 16.33. This section indicates that the ABLA provides that any person who violates the provisions of this part shall be subject to a civil penalty of not more than $10,000, but also states that, pursuant to the provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, this civil penalty is subject to periodic cost-of-living adjustment. Accordingly, any person who violates the provisions of 27 CFR part 16 shall be subject to a civil penalty of not more than the amount listed at *https://www.ttb.gov/regulation_guidance/ablapenalty.html.* Each day shall constitute a separate offense.

To adjust the penalty, § 16.33(b) indicates that TTB will provide notice in the **Federal Register** and at the Web site mentioned above of cost-of-living adjustments to the civil penalty for violations of this part.

In this document, TTB is publishing its yearly adjustment to the maximum ABLA penalty, as required by the Inflation Adjustment Act, as amended.

TTB made the initial adjustment to the ABLA penalty required by the Inflation Adjustment Act, as amended, in an interim final rule that was published and effective on July 1, 2016 (T.D. TTB–138, 81 FR 43062). Subsequent to the initial adjustment, the Improvements Act of 2015 provides that, not later than January 15 of each year after the initial adjustment, the head of each agency shall adjust each civil monetary penalty subject to the Inflation Adjustment Act, as amended, by the inflation adjustment described in section 5 of the Act.

As mentioned earlier, the ABLA contains a maximum civil monetary penalty, rather than a range of minimum and maximum civil monetary penalties. For such penalties, Section 5 indicates that the inflation adjustment shall be determined by increasing the maximum penalty by the cost-of-living adjustment. The cost-of-living adjustment means the percentage (if any) by which the Consumer Price Index for all-urban consumers (CPI–U) for the month of October preceding the date of the adjustment exceeds the CPI–U for the month of October 1 year before the month of October preceding the date of the adjustment.

The CPI–U in October 2015 was 237.838, and the CPI–U in October 2016 was 241.729. The rate of inflation between October 2015 and October 2016 is therefore 1.636 percent. When applied to the current ABLA penalty of $19,787, this rate of inflation yields a raw (unrounded) inflation adjustment of $323.72. Rounded to the nearest dollar, the inflation adjustment is $324, meaning that the new maximum civil penalty for violations of the ABLA will be $20,111.

The new maximum civil penalty will apply to all penalties that are assessed after January 10, 2017. TTB has also updated its Web page at *https://www.ttb.gov/regulation_guidance/ablapenalty.html* to reflect the adjusted penalty.

Signed: January 3, 2017.

John J. Manfreda,

Administrator.

[FR Doc. 2017–00082 Filed 1–9–17; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG–2014–0142]

RIN 1625–AA01

Anchorage Regulations: Special Anchorage Areas; Marina del Rey Harbor, Marina del Rey, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the shape and reducing the size of the special anchorage area in Marina del Rey Harbor, Marina del Rey, California. Additionally, the Coast Guard is clarifying the language in the note section of the existing regulation. This action is necessary as it will create sufficient navigable water around the anchorage allowing vessels to traffic the Marina del Rey channel without undue maritime safety concerns.

DATES: This rule is effective February 9, 2017.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2014–0142. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on the Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room w12–140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday, with the exception of federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Amber Napralla, Waterways Management Division, U.S. Coast Guard District 11, telephone (510) 437–2978, email *Amber.L.Napralla@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NOAA National Oceanic and Atmospheric Administration
NPRM Notice of proposed rulemaking
SNPRM Supplemental Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

In 1967, the Coast Guard placed the regulation for a special anchorage area in the main channel of Marina del Rey in 33 CFR after anchorage regulations were transferred from the Army Corps of Engineers to the Coast Guard (32 FR 17726, 17737, December 12, 1967.) The specific regulations and boundaries for this special anchorage area are defined by coordinates found in 33 CFR 110.111.

On May 28, 2014, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Anchorage Regulations; Special Anchorage Area, Marina del Rey, California'' in the **Federal Register** (79 FR 30509, May 28, 2014) to disestablish the anchorage. The stated purpose of the NPRM was to align the regulations with the main channel and docking facilities in Marina del Rey harbor. Existing docks located in the northern section of the harbor were built into the pre-existing anchorage area at some point with no record of Coast Guard comment on the construction or its impact on anchorage.

On November 4, 2014, the Coast Guard published notice for a public meeting (79 FR 65361, November 4, 2014) to hear concerns regarding the proposed rulemaking. The meeting was held in Marina del Rey, CA on November 20, 2014. The Coast Guard heard from six speakers. To ensure maximum public input was considered, comments to the public docket were kept open and considered through January 5, 2015. In addition to the six speakers at the public meeting, 44 written submissions were made to the docket. The speakers input and written submissions were reviewed and taken into consideration.

On February 29, 2016, based on the comments received, the Coast Guard published a Supplemental Notice of Proposed Rulemaking (SNPRM) (81 FR 10156, February 29, 2016) that proposed to maintain the special anchorage area, but amend the boundaries and reduce the size of the anchorage.

On April 12, 2016, a public meeting was held in Marina del Rey, CA and comments were open and considered on the docket until April 30, 2016. There was no public representation at the meeting and no comments were submitted to the docket regarding the SNPRM.

On July 14, 2016, the docket was reopened for comment (81 FR 45428, July 14, 2016) for 30 days to provide additional opportunity for public feedback on the SNPRM. During this period four written comments were submitted via the Federal eRulemaking Portal and three comments were sent directly to the Coast Guard via email.

III. Legal Authority and Need for Rule

The legal basis for the final rule is: 33 U.S.C. 471, 1221 through 1236, and 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1. These authorities collectively authorize the Coast Guard to define anchorage areas. A special anchorage area is a designated water area within which vessels less than 65 feet (20 meters) in length are not required to sound signals required by Rule 35 of the Inland Navigation Rules (33 CFR 83.35) or exhibit the white anchor lights or shapes required by Rule 30 of the Inland Navigation Rules (33 CFR 83.30.) By regulation, special anchorage areas should be well removed from the fairways and be located where general navigation will not endanger or be endangered by unlighted vessels (33 CFR 109.10.) The purpose of this rule is to improve navigation safety by clearly delineating between the designated anchorage and the navigation channel, and by accommodating vessel traffic on all sides of the anchorage.

IV. Discussion of Comments, Changes, and the Rule

The Coast Guard received a total of 51 written comments and recorded six speakers at a public meeting since the inception of this rulemaking from November, 2014. The public docket for this rulemaking includes all written submissions made through the Federal eRulemaking Portal, the recorded transcripts of the public meetings and all other documents pertaining to this topic. This correspondence can be found where indicated under **ADDRESSES**.

The original NPRM (USCG–2014–0142) was placed on May 28, 2014 and the Coast Guard received a total of 32 written submissions to the docket following this publication. Of the 32 submissions, 12 comments requested a public hearing and additional time for public comment. As a result, the Coast Guard held a public meeting in Marina del Rey on November 20, 2014 and extended the online comment period to January 5, 2015. The Coast Guard heard from six speakers at the public meeting on November 20, 2014 and received 12 additional written comments to the docket, resulting in 44 total written comments to the docket. Of the 44 submissions, 32 comments requested to keep the anchorage as is or to establish an alternate anchorage at another location in the harbor. The Coast Guard understood the concerns of the comment submitters regarding the need for a safe refuge for recreational vessels during storms or other dangerous conditions and thus proposed a smaller anchorage at the same site as an option for mariners in the SNPRM. The Coast Guard received seven comments in support of removing the anchorage. Some comments indicated that vessels anchoring in the existing anchorage site in the main channel create an unsafe situation. Other comments indicated that mariners rarely use the anchorage and that there is little knowledge of its existence. The special anchorage area in question is clearly marked on the chart with reference to the applicable regulation. A copy of the National Oceanic and Atmospheric Administration (NOAA) Office of Coast Survey chart number 18744 has been posted to the docket for reference. In addition, Coast Pilot 7 contains information regarding the special anchorage area in Marina Del Rey. Some comments expressed concern regarding the administration of the special anchorage area by the Marina del Rey Harbormaster, indicating that the Harbor Master does not allow vessels to anchor in the area for other than emergency reasons. Local regulations administered by the Harbor Master are outside the scope of Coast Guard authority, and are not addressed in this rulemaking. At the public meeting, the Coast Guard received two comments and questions concerning proposed projects located in other areas within the harbor. The Coast Guard responded to these comments and questions by indicating that these comments addressed areas outside the anchorage area being discussed. The Coast Guard indicated to the attendees that projects in other areas within the harbor would not impact the existing anchorage and were beyond the scope of the proposed rulemaking.

The Coast Guard determined that the existing configuration of the special anchorage area in Marina del Rey poses a safety concern because it occupies the entire channel width at the north end of the harbor. The SNPRM published on February 29, 2016 proposed a smaller special anchorage area that allows vessel traffic to pass safely on all sides of the designated anchorage and also amends the note to update authority to the Marina del Rey Harbor Master for prescribing local regulation for mooring and boating activities in the area. A public meeting regarding the revised proposal in the SNPRM was held on April 12, 2016. No members of the public attended this meeting. The **Federal Register** announcement for the

meeting was delayed due to administrative errors and was not available for review until after the meeting. However, the meeting was advertised locally and through direct outreach. The online comments for the docket were open until April 30, 2016; no comments were made to the docket during this time period. In light of the delayed announcement by the **Federal Register**, the Coast Guard reopened the docket for comments on July 15, 2016 to allow for an extended period of public comment. Seven comments were received during this time; four via the online docket and three via email bringing the total number to 51 written submissions to the docket. Two comments were identical and appear to have been incorrectly filed in the docket, as they addressed concerns with a proposed anchorage on the east coast and were unrelated to the anchorage in Marina del Rey. One comment supported the proposal, citing safety concerns due to the increasing number of waterway users. One comment to the docket and three email comments opposed disestablishment of the Marina del Rey anchorage due to there not being an alternate anchorage site for safe harbor in the area and the comments also expressed concern regarding future development. These comments appear to reference the original NPRM, proposing removal of the anchorage, not the most recent SNPRM, proposing retention of the anchorage area with an amended size and shape of the anchorage. The Coast Guard is retaining the anchorage but is changing the shape and size of the anchorage area to allow for safer transit around the anchorage for recreational traffic. The reconfiguration of the anchorage area does not accommodate further development as it more clearly delineates the navigation channel on either side of the anchorage. Nothing in this regulation prevents vessels from anchoring due to emergency situations.

This final rule will decrease the size of the current anchorage in Marina del Rey Harbor. The anchorage is currently a trapezoid-shaped anchorage of approximately 0.48 square nautical miles. The Coast Guard is changing the shape of the anchorage from a trapezoid to a rectangular shape and reducing the size from 0.48 to 0.11 square nautical miles. The revised anchorage will be moved to the middle of the channel across from Burton Chace Park with its northern boundary line extending from approximately the midpoint of Basin G south to the midpoint of Basin H. The anchorage dimensions will be 1,154 feet in length by 365 feet in width. The distance from the closest shore-side dock to the anchorage boundary will be approximately 243 feet. The anchorage boundaries are described, using precise coordinates, in the final regulatory text at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders.

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard expects the economic impact of this proposed rule will not be significant to the maritime and local community. The existing anchorage is currently used only in emergency circumstances and this final rule will not significantly reduce the number of vessels using the anchorage.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This final rule may affect the following entities, some of which might be small entities: Owners or operators of recreational vessels that have a need to anchor in Marina del Rey special anchorage area.

This final rule will not have a significant impact on a substantial number of small entities. Although this rule will decrease the size of the special anchorage area, the dimensions provide sufficient room for vessels to anchor without presenting a hazard to vessels transiting in the channel.

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.

This rule has no 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 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 (NEPA) of 1969.42 U.S.C. 4321–4370f, and have concluded that this action is one of the category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the amendment of a currently-existing anchorage area. Normally such actions are categorically excluded from further

review under paragraph 34(f) of Figure 2–1 of the Commandant Instruction M16475.1D. A final environmental analysis checklist and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.01.

■ 2. Revise § 110.111 to read as follows:

§ 110.111 Marina del Rey Harbor, Calif.

An area in the main channel encompassed within the following described boundaries: Beginning at the northeasterly corner in position latitude 33°58′41.6″ N., longitude 118°26′50.8″ W.; thence southerly to latitude 33°58′30.2″ N., longitude 118°26′50.8″ W.; thence westerly to latitude 33°58′30.2″ N., longitude 118°26′55.1″ W.; thence northerly to latitude 33°58′41.6″ N., longitude 118°26′55.1″ W.; thence easterly to the point of origin. All coordinates referenced North American Datum 1983.

Note to 110.111: The Marina del Rey Harbor Master, Los Angeles County, prescribes local regulations for mooring and boating activities in this area.

Dated: December 2, 2016

T.A. Sokalzuk

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 2016–31996 Filed 1–9–17; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 265

Production or Disclosure of Material or Information

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The United States Postal Service® (Postal Service) is responding to public comments regarding the amendment of its regulations concerning compliance with the Freedom of Information Act (FOIA) to implement the changes to the procedures for the disclosure of records and for engaging in dispute resolution required by the FOIA Improvement Act of 2016. Upon review and evaluation of such comments, the Postal Service has found that one change to the regulations is necessary.

DATES: *Effective date:* January 10, 2017.

FOR FURTHER INFORMATION CONTACT: Natalie A. Bonanno, Chief Counsel, Federal Compliance, *natalie.a.bonanno@usps.gov,* (202) 268–2944.

SUPPLEMENTARY INFORMATION: On November 30, 2016 (81 FR 86270), the Postal Service published notice of amendments to 39 CFR part 265 to implement changes required by the FOIA Improvement Act of 2016 (FOIAIA), Public Law 114–185 (June 30, 2016). These changes were effective on December 27, 2016.

In response to this notice, we received comments that generally supported the amendments to the regulations, but questioned the definition of a ''representative of the news media'' in the regulations. The Postal Service has reviewed these comments, and has concluded that one change should be made to the definition in question.

Our responses to the comments received, as grouped and categorized for convenience, are as follows.

Question 1: Why did the Postal Service fail to eliminate the ''organized and operated'' standard from the definition of a representative of the news media in 39 CFR part 265.9(b)(8) in accordance with 5 U.S.C. part 552(a)(4)(a), recent case law, and the Open Government Act of 2007?

Answer: Thank you for bringing this our attention. We will eliminate the ''organized and operated'' standard from the definition of a representative of the news media in 39 CFR 265.9(b)(8).

Question 2: Why did the Postal Service fail to eliminate the requirement that a news media requester use ''editorial skills'' to turn ''raw materials'' into a ''distinct work'' as a ''simple press release commenting on records'' would satisfy this criterion?

Answer: Such a change would be inconsistent with 5 U.S.C. 552(a)(4)(a), and the Department of Justice, Office of Information Policy's template regulations for agencies. In addition, eliminating the ''editorial skills'' requirement would extend the definition from representatives of the news media with a minimal degree of professionalism to almost anyone.

Question 3: Why did the Postal Service fail to indicate that its list of examples of news media entities is non-exhaustive in contemplation of alternative media and evolving news media formats that may include posting content to a Web site?

Answer: Such a change would be inconsistent with the Department of Justice, Office of Information Policy's template regulations for agencies. Please note that the Postal Service accounted for ''news organizations that disseminate solely on the Internet'' in contemplation of evolving news media formats in 39 CFR 265.9(b)(8).

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of information, Government employees.

For the reasons stated in the preamble, the Postal Service amends 39 CFR part 265 as follows:

PART 265—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

■ 1. The authority citation for 39 CFR part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601; Pub. L. 114–185.

■ 2. Revise the first sentence of § 265.9(b)(8) to read as follows:

§ 265.9 Fees.

* * * * *

(b) * * *

(8) *Representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. * * *

* * * * *

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2017–00106 Filed 1–9–17; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0487; FRL–9954–53]

Butanedioic Acid, 2-Methylene-, Telomer With Sodium Phosphinate (1:1), Acidified, Potassium Salts; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of butanedioic acid, 2-methylene-, telomer with sodium phosphinate (1:1), acidified, potassium salts when used as an inert ingredient in a pesticide chemical formulation. Itaconix submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of butanedioic acid, 2-methylene-, telomer with sodium phosphinate (1:1), acidified, potassium salts on food or feed commodities.

DATES: This regulation is effective January 10, 2017. Objections and requests for hearings must be received on or before March 13, 2017, 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–2016–0487, 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 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. 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–2016–0487 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 March 13, 2017. 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–2016–0487, 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. Background and Statutory Findings

In the **Federal Register** of October 18, 2016 (Vol. 81, 71668) (FRL–9952–19), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 10922) filed by Itaconix, 2 Marin Way, Stratham, NH 03885. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of butanedioic acid, 2-methylene-, telomer with sodium phosphinate (1:1), acidified, potassium salts; CAS Reg. No. 1663489–14–2. That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. There were no comments received in response to the notice of filing. Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(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 use 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 an exemption from the requirement of 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 . . .'' and specifies factors EPA is to consider in establishing an exemption.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information 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. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). Butanedioic acid, 2-methylene-, telomer with sodium phosphinate (1:1), acidified, potassium salts conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, butanedioic acid, 2-methylene-, telomer with sodium phosphinate (1:1), acidified, potassium salts meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to butanedioic acid, 2-methylene-, telomer with sodium phosphinate (1:1), acidified, potassium salts.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that butanedioic acid, 2-methylene-, telomer with sodium phosphinate (1:1), acidified, potassium salts could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The minimum number average MW of butanedioic acid, 2-methylene-, telomer with sodium phosphinate (1:1), acidified, potassium salt is 3800 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since butanedioic acid, 2-methylene-, telomer with sodium phosphinate (1:1), acidified, potassium salt conforms to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. 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 butanedioic acid, 2-methylene-, telomer with sodium phosphinate (1:1), acidified, potassium salts to share a common mechanism of toxicity with any other substances, and butanedioic acid, 2-methylene-, telomer with sodium phosphinate (1:1), acidified, potassium salts does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that butanedioic acid, 2-methylene-, telomer with sodium phosphinate (1:1), acidified, potassium salts 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 Web site at *http://www.epa.gov/pesticides/cumulative.*

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold 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 data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of butanedioic acid, 2-methylene-, telomer with sodium phosphinate (1:1), acidified, potassium salts, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of butanedioic acid, 2-methylene-, telomer with sodium phosphinate (1:1), acidified, potassium salts.

VIII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

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 butanedioic acid, 2-methylene-, telomer with sodium phosphinate (1:1), acidified, potassium salts.

IX. Conclusion

Accordingly, EPA finds that exempting residues of butanedioic acid, 2-methylene-, telomer with sodium phosphinate (1:1), acidified, potassium salts from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This action establishes a tolerance 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). 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).

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: November 18, 2016.

Michael Goodis,

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 § 180.960, add alphabetically the polymer in the table to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * * * *	
Butanedioic acid, 2-methylene-, telomer with sodium phosphinate (1:1), acidified, potassium salt minimum number average molecular weight (in amu), 3800	1663489–14–2
* * * * * * *	

[FR Doc. 2016–31830 Filed 1–9–17; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0695; FRL–9955–74]

Tetraconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of tetraconazole in or on vegetable, fruiting (Crop Group 8–10) at 0.30 parts per million (ppm) and vegetable, cucurbit (Crop Group 9) at 0.15 ppm and revises the tolerance for residues on beet, sugar, root; beet, sugar, dried pulp; and beet, sugar molasses. Isagro S.P.A. (d/b/a Isagro USA, Inc.) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective January 10, 2017. Objections and requests for hearings must be received on or before March 13, 2017, 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–2015–0695, 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–2015–0695 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 March 13, 2017. 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–2015–0695, 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 March 16, 2016 (81 FR 14030) (FRL–9942–86), 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 5F8400) by Isagro S.P.A. (d/b/a Isagro USA, Inc.), 430 Davis Drive, Suite 240, Morrisville, NC 27560. That document provided notice that the petition requested that 40 CFR 180.557 be amended by establishing tolerances for residues of the fungicide tetraconazole, in or on Vegetable, Fruiting (Crop Group 8–10) at 0.30 parts per million (ppm) and Vegetable, Cucurbit (Crop Group 9) at 0.15 ppm. In the **Federal Register** of August 29, 2016 (81 FR 59165) (FRL–9950–22), EPA issued another document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the remainder of that petition requesting revision of the existing tolerances for tetraconazole residues on beet, sugar, root to 0.15 ppm; beet, sugar, dried pulp to 0.20 ppm; and beet, sugar molasses to 0.25 ppm. Those documents referenced a summary of the petition prepared by Isagro S.P.A. (d/b/a Isagro USA, Inc.), the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to these notices of filing.

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 tetraconazole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with tetraconazole 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 liver and kidney are the primary target organs of tetraconazole in all species in oral toxicity studies of sub-chronic and chronic durations. Following long-term oral exposure, tetraconazole caused liver tumors in mice in both sexes. In the acute neurotoxicity study, loss of motor activity in both sexes, and clinical signs including hunched posture, decreased defecation, and/or red or yellow material on various body surfaces were observed in females. There was no evidence of immunotoxicity or neurotoxicity following sub-chronic exposure. There were no systemic effects observed in the 21-day dermal toxicity study up to the highest dose tested. Tetraconazole did not show evidence of mutagenicity in *in vitro* or *in vivo* studies.

Oral rat and rabbit developmental toxicity studies showed no increased susceptibility of fetuses to tetraconazole. Maternal toxicity (decreased body weight gain and food consumption, increased water intake and increased liver and kidney weights) and developmental toxicity (increased incidence of small fetuses, supernumerary ribs and hydroureter and hydronephrosis) occurred at the same dose level in the rat study. No developmental toxicity was seen in the rabbit study, whereas maternal toxicity (decreased body weight gain) was noted at the highest dose tested. Similarly, there was no evidence of increased susceptibility of offspring in the 2-generation rat reproduction study.

In contrast to the oral studies where the most sensitive effects were in the liver and kidney, inhalation exposure of tetraconazole to rats resulted in portal-of-entry effects including; squamous cell metaplasia of the laryngeal mucous, mono-nuclear cell infiltration, goblet cell hyperplasia, hypertrophy of the nasal cavity and nasopharyngeal duct, and follicular hypertrophy of the thyroid in males. At the highest concentration tested, there were treatment-related increases in absolute lung weights in both sexes. Since the last risk assessment, a 28-day *in vivo* cancer mode-of-action study in mice was submitted and reviewed leading to the re-evaluation of tetraconazole's cancer potential and classification. EPA has now classified tetraconazole as ''Not likely to be carcinogenic to humans at levels that do not cause increased cell proliferation in the liver.'' Quantification of carcinogenic potential is not required.

Specific information on the studies received and the nature of the adverse effects caused by tetraconazole 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 ''Human Health Risk Assessment for the Section 3 Registration for Application to Fruiting Vegetables (Crop Group 8) and Cucurbit Vegetables (Crop Group 9) and Amending the Sugar Beet Application Scenario and Tolerance'' in docket ID number EPA–HQ–OPP–2015–0695.

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 tetraconazole used for human risk assessment is shown in Table 1 of this unit.

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

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–50 years of age).	NOAEL = 22.5 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.225 mg/kg/day. aPAD = 0.225 mg/kg/day.	Developmental toxicity study (rat). Developmental LOAEL = 100 mg/kg/day based on increased incidence of small fetuses, supernumerary ribs, and hydroureter and hydronephrosis.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR TETRACONAZOLE FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children).	NOAEL = 50 mg/kg/ day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.5 mg/ kg/day. aPAD = 0.5 mg/kg/ day.	Acute neurotoxicity (rat). LOAEL = 200 mg/kg/day due to decreased motor activity on day 0 in both sexes, and clinical signs in females including hunched posture, decreased defecation, and/or red or yellow material on various body surfaces.
Chronic dietary (All populations)	NOAEL = 0.73 mg/ kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.0073 mg/kg/day. cPAD = 0.0073 mg/ kg/day.	Chronic oral toxicity (dog). LOAEL = 2.95/3.33 (M/F) mg/kg/day, based on absolute and relative kidney weights and histopathological changes in the male kidney.
Dermal short-term (1 to 30 days) and dermal intermediate-term (1 to 6 months).	No hazard identified and therefore quantification is not required. There are no developmental concerns via the dermal route and no systemic toxicity was seen following dermal exposure.		
Inhalation short-term (1 to 30 days) and inhalation intermediate-term (1 to 6 months).	* NOAEL not established. UF_A = 3x UF_H = 10x UF_L = 10x	LOC = 300	28-Day Inhalation toxicity—rat. LOAEL = 1.3 mg/kg/day (0.0048 mg/kg/L, 0.0548 mg/L (rat)) for males and females, based on squamous cell metaplasia of laryngeal mucous, mononuclear cell infiltration, goblet hyperplasia and hypertrophy of nasal cavity and nasopharyngeal duct and follicular hypertrophy of thyroid in males.
Cancer (Oral, dermal, inhalation).	Classification: ''Not likely to be carcinogenic to humans at levels that do not cause increased cell proliferation in the liver.'' Quantification of carcinogenic potential is not required (TXR #0056628, J. Rowland *et al.,* 2-Apr-2013).		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to tetraconazole, EPA considered exposure under the petitioned-for tolerances as well as all existing tetraconazole tolerances in 40 CFR 180.557. EPA assessed dietary exposures from tetraconazole 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 tetraconazole. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). This dietary survey was conducted from 2003 to 2008. As to residue levels in food, EPA utilized the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database DEEM–FCID, Version 3.16 default processing factors and tolerance-level residues and 100 percent crop treated (PCT) for all commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA NHANES/WWEIA dietary survey conducted from 2003 to 2008. As to residue levels in food, EPA utilized residue data from field trials and feeding studies to obtain average residues and assumed the PCT figures provided below. Empirically derived processing factors were used in these assessments when available

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

iv. *Anticipated Residues and Percent Crop Treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

100 PCT were assumed for all food commodities for the acute analysis. The chronic analysis used percent crop treated for new uses (PCTn).

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows:

Sugarbeet, 70%; field corn, 9%; and soybean, 5%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which tetraconazole may be applied in a particular area.

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

Based on the 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 tetraconazole for acute exposures are estimated to be 11 parts per billion (ppb) for surface water and 120 ppb for ground water. The estimated EDWCs of tetraconazole for chronic exposures for non-cancer assessments are estimated to be 5.5 ppb for surface water and 118 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

For acute dietary risk assessment, the water concentration value of 120 ppb was used to assess the contribution to drinking water.

For chronic dietary risk assessment, the water concentration value of 118 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). Tetraconazole is not registered for any specific use patterns that would result in residential exposure.

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

Tetraconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events (EPA, 2002). In the case of conazoles, however, a variable pattern of toxicological responses is found. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that tetraconazole shares a common mechanism of toxicity with any other conazole pesticide, and EPA is not following a cumulative risk approach for this tolerance action. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's Web site at *http://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

Tetraconazole is a triazole-derived pesticide. This class of compounds can form the common metabolite 1,2,4-triazole and two triazole conjugates (triazolylalanine and triazolylacetic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including tetraconazole, EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazolylalanine, and triazolylacetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (*e.g.,* use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (*i.e.,* high end estimates of both dietary and non-dietary exposures). The Agency retained a 3X for the LOAEL to NOAEL safety factor when the reproduction study was used. In addition, the Agency retained a 10X for the lack of studies including a developmental neurotoxicity (DNT) study. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at *http://www.regulations.gov/,* Docket Identification (ID) Number EPA–HQ–OPP–2005–0497.

An updated dietary exposure and risk analysis for the common triazole metabolites 1,2,4-triazole (T), triazolylalanine (TA), triazolylacetic acid (TAA), and triazolylpyruvic acid (TP) was completed on April 9, 2015, in association with registration requests for several triazole fungicides, propiconazole, difenoconazole, and flutriafol. The requested new uses of tetraconazole did not significantly change the dietary exposure estimates for free triazole or conjugated triazoles. Therefore, an updated dietary exposure

analysis was not conducted. The April 9, 2015 update for triazoles may be found in docket ID number EPA–HQ–OPP–2014–0788.

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 are no residual uncertainties for pre- and post-natal toxicity. There is no evidence of increased quantitative susceptibility of rat or rabbit fetuses to *in utero* exposure to tetraconazole. There is evidence of increased qualitative susceptibility to fetuses in the rat prenatal developmental toxicity study (increased incidences of supernumerary ribs, and hydroureter and hydronephrosis). The LOC is low however because the fetal effects were seen at the same dose as the maternal effects, a clear NOAEL was established, the developmental NOAEL from a study in rats is being used as the POD for the acute dietary endpoint (females 13–49 years of age), and there were no developmental effects in the rabbit study. There is also no evidence of increased quantitative or qualitative susceptibility to offspring in the two-generation reproduction study.

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 tetraconazole is complete.

ii. There were effects indicative of neurotoxicity in the acute neurotoxicity study in rats. However, the level of concern (LOC) is low since a clear NOAEL was established which is being used in endpoint selection. Furthermore, the dose at which these neurotoxic effects were observed is 2 to 100-fold higher than the primary effects seen in the other studies in the database (liver and kidney). After preliminary review, a sub-chronic neurotoxicity study has shown no evidence for neurotoxicity. Finally, there are no other signs of neurotoxicity in any of the other studies in the database. Therefore, there is no need for a developmental neurotoxicity study or additional uncertainty factors (UFs) to account for neurotoxicity.

iii. There is no evidence that tetraconazole results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study. There is evidence of increased qualitative susceptibility to fetuses in the rat prenatal developmental toxicity study (increased incidences of supernumerary ribs, and hydroureter and hydronephrosis). The LOC is low however because:

- The fetal effects were seen at the same dose as the maternal effects,
- a clear NOAEL was established,
- the developmental NOAEL from a study in rats is being used as the POD for the acute dietary endpoint (females 13–49 years of age), and
- there were no developmental effects in the rabbit study. There is also no evidence of increased quantitative or qualitative susceptibility to offspring in the two-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. There are no residual uncertainties identified for pre- and post-natal toxicity in the exposure databases. Tolerance-level residues, 100 PCT, and modeled water estimates were incorporated into the acute dietary exposure analysis. Therefore, the acute analysis is highly conservative. The chronic and cancer dietary exposure analyses utilized empirical processing factors, average field trial residues, average residues from the feeding studies, percent crop treated estimates, and modeled drinking water estimates. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to tetraconazole in drinking water. These assessments will not underestimate the exposure and risks posed by tetraconazole.

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 tetraconazole will occupy 4.6% of the aPAD for all infants (<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 tetraconazole from food and water will utilize 92% of the cPAD for all infants (<1 year old) the population group receiving the greatest exposure. There are no residential uses for tetraconazole

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). A short-term adverse effect was identified; however, tetraconazole is not registered for any use patterns that would result in short-term residential exposure. Short-term risk is assessed based on short-term residential exposure plus chronic dietary exposure. Because there is no short-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 short-term risk), no further assessment of short-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term risk for tetraconazole.

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, tetraconazole 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 tetraconazole.

5. *Aggregate cancer risk for U.S. population.* As discussed in Unit III.A., EPA has concluded that tetraconazole is ''Not likely to be carcinogenic to humans at levels that do not cause increased cell proliferation in the liver.'' Because the chronic endpoint is protective of cell proliferation in the liver, there is not likely to be a cancer risk from exposure to tetraconazole.

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 tetraconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate analytical methods are available to enforce the currently established tetraconazole plant and livestock tolerances (D280006, W. Donovan, 10-Jan-2002, D267481, 12-Oct-2000; D278236, W. Donovan, 22-Oct-2001). Isagro has also submitted adequate method validation and independent laboratory validation (ILV) data which indicates that the QuEChERS multi-residue method L00.00–115 (48135104.der) is capable of quantifying tetraconazole residues in/on a variety of fruit, cereal grain, root, oilseed, and livestock commodities.

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 tetraconazole.

C. Revisions to Petitioned-for Tolerances

EPA revised two commodity definitions for vegetable, fruiting, group 8–10 and vegetable, cucurbit, group 9.

V. Conclusion

Therefore, tolerances are established for residues of tetraconazole, in or on vegetable, fruiting, group 8–10 at 0.30 ppm and vegetable, cucurbit, group 9 at 0.15 ppm and revised for beet, sugar, root; beet, sugar, dried pulp; and beet, sugar, molasses.

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). 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: December 14, 2016.

Daniel J. Rosenblatt,

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 the table in paragraph (a) of § 180.557:

■ a. Revise the commodities of ''Beet, sugar, dried pulp'', ''Beet, sugar, molasses'', and ''Beet, sugar, root''; and

■ b. Add alphabetically the commodities of ''Vegetable, cucurbit, group 9'' and ''Vegetable, fruiting, group 8–10'' to read as follows:

§ 180.557 Tetraconazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Beet, sugar, dried pulp	0.20
Beet, sugar, molasses	0.25
Beet, sugar, root	0.15
* * * * *	
Vegetable, cucurbit, group 9	0.15
Vegetable, fruiting, group 8–10	0.30

* * * * * *

[FR Doc. 2016–31824 Filed 1–9–17; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO–300–L13100000.PP0000]

RIN 1004–AE37

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order Number 1, Approval of Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final order.

SUMMARY: The Bureau of Land Management (BLM) hereby amends its existing Onshore Oil and Gas Order Number 1 (Onshore Order 1) to require the electronic filing (or e-filing) of all Applications for Permit to Drill (APD) and Notices of Staking (NOS). Previously, Onshore Order 1 stated that an ''operator must file an APD or any other required documents in the BLM Field Office having jurisdiction over the lands described in the application,'' but allowed for e-filing of such documents as an alternative. This change makes e-filing the required method of submission, subject to limited exceptions. The BLM is making this change to improve the efficiency and transparency of the APD and NOS processes.

DATES: The final Order is effective on February 9, 2017.

FOR FURTHER INFORMATION CONTACT: Steven Wells, Division Chief, Fluid Minerals Division, 202–912–7143 for information regarding the substance of the final Order or information about the BLM's Fluid Minerals Program. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact the above individuals during normal business hours. The Service is available 24 hours a day, 7 days a week to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Final Order, Section-by-Section Analysis, and Response to Comments
III. Procedural Matters

I. Background

The BLM regulations governing onshore oil and gas operations are found at 43 Code of Federal Regulations (CFR) part 3160, Onshore Oil and Gas Operations. Section 3164.1 provides for the issuance of Onshore Oil and Gas Orders to implement and supplement the regulations found in part 3160. Onshore Order 1 has been in effect since October 21, 1983, and was most recently revised in 2007 (see 72 FR 10308 (March 7, 2007)) as part of a joint effort with the Department of Agriculture and the Forest Service (FS), in response to new requirements imposed under Section 366 of the Energy Policy Act of 2005.

On July 29, 2016, the BLM published in the **Federal Register** a proposed Order that would revise sections III.A., III.C., III.E., and III.I. in Onshore Order 1. The Order proposed to require e-filing of all APDs and NOSs. The comment period for the proposed Order closed on August 28, 2016. This final Order adopts all of the revisions identified in the proposed Order.

Through this change, the BLM modifies Onshore Order 1 to require operators to submit NOSs and APDs through the e-filing system, Automated Fluid Mineral's Support System (AFMSS II), as opposed to the previous system, which allowed either hardcopy or electronic submission. Under the final Order, the BLM will consider granting waivers to the e-filing requirement for individuals who request a waiver because they would experience hardship if required to e-file (*e.g.,* if an operator is prevented from e-filing or is in a situation that would make e-filing so difficult to perform that it would significantly delay an operator's APD submission).

The change to Onshore Order 1 that the BLM is implementing in this final Order will not affect other provisions of Onshore Order 1 that are not discussed in this preamble or this final rulemaking, including the Onshore Order 1 provisions relating to the roles and responsibilities of the FS that are outlined in the 2007 rule. As a matter of practice, the FS will have the same access to the BLM's e-filing system and the same user privileges as BLM employees to process APDs and NOSs electronically for wells proposed on National Forest Service (NFS) lands.

An APD is a request to drill an oil or gas well on Federal or Indian lands. An operator must have an approved APD prior to drilling. Prior to submitting an APD, an applicant may file an NOS requesting the BLM to conduct an onsite review of an operator's proposed oil and gas drilling project. The purpose of an NOS is to provide the operator with an opportunity to gather information and better address site-specific resource concerns associated with a project while preparing its APD package. Operators are not required to submit an NOS prior to filing an APD.

The BLM has recently experienced a decrease in the number of APDs received due to changes in market conditions. Since 2009, the BLM received an average of about 5,000 APDs per year for wells on Federal and Indian lands, of which Indian lands account for about 16%. In FY 2015, the BLM received approximately 4,500 APDs. From October 1, 2015, through the end of September 2016 (FY 2016), the BLM estimates that it received only approximately 1,600 APDs. In coming years, due to the recent drop in oil prices and persistently low natural gas prices, the BLM conservatively estimates that an average of 3,000 APDs will be submitted per year. The BLM anticipates these market conditions to continue for the near term.

The available data show that use of the BLM's e-filing system for APDs and NOSs is common and broad-based among operators, and therefore is not a novel concept. Specifically, over the last few years, roughly half of the APDs submitted to the BLM were submitted using the e-filing system (Well Information System, or WIS). The other half of the APDs were submitted in hard copy. More importantly, the data show that the use of e-filing has increased over time, with the rate nearly doubling from 26 percent in FY 2010 to 51 percent in FY 2014. As of 2014, approximately 411 operators had used the BLM's WIS to e-file NOSs, APDs, well completion reports, sundry notices, and other application materials. Those operators represent an estimated 85 percent of the operators that conduct drilling and completion operations on Federal and Indian leases nationwide.

The BLM's WIS system is a web-based application that operators could use to submit permit applications and other types of information electronically over

the Internet. This includes APDs and NOSs, but also well completion reports and sundry notices. The WIS system is an extension of the BLM's current Automated Fluid Minerals Support System (AFMSS), which the BLM uses to track various types of oil and gas information on Federal and Indian lands, including the processing of NOSs and APDs.

Automated Fluid Minerals Support System II

Since 2013, the BLM has been developing and deploying updates to its Automated Fluid Minerals Support System in order to gain efficiencies for both government and industry users of the system. The updated system, known as AFMSS II, is being implemented based on modules that will manage different types of data for the BLM's oil and gas program, such as NOSs and APDs, well completion reports, sundry notices, and inspection and enforcement-related operations. The NOS/APD module is the first module developed as part of the update, which phased in beginning in December 2015. As part of the phase in, the BLM conducted training for its staff and operators in order to understand how to use the new module. The NOS/APD module within AFMSS II replaces that portion of the WIS system that allowed operators to submit NOSs and APDs electronically over the internet. Once all the modules that will manage data from the existing system have been deployed for AFMSS II, the old version of AFMSS will be decommissioned. As of the date of this final Order, the NOS/APD module is fully operational with the NOS/APD component of WIS now phased out. The NOS/APD module is ready to meet the demand of an increase in APD e-filing that is likely to result from this final Order.

Efficiency and Transparency

The goal of the AFMSS II system and the amendments to Onshore Order 1 is to improve operational efficiency and transparency in the processing of APDs and NOSs by requiring operators to use BLM's updated e-filing system as the default approach to APD and NOS filing. Although data show that voluntary use of the e-filing system has increased over time, this Order is necessary to move towards 100 percent electronic APD and NOS submission.

This shift to e-filing presents potential advantages to operators, including operators owned by individual Indian tribes,[1] because the new AFMSS II system is expected to streamline the APD and NOS application process. The system will expedite processing and enhance transparency, resulting in savings to both operators and the U.S. Government by:

- Reducing the number of applications with deficiencies by providing users the ability to identify and correct errors through automatic error notifications generated prior to the submission process;
- Automatically populating data fields based on users' previously submitted information;
- Allowing operators to electronically track the progress of their application throughout the BLM review process; and
- Facilitating the use of pre-approved plans, such as Master Development Plans and Master Leasing Plans that have already been input into the system.

The AFMSS II system was developed in response to the Government Accountability Office's (GAO) and the Department of the Interior Office of the Inspector General's (OIG) recommendations in GAO report 13–572 (GAO–13–572) and OIG report CR–EV–MOA–0003–2013 (Report No. CR–EV–MOA–0003–2013). Both reports recommended that the BLM ensure that all key dates associated with the processing of APDs are completely and accurately entered and retained in AFMSS, and in any new system that replaces AFMSS, to help assess whether the BLM is meeting applicable processing deadlines and identify ways to improve the efficiency of the APD review process. Additionally, the OIG report recommends that the BLM: (1) Develop, implement, enforce, and report performance timelines for APD processing; (2) Develop outcome-based performance measures for the APD process that help enable management to improve productivity; and (3) Ensure that the modifications to AFMSS enable accurate and consistent data entry, effective workflow management, efficient APD processing, and APD tracking at the BLM Field Office level. The NOS/APD module developed for AFMSS II addresses these recommendations from the GAO and OIG.

II. Discussion of Final Order, Section-by-Section Analysis, and Response to Comments

This final order revises existing Onshore Order 1, which primarily supplements 43 CFR 3162.3 and 3162.5. Section 3162.3 covers conduct of operations, section 3162.3–1 covers applications to drill on a lease, section 3162.3–2 covers subsequent well operations, section 3162.3–3 covers other lease operations, and section 3162.3–4 covers well abandonment. Section 3162.5 covers environment and safety obligations.

The BLM received 5 comments on the proposed Order, from trade organizations, members of industry, and non-governmental organizations.

This section of the preamble describes the changes that the BLM is making to three existing provisions of Order 1. The BLM is making only slight modifications to these sections. However, to provide context for the changes, we have included the three complete sections, which are entitled, *Where to File an APD, Where to File an NOS,* and *APD Posting.* This Order does not make any changes to these subsections beyond those detailed below.

Where to File an APD

The final order modifies subsection III.A. to require operators to file APDs using the BLM's electronic commerce application, AFMSS II, for oil and gas permitting and reporting. Through this revision, the BLM will move toward an electronic submission rate of 100 percent. In the past, the BLM has received a portion of the APDs electronically and a portion in hard copy, which introduced a number of inefficiencies and necessitated multiple records management systems. This process change will help to eliminate those problems. In addition, the BLM believes that requiring submission through the e-filing system will improve processing times, public participation, and transparency. The BLM did not make any changes to this section between the proposed and final Order because it did not receive any comments on section III.A., and the agency did not have any independent reason to make a change as part of the final Order.

Where to File an NOS

Likewise, if an operator chooses to file an NOS, final Section III.C. requires operators to file NOSs using the BLM's e-filing system, the APD module of AFMSS II, for oil and gas permitting and reporting. As with APDs, receiving a portion of the NOSs electronically and a portion in hard copy introduced a number of inefficiencies that necessitated multiple records management systems. The BLM hopes that moving towards a 100-percent electronic submission rate for NOSs will eliminate those inefficiencies.

[1] In some cases, operators are companies owned by individual Indian tribes. Such companies are usually established to produce the minerals owned by the tribe and, thus, are operated for the benefit of the tribe.

The BLM received one comment on section III.C. that suggested that the BLM increase the time allowed for operators to submit an APD after completing an on-site inspection for an associated NOS. Under the existing requirements of section III.C. of Order 1, if an operator elects to submit an NOS prior to submitting an APD and conducts an on-site inspection based on the NOS, the operator must submit the APD associated with that NOS within 60 days after conducting the onsite inspection. Failure to submit the APD within 60 days of the onsite inspection will result in the NOS being returned to the operator. The commenter recommended extending this timeframe from 60 days to 90 days, because previous analyses conducted by the commenter indicated that 60 days did not afford enough time to complete the APD submission process. This comment is outside the scope of the revisions to Order 1, which pertain only to the e-filing of APDs and NOSs.

APD Posting

Section III.E.1. of the pre-existing Onshore Order 1 already required the BLM to post information about the APD or NOS in an area of the local BLM Field Office that is readily accessible to the public. The pre-existing section III.E.1 also called for that information to be posted on the Internet when possible, though it was not required. Some offices were already posting information about APDs and NOSs on their local BLM Field Office Web sites. Final section III.E.1. of the final Order continues to require the BLM to post information about the APD or NOS in a publicly accessible area of the local BLM Field Office having jurisdiction. Final section III.E.1., also provides that the BLM will post information about the APD or NOS for Federal oil and gas leases on the Internet. This change will increase consistency, transparency, and efficiency for both operators who file APD submissions and the public. The information that the BLM posts online about APDs and NOSs will be consistent with what is already identified in 43 CFR 3162.3–1(g) and will not conflict with the BLM's statutory obligations to protect confidential business information.

In accordance with 43 CFR 3162.3–1(g), information that will be posted online about APDs and NOSs includes: The company/operator name; the well name/number; and the well location described to the nearest quarter-quarter section (40 acres), or similar land description in the case of lands described by metes and bounds, or maps showing the affected lands and the location of all tracts to be leased, and of all leases already issued in the general area. Where the inclusion of maps in such posting is not practicable, the BLM provides maps of the affected lands available to the public for review. This posting requirement only applies to APDs or NOSs proposing to drill into and produce Federal minerals. The posting requirement derives from the Mineral Leasing Act, and does not apply to APDs or NOSs for Indian minerals, which are not made publicly available. The BLM received one comment on section III.E.1. The commenter provided a list of information that it believes the BLM should make publicly available on the Internet: Waiver applications and approvals for the e-filing requirement; APD and Master Development Plan packages (in their entirety); Geographical Information Systems data for each APD; well completion or recompletion reports; sundry notices; and a variety of other information related to the BLM's oil and gas program. Furthermore, the commenter recommended that a public portal be set up in AFMSS II to facilitate posting of this information.

The BLM did not make a change in response to this comment because it is beyond the scope of the proposed amendments to the Order.

Waiver From Electronic Submissions

Section III.E.1. of the pre-existing Onshore Order 1 already required the BLM to post information about the APD or NOS in an area of the local BLM Field Office that was readily accessible to the public. The pre-existing section III.E.1 also called for that information to be posted on the Internet when possible, though it was not required. Consequently, some BLM Field Offices were already posting information about APDs and NOSs on their local BLM Field Office Web sites. Section III.I. is a new section that allows operators to request a waiver from the requirements in sections III.A. and III.C. of this Order. This section is different from section X., which addresses the requirements for requesting a variance from this Order. Unlike a variance from the other provisions or standards of Order 1, a waiver under this section is limited to the means of submission of an APD (electronic or hardcopy). A waiver under section III.I. is also different from a waiver under section XI., which addresses lease stipulations. Unlike a waiver from the requirement(s) of a lease stipulation, a waiver under this Order is not a permanent exemption from the BLM's requirement to file applications electronically.

When submitting a waiver request under section III.I, the applicant must explain what prevents them from using the e-filing system, plans for complying with the Order's electronic submission requirement in the future, and a timeframe for compliance, all of which is subject to BLM approval. If the applicant would like the waiver to apply to a particular set of APDs or NOSs, then the request must identify the APDs or NOSs to which the waiver request applies. Otherwise, the waiver would apply to all submissions made during the compliance timeframe identified as part of the BLM's approval. The BLM will not consider an APD or NOS that the operator did not submit through the e-filing system, unless the BLM approves a waiver from the e-filing requirement under section III.I.

Changes to Section III.I—Waiver From Electronic Submissions

As part of the final Order, the BLM made four changes to this section in response to comments and additional internal reviews, all of which are discussed in the following paragraphs. Two changes are worth noting at the outset. First, in addition to the proposed Order's requirement to explain what prevents an operator from using the e-filing system, the final Order now also requires operators to identify what their plans are for complying with the electronic submission requirement in the future, and a timeframe for achieving compliance. Second, recognizing that it would be helpful to provide operators time after the effective date of the Order to determine whether or not they need to submit a waiver request, the BLM has delayed the compliance date for the electronic submission requirement in this Order by 30 days. During the interim period, APDs and NOSs may be submitted using existing procedures.

The BLM received a few substantive comments on the waiver section of the proposed Order. One commenter disagreed with the need for operators to make a waiver request for every APD or NOS they file, particularly if the operator was granted a waiver from a prior request. The commenter said chances are that the same circumstances will exist with subsequent APD and NOS waiver requests. The commenter recommended that after the BLM grants a waiver, then that waiver needs to remain in force until no longer needed. The BLM did not entirely accept the commenter's recommendation because it would inject needless uncertainty as to when the applicant will start to use the electronic system. Such a provision would run counter to the BLM's efforts

to bring efficiency and modernization to its permitting process. The BLM recognizes that an applicant may need to request a waiver for multiple APDs or NOSs, which is why a waiver request applies to all applications identified in the waiver request. However, the BLM also recognizes that there could be instances when not all APDs and NOSs could be identified at the time an applicant submits a waiver request. Therefore, the BLM modified this section of the final Order. Unlike the proposed Order, which required that the waiver request identify all covered applications, the final Order makes this an option for the applicant. If an applicant does not identify any specific APDs or NOSs in their waiver request, then the waiver request will apply to all submissions made by the applicant until such time as the applicant is able to come into compliance with the electronic submission requirement. The timeframe required to come into compliance is subject to BLM review as part of the waiver approval process, which addresses the BLM's concerns about open-ended waiver approvals. The options provided through this modification are expected to help eliminate delays associated with submitting multiple waiver applications.

Another commenter stated that the Order should define the term ''hardship'' in order to promote consistency in the application of the waiver provision across BLM Field Offices and limit the amount of unwarranted waiver approvals. The commenter suggested that the BLM adopt language from the proposed *Waste Prevention, Production Subject to Royalties, and Resource Conservation* rule (Waste Prevention rule) (81 FR 6616) that states that an exemption will be approved if ''compliance with this requirement would impose such costs as to cause the operator to cease production and abandon significant recoverable oil reserves under the lease.''

The BLM did not make a change in response to the commenter's recommendation. The language cited from the proposed Waste Prevention rule, which also appears in the final Waste Prevention rule, (see 81 FR 83008 (November 18, 2016)), is meant to address circumstances in which new BLM requirements are being applied to existing well operations. In the case of these revisions to Order 1, the electronic submission requirement pertains to applications of wells not yet drilled. Moreover, we do not believe an electronic submission requirement under this rulemaking will deter an operator from deciding to drill a well or group of wells.

However, we do believe there are conditions or circumstances that may prevent an operator from e-filing or would make e-filing so difficult to perform that it would significantly delay an operator's APD submission. For example, an operator could encounter technical problems, such as network or operating system failures, that are delaying or preventing use of the e-filing system. The BLM would evaluate such a case, and the circumstances associated with it, and determine whether it qualifies as a hardship. As previously stated in the proposed Order, however, the BLM cannot conceive of every scenario that may qualify as a hardship, which is why the Order's criteria are broad.

Miscellaneous Comments

The BLM received several comments expressing concern with AFMSS II's current state of implementation, noting the need for more industry training and correction of issues experienced by some users. The commenters stated that the technical problems being experienced are not necessarily significant, but are an indication that the system is not yet fully operational. While these commenters are supportive of AFMSS II and do not object to 100 percent e-filing of APDs and NOSs, they believe there is too much at stake (additional delays in approval of drilling permits) to make the use of AFMSS II a requirement right now. The commenters recommended that the BLM should transition the implementation of the APD and NOS e-filing requirement through AFMSS II for at least one year to allow for more agency staff and end-user training and until all technical flaws have been resolved.

The BLM assessed whether the technical problems identified by the commenters related to the functionality of the system, and determined that the cases were instead related to user error rather than system error. After receiving this comment, the BLM contacted its field offices and none reported having this issue with operators under their jurisdiction. A revision to the final Order was not made in response to this comment.

With regard to the commenter's recommendation to phase in the requirement to use the e-filing system, the BLM has in fact phased in AMFSS II over the past year and conducted numerous training for operators and BLM staff. The following table illustrates the steps taken to phase out the operation of the previous electronic permitting system, WIS, and phase in AFMSS II.

WIS PHASE-OUT SCHEDULE

BLM Office transitioned out of WIS	Dates
Farmington, Vernal, Dickinson, Meeker, Grand Junction, Pinedale, Miles City, Great Falls	Jan–Feb 2016.
Durango, Canon City, Roswell, Buffalo, Newcastle, Moab, Price, Kemmerer, Salt Lake, Rawlins, Lander, Rock Springs, Anchorage, Milwaukee, Jackson, Casper, Worland, Tulsa, Bakersfield, Reno.	Apr–May 2016.
Carlsbad/Hobbs	May–Jun 2016.

As noted in the proposed Order, the BLM has already provided training opportunities to its staff and to operators on how to use the APD module for AFMSS II. The following table outlines when that training was provided:

COMPLETED TRAINING SESSIONS

Location	Dates	Operator/Agent Participation
Operator WebEx: BLM National Training Center	Dec 2015	Over 110 operators trained/47 companies.
BLM Offices	Jan–May 2016	Over 230 BLM employees trained.
Operator WebEx: BLM National Operations Center	Mar–May 2016	Over 150 operators trained.

Because this training captured only a specific group of individuals, the BLM also provides permanent training materials for external users that are available at all times. Operators may access materials at: *http://www.ntc.blm.gov/krc/viewresource.php?courseID=869.* In addition, the BLM will provide one-on-one training (delivered through Webex, demonstrations, or classroom training) whenever requested. The BLM has provided ample opportunities for AFMSS II training and will continue to do so. Therefore, the BLM did not make changes to the Order in response to this comment.

One commenter expressed frustration with a limitation in the BLM's electronic system for paying APD fees. If an operator prefers to make payments electronically and not by check to the BLM, then operators must make their payments through *pay.gov*. After making a payment, the operator receives a receipt number that is generated and must be entered into AFMSS II when an APD is submitted. AFMSS II will not accept an APD unless the receipt number is entered into the system. The problem encountered when making electronic payments is that *pay.gov* is currently able to accept credit card payments only. A $24,999 daily limit is placed on payments made to the Federal Government using a credit card. At a cost of $9,500 per APD, operators are able to pay the fee for only two APDs per day. This could present a delay for operators that typically submit APDs in bulk—20 to 50 APDs in some cases. The commenter recommended that the BLM provide a means to accept other forms of payment commonly used by industry, in particular Automated Clearing House (ACH) payments.

The BLM recognizes this as a valid concern, but it cannot address this issue in this rulemaking. However, we are in the process of evaluating how our current billing systems can be modified to accept ACH payments through *pay.gov*.

III. Procedural Matters

Considerations

The final Order requires that all operators e-file NOSs and APDs. As a practical matter, however, it will have a greater impact on operators that do not currently use the BLM's e-filing system, as these changes do not alter the requirements related to the content of an APD or NOS. Thus, operators that already use the e-filing system will likely continue to use the system, regardless of the Order, and therefore will not be impacted by the changes.

The requirements are estimated to pose relatively small compliance costs (see discussion in the *Affected Entities* section) associated with administrative compliance and access to the BLM's e-filing system. In particular, operators that have not purchased access to the Internet or cannot access the Internet due to the remoteness of their location are likely to have to hire a permit agent to e-file their APDs, acquire Internet access depending on the coverage and the availability of service providers, or find another work-around solution. The requirements may also result in cost savings to impacted operators by reducing the amount of time spent correcting deficiencies in APDs. The filing of APDs through the modernized AFMSS II is expected to reduce the number of APD submissions that have deficiencies, and reduce the time it takes operators to correct any deficiencies that occur. Reduced APD processing times will benefit impacted operators in that they will be able to commence drilling and develop the mineral resources sooner. On Indian lands, this will benefit tribes and Indian allottees since they are the direct recipients of the royalties generated from the minerals they own.

There will also be improved transparency during the application and review process for APDs that are e-filed. With the transition to AFMSS II, the operator is able to check the status of the APD, and the public is able to find and access information, all in one online location. Until all operators are able to e-file, the BLM will continue to maintain hard copy records for APDs submitted in hard copy, consistent with records management and retention requirements.

Affected Entities

All entities involved in the exploration and production of crude oil and natural gas resources on Federal and Indian leases and that submit APDs or NOSs after the effective date of the final Order will be subject to its requirements.

We estimate that the amendments will impact about 484 operators,[2] and that these operators might experience a small increase in administrative costs associated with submitting an APD and NOS to the BLM through the new APD module, due to the newness of the system. Operators that comply by submitting a waiver request that is accepted by the BLM might also experience a small increase in costs associated with preparing the waiver request. We estimate the annual average costs per operator to be approximately $3,920 per operator during the Order's initial implementation period; however, we expect those costs to decrease quickly over time as operators become familiar with the new AFMSS II. In total, we estimate that the amendments might pose annual administrative costs of $2.2 million (about $1.9 million per year to the industry and $315,000 per year to the BLM) during the initial phases. We believe this is a generous estimate of costs given the relatively high proportion of APDs already submitted using BLM's existing e-filing systems.

In addition, we estimate that the amendments will pose additional costs for those operators that currently do not use the BLM's e-filing system. Specifically, those 73 entities[3] might face additional compliance costs of $1,200 per operator per year for Internet access, using the conservative assumption that they do not already have such access. In total, these compliance costs could be about $90,000 per year for all 73 affected operators. The increased e-filing rates that the BLM has observed during the rollout of the AFMSS II APD module suggest, however, that some of these operators would choose to e-file even without the Order.

We estimate that the amendments will also benefit operators, since operators are expected to receive cost savings from more expedited APD processing. We estimate that submitting an APD via the e-filing system rather than in hard-copy will reduce processing time by 27 percent or 60 days. Furthermore, we estimate the cost savings to the operator of that increased efficiency to be $6,195 per APD. Given that the Order will impact about 1,500 APDs per year, we estimate that the total cost savings could be about $9.3 million per year.

Together, the total benefits are expected to exceed the total costs, and the Order is expected to result in total cost savings of about $7 million per year on aggregate. We expect these aggregate benefits to translate to individual operators. To illustrate, even if we

[2] We examined AFMSS data over a 5-year period (from 2008 to 2012) and found that there were 484 operators that completed wells on Federal and Indian leases. We believe that this pool of operators is a good basis for an estimate about the entities that are likely to file APDs in the future and are, therefore, subject to the requirements.

[3] According to BLM records, as of 2014, there were approximately 411 WIS users, representing 85 percent of the operators that would be subject to the requirements. By extension, we estimate that there are 73 entities that did not use WIS, representing 15 percent of the operators that would be subject to the requirements. These 73 entities were not users of the e-filing system and will be most impacted by the Order.

assume an individual operator incurs costs as a result of the amendments because they do not currently use BLM's existing e-filing system and have to learn the new system, such an operator would still be expected to receive a net cost savings on a per-APD basis, given that the cost savings will exceed the combined administrative and other compliance costs. On a per APD basis, we expect increased costs of $1,716 per year—$516 in administrative burden/compliance costs, plus $1,200 in other compliance costs. Those costs are expected to be offset, however, by cost savings of $6,195 per APD. Therefore, on net, an operator submitting one APD per year would be expected to realize a net reduction in costs of $4,479 ($6,195 minus $1,716). That expected net benefit would increase as an operator's familiarity with the new e-filing system increases, as administrative costs would be reduced by such familiarity.

As noted elsewhere in the preamble, some operators are owned by individual Indian tribes. Those operators typically develop the minerals owned by and for the benefit of the tribe. We expect the impacts and benefits of these Order revisions to apply to these operators to the same extent and in the same manner as to other entities operating on Federal or Indian lands. On net, we anticipate that the benefits of permitting-time efficiencies associated with 100% e-filing, will significantly outweigh any costs, especially as operators become more familiar with AFMSS II.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (see 5 U.S.C. 601–612). Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act and those size standards can be found in 13 CFR 121.201. The BLM reviewed the SBA classifications and found that the SBA specifies different size standards for potentially affected industries. The SBA defines a small business in the crude petroleum and natural gas extraction industry (North American Industry Classification System or NAICS code 211111) as one with 1,250 or fewer employees. However, for the natural gas liquid extraction industry (NAICS code 211112), it defines a small business as one with 750 or fewer employees.

The BLM reviewed the SBA size standards for small businesses and the number of entities fitting those size standards as reported by the U.S. Census Bureau in the 2012 Economic Census. The data show the number of firms with fewer than 100 employees and those with 100 employees or more (well below the SBA size standards for the respective industries). According to the available data, over 95% and 91% of firms in the crude petroleum and natural gas extraction industry and the natural gas liquid extraction industry, respectively, have fewer than 100 employees. Therefore, we would expect that an even higher percentage of firms will be considered small according to the SBA size standards. Thus, based on the available information, the BLM believes that the vast majority of potentially affected entities will meet the SBA small business definition.

We examined the potential impacts of the final Order and determined that up to 484 small entities will be subject to the Order's requirements and could face administrative burdens of about $3,920 per entity per year. In addition, up to 73 small entities could face other compliance costs of $1,200 per entity per year. However, we estimate that the administrative and other compliance costs will be offset as a result of improved APD processing times. We estimate that cost savings from faster APD processing could be $6,195 per APD. Moreover, we expect that the administrative burdens of the final Order will lessen over time as operators become more familiar with the BLM's new e-filing system.

Based on this review, we have determined that, although the revisions to the Order will impact a substantial number of small entities, it will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

This Order is also not a major rule under 5 U.S.C. 804(2) of the RFA, as amended by the SBREFA. This Order will not have an annual effect on the economy of $100 million or more. In fact, the BLM estimates that the benefits will exceed the costs, and that the rulemaking could result in net savings of $7 million per year. Similarly, the revisions to the Order will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, tribal, or local government agencies, or geographic regions, nor do the revisions have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The revisions to the Order are administrative in nature and only affect the method for submitting APDs and NOSs. The BLM prepared an economic threshold analysis as part of the record, which is available for review.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (UMRA), agencies must prepare a written statement about benefits and costs before issuing a proposed or final rule that may result in aggregate expenditure by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year.

The revisions to the Order do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector, in any one year. Thus, the revisions to the Order are also not subject to the requirements of sections

202 or 205 of UMRA. This Order is also not subject to the requirements of section 203 of UMRA because the revisions contain no regulatory requirements that might significantly or uniquely affect small governments, because the revisions contain no requirements that apply to such governments, nor do they impose obligations on them.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

In accordance with Executive Order 12630, the BLM has determined that the revisions to the Order will not have significant takings implications. The revisions to the Order are not a governmental action capable of interfering with constitutionally protected property rights. Therefore, the revisions to the Order will not cause a taking of private property or require a takings implication assessment under the Executive Order.

Executive Order 13132, Federalism

The revisions to the Order will not have federalism implications. The revisions will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, a Federalism Assessment is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The BLM evaluated possible effects of the revisions to the Order on federally recognized Indian tribes. Since the BLM approves proposed operations on all Indian onshore oil and gas leases (other than those of the Osage Tribe), the Order has the potential to affect Indian tribes, particularly those tribes with tribally-owned and -operated oil and gas drilling or exploration companies, which currently submit APDs and/or NOSs.

In conformance with the Secretary's policy on tribal consultation, the BLM extended an invitation to consult on the proposed Order to affected tribes, including tribes that either: (i) Own an oil and gas company; or (ii) Own minerals for which the BLM has recently received an APD. Over the years, oil and gas development on Indian and allotted lands has been focused in Colorado, Montana, New Mexico, North Dakota, Oklahoma, Texas, and Utah. Based on BLM records, the BLM anticipates that there are nearly 40 tribes for which the BLM has received or will foreseeably receive APDs or NOSs in connection with the development of tribal or allotted mineral resources. In advance of issuing the proposed Order, the BLM sent letters to these 40 tribes extending an invitation to consult on this rulemaking. When the BLM published the proposed Order, BLM also sent letters of invitation to consult to the larger group of tribes who own minerals, but do not play a direct role in the development of those resources. The BLM received one comment from a tribe recommending that the BLM consider creating a similar e-filing system for the tribes for the development of tribal or allotted mineral resources. The current e-filing system is not restricted to the filing of APDs on Federal lands. The system also allows for the submission of APDs on Tribal or allotted lands. Therefore, there already is a system in place to do what the tribe requested. Multiple attempts were made to contact the Tribal representative, but were unsuccessful.

Executive Order 12988, Civil Justice Reform

This Order complies with the requirements of Executive Order 12988. Specifically, the revisions to the Order do not unduly burden the Federal court system and meet the requirements of sections 3(a) and 3(b)(2) of the Executive Order. The BLM has reviewed the Order to eliminate drafting errors and ambiguity and the Order has been written to minimize litigation and provide clear legal standards.

Paperwork Reduction Act of 1995

Overview

The Paperwork Reduction Act (PRA)[4] provides that 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. Collections of information include requests and requirements that an individual, partnership, or corporation obtain information, and report it to a Federal agency. See 44 U.S.C. 3502(3); 5 CFR 1320.3(c) and (k).

This Order contains information collection activities that require approval by the OMB under the PRA. The BLM included an information collection request in the proposed Order. OMB has approved the information collection for the final Order under control number 1004–0213.

The BLM plans to seek OMB approval to incorporate the burdens of this Order into control number 1004–0137 after this Order becomes effective. For reference, the current burdens for control number 1004–0137 (920,464 hours and $32.5 million in non-hour costs) can be viewed at *http://www.reginfo.gov/public/.* After the Order goes into effect, the BLM intends to ask OMB to combine the requirements and burdens of the Order with control number 1004–0137.

Summary of Information Collection Requirements

- *Title:* Approval of Operations (43 CFR part 3160).
- *Forms:* Form 3160–3, Application for Permit to Drill or Reenter; and Sample Format for Notice of Staking (Attachment 1 to 2007 Onshore Order 1, 72 FR at 10338).
- *OMB Control Number:* 1004–0213.
- *Description of Respondents:* Holders of Federal and Indian (except Osage Tribe) oil and gas leases.
- *Respondents' Obligation:* Required to obtain or retain a benefit.
- *Frequency of Collection:* On occasion.
- *Abstract:* The Order will improve the efficiency and transparency of the APD and NOS processes via e-filing, and provide for waivers from e-filing when appropriate.
- *Estimated Number of Responses:* 3,450 responses.
- *Estimated Total Annual Burden Hours:* 29,400 hours.

Compliance with the new collection of information is required to obtain or retain a benefit for the operators of Federal and Indian onshore oil and gas leases, or units or communitization agreements that include Federal and Indian leases (except on the Osage Reservation or the Crow Reservation, or in certain other areas). The frequency of the collection is ''on occasion.''

Discussion of the Collection Activities

APDs: As revised here, section III.A. of Onshore Order 1 requires an operator to file an APD and associated documents using the BLM's electronic commerce application for oil and gas permitting and reporting.

NOSs: Section III.C. of Onshore Order 1 continues to provide that an NOS may be submitted voluntarily. Section III.C. also requires an operator who chooses to file an NOS to use the BLM's electronic commerce application for oil and gas permitting and reporting. Except for the new e-filing requirement, this is an existing collection in use without a control number. The purpose of submitting an NOS is to provide an operator an opportunity to gather information and better address site-

[4] 44 U.S.C. 3501–3521.

specific resource concerns associated with a project while preparing an APD package.

Waiver Requests: Section III.I. is a new provision that allows operators to request a waiver from the requirements in final sections III.A. and III.C. The request must be supported by an explanation of why the operator is not able to use the e-filing system, the operator's plans for complying with the electronic submission requirement, and a timeframe for achieving compliance. If the operator would like the waiver to apply to a particular set of APDs or NOSs, then the request must identify the APDs or NOSs to which the waiver applies. If the request does not specify a particular set of APDs or NOSs, the waiver will apply to all submissions made by the operator during the compliance timeframe included as part of the BLM's waiver approval. In those exceptional cases, the BLM will review the operator's request and determine whether a waiver allowing the operator to submit hard copies is warranted.

Between the proposed and the final Order, the BLM added requirements for operators to submit their plans for complying with the electronic submission requirement and a timeframe for achieving compliance, both of which are in addition to the requirement from the proposed Order for operators to explain why they are unable to use the e-filing system. In the final Order, the BLM is also providing an option for operators to request that its waiver approval apply to a specific set of APDs or NOSs. The operator's waiver request would need to identify which APDs or NOSs that the BLM's approval would apply.

As previously discussed, the BLM made these changes in response to a commenter's recommendation that after the Bureau grants a waiver, that waiver needs to remain in force until no longer needed. The BLM did not accept the commenter's recommended change because it would inject needless uncertainty as to when the applicant will start to use the electronic system and would run counter to the Bureau's efforts to bring efficiency and modernization to its permitting process. However, the BLM also recognizes that there could be instances when not all APDs and NOSs could be identified at the time an applicant submits a waiver request, which could lead to the operator submitting another waiver request at a later time if they are still prevented from using the e-filing system. The BLM believes this change will help eliminate the commenter's concerns about delays associated with submitting multiple waiver applications and, at the same time, addresses the Bureau's concerns about open-ended waiver approvals.

Although the BLM is requiring the submission of this additional information, we do not believe this will result in additional burden hours. If an operator is prevented from using the e-filing system and requests a waiver, the operator likely understands and has a reasonable idea as to what steps it needs to take and the length of time necessary to overcome the challenges that prevent its use of the system. Therefore, assessing those steps will not impose any additional burden hours.

Although the final Order directs the method by which operators must submit an APD or NOS, it does not direct operators to obtain, maintain, retain, or report any more information than what is already required by the existing Onshore Order 1. The BLM recognizes operators may encounter a learning curve as they familiarize themselves with the database system, like any new software system to which users must adapt. For that reason, the BLM intends to adjust the existing 80 hours per response for APDs upwards to 88 hours per response. However, any costs or delays in adapting to the e-filing system will be temporary, and may be subject to a downward adjustment sometime in the future.

The BLM has sponsored multiple outreach strategies and training forums for its AFMSS clients, which should further mitigate the extent of industry's learning curve. These outreach efforts include:

- Easily accessible Internet-based resources, including user-guides, audiovisual modules, user toolkits, and FAQs that are available to operators or their agents, and
- Live trainings provided to users to allow for a more robust discussion with the BLM on how to use the system.

The previously discussed table entitled, ''Completed Training Sessions'' outlines the locations where the BLM has sponsored these trainings.

The following table itemizes the estimated burdens of APDs, NOSs, and waivers as a result of this Order. In the case of APDs, these burdens are in addition to the 80 burden-hours per response estimated under OMB control number 1004–0137, and the number of responses (3,000 per year) is less than the 5,000 responses currently authorized under OMB control number 1004–0137. Both the number of responses and the burden hours will be adjustments to that control number.

For NOSs and waiver requests, these burdens are new, and will be program changes for control number 1004–0137.

Type of response	Number of responses	Hours per response	Total hours
A.	B.	C.	D.
Application to Drill or Re-Enter 43 CFR 3162.3–1 and Section III.A. of Onshore Order 1 Form 3160–3	[5] 3,000	8	24,000
Notice of Staking Section III.C. of Onshore Order 1	[6] 300	16	4,800
Waiver Request Section III.I. of Onshore Order 1	[7] 150	4	600
Totals	3,450	28	29,400

[5] This will be an adjustment in the number of responses for APDs in control number 1004–0137. At present, control number 1004–0137 authorizes the BLM to collect 5,000 APDs annually.
[6] Estimated as 10 percent of the roughly 3,000 APDs filed annually.
[7] Estimated as 10 percent of the 1,500 APDs likely to be impacted by the final Order. BLM data show that half of APDs were already e-filed through the WIS.

National Environmental Policy Act

The revisions to the Order do not constitute a major Federal action significantly affecting the quality of the human environment. The BLM has analyzed the revisions to the Order and determined it meets the criteria set forth in 43 CFR 46.210(i) for a Departmental Categorical Exclusion in that the revisions to the Order are ''. . . of an administrative, financial, legal, technical or procedural nature . . ..'' Therefore, it is categorically excluded from environmental review under the National Environmental Policy Act,

pursuant to 43 CFR 46.205 and 46.210(c) and (i). The BLM also has analyzed this Order to determine if it involves any of the extraordinary circumstances that would require an environmental assessment or an environmental impact statement, as set forth in 43 CFR 46.215, and concluded that this Federal action does not involve any extraordinary circumstances.

Data Quality Act

In developing this Order, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C 515, 114 Stat. 2763, 2763A–153 to 154).

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Under Executive Order 13211, agencies are required to prepare and submit to OMB a Statement of Energy Effects for significant energy actions. This Statement is to include a detailed statement of ''any adverse effects of energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies)'' for the action and reasonable alternatives and their effects.

Section 4(b) of Executive Order 13211 defines a ''significant energy action'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1) (i) That is a significant regulatory action under Executive Order 12866 or any successor Order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action.'' The revisions to the Order will not be a significant regulatory action under Executive Order 12866 as they will not have a significant adverse effect on the supply, distribution, or use of energy. The revisions to the Order have also not been designated by the Administrator of OIRA as a significant energy action.

Executive Order 13352, Facilitation of Cooperative Conservation

The BLM determined that this Order involves changes to BLM processes. In accordance with Executive Order 13352, this Order will not impede facilitating cooperative conservation. The Order takes appropriate account of and respects the interests of persons with ownership or other legally recognized interests in land or other natural resources; properly accommodates local participation in the Federal decision-making process; and provides that the programs, projects, and activities are consistent with protecting public health and safety.

Authors

The principal authors of this final Order are Cathy Cook and Michael Riches, Division of Fluid Minerals, and Bryce Barlan and James Tichenor, Division of Business Management, assisted by Mark Purdy and Jean Sonneman, Division of Regulatory Affairs, Dylan Fuge, Counselor to the Director, and the Department of the Interior's Office of the Solicitor.

List of Subjects in 43 CFR Part 3160

Administrative practice and procedure, Government contracts, Indian-lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: December 21, 2016.

Amanda Leiter,

Acting Assistant Secretary, Land and Minerals Management.

■ For reasons set out in the preamble, the Bureau of Land Management amends the appendix following the regulatory text of the final rule published in the **Federal Register** at 72 FR 10308 at 10328 (March 7, 2007), corrected on March 9, 2007 (72 FR 10608), effective March 7, 2007, as follows:

Note: This appendix does not appear in the BLM regulations in 43 CFR part 3160.

Appendix—Text of Oil and Gas Onshore Order

Amend the Onshore Oil and Gas Order Number 1 by revising sections III.A, III.C, and III.E, and adding section III.I to read as follows:

Onshore Oil and Gas Order Number 1

* * * * *

III. Application for Permit to Drill

* * * * *

A. Where to File

On or after March 13, 2017, the operator must file an APD and associated documents using the BLM's electronic commerce application for oil and gas permitting and reporting. The operator may contact the local BLM Field Office for information on how to gain access to the electronic commerce application. Prior to March 13, 2017, an operator may file an APD and associated documents in the BLM Field Office having jurisdiction over the application.

* * * * *

C. Notice of Staking Option

Before filing an APD or Master Development Plan, the operator may file a Notice of Staking with the BLM. The purpose of the Notice of Staking is to provide the operator with an opportunity to gather information to better address site-specific resource concerns while preparing the APD package. This may expedite approval of the APD. On or after March 13, 2017, if an operator chooses to file an NOS, the operator must file the Notice of Staking using the BLM's electronic commerce application for oil and gas permitting and reporting. Attachment I, Sample Format for Notice of Staking, provides the information required for the Notice of Staking option. Prior to March 13, 2017, an operator may file a Notice of Staking in the BLM Field Office having jurisdiction.

For Federal lands managed by other Surface Managing Agencies, the BLM will provide a copy of the Notice of Staking to the appropriate Surface Managing Agency office. In Alaska, when a subsistence stipulation is part of the lease, the operator must also send a copy of the Notice of Staking to the appropriate Borough and/or Native Regional or Village Corporation.

Within 10 days of receiving the Notice of Staking, the BLM or the FS will review it for required information and schedule a date for the onsite inspection. The onsite inspection will be conducted as soon as weather and other conditions permit. The operator must stake the proposed drill pad and ancillary facilities, and flag new or reconstructed access routes, before the onsite inspection. The staking must include a center stake for the proposed well, two reference stakes, and a flagged access road centerline. Staking activities are considered casual use unless the particular activity is likely to cause more than negligible disturbance or damage. Off-road vehicular use for the purposes of staking is casual use unless, in a particular case, it is likely to cause more than negligible disturbance or damage, or otherwise prohibited.

On non-NFS lands, the BLM will invite the Surface Managing Agency and private surface owner, if applicable, to participate in the onsite inspection. If the surface is privately owned, the operator must furnish to the BLM the name, address, and telephone number of the surface owner if known. All parties who attend the onsite inspection will jointly develop a list of resource concerns that the operator must address in the APD. The operator will be provided a list of these concerns either during the onsite inspection or within 7 days of the onsite inspection. Surface owner concerns will be considered to the extent practical within the law. Failure to submit an APD within 60 days of the onsite inspection will result in the Notice of Staking being returned to the operator.

* * * * *

E. APD Posting and Processing

1. Posting

The BLM and the Federal Surface Managing Agency, if other than the BLM, must provide at least 30 days public notice before the BLM may approve an APD or Master Development Plan on a Federal oil and gas lease. Posting is not required for an APD for an Indian oil and gas lease or agreement. The BLM will post information about the APD or Notice of Staking for Federal oil and gas leases to the Internet and in an area of the BLM Field Office having jurisdiction that is readily accessible to the public. Posting to the Internet under this provision will not be required until after March 13, 2017. If the surface is managed by a Federal agency other than the BLM, that agency also is required to post the notice for at least 30 days. This would include the BIA where the surface is held in trust but the mineral estate is federally owned. The posting is for informational purposes only and is not an appealable decision. The purpose of the posting is to give any interested party notification that a Federal approval of mineral operations has been requested. The BLM or the FS will not post confidential information.

Reposting of the proposal may be necessary if the posted location of the proposed well is:

a. Moved to a different quarter-quarter section;

b. Moved more than 660 feet for lands that are not covered by a Public Land Survey; or

c. If the BLM or the FS determine that the move is substantial.

2. Processing

The timeframes established in this subsection apply to both individual APDs and to the multiple APDs included in Master Development Plans and to leases of Indian minerals as well as leases of Federal minerals.

If there is enough information to begin processing the application, the BLM (and the FS if applicable) will process it up to the point that missing information or uncorrected deficiencies render further processing impractical or impossible.

a. Within 10 days of receiving an application, the BLM (in consultation with the FS if the application concerns NFS lands) will notify the operator as to whether or not the application is complete. The BLM will request additional information and correction of any material submitted, if necessary, in the 10-day notification. If an onsite inspection has not been performed, the applicant will be notified that the application is not complete. Within 10 days of receiving the application, the BLM, in coordination with the operator and Surface Managing Agency, including the private surface owner in the case of split estate minerals, will schedule a date for the onsite inspection (unless the onsite inspection has already been conducted as part of a Notice of Staking). The onsite inspection will be held as soon as practicable based on participants' schedules and weather conditions. The operator will be notified at the onsite inspection of any additional deficiencies that are discovered during the inspection. The operator has 45 days after receiving notice from the BLM to provide any additional information necessary to complete the APD, or the APD may be returned to the operator.

b. Within 30 days after the operator has submitted a complete application, including incorporating any changes that resulted from the onsite inspection, the BLM will:

1. Approve the application, subject to reasonable Conditions of Approval, if the appropriate requirements of the NEPA, National Historic Preservation Act, Endangered Species Act, and other applicable law have been met and, if on NFS lands, the FS has approved the Surface Use Plan of Operations;

2. Notify the operator that it is deferring action on the permit; or

3. Deny the permit if it cannot be approved and the BLM cannot identify any actions that the operator could take that would enable the BLM to issue the permit or the FS to approve the Surface Use Plan of Operations, if applicable.

c. The notice of deferral in paragraph (b)(2) of this section must specify:

1. Any action the operator could take that would enable the BLM (in consultation with the FS if applicable) to issue a final decision on the application. The FS will notify the applicant of any action the applicant could take that would enable the FS to issue a final decision on the Surface Use Plan of Operations on NFS lands. Actions may include, but are not limited to, assistance with:

(A) Data gathering; and

(B) Preparing analyses and documents.

2. If applicable, a list of actions that the BLM or the FS need to take before making a final decision on the application, including appropriate analysis under NEPA or other applicable law and a schedule for completing these actions.

d. The operator has 2 years from the date of the notice under paragraph (c)(1) of this section to take the action specified in the notice. If the appropriate analyses required by NEPA, National Historic Preservation Act, Endangered Species Act, and other applicable laws have been completed, the BLM (and the FS if applicable), will make a decision on the permit and the Surface Use Plan of Operations within 10 days of receiving a report from the operator addressing all of the issues or actions specified in the notice under paragraph (c)(1) of this section and certifying that all required actions have been taken. If the operator has not completed the actions specified in the notice within 2 years from the operator's receipt of the paragraph (c)(1) notice, the BLM will deny the permit.

e. For APDs on NFS lands, the decision to approve a Surface Use Plan of Operations or Master Development Plan may be subject to FS appeal procedures. The BLM cannot approve an APD until the appeal of the Surface Use Plan of Operations is resolved.

* * * * *

I. Waiver From Electronic Submission Requirements

The operator may request a waiver from the electronic submission requirement for an APD or Notice of Staking if compliance would cause hardship or the operator is unable to file these documents electronically. In the request, the operator must explain the reason(s) that prevent its use of the electronic system, plans for complying with the electronic submission requirement, and a timeframe for compliance. If the request applies to a particular set of APDs or Notices of Staking, then the request must identify the APDs or Notices of Staking to which the waiver applies. The waiver request is subject to BLM approval. If the request does not specify a particular set of APDs or Notices of Staking, then the waiver will apply to all submissions made by the operator during the compliance timeframe included as part of the BLM's waiver approval. The BLM will not consider an APD or Notice of Staking that the operator did not submit through the electronic system, unless the BLM approves a waiver.

[FR Doc. 2016–31752 Filed 1–9–17; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 384

[FMCSA–2007–27748]

RIN 2126–AB66

Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule; correction.

SUMMARY: FMCSA is correcting a final rule that appeared in the **Federal Register** of December 8, 2016 (81 FR 88732), regarding the establishment of new minimum training standards for certain individuals applying for their commercial driver's license (CDL) for the first time; an upgrade of their CDL (*e.g.,* a Class B CDL holder seeking a Class A CDL); or a hazardous materials (H), passenger (P), or school bus (S) endorsement for the first time.

DATES: The effective date of this correction is February 6, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations (MC–PSD) Division, FMCSA, 1200 New Jersey Ave SE., Washington, DC 20590–0001, by telephone at 202–366–4325, or by email at *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION: The FMCSA makes minor corrections to fix errors in the final rule published on December 8, 2016. In instruction 10, amending § 383.73, the Agency corrects ''(b)(10)'' to read ''(b)(11)'' in both the instruction and associated regulatory

text. Additionally in § 383.73, FMCSA changes paragraph ''(e)(8)'' to read ''(e)(9)'' in both the instruction and associated regulatory text. In instruction 13, amending Part 383, the Agency changes ''§ 384.235'' to read ''§ 384.236.'' These changes are required because as written, the instruction and associated regulatory text would have deleted the recent changes published in the **Federal Register** on December 5, 2016, in the final rule titled ''Commercial Driver's License Drug and Alcohol Clearinghouse'' (Clearinghouse) (81 FR 87686, RIN 2126–AB18, Docket No. FMCSA–2011–0031). FMCSA makes these corrections in this document to ensure the original language in the Clearinghouse final rule remains in effect.

■ Therefore, in FR Doc. 2016–28012 appearing on page 88803 in the **Federal Register** of December 8, 2016, the following corrections are made:

§ 383.73 [Corrected]

■ 1. On page 88803, in the first column, in Part 383, amendatory instruction 10 is corrected to read as follows:

''10. Amend § 383.73 by revising paragraph (b)(3) introductory text and paragraph (b)(3)(ii) and by adding paragraphs (b)(11), (e)(9), and (p) to read as follows:''

The corrected paragraphs (b)(11) and (e)(9) read as follows''

§ 383.73 State procedures.

* * * * *

(b) * * *

(11) Beginning on February 7, 2020, not conduct a skills test of an applicant for a Class A or Class B CDL, or a passenger (P) or school bus (S) endorsement until the State verifies electronically that the applicant completed the training prescribed in subpart F of part 380 of this subchapter.

* * * * *

(e) * * *

(9) Beginning on February 7, 2020, not issue an upgrade to a Class A or Class B CDL, or a passenger (P), school bus (S), or hazardous materials (H) endorsement, unless the applicant has completed the training required by subpart F of part 380 of this subchapter.

§ 384.235 [Corrected]

■ 2. On page 88803, in the third column, in Part 384, amendatory instruction 13 is corrected to read as follows:

''13. Add § 384.236 to subpart B to read as follows:''

The corrected section reads as follows:

§ 384.236 Entry-level driver training provider notification.

The State must meet the entry-level driver training provider notification requirement of § 383.73(p) of this chapter.

Issued under authority delegated in 49 CFR 1.87 on: December 27, 2016.

Larry W. Minor,

Associate Administrator of Policy.

[FR Doc. 2016–31784 Filed 1–9–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150916863–6211–02]

RIN 0648–XF108

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2017 Bering Sea and Aleutian Islands Pollock, Atka Mackerel, and Pacific Cod Total Allowable Catch Amounts

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

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2017 total allowable catch (TAC) amounts for the Bering Sea and Aleutian Islands (BSAI) pollock, Atka mackerel, and Pacific cod fisheries. This action is necessary because NMFS has determined these TACs are incorrectly specified, and will ensure the BSAI pollock, Atka mackerel, and Pacific cod TACs are the appropriate amounts based on the best available scientific information. Also, NMFS is announcing the Aleutian Islands Catcher Vessel (CV) Harvest Set-Aside and Bering Sea Trawl CV A-Season Sector Limitation will not be in effect for 2017, and TACs in this inseason adjustment will apply for 2017. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), January 9, 2017, until the effective date of the final 2017 and 2018 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 25, 2017.

ADDRESSES: You may submit comments on this document, identified by *NOAA–NMFS–2015–0118,* by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0118,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: 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), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone 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.

The final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016) set the 2017 Aleutian Island (AI) pollock TAC at 19,000 metric tons (mt), the 2017 Bering Sea (BS) pollock TAC at 1,340,643 mt, the 2017 BSAI Atka mackerel TAC at 55,000 mt, the 2017 BS Pacific cod TAC at 238,680 mt, and the AI Pacific cod TAC at 12,839 mt. Also set was an AI pollock ABC of 36,664 and a Western Aleutian Island limit for Pacific cod at 26.3 percent of the AI Pacific cod TAC. In December 2016, the

North Pacific Fishery Management Council (Council) recommended a 2017 BS pollock TAC of 1,345,000 mt, which is more than the 1,340,643 mt TAC established by the final 2016 and 2017 harvest specifications for groundfish in the BSAI. The Council also recommended decreasing the AI pollock ABC to 36,061 mt from 36,664 mt. This in turn reduces some area and seasonal limits for AI pollock. The Council also recommended a 2017 BSAI Atka mackerel TAC of 65,000 mt, which is more than the 55,000 mt TAC established by the final 2016 and 2017 harvest specifications for groundfish in the BSAI. Furthermore, the Council recommended a 2017 BS Pacific cod TAC of 223,704 mt, and an AI Pacific cod TAC of 15,695 mt, which is less than the BS Pacific cod TAC of 238,680 mt, and more than the AI Pacific cod TAC of 12,839 mt established by the final 2016 and 2017 harvest specifications for groundfish in the BSAI. In addition to changes in TACs, the Council recommended changing the percentage limit of Western Aleutian Island Pacific cod to 25.6 percent of the AI Pacific cod ABC, from the 26.3 percent of the AI Pacific cod TAC. The Council's recommended 2017 TACs, and the area and seasonal apportionments, are based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2016, which NMFS has determined is the best available scientific information for these fisheries.

Amendment 113 to the FMP (81 FR 84434, November 23, 2016) and regulations at § 679.20(a)(7)(viii) require NMFS to announce whether the Aleutian Islands incidental catch allowance, directed fishing allowance, CV Harvest Set-Aside, and Unrestricted Fishery, as well as the Bering Sea Trawl CV A-Season Sector Limitation will be in effect for 2017. NMFS received notification from Adak and Atka that neither will be processing Aleutian Islands Pacific cod in 2017. Therefore, the Pacific cod TACs in Table 9 of this inseason adjustment will be effective for 2017 and the harvest limits in Table 8A (81 FR 84434, November 23, 2016) will not apply in 2017.

Steller sea lions occur in the same location as the pollock, Atka mackerel, and Pacific cod fisheries and are listed as endangered under the Endangered Species Act (ESA). Pollock, Atka mackerel, and Pacific cod are a principal prey species for Steller sea lions in the BSAI. The seasonal apportionment of pollock, Atka mackerel, and Pacific cod harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. NMFS published regulations and the revised harvest limit amounts for Atka mackerel, Pacific cod, and pollock fisheries to implement Steller sea lion protection measures to insure that groundfish fisheries of the BSAI are not likely to jeopardize the continued existence of the western distinct population segment of Steller sea lions or destroy or adversely modify their designated critical habitat (79 FR 70286, November 25, 2014). The regulations at § 679.20(a)(5)(i) specify how the BS pollock TAC will be apportioned. The regulations at § 679.20(a)(7) specify how the BSAI Pacific cod TAC will be apportioned. The regulations at § 679.20(a)(8) specify how the BSAI Atka mackerel TAC will be apportioned.

In accordance with § 679.25(a)(1)(iii), (a)(2)(i)(B), and (a)(2)(iv), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2016 SAFE report for this fishery, the current BSAI pollock, Atka mackerel, and Pacific cod TACs are incorrectly specified. Pursuant to § 679.25(a)(1)(iii), the Regional Administrator is adjusting the 2017 BS pollock TAC to 1,345,000 mt, the 2017 BSAI Atka mackerel TAC to 65,000, the 2017 BS Pacific cod TAC to 223,704 mt, and the AI Pacific cod TAC to 15,695 mt. Therefore, Table 2 of the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016) is revised consistent with this adjustment.

Pursuant to § 679.20(a)(5)(i), Table 5 of the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016) is revised for the 2017 BS allocations of pollock TAC to the directed pollock fisheries and to the Community Development Quota (CDQ) directed fishing allowances consistent with this adjustment. The Steller sea lion protection measure final rule (79 FR 70286, November 25, 2014), sets harvest limits for pollock in the A season (January 20 to June 10) in Areas 543, 542, and 541, see § 679.20(a)(5)(iii)(B)(*6*). In Area 541, the 2017 A season pollock harvest limit is no more than 30 percent, or 10,818 mt, of the AI ABC of 36,061 mt. In Area 542, the 2017 A season pollock harvest limit is no more than 15 percent, or 5,409 mt, of the AI ABC of 36,061 mt. In Area 543, the 2017 A season pollock harvest limit is no more than 5 percent, or 1,803 mt, of the AI pollock ABC of 36,061 mt.

TABLE 5—FINAL 2017 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2017 allocations	2017 A season [1]		2017 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea TAC [1]	1,345,000	n/a	n/a	n/a
CDQ DFA	134,500	60,525	37,660	73,975
ICA [1]	47,210	n/a	n/a	n/a
Total Bering Sea non-CDQ DFA	1,163,291	523,481	325,721	639,810
AFA Inshore	581,645	261,740	162,861	319,905
AFA Catcher/Processors [3]	465,316	209,392	130,289	255,924
Catch by C/Ps	425,764	191,594	n/a	234,170
Catch by CVs [3]	39,552	17,798	n/a	21,754
Unlisted C/P Limit [4]	2,327	1,047	n/a	1,280
AFA Motherships	116,329	52,348	32,572	63,981
Excessive Harvesting Limit [5]	203,576	n/a	n/a	n/a
Excessive Processing Limit [6]	348,987	n/a	n/a	n/a
Aleutian Islands subarea ABC	36,061	n/a	n/a	n/a
Aleutian Islands subarea TAC [1]	19,000	n/a	n/a	n/a
CDQ DFA	1,900	760	n/a	1,140
ICA	2,400	1,200	n/a	1,200
Aleut Corporation	14,700	12,464	n/a	2,236

TABLE 5—FINAL 2017 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]—Continued

[Amounts are in metric tons]

Area and sector	2017 allocations	2017 A season [1]		2017 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Area harvest limit [7]				
541	10,818	n/a	n/a	n/a
542	5,409	n/a	n/a	n/a
543	1,803	n/a	n/a	n/a
Bogoslof District ICA [8]	500	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the BS subarea pollock, after subtracting the CDQ DFA (10 percent) and the ICA (3.9 percent), is allocated as a DFA as follows: Inshore sector—50 percent, catcher/processor sector (C/P)—40 percent, and mothership sector—10 percent. In the BS subarea, 45 percent of the DFA is allocated to the A season (January 20–June 10) and 55 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (2,400 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the pollock directed fishery.

[2] In the BS subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] Pursuant to § 679.20(a)(5)(iii)(B)(*6*), NMFS establishes harvest limits for pollock in the A season in Area 541 no more than 30 percent, in Area 542 no more than 15 percent, and in Area 543 no more than 5 percent of the Aleutian Islands pollock ABC.

[8] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Pursuant to § 679.20(a)(8), Table 7 of the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016) is revised for the 2017 seasonal and spatial allowances, gear shares, CDQ reserve, incidental catch allowance, and Amendment 80 allocation of the BSAI Atka mackerel TAC consistent with this adjustment.

TABLE 7—FINAL 2017 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector [1]	Season [2 3 4]	2017 allocation by area		
		Eastern Aleutian District/ Bering Sea	Central Aleutian District [5]	Western Aleutian District
TAC	n/a	34,500	18,000	12,500
CDQ reserve	Total	3,692	1,926	1,338
	A	1,846	963	669
	Critical Habitat	n/a	578	401
	B	1,846	963	669
	Critical Habitat	n/a	578	401
Non-CDQ TAC	n/a	30,809	16,074	11,163
ICA	Total	1,000	75	20
Jig [6]	Total	149	0	0
BSAI trawl limited access	Total	2,966	1,600	0
	A	1,483	800	0
	Critical Habitat	n/a	480	0
	B	1,483	800	0
	Critical Habitat	n/a	480	0
Amendment 80 sectors	Total	26,694	14,399	11,143
	A	13,347	7,200	5,571
	B	13,347	7,200	5,571
Alaska Groundfish Cooperative	Total [6]	15,191	8,552	6,853
	A	7,596	4,276	3,427
	Critical Habitat	n/a	2,566	2,056
	B	7,596	4,276	3,427
	Critical Habitat	n/a	2,566	2,056
Alaska Seafood Cooperative	Total [6]	11,502	5,847	4,290
	A	5,751	2,924	2,145
	Critical Habitat	n/a	1,754	1,287
	B	5,751	2,924	2,145

TABLE 7—FINAL 2017 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC—Continued

[Amounts are in metric tons]

Sector [1]	Season [2 3 4]	2017 allocation by area		
		Eastern Aleutian District/ Bering Sea	Central Aleutian District [5]	Western Aleutian District
	Critical Habitat	n/a	1,754	1,287

[1] Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, jig gear allocation, and ICAs to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

[2] Sections 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

[3] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

[4] Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to December 31.

[5] Section 679.20(a)(8)(ii)(C)(*1*)(*i*) limits no more than 60 percent of the annual TACs in Areas 542 and 543 to be caught inside of critical habitat; (a)(ii)(C)(*1*)(*ii*) equally divides the annual TACs between the A and B seasons as defined at § 679.23(e)(3); and (a)(8)(ii)(C)(*2*) requires the TAC in Area 543 shall be no more than 65 percent of ABC.

[6] Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and ICA. The amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Pursuant to § 679.20(a)(7), Table 9 of the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016) is revised for the 2017 gear shares and seasonal allowances of the BSAI Pacific cod TAC consistent with this adjustment.

TABLE 9—FINAL 2017 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Gear sector	Percent	2017 share of gear sector total	2017 share of sector total	2017 seasonal apportionment	
				Seasons	Amount
BS TAC	n/a	223,704	n/a	n/a	n/a
BS CDQ	n/a	23,936	n/a	see § 679.20(a)(7)(i)(B)	n/a
BS non-CDQ TAC	n/a	199,768	n/a	n/a	n/a
AI TAC	n/a	15,695	n/a	n/a	n/a
AI CDQ	n/a	1,679	n/a	see § 679.20(a)(7)(i)(B)	n/a
AI non-CDQ TAC	n/a	14,016	n/a	n/a	n/a
Western Aleutian Island Limit	n/a	4,018	n/a	n/a	n/a
Total BSAI non-CDQ TAC [1]	100	213,783	n/a	n/a	n/a
Total hook-and-line/pot gear	60.8	129,980	n/a	n/a	n/a
Hook-and-line/pot ICA [2]	n/a	500	n/a	see § 679.20(a)(7)(ii)(B)	n/a
Hook-and-line/pot sub-total	n/a	129,480	n/a	n/a	n/a
Hook-and-line catcher/processor	48.7	n/a	103,712	Jan 1–Jun 10	52,893
				Jun 10–Dec 31	50,819
Hook-and-line catcher vessel ≥60 ft LOA.	0.2	n/a	426	Jan 1–Jun 10	217
				Jun 10–Dec 31	209
Pot catcher/processor	1.5	n/a	3,194	Jan 1–Jun 10	1,629
				Sept 1–Dec 31	1,565
Pot catcher vessel ≥60 ft LOA	8.4	n/a	17,889	Jan 1–Jun 10	9,123
				Sept 1–Dec 31	8,765
Catcher vessel <60 ft LOA using hook-and-line or pot gear.	2	n/a	4,259	n/a	n/a
Trawl catcher vessel	22.1	47,246	n/a	Jan 20–Apr 1	34,962
				Apr 1–Jun 10	5,197
				Jun 10–Nov 1	7,087
AFA trawl catcher/processor	2.3	4,917	n/a	Jan 20–Apr 1	3,688
				Apr 1–Jun 10	1,229
				Jun 10–Nov 1	0
Amendment 80	13.4	28,647	n/a	Jan 20–Apr 1	21,485
				Apr 1–Jun 10	7,162
				Jun 10–Nov 1	0
Alaska Groundfish Cooperative	n/a	n/a	4,522	Jan 20–Apr 1	3,392
				Apr 1–Jun 10	1,131
				Jun 10–Dec 31	0
Alaska Seafood Cooperative	n/a	n/a	24,125	Jan 20–Apr 1	18,094
				Apr 1–Jun 10	6,031
				Jun 10–Dec 31	0

TABLE 9—FINAL 2017 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC—Continued

[Amounts are in metric tons]

Gear sector	Percent	2017 share of gear sector total	2017 share of sector total	2017 seasonal apportionment	
				Seasons	Amount
Jig	1.4	2,993	n/a	Jan 1–Apr 30	1,796
				Apr 30–Aug 31	599
				Aug 31–Dec 31	599

[1] The gear shares and seasonal allowances for BSAI Pacific cod TAC are based on the sum of the BS and AI Pacific cod TACs, after the subtraction of CDQ. If the TAC for Pacific cod in either the AI or BS is reached, then directed fishing for Pacific cod in that subarea may be prohibited, even if a BSAI allowance remains.

[2] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 500 mt for 2017 based on anticipated incidental catch in these fisheries.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

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 allow for harvests that exceed the appropriate allocations for pollock, Atka mackerel, and Pacific cod in the BSAI based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 20, 2016, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

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.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 25, 2017.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: January 4, 2017.

Emily H. Menashes,

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

[FR Doc. 2017–00260 Filed 1–9–17; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 82, No. 6
Tuesday, January 10, 2017

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.

BUREAU OF CONSUMER FINANCIAL PROTECTION

5 CFR Part 9401

[Docket No. CFPB–2016–0050]

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Bureau of Consumer Financial Protection

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (CFPB or Bureau), with the concurrence of the Office of Government Ethics (OGE), is issuing this notice of proposed rulemaking for employees of the Bureau. This proposal would amend the existing Supplemental Standards of Ethical Conduct for Employees of the Bureau of Consumer Financial Protection (CFPB Ethics Regulations) involving: Outside employment for covered employees; Bureau employees' ownership or control of certain securities; restrictions on seeking, obtaining, or renegotiating credit or indebtedness; and disqualification requirements based on existing credit or indebtedness. Additionally, the proposed regulation would clarify and make minor revisions to certain definitions.

DATES: Comments are invited and must be received on or before February 9, 2017.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2016–0050 or Regulatory Information Number (RIN) number 3209–AA15, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2016–0050 or RIN number 3209–AA15 in the subject line of the message.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions must include the agency name and docket number or RIN for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Amber Vail, Senior Ethics Counsel, at (202) 435–7305 or Amy Mertz Brown, Alternate Designated Agency Ethics Official, at (202) 435–7256 at the Legal Division, Consumer Financial Protection Bureau.

SUPPLEMENTARY INFORMATION:

I. Background

Section 2635.105 of the OGE Standards of Ethical Conduct for Executive Branch Employees (OGE Standards) authorizes an agency, with the concurrence of OGE, to adopt agency-specific supplemental regulations that are necessary to properly implement its ethics program. On April 27, 2012, the Bureau, with OGE's concurrence, published in the **Federal Register** an interim final rule to establish the CFPB Ethics Regulations (77 FR 25019, April 27, 2012), effective June 27, 2012. The Bureau received one comment on the interim final rule, which did not prompt a change, and the interim final rule went into effect as proposed. The Bureau, with OGE's concurrence, now proposes to amend the CFPB Ethics Regulations.

II. Description of Proposed Amended Sections of the CFPB Ethics Regulations

Proposed Amended § 9401.102—Definitions

Section 9401.102 defines terms and phrases used throughout the CFPB Ethics Regulations. The Bureau proposes to amend the definitions section to add and revise certain useful definitions and delete others.

The proposed regulation replaces the phrase ''debt and equity interest'' with the term ''security'' throughout the CFPB Ethics Regulations. The Bureau has found that the term ''debt interest'' has caused confusion among some employees. This revision would help distinguish between those instances when an individual owns or controls a debt ownership interest in an entity (*e.g.,* owns a corporate bond) from those in which an individual is indebted to an entity (*e.g.,* has a loan or existing credit). The term ''security'' would have the same definition as the phrase ''debt and equity interest'' in the current regulations.

The proposed regulation amends the term ''employee'' to exclude special Government employees (SGEs). During CFPB's initial stand-up period, the Bureau appointed several CFPB executives, subject matter experts, and other Bureau officials with significant policy-making authority to short-term SGE positions. At that time, the Bureau determined it was essential that the CFPB Ethics Regulations apply to these employees to assure the public that the Bureau created and administered the Bureau's programs in an impartial and objective manner. It is no longer the practice for the Bureau to fill such positions with SGEs, and the Bureau currently does not have any employees designated as SGEs. As a result, the Bureau has determined this provision is no longer needed. Therefore, the proposed regulation excludes SGEs from the definition of ''employee.'' This treatment of SGEs is consistent with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation, both of which exclude SGEs from the definition of ''employee'' in their supplemental standards of ethical conduct. The proposed regulation would not relax or

otherwise affect how the criminal conflict of interest statutes and OGE Standards apply to SGEs. The Bureau will continue to provide ethics guidance and assistance to SGEs on compliance with the conflict of interest statutes and OGE Standards. In addition, the Bureau's Office of Human Capital will continue to identify and designate individuals as SGEs at the time the individual is appointed or retained, and will continue to maintain an internal tracking system of individuals who are designated as SGEs.

The proposed regulation also adds the phrase ''practice of law'' to the definitions section. The Bureau has received multiple inquiries from employees as to whether a proposed outside activity would fall within the prohibition in § 9401.105. To ensure consistency and for the ease of administration, the phrase ''practice of law'' would have the same meaning as in Rule 49 of the Rules of the District of Columbia Court of Appeals as of November 2016. The Bureau opted to borrow the definition utilized by the District of Columbia Court of Appeals because the majority of attorneys employed by the Bureau have a duty station located in the District of Columbia.

The proposed regulation also amends the term ''spouse'' by removing the reference to ''legally'' in the phrase ''legally separated.'' The current definition explains that for purposes of the CFPB Ethics Regulations, an individual is not considered to be an employee's spouse if: (1) The employee and the employee's spouse are legally separated; (2) the employee and the employee's spouse live apart; (3) there is an intention to end the marriage or separate permanently; and (4) the employee has no control over the legally separated spouse's debt or equity interests. On several occasions the Bureau encountered confusion as to what constituted a ''legal separation'' because this is a standard defined by State law and varies depending on the State in which an employee resides. The proposed revision to the definition of ''spouse'' eliminates the reference to ''legally'' in the phrase ''legally separated.'' This proposed amendment is consistent with how OGE determines whether an employee is required to report information concerning a spouse from whom the employee is separated for purposes of the financial disclosure reporting requirements at 5 CFR 2634.309(c)(2). OGE does not require a reporting individual to report any information about a spouse from whom the reporting individual is ''permanently separated.'' OGE only requires the employee to be ''permanently separated'' from the employee's spouse and does not require the two individuals to be ''legally separated.''

The proposed regulation also adds the phrase ''vested legal or beneficial interest'' to the definitions section to clarify several provisions. This new definition is meant to help interpret the proposed amendments in §§ 9401.106, 9401.108, and 9401.109, where the Bureau proposes to narrow the disqualification and reporting requirements with respect to trusts in which the employee or the employee's spouse or minor child has a vested legal or beneficial interest. A vested legal or beneficial interest in a trust means that the individual has a present legal right to its property or income, even though the right to possession or enjoyment may be postponed to some unknown time in the future. In defining this phrase, the Bureau relied upon 5 CFR 2634.310, where OGE explains what constitutes a vested beneficial interest in the principal or income of an estate or trust.

The Bureau is republishing all the definitions in this section, including those not proposed for revision, for ease of reference.

Proposed Amended § 9401.104—Additional Rules Concerning Outside Employment for Covered Employees

The proposed amendments to § 9401.104 are designed to balance several important ethical principles against an employee's right to engage in outside activities. Proposed § 9401.104 would retain the existing prohibition that precludes a covered employee from engaging in compensated outside employment for any entity supervised by the Bureau or for any officer, director, or employee of such entity. The proposed rule adds a new prohibition on covered employees using a professional license related to real estate, mortgage brokerage, property appraisals, or property insurance for compensation. The proposed amendment would permit covered employees to retain these professional licenses but would prohibit them from engaging in outside compensated employment as real estate agents, mortgage brokers, property appraisers, real property insurance agents, or in other similar positions.

The Bureau has determined this new prohibition is necessary to ensure that a reasonable person would not question the impartiality and objectivity with which covered employees perform their official Bureau duties in connection with financial institutions that are involved in real estate-related transactions. Continuing to allow covered employees to use these licenses for compensation would hinder CFPB in fulfilling its mission if members of the public question whether these employees are using their public office or Bureau connections for private gain by advancing their outside real estate-related business activities.

The proposed rule authorizes the Designated Agency Ethics Official (DAEO), in consultation with senior management in the Division in which the employee works, to grant a limited waiver to this prohibition based on a written determination that a specific transaction requiring the use of the license would not create an appearance of loss of impartiality or use of public office for private gain.

The proposed regulation expands the term ''covered employee'' to include all employees who work in a Bureau office where employees participate in the examination, investigation, or supervision of entities offering or providing a consumer financial product or service. For example, all employees in the Division of Supervision, Enforcement, and Fair Lending (SEFL) would be ''covered employees'' under the proposed rule, whereas only certain SEFL positions are covered under the current definition.

Proposed Amended § 9401.106—Prohibited Financial Interests

This proposed rule would amend 5 CFR 9401.106, which provides in paragraph (a), with certain exceptions set forth in paragraph (b), that no CFPB employee, or an employee's spouse or minor child, may own or control a security in an entity supervised by the Bureau. The proposed amendment of this section would clarify the scope of the prohibited financial interests by more clearly defining the types of financial interests covered by this prohibition and the exceptions to the general rule. The intent of the proposed amendment is to make this section easier for employees to understand and follow.

The prohibited financial interests are defined in paragraph (a). The proposed regulation would not change the scope of financial interests that currently are prohibited under this section. The purpose of the proposed amendment is to more clearly define prohibited financial interests by dividing the prohibited holdings into two categories. The first would refer to a security in, or bonds issued by, an entity supervised by the Bureau. The second would refer to securities in a collective investment fund, such as a mutual fund, if the fund

has a stated policy of concentrating its investments in the financial services or banking industry. The Bureau always has interpreted the current rule to prohibit employees, as well as their spouses and minor children, from owning or controlling these collective investment funds (*i.e.,* sector mutual funds), and is proposing to amend the rule to make this prohibition more explicit.

The exceptions to the general prohibition are listed in paragraph (b). The purpose of the exceptions is to ease the restrictions on the financial interests of employees and their spouses and minor children by permitting interests of a character unlikely to raise questions regarding the objective and impartial performance of employees' official duties or the possible misuse of their positions. In promulgating the exemptions to the financial conflict of interest statute in 5 CFR part 2640, subpart B, OGE determined that certain financial interests are unlikely to affect an employee's official actions. The Bureau proposes to revise the exceptions in paragraph (b) to more closely conform to certain exemptions to the financial conflict of interest statute (18 U.S.C. 208) promulgated by OGE. The Bureau determined that these newly proposed exceptions will make it easier for Bureau employees to understand and comply with the CFPB Ethics Regulations, as well as the financial conflict of interest statutes.

In paragraph (b)(1), the Bureau proposes to change the name of the first exception to ''collective investment funds'' to conform with the language of that exception but no substantive change is intended. Proposed paragraph (b)(2) replaces the current description for the widely held, diversified pension plan exception with new language that the Bureau intends to have the same meaning as OGE's regulatory exemption found at 5 CFR 2640.201(c)(iii) for diversified employee benefit plans. Proposed paragraph (b)(4) adds an exception for an interest held within a State pension plan. This exception would have the same meaning as OGE's exemption in 5 CFR 2640.201(c)(ii) for State government pension plans.

In new paragraph (c), the proposed regulation would provide specific time frames for employees to notify the DAEO and divest a prohibited financial interest after: (1) An individual commences employment with the Bureau; (2) the Bureau adds a new financial institution to the list of entities supervised by the Bureau (*i.e.,* the prohibited holdings list); or (3) an employee or an employee's spouse or minor child acquires a prohibited interest without specific intent, such as via inheritance. The proposed amendment would provide a uniform 30-day period for notifying the DAEO, and consistent with 5 CFR 2635.403(d), a uniform 90-day period for divestiture in each instance.

Proposed paragraph (d) requires employees to immediately disqualify themselves if they or their spouses or minor children own or control a security prohibited by paragraph (a). Proposed paragraphs (d)(1) and (d)(2) explain the different disqualification standards for securities prohibited under proposed paragraphs (a)(1) and (a)(2), respectively. Proposed paragraph (d)(1) describes the disqualification requirements that apply when an employee or an employee's spouse or minor child owns or controls a security in an entity supervised by the Bureau. Whereas, proposed paragraph (d)(2) describes the more extensive disqualification requirements that apply when an employee or an employee's spouse or minor child owns or controls a security in a collective investment fund that has a stated policy of concentrating its investments in the financial services or banking industry.

Proposed paragraph (e)(4) provides an additional factor for the DAEO to consider when an employee requests a waiver from the general prohibition in paragraph (a). It is expected that the DAEO will grant a waiver of the prohibitions in § 9401.106 only in limited circumstances based on a case-by-case analysis, and only when the granting of the waiver would not unduly undermine the public's confidence in the impartiality and objectivity with which: (1) The employee performs his or her official duties; and (2) the Division in which the employee works executes its functions. Towards this end, proposed paragraph (e)(4) specifically includes public confidence and the appearance of impartiality as a factor for the DAEO to consider in granting a waiver.

The CFPB Ethics Regulations currently require an employee to notify the DAEO in writing if a trust in which the employee or the employee's spouse or minor child has a legal or beneficial interest contains a security that the employee would be prohibited from owning or controlling under paragraph (a). The Bureau proposes to amend paragraph (f)(3) to clarify that the employee's reporting requirement only applies to trusts in which the employee or the employee's spouse or minor child has a vested legal or beneficial interest. The Bureau has determined that the reporting requirement in this section should apply only to those financial interests in which an employee or an employee's spouse or minor child has a present legal right to the property or income in the trust. As noted previously, the proposed rule would add a definition of ''vested legal or beneficial interest'' in § 9401.102.

The Bureau has determined, under its authority in section 2635.403(a) of the OGE Standards, that these proposed regulations are needed so that a reasonable person will not question the impartiality and objectivity with which the Bureau administers its agency programs.

Proposed Amended § 9401.107—Prohibition on Acceptance of Credit or Indebtedness on Preferential Terms From an Entity Supervised by the Bureau

The proposed rule would amend § 9401.107, which provides that employees may accept credit, become indebted, or enter into other financial relationships with entities supervised by the Bureau, only if the credit, indebtedness or other financial service is offered on terms and conditions no more favorable than those offered to the general public. The proposed amendment is not intended to change the scope of this prohibition. The proposed rule is meant to clarify that the standard for entering into financial relationships with entities supervised by the Bureau as articulated in this section is the same standard that is referenced in §§ 9401.108(b) and (e) and 9401.109(b). The proposed rule also states that an employee or the employee's spouse or minor child may not accept credit from, become indebted to, or enter into a financial relationship with an entity supervised by the Bureau, if the credit, indebtedness, or financial relationship is otherwise prohibited by the Federal conflict of interest statutes, the OGE Standards, or the CFPB Ethics Regulations. This proposed language is intended to remind employees there are other government ethics rules that may affect their ability to secure credit or indebtedness or to enter into financial relationships.

Proposed Amended § 9401.108—Restrictions on Seeking, Obtaining, or Renegotiating Credit From an Entity That Is or Represents a Party to a Matter to Which an Employee Is Assigned or May Be Assigned

The proposed revision to 5 CFR 9401.108 would retain the existing general prohibitions on seeking, obtaining, or renegotiating credit or indebtedness, the disqualification provisions, and the exemptions from the disqualification requirements. The

Bureau proposes to restructure this section to clarify the prohibitions and to incorporate new exemptions.

Under the proposed new paragraph (b), an employee or the employee's spouse or minor child would be permitted to seek, obtain, or renegotiate credit or indebtedness secured by a principal residence subject to five conditions. First, the credit or indebtedness must be secured by residential real property that is or will be the principal residence of the employee or the employee's spouse or minor child. Second, a minimum of three months must have elapsed since the employee stopped participating in each particular matter involving specific parties in which the entity from which the credit or indebtedness will be sought, obtained, or renegotiated was or represented a party to the matter. Third, the employee would be disqualified from participating in any particular matter involving specific parties in which the lender or creditor is or represents a party while the employee or the employee's spouse or minor child is actively seeking, obtaining, or renegotiating the loan or credit. Fourth, the party seeking, obtaining, or renegotiating the credit or indebtedness would have to satisfy all financial requirements that apply to applicants for the same type of credit or indebtedness for a residential real property. Fifth, the credit or indebtedness would have to be obtained on terms and conditions no more favorable than those offered to the general public.

The Bureau determined that a different standard for a residential home loan or credit on the principal residence is necessary because the Bureau's general prohibition in paragraph (a) against seeking, obtaining, or renegotiating credit or indebtedness has been a significant burden on certain employees. The current prohibition substantially reduces the number of lending options available to employees when they attempt to secure funding for a principal residence and prevents them from full access to the competitive consumer financial marketplace. The five conditions upon which seeking, obtaining, or renegotiating a residential home loan or credit are contingent reduce the possibility that: (1) The employee is using the employee's public office for private gain; (2) a reasonable person would question the impartiality and objectivity with which the Bureau administers its programs; and (3) the borrower has obtained the loan or credit on more favorable terms due to the employee's work on a Bureau matter involving that lender.

The Bureau notes that other financial regulatory agencies, including the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency, have similar exemptions for a home loan for an employee's principal residence. Additionally, this proposed amendment is consistent with the intent of the Preserving Independence of Financial Institution Examinations Act of 2003 (PIFIEA), which amended sections 212 and 213 of title 18 of the United States Code. These sections generally impose criminal penalties on national examiners borrowing from banks they examine. The PIFIEA modified those rules by decriminalizing extensions of credit to examiners for principal residential home loans from institutions that they examine or have authority to examine, if these loans are made on the same terms and conditions as are available to other borrowers. In amending sections 212 and 213, Congress explained that several factors supported the blanket residential loan exception, but most importantly, consolidation within the banking industry made it increasingly difficult for examiners to obtain nationally available mortgage loans and for the banking agencies to assign examiners work. Although Bureau employees are not subject to sections 212 and 213, the rationale for allowing Bureau employees, as well as their spouses and minor children, the ability to secure a residential home loan for their principal residence is the same.

For the same reasons as stated in § 9401.106, amended § 9401.108(d)(4) would limit the trust disqualification requirement to only those trusts in which the employee or the employee's spouse, domestic partner, or dependent child has a vested legal or beneficial interest.

The exemptions to the general prohibition are listed in new paragraph (e). The proposed rule would modify the two existing exemptions by deleting the limitation related to insured depository institutions or credit unions. As a result, all consumer credit or charge cards regardless of the issuer, and all checking or similar accounts regardless of where held, would fall within an exemption.

The proposed rule also would add a new exemption involving certain utility services. Under the current regulation, an employee and the employee's spouse and minor child are prohibited from seeking, obtaining, or renegotiating credit or indebtedness with any entity that is or was a party to a particular matter involving specific parties in which the employee: (1) Is currently participating; (2) is aware of the matter and believes it is likely the employee will participate; or (3) participated within the last two years. For purposes of this prohibition, the term ''credit'' includes ''the right granted by a person to a consumer to purchase property or services and defer payment of such.'' A number of courts have determined that this definition of ''credit'' includes when a consumer receives gas, electricity, water, and cellular telephone services and receives periodic bills for the services used.[1] When the Bureau originally promulgated the CFPB Ethics Regulations, it was not anticipated that the prohibition in this section would limit Bureau employees' ability to have these basic utility services and still be able to work on Bureau matters.

Under proposed paragraph (e)(3), the Bureau would exempt certain types of basic utility services used by consumers from the prohibition in paragraph (a) and the disqualification requirement in paragraph (d). Specifically, the proposed rule would add an exemption for the provision of telephone, cable, gas, electricity, water, or other similar utility services provided on credit. The Bureau has determined that there is no need to limit an employee's ability to work on matters while holding these forms of credit because they tend to involve fairly standardized agreements and low credit amounts. The Bureau also has concluded that permitting employees to have adequate access to sources of credit involving these types of utility services to meet their personal needs outweighs the incremental benefit that may be gained by covering these forms of credit.

Proposed Amended § 9401.109—Disqualification of Employees From Particular Matters Involving Existing Creditors

In addition, the proposed rule would amend 5 CFR 9401.109, which generally provides that an employee is disqualified from participating in a particular matter involving specific parties if the employee is aware that the employee, the employee's spouse, domestic partner, or dependent child, or a specified third party has credit with or is indebted to an entity that is or represents a party to the matter. The Bureau proposes to narrow the disqualification requirement regarding trusts and to incorporate new exemptions.

For the same reasons as stated in §§ 9401.106 and 9401.108, amended § 9401.109(a)(5) would impose a

[1] *See, e.g., Murray* v. *New Cingular Wireless Servs., Inc.,* 523 F.3d 719, 722 (7th Cir. 2008); *Mays* v. *Buckeye Rural Elec. Coop.,* 277 F.3d 873, 879 (6th Cir. 2002); *Williams* v. *AT&T Wireless Servs., Inc.,* 5 F. Supp. 2d 1142, 1145 (W.D. Wash. 1998).

disqualification requirement regarding a trust only if the employee or the employee's spouse, domestic partner, or dependent child has a vested legal or beneficial interest in the trust.

The existing regulation in paragraph (b) exempts five forms of credit and indebtedness from the general disqualification requirement as long as the person with the credit or indebtedness is not in an adversarial position with the entity that extended the credit or to which the indebtedness is owed, and the credit or indebtedness was offered on terms and conditions no more favorable than those offered to the general public. The current exemptions include: (1) Revolving consumer credit or charge cards issued by insured depository institutions or insured credit unions; (2) overdraft protection on checking accounts and similar accounts at insured depository institutions or insured credit unions; (3) educational loans; (4) loans on residential homes; and (5) amortizing indebtedness on consumer goods (*e.g.,* automobile loans). The proposed rule would modify the first two existing exemptions by deleting the limitation related to insured depository institutions or insured credit unions. As a result, all consumer credit or charge cards regardless of the issuer, and all checking or similar accounts regardless of where held, would fall within an exemption.

The proposed amendment also would add two new exemptions. The proposed amendment at paragraph (b)(4) would create an exemption for automobile leases for primarily personal (consumer) use vehicles. The Bureau has determined that there is no need to limit an employee's ability to work on matters while holding this form of credit because automobile leases tend to involve fairly standardized agreements and automobile leases are similar in nature to automobile loans, which are already exempted. For the same reasons as stated for § 9401.108, amended § 9401.109 also would create a new exemption for the provision of telephone, cable, gas, electricity, water, or other similar utility services on credit.

Proposed Amended § 9401.111—Restrictions on Participating in Matters Involving Covered Entities

The proposed rule would amend § 9401.111 by reorganizing this section and expanding the definition of ''covered entity.'' Proposed paragraph (b)(1) would expand the definition to include any person for whom the employee is serving or seeking to serve, or has served within the last year, as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee. This proposal builds on OGE's impartiality rule at 5 CFR 2635.502(b)(iv), and is based on the Bureau's presumption that a reasonable person likely would question an employee's impartiality when the employee is participating in a particular matter involving specific parties in which a covered entity is a party or represents a party. Disqualification of the employee eliminates the potential for an appearance of preferential treatment in those instances where the employee's connection to a covered entity would likely raise questions regarding the appropriateness of actions taken by the employee or the Bureau.

The current definition of ''covered entity'' includes, among others, a person for whom the employee is aware that the employee's parent, child, or sibling is serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee. Employees have questioned whether this restriction extends to stepfamily members and half siblings. The proposed regulation in paragraph (b)(2) extends the restriction to stepfathers, stepmothers, stepsons, stepdaughters, stepbrothers, stepsisters, half-brothers, and half-sisters. The Bureau has determined that this proposed regulation is needed so that a reasonable person will not question the impartiality and objectivity with which the Bureau administers its agency programs.

III. Matters of Regulatory Procedure

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (the RFA), requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations, unless the head of the agency certifies that the rules will not have a significant economic impact on a substantial number of small entities. The Director of the Bureau so certifies. The rule does not impose any obligations or standards of conduct for purposes of analysis under the RFA, and it therefore does not give rise to a regulatory compliance burden for small entities.

Paperwork Reduction Act

The Bureau has determined that this proposed rule does not impose any new recordkeeping, reporting, or disclosure requirements on members of the public that would be collections of information requiring approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 5 CFR Part 9401

Conflict of interests, Government employees.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau, in concurrence with OGE, proposes to amend part 9401 of title 5 of the Code of Federal Regulations to read as follows:

PART 9401—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION

■ 1. The authority citation for part 9401 is revised to read as follows:

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159 (April 12, 1989); 3 CFR, 1898 Comp., p.215, as modified by E.O. 12731, 55 FR 42547 (October 17, 1990); 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403, 2635.502 and 2635.803.

■ 2. Section 9401.102 is revised to read as follows:

§ 9401.102 Definitions.

For purposes of this part:

CFPB Ethics Regulations means the supplemental ethics standards set forth in this part.

Control means the possession, direct or indirect, of the power or authority to manage, direct, or oversee.

Credit has the meaning set forth in 12 U.S.C. 5481(7) and as further defined in regulations promulgated by the Bureau to implement that statute. A person may have credit without any outstanding balance owed.

Dependent child has the meaning set forth in 5 CFR 2634.105(d). It includes an employee's son, daughter, stepson, or stepdaughter if:

(1) Unmarried, under the age of 21, and living in the employee's household; or

(2) Claimed as a ''dependent'' on the employee's income tax return.

Designated Agency Ethics Official (DAEO) means the official within the Bureau that the Director has appointed to coordinate and manage the ethics program at the Bureau, under 5 CFR 2638.202(b). For purposes of this part, the term ''DAEO'' also includes the Alternate DAEO appointed under 5 CFR 2638.202(b), and a designee of the DAEO or Alternate DAEO unless a particular provision says an authority is reserved to the DAEO.

Director means the Director of the Bureau.

Domestic partner means a person with whom a Bureau employee:

(1) Has a close and committed personal relationship and both parties are at least 18 years of age, are each other's sole domestic partner and intend to remain in the relationship indefinitely, and neither is married to, in a civil union with, or partnered with any other spouse or domestic partner;

(2) Is not related by blood in a manner that would bar marriage under the laws of the jurisdiction in which the employee resides;

(3) Is in a financially interdependent relationship in which both agree to be responsible for each other's common welfare and share in financial obligations; and

(4) Has shared for at least six months the same regular and permanent residence in a committed relationship and both parties intend to do so indefinitely, or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle.

Employee means an employee of the Bureau, other than a special Government employee.

Entity supervised by the Bureau means a person that is subject to the Bureau's supervision authority pursuant to 12 U.S.C. 5514(a)(1) or 5515(a) and in regulations promulgated thereunder, as identified on a list to be maintained by the Bureau.

Indebted or *indebtedness* means a legal obligation under which an individual or borrower received money or assets on credit, and currently owes payment.

Indebted to an entity means an obligation to make payments to an entity as a result of an indebtedness, whether originally made with that entity or with another entity. This includes without limitation, a servicer on a mortgage to whom payments are made.

OGE Standards mean the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

Participate means personal and substantial participation and has the meaning set forth in 5 CFR 2635.402(b)(4). An employee participates when, for example, he or she makes a decision, gives approval or disapproval, renders advice, provides a recommendation, conducts an investigation or examination, or takes an official action in a particular matter, and such involvement is of significance to the matter. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.

Particular matter has the meaning set forth in 5 CFR 2635.402(b)(3). The term includes a matter that involves deliberation, decision, or action and is focused upon the interests of specific persons or a discrete and identifiable class of persons. It may include governmental action such as legislation, regulations, or policy-making that is narrowly focused on the interest of a discrete and identifiable class of persons.

Particular matter involving specific parties has the meaning set forth in 5 CFR 2641.201(h). Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties. The term includes without limitation, a contract, audit, enforcement action, examination, investigation, litigation proceeding, or request for a ruling.

Person has the same meaning set forth in 5 CFR 2635.102(k). It includes without limitation, an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution.

Practice of law means the provision of legal advice or services where there is a client relationship of trust or reliance. One is presumed to be practicing law when engaging in any of the following conduct on behalf of another:

(1) Preparing any legal document, including any deeds, mortgages, assignments, discharges, leases, trust instruments, or any other instruments intended to affect interests in real or personal property, wills, codicils, instruments intended to affect the disposition of property of decedents' estates, other instruments intended to affect or secure legal rights, and contracts except routine agreements incidental to a regular course of business;

(2) Preparing or expressing legal opinions;

(3) Appearing or acting as an attorney in any tribunal;

(4) Preparing any claims, demands or pleadings of any kind, or any written documents containing legal argument or interpretation of law, for filing in any court, administrative agency, or other tribunal;

(5) Providing advice or counsel as to how any of the activities described in subparagraphs (1) through (4) might be done, or whether they were done, in accordance with applicable law; or

(6) Furnishing an attorney or attorneys, or other persons, to render the services described in subparagraphs (1) through (5) above.

Security means an interest in debt or equity instruments. The term includes without limitation, secured and unsecured bonds, debentures, notes, securitized assets, commercial papers, and preferred and common stock. The term encompasses both current and contingent ownership interests; a beneficial or legal interest derived from a trust; a right to acquire or dispose of any long or short position in debt or equity interests; interests convertible into debt or equity interests; and options, rights, warrants, puts, calls, straddles, derivatives, and other similar interests. It does not include deposits; credit union shares; a future interest created by someone other than the employee or the employee's spouse or dependent child; or a right as a beneficiary of an estate that has not been settled.

Special Government employee has the meaning set forth in 5 CFR 2635.102(l).

Spouse means an employee's husband or wife by lawful marriage, but does not include an employee's spouse if:

(1) The employee and the employee's spouse are separated;

(2) The employee and the employee's spouse live apart;

(3) There is an intention to end the marriage or separate permanently; and

(4) The employee has no control over the separated spouse's securities.

Vested legal or beneficial interest means a present right or title to property, which carries with it an existing right of alienation, even though the right to possession or enjoyment may be postponed to some uncertain time in the future. This includes a future interest when one has a right, defeasible or indefeasible, to immediate possession or enjoyment of the property, upon the ceasing of another's interest.

■ 3. Section 9401.104 is revised to read as follows:

§ 9401.104 Additional rules concerning outside employment for covered employees.

(a) *Prohibited outside employment with an entity supervised by the Bureau.* A covered employee shall not engage in compensated outside employment for an entity supervised by the Bureau or for an officer, director, or employee of such entity. For purposes of this section, ''employment'' has the same meaning as set forth in § 9401.103(b) of this part.

(b) *Use of professional licenses related to real estate.* A covered employee who holds a license related to real estate, mortgage brokerage, property appraisals, or real property insurance is prohibited from using such license for the production of income. The DAEO, in consultation with senior management in

the Division in which the employee works, may grant a limited waiver to this prohibition based on a written finding that the specific transaction which requires use of the license will not create an appearance of loss of impartiality or use of public office for private gain.

(c) *Definition of covered employee.* For purposes of this section, ''covered employee'' means:

(1) An employee in the Division of Supervision, Enforcement, and Fair Lending;

(2) An employee serving in an attorney position;

(3) An employee in the Office of Research, serving as a section chief at Bureau pay band 71 or above or as a senior economist in the Compliance Analytics and Policy Section;

(4) An employee serving in the Office of Consumer Response in an investigations position;

(5) An employee required to file a Public Financial Disclosure Report (OGE Form 278e) under 5 CFR part 2634; or

(6) Any other Bureau employee specified in a Bureau order or directive whose duties and responsibilities, as determined by the DAEO, require application of the prohibition on outside employment contained in this section to ensure public confidence that the Bureau's programs are conducted impartially and objectively.

■ 4. Section 9401.105 is amended by revising paragraphs (a) introductory text, (a)(1), (b)(1), and (b)(2) to read as follows:

§ 9401.105 Additional rules concerning outside employment for Bureau attorneys.

(a) *Prohibited outside practice of law.* In addition to the prior approval requirements under § 9401.103 and the outside employment restrictions under § 9401.104 of this part, an employee serving in an attorney position shall not engage in the practice of law outside the employee's official Bureau duties that might require the attorney to:

(1) Take a position that is or appears to be in conflict with the interests of the Bureau; or

* * * * *

(b) * * *

(1) In those matters in which the attorney has participated personally and substantially as a Government employee; or

(2) In those matters which are the subject of the attorney's official responsibility.

■ 5. Section 9401.106 is revised to read as follows:

§ 9401.106 Prohibited financial interests.

(a) *Prohibited interests.* Except as permitted by this section, an employee or an employee's spouse or minor child shall not own or control a security in:

(1) An entity supervised by the Bureau; or

(2) A collective investment fund that has a stated policy of concentrating its investments in the financial services or banking industry. A collective investment fund includes, without limitation, mutual funds, unit investment trusts (UITs), exchange traded funds (ETFs), real estate investment trusts (REITs), and limited partnerships.

(b) *Exceptions.* Interests prohibited in paragraph (a) of this section do not include the ownership or control of a security in:

(1) *Collective investment funds.* A publicly traded or publicly available collective investment fund if:

(i) The fund does not have a stated policy of concentrating its investments in the financial services or banking industry; and

(ii) Neither the employee nor the employee's spouse or minor child exercises or has the ability to exercise control over or selection of the financial interests held by the fund.

(2) *Diversified employee benefit plans.* A pension or other retirement fund, trust, or plan established or maintained by an employer or an employee organization, or both, to provide its participants with medical, disability, death, unemployment, or vacation benefits, training programs, day care centers, scholarship funds, prepaid legal services, deferred income, or retirement income (employee plan), provided:

(i) The employee plan does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States;

(ii) The investments of the employee plan are administered by an independent trustee;

(iii) The employee plan's trustee has a written policy of varying the plan investments;

(iv) Neither the employee nor the employee's spouse or minor child participates in the selection of the employee plan's investments or designates specific plan investments (except for directing that contributions be divided among several different categories of investments, such as stocks, bonds, or mutual funds, which are available to plan participants); and

(v) The employee plan is not a profit-sharing or stock bonus plan.

(3) *Federal retirement and thrift savings plans.* Funds administered by the Thrift Plan for Employees of the Federal Reserve System, the Retirement Plan for Employees of the Federal Reserve System, the Thrift Savings Plan, or a Federal government agency.

(4) *State pension plans.* A pension plan established or maintained by a State government or any political subdivision of a State government for its employees.

(c) *Reporting and divestiture of prohibited interests*—(1) *New employees.* Within 30 calendar days from the start of employment with the Bureau, an employee must notify the DAEO in writing of a financial interest prohibited under paragraph (a) of this section that the employee or the employee's spouse or minor child acquired prior to the start of the employee's employment with the Bureau. The employee or the employee's spouse or minor child shall divest prohibited securities within 90 days after the start of the employee's employment at the Bureau.

(2) *Newly prohibited interest.* Within 30 days after the Bureau updates and internally publishes a new list of entities supervised by the Bureau, an employee who owns or controls, or whose spouse or minor child owns or controls, a security in an entity newly added to that list must notify the DAEO in writing. The employee or the employee's spouse or minor child shall divest prohibited securities within 90 days after internal publication of the new list.

(3) *Interests acquired without specific intent.* If an employee or an employee's spouse or minor child acquires a financial interest prohibited under paragraph (a) of this section as a result of marriage, inheritance, or otherwise without specific intent to acquire, the employee must notify the DAEO in writing within 30 days of the acquisition. The employee or the employee's spouse or minor child shall divest prohibited securities within 90 days of the acquisition.

(d) *Disqualification and divestiture*—(1) *Securities in entities supervised by the Bureau.* If an employee or an employee's spouse or minor child owns or controls a security in an entity that is prohibited under paragraph (a)(1) of this section, the employee shall immediately disqualify himself or herself from participating in all particular matters affecting that entity, unless and until the security is divested or the employee is granted a waiver pursuant to paragraph (e) of this section and the waiver includes an

authorization allowing the employee to participate in such matters.

(2) *Securities in collective investment funds.* If an employee or an employee's spouse or minor child owns or controls a security in a collective investment fund that is prohibited under paragraph (a)(2) of this section, the employee shall immediately disqualify himself or herself from participating in all particular matters affecting one or more holdings of the collective investment fund if the affected holding is invested in the financial services or banking industry, unless and until the collective investment fund is divested or the employee is granted a waiver pursuant to paragraph (e) of this section and the waiver includes an authorization allowing the employee to participate in such matters.

(e) *Waivers.* Upon request by the employee, the DAEO in the DAEO's sole discretion has the authority to grant an individual waiver under this paragraph. The DAEO's authority to grant an individual waiver under this paragraph may not be delegated to any person except the Alternate DAEO. The DAEO, in consultation with senior management in the Division in which the employee works, may issue a written waiver permitting the employee or the employee's spouse or minor child to own or control a particular security that otherwise would be prohibited by this section, after considering all relevant factors. Relevant factors include, without limitation, whether:

(1) Mitigating circumstances exist due to the way the employee or the employee's spouse or minor child acquired ownership or control of the security. Mitigating circumstances may include without limitation:

(i) The employee or the employee's spouse or minor child acquired the security through inheritance, merger, acquisition, or other change in corporate structure, or otherwise without specific intent on the part of the employee or the employee's spouse or minor child; or

(ii) The employee's spouse received the security as part of a compensation package in connection with employment or prior to marriage to the employee;

(2) The employee makes a prompt and complete written disclosure of the security to the DAEO;

(3) The disqualification of the employee from participating in particular matters pursuant to paragraph (d) of this section, as specified in the written waiver, would not unduly interfere with the full performance of the employee's duties; and

(4) The granting of the waiver would not unduly undermine the public's confidence in the impartiality and objectivity with which:

(i) The employee performs the employee's official Bureau duties; and

(ii) The Division in which the employee works executes its programs and functions.

(f) *Covered third party entities.* Immediately after becoming aware that a covered third party entity owns or controls a security that an employee would be prohibited from owning or controlling under paragraph (a) of this section, the employee shall report the interest in writing to the DAEO. The DAEO may require the employee to terminate the relationship with the covered third party entity, disqualify himself or herself from certain particular matters, or take other action as necessary to avoid a statutory violation, a violation of the OGE Standards, or the CFPB Ethics Regulations, including an appearance of misuse of position or loss of impartiality. For purposes of this paragraph, ''covered third party entity'' includes:

(1) A partnership in which the employee or the employee's spouse or minor child is a general partner;

(2) A partnership or closely held corporation in which the employee or the employee's spouse or minor child individually or jointly holds more than a 10 percent equity interest;

(3) A trust in which the employee or the employee's spouse or minor child has a vested legal or beneficial interest;

(4) An investment club or similar informal investment arrangement between the employee or the employee's spouse or minor child, and others;

(5) A qualified profit sharing, retirement, or similar plan in which the employee or the employee's spouse or minor child has an interest; or

(6) An entity in which the employee or the employee's spouse or minor child individually or jointly holds more than a 25 percent equity interest.

■ 6. Section 9401.107 and the section heading are revised to read as follows:

§ 9401.107 Prohibition on acceptance of credit or indebtedness on preferential terms from an entity supervised by the Bureau.

An employee or the employee's spouse or minor child may not accept credit from, become indebted to, or enter into a financial relationship with an entity supervised by the Bureau, unless the credit, indebtedness, or other financial relationship:

(1) Is offered on terms and conditions no more favorable than those offered to the general public; and

(2) Is not otherwise prohibited by law or inconsistent with the OGE Standards or the CFPB Ethics Regulations.

■ 7. Section 9401.108 is revised to read as follows:

§ 9401.108 Restrictions on seeking, obtaining, or renegotiating credit from an entity that is or represents a party to a matter to which an employee is assigned or may be assigned.

(a) *General rules regarding seeking, obtaining, or renegotiating credit or indebtedness*—(1) *Prohibition.* While an employee is assigned to participate in a particular matter involving specific parties, the employee or the employee's spouse or minor child shall not seek, obtain, or renegotiate credit or indebtedness with an entity that is a party or represents a party to the matter. This prohibition also applies to a particular matter involving specific parties pending at the Bureau in which the employee is not currently participating but of which the employee is aware and believes it is likely that the employee will participate.

(2) *Cooling off period.* The prohibition in paragraph (a)(1) of this section continues for two years after the employee's participation in the particular matter has ended.

(b) *Rules regarding credit or indebtedness secured by principal residence.* Notwithstanding paragraph (a) of this section, an employee or an employee's spouse or minor child may seek, obtain, or renegotiate credit or indebtedness secured by residential real property with an entity, subject to the following conditions:

(1) The residential real property is or will be the principal residence of the employee or the employee's spouse or minor child;

(2) A minimum of three months have passed since the end of the employee's participation in each particular matter involving specific parties in which that entity was a party or represented a party;

(3) The employee is disqualified from participating in particular matters involving specific parties in which that entity is a party or represents a party while the employee or the employee's spouse or minor child is seeking, obtaining, or renegotiating the credit or indebtedness;

(4) The employee or the employee's spouse or minor child seeking, obtaining, or negotiating the credit or indebtedness must satisfy all financial requirements generally applicable to all applicants for the same type of credit or indebtedness for residential real property; and

(5) The credit or indebtedness is obtained on terms and conditions no more favorable than those offered to the general public.

(c) *Specific rules for employee's spouse and minor child.* The prohibitions in paragraphs (a) and (b) of this section do not apply when the employee's spouse or minor child is seeking, obtaining, or renegotiating credit or indebtedness and:

(1) The credit or indebtedness is supported only by the income or independent means of the spouse or minor child;

(2) The credit or indebtedness is obtained on terms and conditions no more favorable than those offered to the general public; and

(3) The employee does not participate in the negotiating for the credit or indebtedness or serve as co-maker, endorser or guarantor of the credit or indebtedness.

(d) *Disqualification requirement for credit sought by person related to an employee.* An employee shall disqualify himself or herself from participating in a particular matter involving specific parties as soon as the employee learns that any of the following persons are seeking, obtaining, or renegotiating credit or indebtedness with an entity that is or represents a party to the matter:

(1) The employee's spouse, domestic partner, or dependent child;

(2) A partnership in which the employee or the employee's spouse, domestic partner, or dependent child is a general partner;

(3) A partnership or closely held corporation in which the employee or the employee's spouse, domestic partner, or dependent child individually or jointly owns or controls more than a 10 percent equity interest;

(4) A trust in which the employee or the employee's spouse, domestic partner, or dependent child has a vested legal or beneficial interest;

(5) An investment club or similar informal investment arrangement between the employee or the employee's spouse, domestic partner, or dependent child, and others;

(6) A qualified profit sharing, retirement, or similar plan in which the employee or the employee's spouse, domestic partner, or dependent child has an interest; or

(7) An entity in which the employee or the employee's spouse, domestic partner, or dependent child individually or jointly holds more than a 25 percent equity interest.

(e) *Exemptions.* The following forms of credit are exempted from the prohibitions in paragraphs (a) and (b) of this section and the disqualification requirement in paragraph (d) of this section, provided the credit is offered on terms and conditions no more favorable than those offered to the general public:

(1) Revolving consumer credit or charge cards;

(2) Overdraft protection on checking accounts and similar accounts; and

(3) The provision of telephone, cable, gas, electricity, water, or other similar utility services provided on credit (*i.e.,* the service is provided before payment is due such that consumers incur debt as they use the service and receive periodic bills for the services used).

(f) *Waivers.* The DAEO, after consultation with senior management in the Division in which the employee works, may grant a written waiver from the prohibition in paragraphs (a) or (b) of this section or the disqualification requirement in paragraph (d) of this section, based on a determination that participation in matters otherwise prohibited by this section would not be prohibited by law (18 U.S.C. 208) or create an appearance of loss of impartiality or use of public office for private gain, and would not otherwise be inconsistent with the OGE Standards or the CFPB Ethics Regulations.

■ 8. Section 9401.109 is amended by:

■ a. Revising the section heading;

■ b. Revising paragraphs (a)(5) and (b)(1) through (5); and

■ c. Adding paragraphs (b)(6) and (7).

The revisions and additions read as follows:

§ 9401.109 Disqualification of employees from particular matters involving existing creditors.

(a) * * *

(5) A trust in which the employee or the employee's spouse, domestic partner, or dependent child has a vested legal or beneficial interest;

* * * * *

(b) * * *

(1) Revolving consumer credit or charge cards;

(2) Overdraft protection on checking accounts and similar accounts;

(3) Amortizing indebtedness on consumer goods (*e.g.,* automobiles);

(4) Automobile leases for primarily personal (consumer) use vehicles;

(5) The provision of telephone, cable, gas, electricity, water, or other similar utility services provided on credit (*i.e.,* the service is provided before payment is due such that consumers incur debt as they use the service and receive periodic bills for the services used);

(6) Educational loans (*e.g.,* student loans; loans taken out by a parent or guardian to pay for a child's education costs); and

(7) Loans on residential homes (*e.g.,* home mortgages; home equity lines of credit).

* * * * *

■ 9. Section 9401.110 is revised to read as follows:

§ 9401.110 Prohibited recommendations.

An employee shall not make recommendations or suggestions, directly or indirectly, concerning the acquisition or sale or other divestiture of a security in an entity supervised by the Bureau, or an entity that is or represents a party to a particular matter involving specific parties to which the employee is assigned.

■ 10. Section 9401.111 is revised to read as follows:

§ 9401.111 Restriction on participating in matters involving covered entities.

(a) *Disqualification required.* Absent an authorization pursuant to paragraph (c) of this section, an employee shall not participate in a particular matter involving specific parties if a covered entity is or represents a party to the matter.

(b) ''*Covered entity*'' *defined.* For purposes of this section, a ''covered entity'' includes:

(1) Any person for whom the employee is serving or seeking to serve, or has served with the last year, as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee; or

(2) Any person for whom the employee is aware the employee's spouse, domestic partner, fiancé, child, parent, sibling, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, or member of the employee's household is serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee.

(c) *Waivers.* The DAEO may authorize the employee to participate in a matter that would require disqualification under paragraph (a) of this section, using the authorization process set forth in 5 CFR 2635.502(d) of the OGE Standards. The DAEO will consult with senior management in the Division in which the employee works before issuing such an authorization.

Dated: December 15, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

Walter M. Shaub, Jr.,

Director, Office of Government Ethics.

[FR Doc. 2016–31596 Filed 1–9–17; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2014–0715]

RIN 1625–AA08

Special Local Regulation; Mavericks Surf Competition, Half Moon Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise a special local regulation in the navigable waters of Half Moon Bay, CA, near Pillar Point in support of the Mavericks Surf Competition, an annual invitational surf competition held at the Mavericks Break. We are proposing this revision to improve the regulation by making it clearer and to have it better reflect the natural conditions that must be met for this surf competition to take place. This regulation is necessary to provide for the safety of life on the navigable waters immediately prior to, during, and immediately after the surfing competition, which is held only one day between November 1 of each year and March 31 of the following year. This proposed revision would temporarily restrict vessel traffic in the vicinity of Pillar Point and prohibit vessels and persons not participating in the surfing event from entering the dedicated surfing area and a designated no-entry area. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before February 9, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–2015–0427 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Marcia Medina, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7443, email at *D11-PF-MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

ATON Aids to Navigation
CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
OCMI Officer in Charge, Marine Inspection
PATCOM Patrol Commander
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Mavericks Surf Competition has grown in popularity within the past several years. Due to the inherent dangers of the competition and the disruption to the normal uses of the waterways in the vicinity of Pillar Point, the Coast Guard issues a Marine Event Permit to the event sponsor. Following the collapse of the Cliffside viewing area in 2011, the Coast Guard became concerned that the loss of shore-side viewing would result in a larger than expected number of spectator vessels in the vicinity of the event.

The Coast Guard considered promulgating a safety zone which would prevent spectator vessels from encroaching on the competition area to preserve the safety of both the surfers and the spectators. Because it proved impossible to reliably predetermine the exact location of breaking surf, the Coast Guard did not establish a safety zone for subsequent events, but has continued to maintain a presence at the event to protect the competitors from encroaching spectator vessels and vice versa.

This proposed rulemaking would formalize the scheme employed during the 2013, 2014, and 2015 competitions, which proved to be an effective means of separating competitors from spectators. The two zones and associated regulations contained in this proposed rule are intended to ensure the safety of competitors from spectator vessels, and to enhance safety of spectator vessels by creating a designated area in which the Coast Guard may direct the movement of such vessels. Because of the dangers posed by the surf conditions during the Mavericks Surf Competition, the special local regulation is necessary to provide for the safety of event participants, spectators, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

On October 15, 2014, the Coast Guard published an interim rule and request for comments in the **Federal Register** (79 FR 61762) establishing the special local regulation 33 CFR 100.1106. We received no comments during the comment period on the interim rule. Although the event was not held during the 2014–2015 season, the planning process proved to be vital in identifying updates to the rule as proposed here.

On November 3, 2015, we published a temporary final rule (80 FR 67635) for the Mavericks Surf Competition which was most recently held on February 12, 2016. That temporary rule was needed to keep spectators and vessels a safe distance away from the event participants and the hazardous waters surrounding Pillar Point. Past competitions have demonstrated the importance of restricting access to the competition area to only vessels in direct support of the competitors. In the Coast Guard's assessment, that temporary final rule provided an effective scheme for ensuring the safety of life during the Mavericks Surf Competition.

We are proposing the following changes based on lessons learned during the multi-agency planning process. The name of this event has changed over the years based on the sponsor. The Coast Guard decided to propose this rule using the event name ''Mavericks Surf Competition'' to remove any affiliation with past or future sponsors and to keep the name of the event generic in order to apply to any future sponsor. In addition, this proposed rule would clarify that the maintenance of the buoy placement throughout the course of the event is a requirement for the event sponsor. The definition of ''support vessels'' has been updated to specifically include jet skis and to clarify that they must be pre-designated and approved to serve as such for this event by the Officer in Charge, Marine Inspection (OCMI) prior to the competition. Due to the temperamental nature of buoy locations with regards to swing circles, the proposed definition for ''Zone 1'' and ''Zone 2'' would both amend the ATON buoy reference of ''Pillar Point Entrance Lighted Gong Buoy 1'' to only reference a latitude and longitude position. Finally, the definition of ''spectator vessel'' was expanded to specifically include human-powered craft.

Under 33 CFR 100.35, the Coast Guard District Commander has authority to promulgate certain special local regulations deemed necessary to ensure the safety of life on the navigable waters immediately before, during, and immediately after an approved regatta or marine parade. The Commander of Coast Guard District 11 has delegated to the Captain of the Port (COTP) San Francisco the responsibility of issuing such regulations.

The Mavericks Surf Competition is a one-day ''Big Wave'' surfing competition between the top big wave

surfers as chosen by the event organizer. The competition only occurs when 15–20 foot waves are sustained for over 24 hours and are combined with mild easterly winds of no more than 5–10 knots. The rock and reef ridges that make up the sea floor of the Pillar Point area, combined with optimal weather conditions, create the large waves for which Mavericks is known. Due to the hazardous waters surrounding Pillar Point at the time of the surfing competition, the Coast Guard is proposing to modify § 100.1106 which establishes a special local regulation in the vicinity of Pillar Point that restricts navigation in the area of the surf competition and in neighboring hazardous areas. This proposed rule is intended to ensure the safety of competitors by delineating a specific competition area, and to provide for the safety of spectators by imposing operating restrictions on those vessels.

III. Discussion of Proposed Rule

The Coast Guard proposes to revise a regulated area for the Mavericks Surf Competition. The Mavericks Surf Competition will take place on a day that presents favorable surf conditions between November 1 of each year and March 31 of the following year, from 6 a.m. until 6 p.m. The Mavericks Surf Competition can only occur when 15–20 foot waves are sustained for over 24 hours and are combined with mild easterly winds of no more than 5–10 knots. Unpredictable weather patterns and the event's narrow operating window limit the Coast Guard's ability to notify the public of the event. The Coast Guard would issue notice of the event as soon as practicable, but no later than 24 hours before Competition day via the Broadcast Notice to Mariners and issue a written Boating Public Safety Notice at least 24 hours in advance of Competition day. Also, the zones that would be established by this proposed rule will be prominently marked by at least 8 buoys throughout the course of the event.

The Mavericks Surf Competition will occur in the navigable waters of Half Moon Bay, CA, in the vicinity of Pillar Point as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18682 (*http://www.charts.noaa.gov/OnLineViewer/18682.shtml*). The Coast Guard will enforce a regulated area defined by an arc extending 1000 yards from Sail Rock (37°29′34″ N., 122°30′02″ W.) excluding the waters within Pillar Point Harbor. All proposed restrictions would apply only between 6 a.m. and 6 p.m. on the day of the actual competition.

The effect of this regulation would be to restrict navigation in the vicinity of Pillar Point during the Mavericks Surf Competition. During the enforcement period, the Coast Guard would direct the movement and access of all vessels within the regulated area. The regulated area will be divided into two zones. Zone 1 will be designated as the competition area, and the movement of vessels within Zone 2 will be controlled by the Patrol Commander (PATCOM).

This regulation is needed to keep spectators and vessels a safe distance away from the event participants and the hazardous waters surrounding Pillar Point. Past competitions have demonstrated the importance of restricting access to the competition area to only vessels in direct support of the competitors. Failure to comply with the lawful directions of the Coast Guard could result in additional vessel movement restrictions, citation, or both.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

We expect the economic impact of this rule does not rise to the level of necessitating a full Regulatory Evaluation. The regulated area and associated regulations are limited in duration, and are limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the regulated area, the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the regulations will result in minimum impact. The entities most likely to be affected are small commercial vessels, and pleasure craft engaged in recreational activities.

B. Impact on Small Entities

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

The Coast Guard did not receive any comments from the Small Business Administration on the Interim rule published on October 15, 2014. Also, while some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have

analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a regulated area of limited size and duration. Normally such actions are categorically excluded from further review under paragraph 34(h) and 35(b) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

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

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

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

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—REGATTAS AND MARINE PARADES

■ 1. The authority citation for part 100 is revised to read as follows:

Authority: 33 U.S.C. 1233; 33 CFR 1.05–1.

■ 2. Revise § 100.1106 to read as follows:

§ 100.1106 Special Local Regulation; Mavericks Surf Competition.

(a) *Location.* This special local regulation establishes a regulated area on the waters of Half Moon Bay, located in the vicinity of Pillar Point, excluding the waters within Pillar Point Harbor. This regulated area is defined in paragraph (c) of this section.

(b) *Enforcement period.* This section will be enforced between 6 a.m. and 6 p.m. on Competition day, which if defined wave and wind conditions are met, will occur for one day between November 1 of each year and March 31 of the following year. Notice of the specific enforcement date of this section will be announced via Broadcast Notice to Mariners and issued in writing by the Coast Guard in a Boating Public Safety Notice at least 24 hours in advance of Competition day.

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

Competition day means the one day between November 1 of each year and March 31 of the following year that Mavericks Surf Competition will be held. The Mavericks Surf Competition will only be held if 15 to 20 foot waves are sustained for over 24 hours and are combined with mild easterly winds of no more than 5 to 10 knots.

Competitor means a surfer enrolled in the Mavericks Surf Competition.

Patrol Commander or *PATCOM* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer, or a Federal, State, or local officer designated by the Captain of the Port San Francisco (COTP), to assist in the enforcement of the special local regulation.

Regulated area means the area in which the Mavericks Surf Competition will take place. This area is bounded by an arc extending 1000 yards from Sail Rock (37°29′34″ N., 122°30′02″ W.) excluding the waters within Pillar Point Harbor. All coordinates are North American Datum 1983. Within the regulated area, at least two zones will be established and marked by buoys on the day of the competition. Due to the dynamic and changing nature of the surf, the exact size and location of the zones will not be made public until the competition day. The zones will be prominently marked by at least 8 buoys, placed and maintained throughout the course of the event by the event sponsor in a pattern approved by the PATCOM. In addition, the Coast Guard will notify the public of the zone locations via

Broadcast Notice to Mariners on the day of the event.

Spectator vessel means any vessel or person, including human-powered craft, which is not designated by the sponsor as a support vessel.

Support vessel means a vessel, including jet skis, which is designated and conspicuously marked by the sponsor to provide direct support to the competitors. Support vessels must be pre-designated and approved to serve as such for this event by the Officer in Charge, Marine Inspection (OCMI) prior to the competition.

Zone 1 means the competition area within the regulated area. Zone 1 will generally be located to the northwest of a line drawn between Sail Rock (37°29′34″ N., 122°30′02″ W.) and 37°29′10.410″ N., 122°30′21.904″ W.

Zone 2 means the area within the regulated area where the Coast Guard may direct the movement of all vessels, including restricting vessels from this area. Zone 2 will generally be located to the southeast of a line drawn between Sail Rock (37°29′34″ N., 122°30′02″ W.) and 37°29′10.410″ N., 122°30′21.904″ W.

(d) *Special local regulations.* The following regulations apply between 6 a.m. and 6 p.m. on the competition day.

(1) Only support vessels may be authorized by the Patrol Commander (PATCOM) to enter Zone 1 during the competition.

(2) Entering the water in Zone 1 by any person other than the competitors is prohibited. Competitors may enter the water in Zone 1 from authorized support vessels only.

(3) Spectator vessels and support vessels within Zone 2 must maneuver as directed by PATCOM. Given the changing nature of the surf in the vicinity of the competition, PATCOM may close Zone 2 to all vessels due to hazardous conditions. Due to weather and sea conditions, the Captain of the Port may deny access to Zone 2 and the remainder of the regulated area to all vessels other than competitors and support vessels on the day of the event

(4) Entering the water in Zone 2 by any person is prohibited.

(5) Rafting and anchoring of vessels are prohibited within the regulated area.

(6) Only vessels authorized by the PATCOM will be permitted to tow other watercraft within the regulated area.

(7) Spectator and support vessels in Zones 1 and 2 must operate at speeds which will create minimum wake, in general, 7 miles per hour or less.

(8) If granted permission to enter the regulated area, when hailed or signaled by the PATCOM by a succession of sharp, short signals by whistle or horn, the hailed vessel must come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in additional operating restrictions, citation for failure to comply, or both.

(9) During the events, vessel operators may contact the PATCOM on VHF–FM channel 16.

Dated: December 13, 2016.

Anthony J. Ceraolo,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2017–00175 Filed 1–9–17; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9957–79–OW]

40 CFR Part 35

Notice of Funding Availability (NOFA) for Applications for Credit Assistance Under the Water Infrastructure Finance and Innovation Act (WIFIA) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of funding availability.

SUMMARY: In the Further Continuing and Security Assistance Appropriations Act, 2017, signed by the President on December 10, 2016, Congress provided $20 million in budget authority for the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) program. This funding covers the Federal government's anticipated cost of providing a much larger amount of credit assistance. Environmental Protection Agency (EPA) estimates that current budget authority may provide more than $1 billion in credit assistance and may finance over $2 billion in water infrastructure investment. The purpose of this notice of funding availability (NOFA) is to solicit letters of interest (LOIs) from prospective borrowers seeking credit assistance from EPA.

EPA will evaluate and select proposed projects described in the LOIs using the selection criteria established in regulation at 40 CFR 35.10055,[1] and further described in this NOFA as well as the WIFIA program handbook. This NOFA establishes relative weights that will be used in the current LOI submittal period for the selection criteria and outlines the process that applicants must follow to be considered for WIFIA credit assistance.

In addition, EPA reserves the right to make additional awards under this announcement, consistent with Agency policy and guidance, if additional funding is available after the original selections are made.

DATES: EPA will collect LOIs in two selection rounds in FY 2017. The first LOI submittal period will begin on January 10, 2017, and end at midnight in the time zone of the prospective borrower on April 10, 2017. The second LOI submittal period, if needed, will begin on August 1, 2017 and end at midnight in the time zone of the prospective borrower on September 29, 2017.

ADDRESSES: Prospective borrowers should submit all LOIs electronically via email at: *wifia@epa.gov.* Prospective borrowers will receive a confirmation email and are advised to request a return receipt to confirm transmission. Only LOIs received by email, as provided above, shall be considered for funding.

Prospective borrowers can access additional information, including the WIFIA program handbook and application materials, on the WIFIA Web site: *https://www.epa.gov/wifia/.*

SUPPLEMENTARY INFORMATION: In the first selection round, EPA will make available the full $17 million of budget authority appropriated for the WIFIA program to provide credit assistance. This $17 million in Federal funding can help finance total project costs of more than $2 billion. If funding remains after the first selection round, EPA will hold a second round. The second LOI submittal period, if needed, will begin on August 1, 2017 and end at midnight in the time zone of the prospective borrower on September 29, 2017. Late proposals will not be considered for funding.

EPA will announce the amount available in the second selection round through a notice in the **Federal Register**, as well as on EPA's WIFIA program Web site. In the event that EPA changes the application or selection process to incorporate best practices from the initial round, a new NOFA will be published.

For a project to be considered during a selection round, EPA must receive a complete LOI electronically via email before the corresponding deadline listed above. EPA is only able to accept emails of 25 MB or smaller with unzipped attachments. If necessary due to size restrictions, prospective borrowers may submit attachments separately, as long as they are received by the deadline.

When writing a LOI, prospective borrowers must also fill out the form

[1] 81 FR 91822, *https://www.federalregister.gov/documents/2016/12/19/2016–30194/credit-assistance-for-water-infrastructure-projects*

and follow the guidelines contained on the WIFIA program Web site: *https://www.epa.gov/wifia/*. Prospective borrowers should provide the LOI and any attachments as searchable PDF files, whenever possible, to facilitate EPA's review. Additionally, prospective borrowers should ensure that financial information, including the pro forma financial statement, is in a formula-based Microsoft Excel document whenever possible. Section V of this NOFA provides additional details on the contents of the LOIs.

EPA will invite final applications from prospective borrowers whose project proposals are selected for continuation in the application process. EPA must receive final applications within 365 days of the invitation to apply. If EPA does not receive an application within this timeframe, it is considered withdrawn and the prospective borrower will need to resubmit a LOI to be considered in any subsequent rounds of project selection.

Table of Contents

I. Background
II. Program Funding
III. Eligibility Requirements
IV. Types of Credit Assistance
V. Letters of Interest and Applications
VI. Fees
VII. Selection Criteria

I. Background

Congress enacted WIFIA as part of the Water Resources Reform and Development Act of 2014 (WRRDA). Codified at 33 U.S.C. 3901–3914, as amended by sec. 5008 of the Water Infrastructure Improvements for the Nation (WIIN) Act, signed into law by the President on December 16, 2016, WIFIA establishes a new federal credit program for water infrastructure projects to be administered by EPA. WIFIA authorizes EPA to provide federal credit assistance in the form of secured (direct) loans or loan guarantees for eligible water infrastructure projects.

The WIFIA program's mission is to accelerate investment in our nation's water and wastewater infrastructure by providing long-term, low-cost, supplemental credit assistance under customized terms to creditworthy drinking water and wastewater infrastructure projects of national and regional significance.

II. Program Funding

Congress appropriated $20 million in funding to cover the subsidy cost of providing WIFIA credit assistance. The subsidy cost represents the Federal government's risk that the loan may not be paid back, and since EPA anticipates that on average for the water industry, the risk is relatively low, this funding can be leveraged into a much larger amount of credit assistance. EPA estimates that this appropriation will allow it to provide approximately $1 billion [2] in long-term, low-cost financing to water and wastewater projects and accelerate more than $2 billion in infrastructure investment around the country.

Recognizing the need that exists in both small and large communities to invest in infrastructure, Congress stipulated in WIFIA that EPA set aside 15% of the budget authority appropriated each year for small communities, defined as systems that serve a population of less than 25,000. Of the funds set aside, any amount not obligated by June 1 of the fiscal year for which budget authority is set aside may be used for any size community. Regardless of whether EPA obligates these funds by June 1 of the fiscal year for which budget authority is set aside, EPA will endeavor to use 15% of its budget authority for small communities.

In addition to assisting both large and small projects and communities, WIFIA will be an attractive borrowing mechanism for a variety of different borrower and credit types. EPA anticipates that WIFIA's low cost combined with the debt structuring flexibilities offered by the program will be of benefit to municipalities, private entities, project financings, and to the State Revolving Fund programs.

III. Eligibility Requirements

The WIFIA statute and implementing rules set forth eligibility requirements for prospective borrowers, projects, and project costs. The requirements outlined below are described in greater detail in the WIFIA program handbook.

A. Eligible Applicants

Prospective borrowers must be one of the following in order to be eligible for WIFIA credit assistance:

(i) A corporation;

(ii) A partnership;

(iii) A joint venture;

(iv) A trust;

(v) A Federal, State, or local governmental entity, agency, or instrumentality;

(vi) A tribal government or a consortium of tribal governments; or

(vii) A State infrastructure financing authority.

[2] This estimated loan volume is provided for reference only. Consistent with the Federal Credit Reform Act of 1990 and the requirements of the Office of Management and Budget, the actual subsidy cost of providing credit assistance is based on individual project characteristics and calculated on a project-by-project basis. Thus, actual lending capacity may vary.

B. Eligible Projects

The WIFIA statute authorizes EPA to provide credit assistance for a wide variety of projects. Projects must be one of the following in order to be eligible for WIFIA credit assistance:

(i) One or more activities that are eligible for assistance under section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)), notwithstanding the public ownership requirement under paragraph (1) of that subsection;

(ii) One or more activities described in section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2));

(iii) A project for enhanced energy efficiency in the operation of a public water system or a publicly owned treatment works;

(iv) A project for repair, rehabilitation, or replacement of a treatment works, community water system, or aging water distribution or waste collection facility (including a facility that serves a population or community of an Indian reservation);

(iv) A brackish or sea water desalination project, including chloride control, a managed aquifer recharge project, a water recycling project, or a project to provide alternative water supplies to reduce aquifer depletion;

(v) A project to prevent, reduce, or mitigate the effects of drought, including projects that enhance the resilience of drought-stricken watersheds;

(vi) Acquisition of real property or an interest in real property—

(a) If the acquisition is integral to a project described in paragraphs (i) through (v); or

(b) Pursuant to an existing plan that, in the judgment of the Administrator, would mitigate the environmental impacts of water resources infrastructure projects otherwise eligible for assistance under this section;

(vii) A combination of projects, each of which is eligible under paragraph (i) or (ii), for which a State infrastructure financing authority submits to the Administrator a single application; or

(viii) A combination of projects secured by a common security pledge, each of which is eligible under paragraph (i), (ii), (iii), (iv), (v), or (vi), for which an eligible entity, or a combination of eligible entities, submits a single application.

C. Eligible Costs

As defined under 33 U.S.C. 3906 and described in the WIFIA program handbook, eligible project costs are costs associated with the following activities:

(i) Development-phase activities, including planning, feasibility analysis (including any related analysis necessary to carry out an eligible project), revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;

(ii) Construction, reconstruction, rehabilitation, and replacement activities;

(iii) The acquisition of real property or an interest in real property (including water rights, land relating to the project, and improvements to land), environmental mitigation (including acquisitions pursuant to section 5026(7) of the statute), construction contingencies, and acquisition of equipment; and

(iv) Capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction. Capitalized interest on WIFIA credit assistance may not be included as an eligible project cost.

D. Threshold Requirements

In order for a project to be considered for WIFIA credit assistance, a project must meet the following six criteria:

(i) The project and obligor shall be creditworthy;

(ii) A project shall have eligible project costs that are reasonably anticipated to equal or exceed $20 million, or for a project eligible under paragraphs (2) or (3) of 33 U.S.C. 3905 serving a community of not more than 25,000 individuals, project costs that are reasonably anticipated to equal or exceed $5 million;

(iii) Project financing shall be repayable, in whole or in part, from State or local taxes, user fees, or other dedicated revenue sources that also secure the senior project obligations of the project; shall include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and may have a lien on revenues subject to any lien securing project obligations;

(iv) In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, or a tribal government or consortium of tribal governments, the project that the entity is undertaking shall be publicly sponsored.

(v) The applicant shall have developed an operations and maintenance plan that identifies adequate revenues to operate, maintain, and repair the project during its useful life.

E. Federal Requirements

All projects receiving WIFIA assistance must comply with Federal requirements and regulations, including (but not limited to):

(i) American Iron and Steel Requirement, 33 U.S.C. 3914, *https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement;*

(ii) Labor Standards, 33 U.S.C. 1372, *https://www.dol.gov/whd/govcontracts/dbra.htm;*

(iii) National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq., https://www.epa.gov/nepa;*

(iv) Floodplain Management, Executive Order 11988, 42 FR 26951, May 24, 1977, as amended by Executive Order 13690, 80 FR 6425, February 4, 2015, *https://www.archives.gov/federal-register/codification/executive-order/11988.html, https://www.whitehouse.gov/the-press-office/2015/01/30/executive-order-establishing-federal-flood-risk-management-standard-and-https://www.fema.gov/media-library/assets/documents/110377;*

(v) Archeological and Historic Preservation Act, 16 U.S.C. 469–469c, *https://www.nps.gov/archeology/tools/laws/ahpa.htm;*

(vi) Clean Air Act, 42 U.S.C. 7401 *et seq., https://www.epa.gov/clean-air-act-overview;*

(vii) Clean Water Act, 33 U.S.C. 1251 *et seq., https://www.epa.gov/aboutepa/about-office-water;*

(viii) Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq., https://www.fws.gov/ecological-services/habitat-conservation/cbra/Act/index.html;*

(ix) Coastal Zone Management Act, 16 U.S.C. 1451 *et seq., https://coast.noaa.gov/czm/about/;*

(x) Endangered Species Act, 16 U.S.C. 1531 *et seq., https://www.fws.gov/endangered/;*

(xi) Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Executive Order 12898, 59 FR 7629, February 16, 1994, *https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf;*

(xii) Protection of Wetlands, Executive Order 11990, 42 FR 26961, May 25, 1977, as amended by Executive Order 12608, 52 FR 34617, September 14, 1987, *https://www.epa.gov/cwa-404;*

(xiii) Farmland Protection Policy Act, 7 U.S.C. 4201 *et seq., https://www.nrcs.usda.gov/wps/portal/nrcs/detail/?cid=nrcs143_008275;*

(xiv) Fish and Wildlife Coordination Act, 16 U.S.C. 661–666c, as amended, *https://www.fws.gov/;*

(xv) Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq., http://www.nmfs.noaa.gov/sfa/laws_policies/msa/;*

(xvi) National Historic Preservation Act, 16 U.S.C. 470 *et seq., https://www.nps.gov/archeology/tools/laws/NHPA.htm;*

(xvii) Safe Drinking Water Act, 42 U.S.C. 300f *et seq., https://www.epa.gov/ground-water-and-drinking-water;*

(xviii) Wild and Scenic Rivers Act, 16 U.S.C. 1271 *et seq., https://rivers.gov/;*

(xix) Debarment and Suspension, Executive Order 12549, 51 FR 6370, *https://www.archives.gov/federal-register/codification/executive-order/12549.html;*

(xx) Demonstration Cities and Metropolitan Development Act, 42 U.S.C. 3301 *et seq.,* as amended, and Executive Order 12372, 47 FR 30959, *http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning;*

(xxi) Drug-Free Workplace Act, 41 U.S.C. 8101 *et seq., https://webapps.dol.gov/elaws/asp/drugfree/screen4.htm;*

(xxii) New Restrictions on Lobbying, 31 U.S.C. 1352, *https://www.epa.gov/grants/lobbying-and-litigation-information-federal-grants-cooperative-agreements-contracts-and-loans;*

(xxiii) Prohibitions relating to violations of the Clean Water Act or Clean Air Act with respect to Federal contracts, grants, or loans under 42 U.S.C. 7606 and 33 U.S.C. 1368, and Executive Order 11738, 38 FR 25161, September 12, 1973, *https://www.archives.gov/federal-register/codification/executive-order/11738.html;*

(xxiv) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 *et seq., https://www.gpo.gov/fdsys/pkg/FR-2005-01-04/pdf/05-6.pdf;*

(xxv) Age Discrimination Act, 42 U.S.C. 6101 *et seq., https://www.eeoc.gov/laws/statutes/adea.cfm;*

(xxvi) Equal Employment Opportunity, Executive Order 11246, 30 FR 12319, September 28, 1965, *https://www.dol.gov/ofccp/regs/compliance/ca_11246.htm;*

(xxvii) Section 13 of the Clean Water Act, Pub. L. 92–500, codified in 42 U.S.C. 1251, *https://www.epa.gov/ocr/section-13-federal-water-pollution-control-act-amendments-1972;*

(xxviii) Section 504 of the Rehabilitation Act, 29 U.S.C. 794, supplemented by Executive Orders 11914, 41 FR 17871, April 29, 1976 and

11250, 30 FR 13003, October 13, 1965, *https://www.epa.gov/ocr/section-504-rehabilitation-act-1973;*

(xxix) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq., https://www.epa.gov/environmentaljustice/title-vi-and-environmental-justice;*

(xxx) Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements, 73 FR 15904, *https://www.epa.gov/resources-small-businesses.*

Detailed information about some of these requirements is outlined in the WIFIA program handbook. Further information can be found at the links above.

IV. Types of Credit Assistance

Under WIFIA, EPA is permitted to provide credit assistance in the form of secured (direct) loans or loan guarantees. The maximum amount of WIFIA credit assistance to a project is 49 percent of eligible project costs. Each prospective borrower will list the estimated total capital costs of the project, broken down by activity type and differentiating between eligible project costs and ineligible project costs in the LOI and application.

V. Letters of Interest and Applications

Each prospective borrower will be required to submit a LOI and, if invited, an application to EPA in order to be considered for approval. This section describes the LOI submission and application submission.

A. Letter of Interest

Applicants seeking a WIFIA loan must submit a LOI describing the project fundamentals and addressing the WIFIA selection criteria.

The primary purpose of the LOI is to provide adequate information to EPA to: (i) Validate the eligibility of the prospective borrower and the prospective project, (ii) perform a preliminary creditworthiness assessment, (iii) perform a preliminary engineering feasibility assessment, and (iv) evaluate the project against the selection criteria and identify which projects EPA will invite to submit applications. Prospective borrowers are encouraged to review the WIFIA program handbook to help create the best justification possible for the project and a cohesive and comprehensive LOI submittal.

Prospective applicants should utilize the LOI form on the WIFIA Web site and ensure that sufficient detail about the project is provided for EPA's review. EPA will notify a prospective applicant if a project is deemed ineligible as described in Section III of this NOFA and based on the information provided in the LOI.

Below is guidance on what should be included in the LOI.

A. *Prospective Borrower Information.* In this section, the prospective borrower describes its project's organizational structure, financial condition and experience, and project's readiness to proceed. Also, the prospective borrower provides basic information such as its address, Web site, Dun and Bradstreet Data Universal Number System (DUNS) number, and employer/taxpayer identification number numbers. As part of the description of its financial condition, the prospective borrower should include the year-end audited financial statements for the past three years, as available.

In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, or a tribal government or consortium of tribal governments, the project that the entity is undertaking must be publicly sponsored. Public sponsorship means that the recipient can demonstrate, to the satisfaction of the EPA, that the project applicant has consulted with the affected State, local, or tribal government in which the project is located, or is otherwise affected by the project and that such government supports the proposed project. A prospective borrower can show support by including a certified letter signed by the approving municipal department or similar agency, mayor or other similar designated authority, local ordinance, or any other means by which local government approval can be evidenced.

B. *Project Plan.* The prospective borrower provides a general description of the project, including its location, population served, purpose, design features, estimated capital cost, and development schedule. The prospective borrower describes how the project can be categorized as one of the project types eligible for WIFIA assistance as described in the program handbook. The prospective borrower includes other relevant information that could affect the development of the project, such as community support, pending legislation, or litigation. In this section, the prospective borrower summarizes the status of the project's environmental review, engineering report, and other approvals or analyses that are integral to the project's development.

C. *Project Operations and Maintenance Plan.* The prospective borrower describes its plan for operating, maintaining, and repairing the project post-completion, discusses the sources of revenue used to finance these activities, and provides an estimate of the useful life of the project.

D. *Financing Plan.* The prospective borrower details the proposed sources and uses of funds for the project and states the type and amount of credit assistance it is seeking from the WIFIA program. The discussion of proposed financing should identify the source(s) of revenue or other security that would be pledged to the WIFIA assistance. Additionally, the prospective borrower describes the credit characteristics of the project and how the senior obligations of the project will achieve an investment-grade rating as well as the anticipated rating on the WIFIA instrument. It also includes a summary financial pro forma as well as revenue and expense projections for the life of the WIFIA debt.

E. *Selection Criteria.* The prospective borrower describes the potential policy benefits achieved through the use of WIFIA assistance with respect to each of the WIFIA program selection criteria. These criteria and their weights are enumerated in Section VII of this NOFA and further explained in the program handbook.

F. *Contact Information.*The prospective borower identifies the point of contact with whom the WIFIA program should communicate regarding the LOI. For the purpose of completing its evaluation, WIFIA program staff may contact a prospective borrower regarding specific information in the LOI.

G. *Certifications.* The prospective borrower certifies that it will abide by all applicable laws and regulations, including NEPA, the Federal Water Pollution Control Act, the American Iron and Steel requirements, and Federal labor standards, among others if selected to receive funding.

H. *SRF Notification.* The prospective borrower acknowledges that EPA will notify the State infrastructure financing authority in the State in which the project is located that it submitted a LOI and provide the submitted LOI and source documents to that authority. The prospective borrower may opt out of having its LOI and source documents shared.

B. Application

After the EPA concludes its evaluation of the LOIs, a selection committee will invite prospective borrowers to apply based on preliminary engineering feasibility findings, the preliminary creditworthiness assessment, the amount of budget authority necessary to

provide WIFIA credit assistance, and the scoring of the selection criteria in accordance with Section VII of this NOFA.

Applications must be submitted using the form provided on the WIFIA Web site: *https://www.epa.gov/wifia/*. The purpose of the application is to provide the WIFIA program with the materials necessary to underwrite the loan. Underwriting performed by the WIFIA team will include a thorough evaluation of the project's plan of finance and underlying economics, including a detailed assessment of the project's cash flow and proposed credit terms. The WIFIA team will review the inputs and assumptions in the financing plan, the revenue and expenditures in the financing plan, the project's ability to meet WIFIA loan repayment obligations, and project risks and mitigants, among other things. An application fee may be required, as determined by the final fee rule.

EPA will require a preliminary rating opinion letter indicating that the project's senior debt obligations have the potential to attain an investment-grade rating, prior to approving a project for credit assistance. To demonstrate this potential, each application must include a preliminary rating opinion letter from a Nationally Recognized Statistical Rating Organization (NRSRO) that addresses the creditworthiness of the senior debt obligations funding the project (*i.e.,* debt obligations which have a lien senior to that of the WIFIA credit instrument on the pledged security) and the default risk of the WIFIA loan. The preliminary rating opinion letter must be based on the financing structure proposed by the prospective borrower, must conclude that there is a reasonable probability for the senior debt obligations to receive an investment grade rating, and should opine on the default risk of the WIFIA credit assistance itself. If the WIFIA credit assistance is proposed as the senior obligation, then it must receive the investment grade rating. A project that does not demonstrate the potential for its senior obligations to receive an investment grade rating will not be considered for a WIFIA loan.

Finally, prior to execution of a WIFIA loan agreement, each prospective borrower must obtain two investment grade ratings on its project's senior debt obligations (which may be the WIFIA credit instrument) and revised opinions on the default risk of the WIFIA loan.

Detailed information requirements for the application are listed in the application form, and are described in the WIFIA program handbook.

VI. Fees

There is no fee to submit a LOI. EPA has proposed in ''Fees for Water Infrastructure Project Applications under WIFIA'', found at Docket ID No. EPA–HQ–OW–2016–0568 at *http://www.regulations.gov,* that each invited applicant must submit, concurrent with its application, a non-refundable Application Fee of $25,000 for projects serving communities of not more than 25,000 individuals or $100,000 for all other projects. Applications will not be evaluated until the Application Fee is paid. For successful applicants, this fee will be credited toward final payment of a Credit Processing Fee, assessed following financial close, to reimburse the EPA for actual engineering, financial, and legal costs. In the event a final credit agreement is not executed, the borrower is still required to reimburse EPA for the costs incurred. Typically, the amount of this credit processing fee is expected to range between $350,000 and $700,000, although it can be greater for projects that require complex financial structures and extended negotiations or lower for projects that require simpler financial structures and shorter negotiations.

Borrowers may finance any of the fees described above with WIFIA credit assistance, in accordance with recent amendments to WIFIA found in section 5008 of the Water Infrastructure Improvements for the Nation (WIIN) Act. Borrowers may not finance any other expenses associated with the application process, such as charges associated with obtaining the required preliminary rating opinion letter, with WIFIA credit assistance.

VII. Selection Process and Criteria

This section specifies the criteria and process that EPA will use to evaluate and award applications for WIFIA assistance.

After EPA concludes its evaluation of the LOIs, a selection committee will invite prospective borrowers to apply based on the scoring of the selection criteria, the initially estimated amount of budget authority consumed by the project, the preliminary creditworthiness assessment, and the preliminary engineering feasibility assessment. In addition, the selection committee will take into consideration geographic and project diversity when identifying which projects should be invited to submit complete applications.

To maintain consistency throughout the evaluation process, the criteria will receive a score on the rating scale of 1–5, 1 being the lowest. Each criterion is weighted based upon EPA's mission and priorities as well as factors influencing the successful implementation of the WIFIA program. There is no threshold score that must be achieved in order to be selected. Rather, the selection committee will weigh each of the factors outlined above in making final determinations.

An invitation to apply for WIFIA credit assistance does not guarantee EPA's approval, which remains subject to a project's continued eligibility, including creditworthiness, the successful negotiation of terms acceptable to EPA, and the availability of funds at the time at which all necessary recommendations and evaluations have been completed. However, the purpose of EPA's LOI review is to pre-screen prospective borrowers to the extent practicable. In doing this, it is expected that EPA will only invite projects to apply if it anticipates that those projects are able to obtain WIFIA credit assistance.

The selection criteria incorporate statutory eligibility requirements as well as EPA priorities. EPA has identified the following project priorities for the LOI submittal period:

(i) Adaptation to extreme weather and climate change including enhanced infrastructure resiliency, water recycling and reuse, and managed aquifer recovery;

(ii) Enhanced energy efficiency of treatment works, public water systems, and conveyance systems, including innovative, energy efficient nutrient treatment;

(iii) Green infrastructure; and

(iv) Repair, rehabilitation, and replacement of infrastructure and conveyance systems.

EPA's priorities reflect water sector challenges that require innovative tools to assist municipalities in managing and adapting to our most pressing public health and environmental challenges. These priorities are reflected in the relative weights of the thirteen selection criteria below, described in greater detail in the WIFIA program handbook.

Listed in order of relative weight for this LOI submittal period, the WIFIA selection criteria are as follows:

(i) The extent to which the project is nationally or regionally significant, with respect to the generation of economic and public health benefits: 10 percent.

(ii) The likelihood that assistance under WIFIA would enable the project to proceed at an earlier date than the project would otherwise be able to proceed: 5 percent.

(iii) The extent to which the project uses new or innovative approaches such as the use of energy efficient parts and

systems, or the use of renewable or alternate sources of energy; green infrastructure; and the development of alternate sources of drinking water through desalination, aquifer recharge or water recycling: 10 percent.

(iv) The extent to which the project protects against extreme weather events, such as floods or hurricanes, as well as the impacts of climate change: 10 percent.

(v) The extent to which the project helps maintain or protect the environment or public health: 10 percent.

(vi) The extent to which the project serves regions with significant energy exploration, development, or production areas: 5 percent.

(vii) The extent to which the project serves regions with significant water resource challenges, including the need to address water quality concerns related to groundwater, surface water, or other resources, significant flood risk, water resource challenges identified in existing regional, state, or multistate agreements, and water resources with exceptional recreational value or ecological importance: 10 percent.

(viii) The extent to which the project addresses identified municipal, state, or regional priorities: 5 percent.

(ix) The readiness of the project to proceed towards development, including a demonstration by the prospective borrower that there is reasonable expectation that the contracting process for construction of the project can commence by not later than ninety days after the date on which a Federal credit instrument is obligated: 5 percent.

(x) The extent to which the project financing plan includes public or private financing in addition to assistance under WIFIA: 5 percent.

(xi) The extent to which assistance under WIFIA reduces the contribution of Federal assistance to the project: 5 percent.

(xii) The extent to which the project addresses needs for repair, rehabilitation, or replacement of a treatment works, community water system, or aging water distribution or wastewater collection system: 10 percent.

(xiii) The extent to which the project serves economically stressed communities, or pockets of economically stressed rate payers within otherwise non- communities: 10 percent.

The scoring scales and guidance used to evaluate each project against the selection criteria are available in the WIFIA program handbook. Prospective borrowers considering WIFIA should review the WIFIA program handbook and discuss how the project addresses each of these selection criteria in the LOI submission.

In the event that EPA changes the application or selection process to incorporate best practices from the initial round, a new NOFA will be published. Any updates will also be available on the WIFIA Web site: *https://www.epa.gov/wifia/*.

Authority: 33 U.S.C. 3901–3914; 40 CFR part 35.

Dated: December 22, 2016.

Gina McCarthy,

Administrator.

[FR Doc. 2016–31828 Filed 1–9–17; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 82, No. 6
Tuesday, January 10, 2017

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

Grain Inspection, Packers and Stockyards Administration (GIPSA)

Designation of Fremont Grain Inspection Department, Inc. To provide Class X or Class Y Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: GIPSA is announcing the designation of Fremont Grain Inspection Department, Inc. (Fremont) to provide Class X or Class Y weighing services under the United States Grain Standards Act (USGSA), as amended.

DATES: *Effective Date:* November 9, 2016.

FOR FURTHER INFORMATION CONTACT: Sharon Lathrop, 816–891–0415, or *FGIS.QACD@usda.gov*.

SUPPLEMENTARY INFORMATION: In the August 24, 2016, **Federal Register** (81 FR 57884), GIPSA announced the designation of Fremont to provide official services under the USGSA, effective July 1, 2016, to June 30, 2021. Subsequently, Fremont asked GIPSA to amend their designation to include official weighing services. The USGSA authorizes the Secretary to designate authority to perform official weighing to an agency providing official inspection services within a specified geographic area, if such agency is qualified under 7 U.S.C. 79. Under 7 U.S.C. 79(a), GIPSA evaluated information regarding the designation criteria in section 7 U.S.C. 79 and determined that Fremont is qualified to provide official weighing services in their currently assigned geographic area.

Fremont's designation is amended to include Class X or Class Y weighing within their assigned geographic area, effective November 9, 2016, to June 30, 2021. Interested persons may obtain official services by contacting Fremont at (402) 721–1270.

Authority: 7 U.S.C. 71–87k.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2017–00203 Filed 1–9–17; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Casa Grande, Arizona, Area; Request for Comments on the Official Agency Servicing This Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designation of the official agency listed below will end on March 31, 2017. We are asking persons or governmental agencies interested in providing official services in the areas presently served by this agency to submit an application for designation. In addition, we are asking for comments on the quality of services provided by the following designated agency: Farwell Commodity Grain Services, Inc. (Farwell Southwest).

DATES: Applications and comments must be received by February 9, 2017.

ADDRESSES: Submit applications and comments concerning this Notice using any of the following methods:

- *Applying for Designation on the Internet:* Use FGISonline (*https://fgis.gipsa.usda.gov/default_home_FGIS.aspx*) and then click on the Delegations/Designations and Export Registrations (DDR) link. You will need to obtain an FGISonline customer number and USDA eAuthentication username and password prior to applying.
- *Submit Comments Using the Internet:* Go to *Regulations.gov* (*http://www.regulations.gov*). Instructions for submitting and reading comments are detailed on the site.
- *Mail, Courier or Hand Delivery:* Jacob Thein, Compliance Officer, USDA, GIPSA, FGIS, QACD, 10383 North Ambassador Drive, Kansas City, MO 64153
- *Fax:* Jacob Thein, 816–872–1257
- *Email: FGIS.QACD@usda.gov*

Read Applications and Comments: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

FOR FURTHER INFORMATION CONTACT: Jacob Thein, 816–866–2223 or *FGIS.QACD@usda.gov*

SUPPLEMENTARY INFORMATION: Section 79(f) of the United States Grain Standards Act (USGSA) authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79(f)). Under section 79(g) of the USGSA, designations of official agencies are effective for no longer than five years, unless terminated by the Secretary, and may be renewed according to the criteria and procedures prescribed in section 79(f) of the USGSA.

Areas Open for Designation

Farwell Southwest

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the following geographic area in the States of Arizona and California is assigned to this official agency.

In Arizona

Maricopa, Pinal, Santa Cruz, and Yuma Counties.

In California

Imperial, Riverside, and San Diego Counties. Farwell Southwest's assigned geographic area does not include the export port locations inside Farwell Southwest's area which are serviced by GIPSA.

Opportunity for Designation

Interested persons or governmental agencies may apply for designation to provide official services in the geographic areas specified above under the provisions of section 79(f) of the USGSA and 7 CFR 800.196. Designation in the specified geographic areas in Arizona and California is for the period beginning April 1, 2017, to March 31, 2022. To apply for designation or to request more information, contact Jacob Thein at the address listed above.

Request for Comments

We are publishing this Notice to provide interested persons the opportunity to comment on the quality of services provided by the Farwell

Southwest official agency. In the designation process, we are particularly interested in receiving comments citing reasons and pertinent data supporting or objecting to the designation of the applicant. Submit all comments to Jacob Thein at the above address or at *http://www.regulations.gov.*

We consider applications, comments, and other available information when determining which applicants will be designated.

Authority: 7 U.S.C. 71–87k.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2017–00205 Filed 1–9–17; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Application Deadlines and Funding Levels

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), herein referred to as RUS or the Agency, announces its Community Connect Grant Program application window for Fiscal Year (FY) 2017. In addition, this NOSA announces the minimum and maximum Community Connect grant amounts, the funding priority, the application submission dates, the agency contact information, and the procedures for submission of paper and electronic applications.

RUS will publish the amount of funding received in the final appropriations act on its Web site at *http://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.* Applicants can review the Community Connect Grant Program regulation at 7 CFR part 1739 (Subpart A).

DATES: Submit completed paper or electronic grant applications by the following deadlines:

- *Paper submissions:* Paper submissions must be postmarked and mailed, shipped, or sent overnight *no later* than March 13, 2017 to be eligible for FY 2017 grant funding. Late or incomplete applications will not be eligible for FY 2017 grant funding.
- *Electronic submissions:* Electronic submissions must be received no later than March 13, 2017 to be eligible for FY 2017 grant funding. Late or incomplete applications will not be eligible for FY 2017 grant funding.
- If the submission deadline falls on Saturday, Sunday, or a Federal holiday, the application is due the next business day.

ADDRESSES: Copies of the FY 2017 Application Guide and materials for the Community Connect Grant Program may be obtained through:

(1) The Community Connect Web site at *http://www.rd.usda.gov/programs-services/community-connect-grants*; and

(2) The RUS Office of Loan Origination and Approval at 202–720–0800.

Completed applications may be submitted the following ways:

(1) *Paper:* Mail paper applications to the Rural Utilities Service, Telecommunications Program, 1400 Independence Ave. SW., Room 2844, STOP 1597, Washington, DC 20250–1597. Mark address with ''Attention: Deputy Assistant Administrator, Office of Loan Origination and Approval, Rural Utilities Service.''

(2) *Electronic:* Submit electronic applications through *Grants.gov*. Prospective applicants can access information on submitting electronic applications at any time, regardless of registration status, through the *Grants.gov* Web site at *http://www.grants.gov*. However, in order to use the electronic submission option, applicants must register with *Grants.gov*.

FOR FURTHER INFORMATION CONTACT: Shawn Arner, Deputy Assistant Administrator, Office of Loan Origination and Approval, Rural Utilities Service, U.S. Department of Agriculture, telephone: (202) 720–0800.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Community Connect Grant Program.

Announcement Type: Initial announcement.

Funding Opportunity Number: RDRUS–CC–2017.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.863.

Dates: Applicants must submit the paper or electronic grant applications by the deadlines found in this section and Section D(5).

A. Program Description

The purpose of the Community Connect Grant Program is to provide financial assistance in the form of grants to eligible applicants that will provide service at the Broadband Grant Speed to all premises in currently unserved, lower-income, and extremely rural areas. RUS will give priority to rural areas that demonstrate the greatest need for broadband services, based on the criteria contained herein.

In addition to providing service to all premises, the program's ''community-oriented connectivity'' concept will stimulate practical, everyday uses and applications of broadband by cultivating the deployment of new broadband services that improve economic development and provide enhanced educational and health care opportunities in rural areas. Such an approach will also give rural communities the opportunity to benefit from the advanced technologies that are necessary to achieve these goals. The regulation for the Community Connect Program can be found at 7 CFR part 1739.

As in years past, the FY 2017 Community Connect Grant Application Guide has been updated based on program experience. All applicants should carefully review and prepare their applications according to instructions in the FY 2017 Application Guide and sample materials. Expenses incurred in developing applications will be at the applicant's own risk.

B. Federal Award Information

In accordance with 7 CFR 1739.2, the Administrator has established a minimum grant request amount of $100,000 and a maximum grant request amount of $3,000,000 per application for FY 2017.

The standard grant agreement, which specifies the term of each award, is available at *http://www.rd.usda.gov/files/UTP_Comm_ConnectGrantAgreement.pdf.* The Agency will make awards, and successful applicants will be required to execute documents appropriate to the project before the Agency will advance funding.

While prior Community Connect grants cannot be renewed, existing Community Connect awardees may submit applications for new projects. The Agency will evaluate project proposals from existing awardees as new applications. All grant applications must be submitted during the application window.

C. Eligibility Information

1. Eligible Applicants (See 7 CFR 1739.10)

a. Only entities legally organized as one of the following are eligible for Community Connect Grant Program financial assistance:

i. An incorporated organization.

ii. An Indian tribe or tribal organization, as defined in 25 U.S.C. 450b.

iii. A state or local unit of government.

iv. Other legal entity, including a cooperative, private corporation, or limited liability company organized on a for-profit or not-for-profit basis.

b. Applicants must have the legal capacity and authority to enter into contracts, to comply with applicable federal statutes and regulations, and to own and operate the broadband facilities as proposed in their application.

c. Applicants must have an active registration with current information in the System for Award Management (SAM) at *https://www.sam.gov* and have a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number. Further information regarding SAM registration and DUNS number acquisition can be found in Sections D(3) and D(4) of this NOSA.

2. Ineligible Applicants

a. The following entities are not eligible for Community Connect Grant Program financial assistance:

i. Individuals and partnerships.

ii. Corporations that have been convicted of a Federal felony within the past 24 months. Any corporation that has been assessed to have any unpaid federal tax liability, for which all judicial and administrative remedies have been exhausted or have lapsed and is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance.

b. In accordance with the Consolidated Appropriations Act, 2016, Sections 743–4, no funds may be available ''for a contract, grant, or cooperative agreement with an entity that requires employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.''

3. Cost Sharing or Matching

The Community Connect Grant Program requires matching contributions for grants. See 7 CFR 1739.14 and the FY 2017 Application Guide for information on required matching contributions.

a. Grant applicants must demonstrate matching contributions in cash of at least fifteen percent (15%) of the requested grant amount. Matching contributions must be used solely for the Project and shall not include any financial assistance from federal sources unless there is a federal statutory exception specifically authorizing the federal financial assistance to be considered as such as discussed in 7 CFR 1739.14.

b. Applications that do not provide sufficient documentation of the required fifteen percent match will be declared ineligible.

4. Funding Restrictions

a. Eligible grant purposes.

Grant funds may be used to finance:

i. The construction, acquisition, or leasing of facilities, including spectrum, land or buildings to deploy service at the Broadband Grant Speed to all participating Critical Community Facilities and all required facilities needed to offer such service to all residential and business customers located within the Proposed Funded Service Area;

ii. The improvement, expansion, construction, or acquisition of a Community Center that furnishes free internet access at the Broadband Grant Speed and provides Computer Access Points. Grant funds provided for such costs shall not exceed the lesser of ten percent (10%) of the grant amount requested or $150,000; and

iii. The cost of bandwidth to provide service free of charge at the Broadband Grant Speed to Critical Community Facilities for the first two (2) years of operation.

b. Ineligible grant purposes.

Grant funds may not be used to finance:

i. The duplication of any existing Broadband Service provided by another entity.

ii. Operating expenses other than the cost of providing bandwidth at the Broadband Grant Speed to the Critical Community Facilities for two (2) years.

iii. Any other operating expenses not specifically permitted in 7 CFR 1739.12.

c. Other. For more information, see 7 CFR 1739.3 for definitions, 7 CFR 1739.12 for eligible grant purposes, and 7 CFR 1739.13 for ineligible grant purposes.

5. Other

Eligible projects must propose to fulfill the following requirements (see 7 CFR 1739.11 for more information):

a. Minimum Broadband Service. RUS uses this measurement to determine whether a proposed funded service area is served or unserved. Until otherwise revised in the **Federal Register**, the minimum rate-of-data transmission that qualifies as Minimum Broadband Service is four (4) megabits per second downstream and one (1) megabit per second upstream for both fixed and mobile broadband service. RUS will determine that Broadband Service *does not exist* for areas with no broadband access or whose access is *less than* 4 Mbps downstream plus 1 Mbps upstream.

b. Minimum Broadband Grant Speed. The minimum bandwidth that an applicant *must* propose to deliver to every customer in the proposed funded service area. Until otherwise revised in the **Federal Register**, the minimum rate-of-data transmission that qualifies as Minimum Broadband Grant Speed is ten (10) megabits downstream and one (1) megabit upstream for both fixed and mobile service to the customer.

c. Rural Area. A Rural Area refers to any area, as confirmed by the most recent decennial Census of the United States, which is not located within:

i. A city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or

ii. An urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants. For purposes of the definition of Rural Area, an urbanized area means a densely populated territory as defined in the most recent decennial Census.

d. Proposed Funded Service Area (PFSA). Applicants must define a contiguous geographic area within an eligible Rural Area, in which Broadband Service does not currently exist, and where the applicant proposes to offer service at the Broadband Grant Speed to all residential and business customers. A PFSA must not overlap with Service Areas of current RUS borrowers and grantees.

e. Critical Community Facilities. Applicants must propose to offer service, free of charge to users, at the Broadband Grant Speed to all Critical Community Facilities located within the Proposed Funded Service Area for at least two (2) years.

f. Community Center. Applicants must propose to provide a Community Center, within the PFSA, with at least two (2) Computer Access Points and wireless access at the Broadband Grant Speed free of charge to users for at least two (2) years.

D. Application and Submission Information

The FY 2017 Application Guide provides specific detailed instructions

for each item in a complete application. The Agency emphasizes the importance of including every required item and strongly encourages applicants to follow the instructions carefully, using the examples and illustrations in the FY 2017 Application Guide. Applications submitted by the application deadline, but have critical missing items will be returned as ineligible. The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. However, depending on the specific scoring criteria, applications that do not include all items necessary for scoring may still be eligible applications, but may not receive full or any credit if the information cannot be verified. See the FY 2017 Application Guide for a full discussion of each required item. For a comprehensive list of all information required in a grant application, refer to 7 CFR 1739.15.

1. Address To Request Application Package

The FY 2017 Application Guide, copies of necessary forms and samples, and the Community Connect Grant Program Regulation are available in the following locations:

a. Community Connect Grant Program Web page at *http://www.rd.usda.gov/programs-services/community-connect-grants.*

b. The Office of Loan Origination and Approval in RUS; call 202–720–0800.

2. Content and Form of Application Submission

a. Carefully review the Community Connect Application Guide and the 7 CFR part 1739, which detail all necessary forms and worksheets. A table summarizing the necessary components of a complete application can be found in Section D(2)(d).

b. *Submission of Application Items.* Given the high volume of program interest, applicants should submit the required application items in the order indicated in the FY 2017 Application Guide. Applications that are not assembled and tabbed in the specified order impede timely determination of eligibility. For applications with inconsistencies among submitted copies, the Agency will base its evaluation on the original signed application received.

c. *Additional Information.* The Agency may ask for additional or clarifying information for applications submitted by the deadline which appear to meet the eligibility requirements, but require further review.

d. *Table of Required Information in a Complete Grant Application.* This table summarizes and categorizes the items required in a grant application.

	Application item	Regulation	Comments
A	Application for Federal Assistance Form. SF–424 Standard Form.		Form provided in FY 2017 Application Guide.
	A–2 SAM Registration Information		Form provided in FY 2017 Application Guide.
	A–3 State Director Notification		Form provided in FY 2017 Application Guide.
	A–4 Equal Opportunity Survey		Form provided in FY 2017 Application Guide.
B	Executive Summary of the Project		Narrative.
C	Scoring Criteria Documentation		Narrative & Documentation.
	Special Considerations		Documentation.
D	System Design		Narrative & Documentation.
	Network Diagram		Documentation.
	Environmental Questionnaire	*7 CFR part 1970*	Narrative & Documentation.
E	Service Area Map		Provided in RUS web-based Mapping Tool.
	Service Area Demographics		Documentation.
F	Scope of Work		Narrative & Documentation.
	Construction Build-out and Project Milestones.		Form provided in FY 2017 Application Guide.
	Project Budget		Form provided in FY 2017 Application Guide.
G	Community-oriented Connectivity Plan.		Narrative.
H	Financial Information and Sustainability.		Narrative & Documentation.
I	Statement of Experience		Narrative.
J	Evidence of Legal Authority and Existence.		Documentation.
K	Additional Funding		Narrative & Documentation.
L	Compliance with Other Statutes and Regulations.		
	Equal Opportunity and Nondiscrimination.	*7 CFR part 15 (Subpart A).*	Form provided in FY 2017 Application Guide.
	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.	*49 CFR Part 24 and 7 CFR Part 21.*	Form provided in FY 2017 Application Guide.
	Debarment, Suspension, and Other Responsibility Matters.	*7 CFR Part 3017*	Form provided in FY 2017 Application Guide.
	Lobbying for Contracts, Grants, Loans, and Cooperative Agreements.	*7 CFR Part 3018*	Form provided in FY 2017 Application Guide.
	Drug-Free Workplace	*7 CFR Part 3017*	Form provided in FY 2017 Application Guide.
	Architectural Barriers		Form provided in FY 2017 Application Guide.
	Flood Hazard Area Precautions	*7 CFR 1970*	Form provided in FY 2017 Application Guide.
	Non-Duplication of Services		Form provided in FY 2017 Application Guide.
	Federal Collection Policies for Commercial Debt.		Form provided in FY 2017 Application Guide.

	Application item	Regulation	Comments
	Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.	.....	Form provided in FY 2017 Application Guide (corporate applicants-only).

e. *Number of copies of submitted applications.*

i. Applications submitted on paper. Submit the original application and two (2) copies to RUS.

ii. Applications submitted electronically through *Grants.gov*. Submit the electronic application once. Carefully read the FY 2017 Application Guide for guidance on submitting an electronic application. Applicants should identify and number each page in the same manner as the paper application.

3. Dun and Bradstreet Universal Numbering System (DUNS) Number

The grant applicant must supply a DUNS number as part of the application. The Standard Form 424 (SF–424) contains a field for the DUNS number. The applicant can obtain the DUNS number free of charge by calling Dun and Bradstreet. Go to *http://fedgov.dnb.com/webform* for more information on DUNS number acquisition or confirmation.

4. System for Award Management (SAM)

Prior to submitting a paper or an electronic application, the applicant must register in SAM at *https://www.sam.gov/portal/public/SAM/*. SAM registration must be active with current data at all times, from the application review throughout the active Federal grant funding period. To maintain active SAM registration, the applicant must review and update the information in the SAM database annually from the date of initial registration or from the date of the last update. The applicant must ensure that the information in the database is current, accurate, and complete.

5. Submission Dates and Times

a. Paper applications must be postmarked and mailed, shipped, or sent overnight no later than March 13, 2017 to be eligible for FY 2017 grant funding. Late applications, applications which do not include proof of mailing or shipping, and incomplete applications are not eligible for FY 2017 grant funding. If the submission deadline falls on Saturday, Sunday, or a Federal holiday, the application is due the next business day. In the event of an incomplete application, the Agency will notify the applicant in writing, return the application, and terminate all further action.

i. Address paper applications to the Telecommunications Program, RUS, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 2844, STOP 1597, Washington, DC 20250–1597. Applications should be marked, ''Attention: Deputy Assistant Administrator, Office of Loan Origination and Approval.''

ii. Paper applications must show proof of mailing or shipping by the deadline with one of the following:

A. A legibly dated U.S. Postal Service (USPS) postmark.

B. A legible mail receipt with the date of mailing stamped by the USPS.

C. A dated shipping label, invoice, or receipt from a commercial carrier.

iii. Due to screening procedures at the USDA, packages arriving via regular mail through the USPS are irradiated, which can damage the contents and delay delivery to the office. RUS encourages applicants to consider the impact of this procedure when selecting their application delivery method.

b. Electronic grant applications submitted through *Grants.gov* must be received no later than March 13, 2017 to be eligible for FY 2017 funding. Late or incomplete applications will not be eligible for FY 2017 grant funding.

i. Applications will not be accepted via fax or electronic mail.

ii. Electronic applications for grants must be submitted through the federal government's *Grants.gov* initiative at *http://www.grants.gov/. Grants.gov* contains full instructions on all required passwords, credentialing, and software.

iii. *Grants.gov* requires some credentialing and online authentication procedures. These procedures may take several business days to complete. Therefore, the applicant should complete the registration, credentialing, and authorization procedures at *Grants.gov* before submitting an application.

iv. Dun and Bradstreet Data Universal Numbering System (DUNS). The grant applicant must supply a DUNS number as part of the application. See Section D(3) of this NOSA for more information.

v. System for Award Management (SAM). *Grants.gov* requires that the applicant's organization is registered in SAM. Be sure to obtain the organization's SAM listing well in advance of the application deadline. See Section D(4) of this NOSA for more information.

vi. RUS encourages applicants who wish to apply through *Grants.gov* to submit their applications in advance of the deadline.

vii. If system errors or technical difficulties occur, use the customer support resources available at the *Grants.gov* Web site.

E. Application Review Information

1. Criteria

Grant applications are scored competitively and are subject to the criteria listed below. The maximum number of points possible is 115. See 7 CFR 1739.17 and the FY 2017 Application Guide for more information on the scoring criteria.

a. Needs Category. The Agency analyzes the challenges related to the following criteria and the ways in which the project proposes to address these issues (up to 50 points):

i. Economic characteristics.

ii. Educational challenges.

iii. Health care needs.

iv. Public safety issues.

b. Stakeholder Involvement Category. The Agency analyzes the extent of the project planning, development, and support from local residents, institutions, and Critical Community Facilities (up to 40 points).

c. Experience Category. The Agency analyzes the management team's level of experience and past success of broadband systems operation (up to 10 points).

d. Special Consideration Areas Category. In accordance with 7 CFR 1739.1(a), applicants may receive special consideration if they submit documentation demonstrating that they will provide service at the Broadband Grant Speed within the following areas (15 points):

i. Tribal jurisdiction or trust areas.

ii. Promise Zone (for further information, see the *Promise Zone* Web site at *http://www.hud.gov/promisezones/*).

iii. Strike Force area (for further information, see the *Strikeforce* Web site at *http://www.usda.gov/wps/portal/usda/usda?navid=STRIKE_FORCE*).

e. In making a final selection among and between applications with comparable rankings and geographic distribution, the Administrator may take

into consideration the characteristics of the Proposed Funded Service Area (PFSA), as identified in 7 CFR 1739.17(d).

2. Review and Selection Process

Grant applications are ranked according to their final scores. RUS selects applications based on those rankings, subject to the availability of funds and consistent with 7 CFR 1739.17. In addition, it should be noted that an application receiving fewer points can be selected over an application receiving more points in the event that there are insufficient funds available to cover the costs of the higher scoring application, as stated in 7 CFR 1739.16(f).

a. In addition to the scoring criteria that rank applications against each other, the Agency evaluates grant applications on the following items, in accordance with 7 CFR 1739.16:

i. Financial feasibility. A proposal that does not indicate financial feasibility or that is not sustainable will not be approved for an award.

ii. Technical considerations. An application that contains flaws that would prevent the successful implementation, operation, or sustainability of the project will not be approved for an award.

b. Applications conforming with this part will then be evaluated competitively and ranked by a panel of RUS employees that the Administrator of RUS selects, and will be awarded points as described in the scoring criteria in 7 CFR 1739.17. Applications will be ranked and grants awarded in order until all grant funds are expended.

c. The Agency reserves the right to offer the applicant a lower amount than the amount proposed in the application, as stated in 7 CFR 1739.16(g).

F. Federal Award Administration Information

1. Federal Award Notices

a. Successful applications. RUS notifies applicants whose projects are selected for awards by mailing or emailing a copy of the award letter. The receipt of an award letter does not authorize the applicant to commence performance under the award.

b. After sending the award letter, the Agency will send an agreement that contains all the terms and conditions, as referenced in 7 CFR 1739.18 and Section B of this NOSA. A copy of the standard agreement is posted on the RUS Web site at *http://www.rd.usda.gov/programs-services/community-connect-grants.* RUS recognizes that each funded project is unique, and therefore may attach additional conditions to individual award documents. An applicant must execute and return the grant agreement with any additional items required by the agreement within the number of days specified in the selection notice letter.

2. Administrative and National Policy Requirements

The items listed in this NOSA, the Community Connect Grant Program regulation, the FY 2017 Application Guide, and accompanying materials implement the appropriate administrative and national policy requirements, which include, but are not limited to:

a. Executing a Community Connect Grant Agreement.

b. Using Form SF 270, ''Request for Advance or Reimbursement,'' to request reimbursements (along with the submission of receipts for expenditures, timesheets, and any other documentation to support the request for reimbursement).

c. Providing annual project performance activity reports until the expiration of the award.

d. Ensuring that records are maintained to document all activities and expenditures utilizing Community Connect grant funds and matching funds (receipts for expenditures are to be included in this documentation).

e. Providing a final project performance report.

f. Complying with policies, guidance, and requirements as described in the following applicable Code of Federal Regulations, and any successor regulations:

i. 2 CFR parts 200 and 400 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

ii. 2 CFR part 417 (Nonprocurement Debarment and Suspension).

iii. 2 CFR part 180 (Government-wide Debarment and Suspension).

g. Signing Form AD–3031 (''Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants'') (for corporate applicants only).

h. Complying with Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency.'' For information on limited English proficiency and agency-specific guidance, go to *http://www.LEP.gov.*

3. Reporting

a. Performance reporting. All recipients of Community Connect Grant Program financial assistance must provide annual performance activity reports to RUS until the project is complete and the funds are expended. A final performance report is also required. This report may serve as the last annual report. The final report must include an evaluation of the success of the project in meeting the Community Connect Grant Program objectives. See 7 CFR 1739.19 and 2 CFR 200.328 for additional information on these reporting requirements.

b. Financial reporting. All recipients of Community Connect Grant Program financial assistance must provide an annual audit, beginning with the first year in which a portion of the financial assistance is expended. Audits are governed by USDA audit regulations. See 7 CFR 1739.20 and 2 CFR part 200 (Subpart F) for a description of the financial reporting requirements.

c. Recipient and Sub-recipient Reporting. The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 in the event the applicant receives funding unless such applicant is exempt from such reporting requirements pursuant to 2 CFR 170.110(b). The reporting requirements under the Transparency Act pursuant to 2 CFR 170 are as follows:

i. First Tier Sub-Awards of $25,000 or more (unless they are exempt under 2 CFR part 170) must be reported by the Recipient to *https://www.fsrs.gov* no later than the end of the month following the month the obligation was made. Please note that currently underway is a consolidation of eight federal procurement systems, including the Federal Sub-award Reporting System (FSRS), into one system, the System for Award Management (SAM). As a result, the FSRS will soon be consolidated into and accessed through *https://www.sam.gov/portal/public/SAM/.*

ii. The Total Compensation of the Recipient's Executives (the five most highly compensated executives) must be reported by the Recipient (if the Recipient meets the criteria under 2 CFR part 170) to *https://www.sam.gov/portal/public/SAM/* by the end of the month following the month in which the award was made.

iii. The Total Compensation of the Sub-recipient's Executives (the five most highly compensated executives) must be reported by the Sub-recipient (if the Sub-recipient meets the criteria under 2 CFR part 170) to the Recipient by the end of the month following the

month in which the sub-award was made.

d. Record Keeping and Accounting. The contract will contain provisions related to record keeping and accounting requirements.

G. Federal Awarding Agency Contacts

1. *Web site: http://www.rd.usda.gov/programs-services/community-connect-grants.* This site maintains up-to-date resources and contact information for the Community Connect Grant Program;

2. *Telephone:* 202–720–0800;

3. *Email: community.connect@wdc.usda.gov*; and

4. *Main Point of Contact:* Shawn Arner, Deputy Assistant Administrator, Office of Loan Origination and Approval, Rural Utilities Service, U.S. Department of Agriculture.

H. Other Information

1. USDA Non-Discrimination Statement

USDA prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by USDA. (Not all prohibited bases will apply to all programs and/or employment activities.)

2. How To File a Complaint

a. Equal Employment Opportunity Complaint. Individuals who wish to file an employment complaint must contact their Agency's EEO Counselor within 45 days of the date of the alleged discriminatory act, event, or in the case of a personnel action. Additional information can be found online at *http://www.ascr.usda.gov/complaint_filing_file.html.*

b. Program Discrimination Complaint. Individuals who wish to file a Program Discrimination Complaint must complete the USDA Program Discrimination Complaint Form (PDF), found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* or at any USDA office, or call (866) 632–9992 to request the form. A letter may also be written containing all of the information requested in the form. Send the completed complaint form or letter by mail to the U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, or email at *program.intake@usda.gov.*

3. Persons With Disabilities

Individuals who are deaf, hard of hearing, or have speech disabilities and wish to file either an EEO or program complaint may contact USDA through the Federal Relay Service at (800) 877–8339 (English) or (800) 845–6136 (Spanish).

Persons with disabilities who wish to file a program complaint, please see information above on how to contact USDA by mail or email. Individuals who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, etc.) may contact USDA's TARGET Center at 202–720–2600 (voice and TDD).

Dated: December 6, 2016.

Brandon McBride,

Administrator, Rural Utilities Service.

[FR Doc. 2017–00194 Filed 1–9–17; 8:45 am]

BILLING CODE P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

TIME AND DATE: January 25, 2017, 1:00 p.m. EST

PLACE: U.S. Chemical Safety Board, 1750 Pennsylvania Ave. NW., Suite 910, Washington, DC 20006.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Chemical Safety and Hazard Investigation Board (CSB) will convene a public meeting on January 25, 2017, starting at 1:00 p.m. EST in Washington, DC, at the CSB offices located at 1750 Pennsylvania Avenue NW., Suite 910. The Board will discuss open investigations, the status of audits from the Office of the Inspector General, financial and organizational updates, and review the agency's action plan. The Board will also review safety video animation related to the CSB Williams Olefins investigation. An opportunity for public comment will be provided.

Additional Information

The meeting is free and open to the public. If you require a translator or interpreter, please notify the individual listed below as the ''Contact Person for Further Information,'' at least three business days prior to the meeting.

A conference call line will be provided for those who cannot attend in person. Please use the following dial-in number to join the conference: (888) 466–9863 Confirmation Number 5690151#.

The CSB is an independent federal agency charged with investigating accidents and hazards that result, or may result, in the catastrophic release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of chemical accidents and hazards, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

Public Comment

The time provided for public statements will depend upon the number of people who wish to speak. Speakers should assume that their presentations will be limited to three minutes or less, but commenters may submit written statements for the record.

CONTACT PERSON FOR FURTHER INFORMATION: Hillary Cohen, Communications Manager, at *public@csb.gov* or (202) 446–8094. Further information about this public meeting can be found on the CSB Web site at: *www.csb.gov.*

Dated: January 5, 2017.

Kara A. Wenzel,

Acting General Counsel, Chemical Safety and Hazard Investigation Board.

[FR Doc. 2017–00403 Filed 1–6–17; 11:15 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2018 End-to-End Census Test—Address Canvassing Operation.

OMB Control Number: 0607–xxxx.

Form Number(s):

DH–31(E/S) Confidentiality Notice.

Listing and Mapping Application Screenshots—screenshots are taken from the legacy tool, LiMA. Screens for the new, in-development tool (ECaSE–ALM) will be comparable.

Type of Request: New Collection.

Number of Respondents: 43,965.

Average Hours Per Response: 5 minutes.

Burden Hours: 3,664 hours.

Needs and Uses:

During the years preceding the 2020 Census, the Census Bureau is pursuing its commitment to reducing the cost of conducting the census while maintaining the quality of the results. The 2018 End-to-End Census Test is the last major test before the 2020 Census and will validate that the 2020 Census design is ready for production from a system, operational and architectural perspective. The Address Canvassing operation is the first operation in the 2018 End-to-End Census Test, with field activity beginning in the summer of 2017. The purpose of the Address Canvassing operation is (1) to deliver a complete and accurate address list and spatial database for enumeration and tabulation, and (2) to determine the type and address characteristics for each living quarter. The Address Canvassing operation consists of two major components: In-Office Address Canvassing and In-Field Address Canvassing. Only the latter component involves collection of information from residents at their living quarters.

The following objectives are crucial to a successful Address Canvassing operation:

- Test the listing and mapping capabilities required by In-Field Address Canvassing
- Validate the creation of In-Field Address Canvassing workload by In-Office Address Canvassing.
- Conduct a listing quality control operation during In-Field Address Canvassing.

The results of this test will inform the Census Bureau's final preparations for the Address Canvassing Operation in advance of the 2020 Census.

Affected Public: Individuals or Households.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 141 and 193.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

PRA Departmental Lead, Office of the Chief Information Officer.

[FR Doc. 2017–00196 Filed 1–9–17; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–134–2016]

Approval of Subzone Status, Jos. A. Bank Manufacturing Company, Hampstead and Eldersburg, Maryland

On October 13, 2016, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Maryland Aviation Administration, on behalf of the Maryland Department of Transportation, grantee of FTZ 73, requesting subzone status subject to the existing activation limit of FTZ 73, on behalf of Jos. A. Bank Manufacturing Company in Hampstead and Eldersburg, Maryland.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (81 FR 72037–72038, October 19, 2016). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 73D is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 73's 67-acre activation limit.

Dated: January 4, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–00303 Filed 1–9–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–870]

Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires From India: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain new pneumatic off-the-road tires (off road tires) from India. For information on the estimated subsidy rates, see the ''Final Determination'' section of this notice. The period of investigation is January 1, 2015, through December 31, 2015.

DATES: Effective January 10, 2017.

FOR FURTHER INFORMATION CONTACT: Spencer Toubia or Gene Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0123 or (202) 482–3586, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Determination* on June 20, 2016.[1] A summary of the events that occurred since the Department published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version are identical in content.

Scope Comments

In accordance with the *Preliminary Determination,* the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.[3] In the *Preliminary Determination,* we did not modify the scope language as it appeared in the *Initiation Notice.*[4] No interested party submitted scope comments in case or rebuttal briefs. Therefore, the scope of this

[1] *Certain New Pneumatic Off-the-Road Tires from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Determination* 81 FR 39903 (June 20, 2016) (*Preliminary Determination*).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India,'' (Issues and Decision Memorandum), dated concurrently with this determination and hereby adopted by this notice.

[3] *See Preliminary Determination* at 81 FR 39903, and accompanying Preliminary Decision Memorandum at ''Scope Comments.''

[4] *Id.*

investigation remains unchanged for this final determination.[5]

Scope of the Investigation

The products covered by this investigation are certain new pneumatic off-the-road tires from India. For a complete description of the scope of this investigation, see the ''Scope of the Investigation,'' in Appendix I of this notice.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix II.

Use of Adverse Facts Available

The Department, in making these findings, relied, in part, on facts available and, because one or more respondent companies failed to cooperate to the best of their ability in responding to the Department's requests for information, we made adverse inferences.[6] Further, because the Government of India did not cooperate to the best of its ability in this investigation, we also determine that adverse inferences are warranted, pursuant to section 776(b) of the Act. A full discussion of our decision to rely on adverse facts available is presented in the ''Use of Facts Otherwise Available and Adverse Inferences'' section of the Issues and Decision Memorandum.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, and minor corrections presented at verification, we made certain changes to the respondents' subsidy rate calculations set forth in the *Preliminary Determination.* For a discussion of these changes, *see* the Issues and Decision Memorandum and the Final Analysis Memoranda.[7]

Final Affirmative Determination of Critical Circumstances, in Part

In the *Preliminary Determination,* the Department found that critical circumstances exist with respect to off road tires from India for All Other exporters or producers not individually examined, but did not exist for ATC Tires Private Limited (ATC) and Balkrishna Industries Limited (BKT).[8] Upon further analysis of the data and comments submitted by interested parties following the *Preliminary Determination,* we are modifying our findings for the *Final Determination*.[9] Specifically, in accordance with section 705(a)(2) of the Act, we find that critical circumstances exist with respect to imports from ATC, and All Other producers or exporters, but do not exist for BKT.

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we determined a countervailable subsidy rate for each individually investigated exporter/producer of the subject merchandise (*i.e.,* ATC and BKT). Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will determine an ''all-others'' rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any *de minimis* countervailable subsidy rates and rates determined entirely by adverse facts available, under section 776 of the Act. Accordingly, in this final determination, we have calculated the ''all-others'' rate by weight-averaging the calculated subsidy rates of the two individually investigated respondents, using the respondents' publicly-ranged sales data for exports of subject merchandise to the United States.[10]

We determine the estimated net countervailable subsidy rates are as follows.

Company	Subsidy rate (percent *ad valorem*)
ATC Tires Private Limited	4.90
Balkrishna Industries Limited	5.36
All-Others	5.06

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

Continuation of Suspension Liquidation

As a result of our *Preliminary Determination,* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of merchandise under consideration from India that were entered or withdrawn from warehouse, for consumption, on or after June 20, 2016, which is the publication date in the **Federal Register** of the *Preliminary Determination.* In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after October 17, 2016, but to continue the suspension of liquidation of all entries of subject merchandise from March 22, 2016, through October 16, 2016.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this

[5] The Department has added two additional subheadings from the Harmonized Tariff Schedule of the United States to the list included for convenience and customs purposes since the *Preliminary Determination.* No revisions were made to the written description of the subject merchandise.

[6] *See* sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act).

[7] *See* Issues and Decision Memorandum; *see also* Memoranda, ''Final Determination Analysis for ATC Tires Private Limited.,'' and ''Final Determination Analysis for Balkrishna Industries Limited,'' both dated concurrently with this determination and hereby adopted by this notice.

[8] *See Preliminary Determination,* 81 FR at 39903.

[9] For a full description of the methodology and results of our analysis, *see* the Issues and Decision Memorandum.

[10] *See* Memorandum, ''Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: Final Determination Margin Calculation for All-Others,'' dated concurrently with this memorandum.

notice serves as the only reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: January 3, 2017.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation is certain new pneumatic off-the-road tires (certain off road tires). Certain off road tires are tires with an off road tire size designation. The tires included in the scope may be either tube-type [11] or tubeless, radial, or non-radial, regardless of whether for original equipment manufacturers or the replacement market.

Subject tires may have the following prefix or suffix designation, which appears on the sidewall of the tire:

Prefix designations:

DH—Identifies a tire intended for agricultural and logging service which must be mounted on a DH drop center rim.

VA—Identifies a tire intended for agricultural and logging service which must be mounted on a VA multipiece rim.

IF—Identifies an agricultural tire to operate at 20 percent higher rated load than standard metric tires at the same inflation pressure.

VF—Identifies an agricultural tire to operate at 40 percent higher rated load than standard metric tires at the same inflation pressure.

Suffix designations:

ML—Mining and logging tires used in intermittent highway service.

DT—Tires primarily designed for sand and paver service.

NHS—Not for Highway Service.

TG—Tractor Grader, off-the-road tire for use on rims having bead seats with nominal +0.188'' diameter (not for highway service).

K—Compactor tire for use on 5° drop center or semi-drop center rims having bead seats with nominal minus 0.032 diameter.

IND—Drive wheel tractor tire used in industrial service.

SL—Service limited to agricultural usage.

FI—Implement tire for agricultural towed highway service.

CFO—Cyclic Field Operation.

SS—Differentiates tires for off-highway vehicles such as mini and skid-steer loaders from other tires which use similar size designations such as 7.00–15TR and 7.00–15NHS, but may use different rim bead seat configurations.

All tires marked with any of the prefixes or suffixes listed above in their sidewall markings are covered by the scope regardless of their intended use.

In addition, all tires that lack any of the prefixes or suffixes listed above in their sidewall markings are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the following sections of the Tire and Rim Association Year Book, as updated annually, unless the tire falls within one of the specific exclusions set forth below. The sections of the Tire and Rim Association Year Book listing numerical size designations of covered certain off road tires include:

The table of mining and logging tires included in the section on Truck-Bus tires;

The entire section on Off-the-Road tires;

The entire section on Agricultural tires; and

The following tables in the section on Industrial/ATV/Special Trailer tires:

- Industrial, Mining, Counterbalanced Lift Truck (Smooth Floors Only);
- Industrial and Mining (Other than Smooth Floors);
- Construction Equipment;
- Off-the-Road and Counterbalanced Lift Truck (Smooth Floors Only);
- Aerial Lift and Mobile Crane; and
- Utility Vehicle and Lawn and Garden Tractor.

Certain off road tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes certain off road tires produced in the subject countries whether mounted on wheels or rims in a subject country or in a third country. Certain off road tires are covered whether or not they are accompanied by other parts, *e.g.,* a wheel, rim, axle parts, bolts, nuts, etc. Certain off road tires that enter attached to a vehicle are not covered by the scope.

Specifically excluded from the scope are passenger vehicle and light truck tires, racing tires, mobile home tires, motorcycle tires, all-terrain vehicle tires, bicycle tires, on-road or on-highway trailer tires, and truck and bus tires. Such tires generally have in common that the symbol ''DOT'' must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following prefixes and suffixes included as part of the size designation on their sidewalls:

Prefix letter designations:

AT—Identifies a tire intended for service on All-Terrain Vehicles;

P—Identifies a tire intended primarily for service on passenger cars;

LT—Identifies a tire intended primarily for service on light trucks;

T—Identifies a tire intended for one-position ''temporary use'' as a spare only; and

ST—Identifies a special tire for trailers in highway service.

Suffix letter designations:

TR—Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156'' or plus 0.250'';

MH—Identifies tires for Mobile Homes;

HC—Identifies a heavy duty tire designated for use on ''HC'' 15'' tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.

Example: 8R17.5 LT, 8R17.5 HC;

LT—Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service;

ST—Special tires for trailers in highway service; and

M/C—Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: Pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; aircraft tires; and turf, lawn and garden, and golf tires. Also excluded from the scope are mining and construction tires that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1025, 4011.20.1035, 4011.20.5030, 4011.20.5050, 4011.61.0000, 4011.62.0000, 4011.63.0000, 4011.69.0050, 4011.92.0000, 4011.93.4000, 4011.93.8000, 4011.94.4000, 4011.94.8000, 8431.49.9038, 8431.49.9090, 8709.90.0020, and 8716.90.1020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.4550, 4011.99.8550, 8424.90.9080, 8431.20.0000, 8431.39.0010, 8431.49.1090, 8431.49.9030, 8432.90.0005, 8432.90.0015, 8432.90.0030, 8432.90.0080, 8433.90.5010, 8503.00.9560, 8708.70.0500, 8708.70.2500, 8708.70.4530, 8716.90.5035, 8716.90.5055, 8716.90.5056 and 8716.90.5059. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Scope Comments
V. Subsidies Valuation Information
VI. Benchmarks and Interest Rates
VII. Use of Facts Otherwise Available and Adverse Inferences

[11] While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.,* sold with or separately from subject merchandise).

VIII. Analysis of Programs
IX. Analysis of Comments
Comment 1: Whether Tax and Import Duty Exemptions Under the Special Economic Zone (SEZ) and Export-Oriented Unit (EOU) Programs are Countervailable
Comment 2: Whether the Department Must Eliminate Certain Duties Regarding ATC's Tamil Nadu SEZ Location in the Final Determination
Comment 3: Whether the Advance Authorization Scheme (AAP) Is a Countervailable Program
Comment 4: Whether the Department Should Apply Adverse Facts Available (AFA) to Determine if the Government of Gujarat's (GOG) Provision of Land to BKT from the ''Land Bank'' was Specific
Comment 5: Whether the Department May Use Land Purchased by BKT from Private Parties as Benchmarks and Whether They Show the GOG, through the ''Land Bank'' Did Not Provide Land to BKT at LTAR
Comment 6: Whether ATC Benefited from the Provision of Land for LTAR for its SEZ/EOU Locations and Whether the Provision of Land to ATC is Contingent upon Export Performance
Comment 7: Whether the Department Should Revise the Benchmark for the Provision of Land Provided to ATC for its SEZ/EOU Locations
Comment 8: Whether the Department Should Revise the Discount Rate Used to Allocate ATC's Land-Use Rights Benefits for its SEZ/EOU Locations
Comment 9: Whether the Income Tax Deductions for Research and Development Expenditures Is a Specific Subsidy
Comment 10: Whether the Department Should Use a Six-Month Comparison Period for Its Final Critical Circumstances Determination
Comment 11: Whether the Department Should Correct Calculation Errors regarding ATC's Preliminary Determination Calculations
Comment 12: Whether the Department Should Apply AFA because of Information Obtained at Verification
Comment 13: Whether the Department Should Subtract BKT's Sales of its Paper Division from its Total Sales and Total Export Sales Denominators
Comment 14: Whether the Department Should Subtract Sales from BKT's Wind Divisions from its Total Sales and Total Export Sales Denominators
Comment 15: Whether the Department Should Use Total Sales Instead of Export Sales as the Denominator when Calculating the Rate for the Export Promotion of Capital Goods Scheme (EPCGS).
X. Recommendation

[FR Doc. 2017–00264 Filed 1–9–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–542–801]

Certain New Pneumatic Off-the-Road Tires From Sri Lanka: Final Affirmative Countervailing Duty Determination, and Final Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain new pneumatic off-the-road tires (off road tires) from Sri Lanka. The period of investigation (POI) is January 1, 2015, through December 31, 2015. For information on the estimated subsidy rates, *see* the ''Final Determination'' section of this notice.

DATES: Effective January 10, 2017.

FOR FURTHER INFORMATION CONTACT: E. Whitley Herndon, Office II, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6274.

SUPPLEMENTARY INFORMATION:

Background

The petitioners in this investigation are Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC. In addition to the Government of Sri Lanka, the mandatory respondent in this investigation is Camso Loadstar (Private) Ltd. (Camso Loadstar).

The events that occurred since the Department published the *Preliminary Determination* [1] on June 20, 2016, are discussed in the Issues and Decision Memorandum, which is hereby adopted by this notice.[2] The Issues and Decision Memorandum also details the changes we made since the *Preliminary Determination* to the subsidy rates calculated for the mandatory respondent and all other producers/exporters. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html*. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Scope of the Investigation

The scope of the investigation covers off road tires, which are tires with an off road tire size designation. For a complete description of the scope of the investigation, *see* Appendix I.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice as Appendix II.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, and minor corrections presented at verification, we made certain changes to Camso Loadstar's subsidy rate calculations since the *Preliminary Determination*. For a discussion of these changes, see the Issues and Decision Memorandum and the Final Analysis Memorandum.[3]

Final Affirmative Determination of Critical Circumstances

On May 24, 2016, the petitioners filed a timely critical circumstances allegation, pursuant to section 703(e)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.206(c)(1),

[1] *See Certain New Pneumatic Off-the-Road Tires from Sri Lanka: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Determination,* 81 FR 39900 (June 20, 2016) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain New Pneumatic Off-The-Road Tires from Sri Lanka,'' dated concurrently with this notice (Issues and Decision Memorandum).

[3] *See* Memorandum ''Final Determination Calculation Memorandum for Camso Loadstar (Private) Ltd. and Loadstar (Private) Ltd. (collectively Camso Loadstar),'' dated concurrently with this notice (Final Analysis Memorandum).

alleging that critical circumstances exist with respect to imports of off road tires from Sri Lanka.[4] We preliminarily determined that critical circumstances exist for Camso Loadstar and the companies covered by the ''all others'' rate. For this final determination, in accordance with section 705(a) of the Act, we continue to find that critical circumstances exist for Camso Loadstar and the companies covered by the ''all others'' rate. For a discussion, *see* the ''Critical Circumstances'' section and ''Comment 7'' of the Issues and Decision Memorandum.

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we calculated a rate for Camso Loadstar (the only individually investigated exporter/producer of subject merchandise). Section 705(c)(5)(A)(i) of the Act states that, for companies not individually investigated, we will determine an ''all others'' rate equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. Where the rates for investigated companies are zero or *de minimis,* or based entirely on facts otherwise available, section 705(c)(5)(A)(ii) of the Act instructs the Department to establish an ''all others'' rate using ''any reasonable method.''

Because the only individually calculated rate is not zero, *de minimis,* or based entirely on facts otherwise available, in accordance with 705(c)(5)(A)(i) of the Act, the rate calculated for Camso Loadstar is assigned as the all-others rate. We determine the total estimated net countervailable subsidy rates to be:

Company	Subsidy rate (percent)
Camso Loadstar (Private), Ltd.	2.18
All Others	2.18

Suspension of Liquidation

As a result of our affirmative *Preliminary Determination* and our affirmative critical circumstances determination, pursuant to sections 703(d) and 703(e)(2)(A) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise from Sri Lanka which were entered or withdrawn from warehouse, for consumption on or after March 22, 2016, which is 90 days before the date of the publication of the *Preliminary Determination* in the **Federal Register**.[5]

In accordance with section 703(d) of the Act, we later issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after October 18, 2016, but to continue the suspension of liquidation of all entries from March 22, 2016, through October 17, 2016, as appropriate.

We will issue a CVD order and reinstate the suspension of liquidation in accordance with our final determination and under section 706(a) of the Act if the United States International Trade Commission (ITC) issues a final affirmative injury determination, and we will instruct CBP to require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited as a result of the suspension of liquidation will be refunded.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: January 3, 2017.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation is certain new pneumatic off-the-road tires (certain off road tires). Certain off road tires are tires with an off road tire size designation. The tires included in the scope may be either tube-type[6] or tubeless, radial, or non-radial, regardless of whether for original equipment manufacturers or the replacement market.

Subject tires may have the following prefix or suffix designation, which appears on the sidewall of the tire:

Prefix designations:

DH—Identifies a tire intended for agricultural and logging service which must be mounted on a DH drop center rim.

VA—Identifies a tire intended for agricultural and logging service which must be mounted on a VA multipiece rim.

IF—Identifies an agricultural tire to operate at 20 percent higher rated load than standard metric tires at the same inflation pressure.

VF—Identifies an agricultural tire to operate at 40 percent higher rated load than standard metric tires at the same inflation pressure.

Suffix designations:

ML—Mining and logging tires used in intermittent highway service.

DT—Tires primarily designed for sand and paver service.

NHS—Not for Highway Service.

TG—Tractor Grader, off-the-road tire for use on rims having bead seats with nominal +0.188'' diameter (not for highway service).

K—Compactor tire for use on 5° drop center or semi-drop center rims having bead seats with nominal minus 0.032 diameter.

IND—Drive wheel tractor tire used in industrial service.

SL—Service limited to agricultural usage.

FI—Implement tire for agricultural towed highway service.

CFO—Cyclic Field Operation.

SS—Differentiates tires for off-highway vehicles such as mini and skid-steer loaders from other tires which use similar size designations such as 7.00–15TR and 7.00–15NHS, but may use different rim bead seat configurations.

All tires marked with any of the prefixes or suffixes listed above in their sidewall markings are covered by the scope regardless of their intended use.

In addition, all tires that lack any of the prefixes or suffixes listed above in their sidewall markings are included in the scope,

[4] *See* Letter from Petitioners, regarding Certain New Pneumatic Off-The-Road Tires from Sri Lanka—Petitioners' Critical Circumstances Allegation, dated May 24, 2016.

[5] *See Preliminary Determination.*

[6] While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.,* sold with or separately from subject merchandise).

regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the following sections of the Tire and Rim Association Year Book, as updated annually, unless the tire falls within one of the specific exclusions set forth below. The sections of the Tire and Rim Association Year Book listing numerical size designations of covered certain off road tires include:

The table of mining and logging tires included in the section on Truck-Bus tires;

The entire section on Off-the-Road tires;

The entire section on Agricultural tires; and

The following tables in the section on Industrial/ATV/Special Trailer tires:

- Industrial, Mining, Counterbalanced Lift Truck (Smooth Floors Only);
- Industrial and Mining (Other than Smooth Floors);
- Construction Equipment;
- Off-the-Road and Counterbalanced Lift Truck (Smooth Floors Only);
- Aerial Lift and Mobile Crane; and
- Utility Vehicle and Lawn and Garden Tractor.

Certain off road tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes certain off road tires produced in the subject countries whether mounted on wheels or rims in a subject country or in a third country. Certain off road tires are covered whether or not they are accompanied by other parts, *e.g.,* a wheel, rim, axle parts, bolts, nuts, etc. Certain off road tires that enter attached to a vehicle are not covered by the scope.

Specifically excluded from the scope are passenger vehicle and light truck tires, racing tires, mobile home tires, motorcycle tires, all-terrain vehicle tires, bicycle tires, on-road or on-highway trailer tires, and truck and bus tires. Such tires generally have in common that the symbol ''DOT'' must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following prefixes and suffixes included as part of the size designation on their sidewalls:

Prefix letter designations:

AT—Identifies a tire intended for service on All-Terrain Vehicles;

P—Identifies a tire intended primarily for service on passenger cars;

LT—Identifies a tire intended primarily for service on light trucks;

T—Identifies a tire intended for one-position ''temporary use'' as a spare only; and

ST—Identifies a special tire for trailers in highway service.

Suffix letter designations:

TR—Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156'' or plus 0.250'';

MH—Identifies tires for Mobile Homes;

HC—Identifies a heavy duty tire designated for use on ''HC'' 15'' tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.

Example: 8R17.5 LT, 8R17.5 HC;

LT—Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service;

ST—Special tires for trailers in highway service; and

M/C—Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: Pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; aircraft tires; and turf, lawn and garden, and golf tires. Also excluded from the scope are mining and construction tires that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1025, 4011.20.1035, 4011.20.5030, 4011.20.5050, 4011.61.0000, 4011.62.0000, 4011.63.0000, 4011.69.0050, 4011.92.0000, 4011.93.4000, 4011.93.8000, 4011.94.4000, 4011.94.8000, 8431.49.9038, 8431.49.9090, 8709.90.0020, and 8716.90.1020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.4550, 4011.99.8550, 8424.90.9080, 8431.20.0000, 8431.39.0010, 8431.49.1090, 8431.49.9030, 8432.90.0005, 8432.90.0015, 8432.90.0030, 8432.90.0080, 8433.90.5010, 8503.00.9560, 8708.70.0500, 8708.70.2500, 8708.70.4530, 8716.90.5035 and 8716.90.5055. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. List of Issues
IV. Subsidies Valuation Information
V. Critical Circumstances
VI. Analysis of Programs
VII. Analysis of Comments
Comment 1: Whether Camso Loadstar Benefited from Exemptions/Concessions for Fiscal Levies on Imports of Spare Parts
Comment 2: Whether the Provision of Tax Concession for Exporters of Non-Traditional Products Program is Countervailable
Comment 3: Whether the Nation Building Tax Preferences Program is Specific and Constitutes a Financial Contribution
Comment 4: Whether Camso Loadstar Benefited from the Guaranteed Price Scheme for Rubber
Comment 5: Whether to Use U.S. Dollar Amounts Recorded by Camso Loadstar to Determine Subsidy Rates
Comment 6: Whether to Use Camso Loadstar's Revised FOB Sales Data for Denominator
Comment 7: Whether the Department Should Continue to Find Critical Circumstances
Comment 8: Whether to Terminate the Investigation
VIII. Recommendation

[FR Doc. 2017–00266 Filed 1–9–17; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (''the Department'') conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the

initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after January 2017, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its ''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

Opportunity To Request a Review: Not later than the last day of January 2017,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

	Period of review
Antidumping Duty Proceedings	
Brazil: Prestressed Concrete Steel Wire Strand A–351–837	1/1/16–12/31/16
India: Prestressed Concrete Steel Wire Strand A–533–828	1/1/16–12/31/16
Mexico: Prestressed Concrete Steel Wire Strand A–201–831	1/1/16–12/31/16
Republic of Korea: Prestressed Concrete Steel Wire Strand A–580–852	1/1/16–12/31/16
South Africa: Ferrovanadium A–791–815	1/1/16–12/31/16
Thailand: Prestressed Concrete Steel Wire Strand A–549–820	1/1/16–12/31/16
The People's Republic of China: Calcium Hypochlorite A–570–008	1/1/16–12/31/16
Carbon and Certain Alloy Steel Wire Rod A–570–012	1/1/16–12/31/16
Crepe Paper Products A–570–895	1/1/16–12/31/16
Ferrovanadium A–570–873	1/1/16–12/31/16
Folding Gift Boxes A–570–866	1/1/16–12/31/16
Potassium Permanganate A–570–863	1/1/16–12/31/16
Wooden Bedroom Furniture A–570–890	1/1/16–12/31/16
Countervailing Duty Proceedings	
Calcium Hypochlorite C–570–009	1/1/16–12/31/16
Carbon and Certain Alloy Steel Wire Rod C–570–013	1/1/16–12/31/16
Certain Oil Country Tubular Goods C–570–944	1/1/16–12/31/16
Circular Welded Carbon Quality Steel Line Pipe C–570–936	1/1/16–12/31/16
Suspension Agreements	
Mexico: Fresh Tomatoes A–201–820	1/1/16–12/31/16
Russia: Certain Cut-to-Length Carbon Steel A–821–808	1/1/16–12/31/16

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), the Department clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[2]

Further, as explained in *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013), the Department clarified its practice with regard to the conditional review of the non-market economy (NME) entity in administrative reviews of antidumping duty orders. The Department will no longer consider the NME entity as an exporter conditionally subject to administrative reviews. Accordingly, the NME entity will not be under review unless the Department specifically receives a request for, or self-initiates, a review of the NME entity.[3] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity).

Following initiation of an antidumping administrative review when there is no review requested of the NME entity, the Department will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS'') on Enforcement and Compliance's ACCESS Web site at *http://access.trade.gov*.[4] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of January 2017. If the Department does not receive, by the last day of January 2017, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 3, 2017.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2017–00252 Filed 1–9–17; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See also* the Enforcement and Compliance Web site at *http://trade.gov/enforcement/*.

[3] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[4] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Department of Commerce Advisory Council on Trade Enforcement and Compliance

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of establishment of the U.S. Department of Commerce Advisory Council on Trade Enforcement and Compliance.

SUMMARY: The Secretary of Commerce (Secretary), having determined that it is in the public interest in connection with the performance of duties imposed on the Department of Commerce by law, and with the concurrence of the General Services Administration, announces establishment of the U.S. Department of Commerce Advisory Council on Trade Enforcement and Compliance (ACTEC). The ACTEC shall advise the Secretary on laws and government policies that deal with trade enforcement; identify

and recommend programs, policies, and actions to help the Department in its efforts to ensure that U.S. trading partners comply with their trade agreement commitments; and recommend ways that the Department's trade enforcement and compliance policies and programs can better support a strong trade and manufacturing agenda and enhance the commercial competitiveness of the United States. The ACTEC shall act as a liaison with the stakeholders represented by the membership, and shall provide a forum for stakeholder input regarding current and emerging issues in trade enforcement and compliance matters. The Department of Commerce will publish a notice in January soliciting nominations for membership on the ACTEC.

DATES: Effective January 10, 2017.

FOR FURTHER INFORMATION CONTACT: Meredith Rutherford, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 3089, Washington, DC 20230; telephone: 202 482 6199; email: *meredith.rutherford@trade.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The ACTEC is established in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App., to advise the Secretary on matters relating to relating to the Department's statutory missions to enforce U.S. trade remedy laws and seek foreign government compliance with trade agreements. The Department affirms that the creation of the ACTEC is necessary and in the public interest. The Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, shall serve as the Executive Director of the ACTEC. The Executive Director shall designate both the Designated Federal Officer (DFO) and a Secondary DFO from among the employees of the International Trade Administration's Enforcement and Compliance unit. The DFO serves as the ACTEC Executive Secretary.

The ACTEC shall advise the Secretary on laws and government policies that deal with trade enforcement; identify and recommend programs, policies, and actions to help the Department in its efforts to ensure that U.S. trading partners comply with their trade agreement commitments; and recommend ways that the Department's enforcement and compliance activities can better support a strong trade and manufacturing agenda and advance the commercial competitiveness of U.S. firms and workers.

The ACTEC shall act as a liaison with the stakeholders represented by the membership, and shall provide a forum for stakeholders on current and emerging issues concerning trade enforcement and compliance matters.

The ACTEC shall report to the Secretary on its activities and recommendations regarding the Department's trade enforcement and compliance efforts. In creating its reports, the ACTEC should survey and evaluate the trade enforcement and compliance concerns of its stakeholders, should identify and examine specific trade problems that require attention, and should examine the needs in this area to inform the ACTEC's efforts. The ACTEC should recommend specific solutions to the problems and needs it identifies.

II. Structure, Membership, and Operation

The ACTEC shall consist of no more than twenty members appointed by the Secretary. Members shall represent U.S. entities involved in and significantly affected by imports and/or those that heavily export to, or operate in, countries with which the United States has trade agreements.

All members must be U.S. Nationals and shall be selected based on their ability to carry out the objectives of the ACTEC, in accordance with applicable Department of Commerce guidelines, in a manner that ensures the ACTEC is balanced in terms of points of view, demographics, industry sector, geography of both production infrastructure and product inputs, and company size. Members shall also represent a broad range of products and services and shall be drawn from large, medium, and small enterprises, private sector organizations, and other entities, such as, non-governmental organizations, associations, and economic development organizations. Members shall serve in a representative capacity, representing the views and interests of their sponsoring entities and those of their particular industrial and regional sector (as applicable); they are, therefore, not Special Government Employees. Appointments to the ACTEC shall be made without regard to political affiliation.

Members serve for a term of two years and will serve at the pleasure of the Secretary. The Secretary may at his/her discretion reappoint any member to an additional term or terms, provided that the member proves to work effectively on the ACTEC and his/her knowledge and advice are still needed.

The Secretary shall designate the ACTEC chair and vice chair or vice chairs from among the members of the ACTEC. The Executive Director may establish subcommittees from among the ACTEC members, in order to perform specific functions within the jurisdiction of the ACTEC, subject to the provisions of the Federal Advisory Committee Act (FACA), the FACA implementing regulations, and applicable Department of Commerce guidance. Subcommittees must report back to the parent committee and do not provide advice or work product directly to the Secretary.

III. Compensation

Members will not be compensated for their services or reimbursed for their travel expenses.

Dated: January 4, 2017.

Steven Presing,

Executive Director for Trade Agreements Policy and Negotiations.

[FR Doc. 2017–00254 Filed 1–9–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE909

Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Proposed Issuance of Permit

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

ACTION: Notice; request for comments.

SUMMARY: We, the National Marine Fisheries Service (NMFS), are proposing to issue a permit for a period of three years to authorize the incidental, but not intentional, take of two stocks of marine mammals listed as threatened or endangered under the Endangered Species Act (ESA), under the Marine Mammal Protection Act (MMPA), by the California (CA) thresher shark/swordfish drift gillnet fishery (>14 inch mesh) and the Washington (WA)/Oregon (OR)/CA sablefish pot fishery. In accordance with the MMPA, NMFS issues this permit provided that it can make the determination that: The incidental take will have a negligible impact on the affected stocks; a recovery plan for all affected stocks of threatened or endangered marine mammals has been developed or is being developed; and as required by the MMPA, a take reduction plan and monitoring program have been implemented, and vessels in the CA thresher shark/swordfish drift

gillnet fishery (>14 inch mesh) and the WA/OR/CA sablefish pot fisheries are registered. We have made a preliminary determination that incidental taking from commercial fishing will have a negligible impact on the ESA-listed humpback whale (CA/OR/WA stock) and sperm whale (CA/OR/WA stock). Recovery plans have been completed for humpback and sperm whales. We solicit public comments on the draft negligible impact determination (NID) and on the proposal to issue a permit to vessels that operate in these fisheries for the taking of affected endangered stocks of marine mammals.

DATES: Comments on this action and supporting documents must be received by February 9, 2017.

ADDRESSES: You may submit comments on this document and the draft negligible impact determination, which are available on the Internet at the following address: *http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/fisheries_interactions.html*. Recovery plans for these two species are available on the Internet at the following address: *http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals*.

You may submit comments on this document or the draft negligible impact determination, identified by NOAA–NMFS–2016–0129, by either 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-2016-0129,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to: Chris Yates, Assistant Regional Administrator, Protected Resources Division, West Coast Region, 501 W. Ocean Blvd., Suite 4200; Long Beach, CA 90802. Comments may also be faxed to (562) 980–4027. Include the identifier ''NOAA–NMFS–2016–0129'' in the comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in 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: Christina Fahy, NMFS West Coast Region, (562) 980–4023 or *Christina.Fahy@noaa.gov;* or Shannon Bettridge, NMFS Office of Protected Resources, (301) 427–8402 or *Shannon.Bettridge@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(E) of the MMPA, 16 U.S.C. 1361 *et seq.,* states that NMFS, as delegated by the Secretary of Commerce, shall for a period of up to three years allow the incidental taking of marine mammal species listed under the ESA, 16 U.S.C. 1531 *et seq.,* by persons using vessels of the United States and those vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1824(b), while engaging in commercial fishing operations, if NMFS makes certain determinations. NMFS must determine, after notice and opportunity for public comment, that: (1) Incidental mortality and serious injury (M/SI) will have a negligible impact on the affected species or stock; (2) a recovery plan has been developed or is being developed for such species or stock under the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with section 118 of the MMPA, and a take reduction plan has been developed or is being developed for such species or stock.

We propose to issue a permit under MMPA section 101(a)(5)(E) to vessels registered in the CA thresher shark/swordfish drift gillnet fishery (>14 inch mesh) to incidentally take individuals from two stocks of endangered marine mammals: The CA/OR/WA stock of humpback whales (*Megaptera novaeangliae*) and the CA/OR/WA stock of sperm whales (*Physeter macrocephalus*); and to vessels registered in WA/OR/CA sablefish pot fishery to incidentally take individuals from the CA/OR/WA stock of humpback whales. A history of MMPA section 101(a)(5)(E) permits related to these stocks was included in previous notices for other permits to take threatened or endangered marine mammals incidental to commercial fishing (*e.g.,* 72 FR 60814, October 26, 2007; 78 FR 54553, September 4, 2013) and is not repeated here. The data for considering these authorizations were reviewed coincident with the 2016 MMPA List of Fisheries (LOF; 81 FR 20550, April 8, 2016), the final 2015 U.S. Pacific Marine Mammal Stock Assessment Report (SAR) (Carretta *et al.* 2016), Carretta and Moore (2014), Moore and Barlow (2014), the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS), recovery plans for these species (available on the Internet at: *http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals*), the best available scientific information and available data, and other relevant sources.

Based on observer data and marine mammal injury reporting forms, vessels operating in the Category I CA thresher shark/swordfish drift gillnet fishery (>14 inch mesh) and the Category II WA/OR/CA sablefish pot fishery are the two Federally-managed Category I and II fisheries that operate in the ranges of affected stocks, namely the CA/OR/WA stocks of humpback whale and sperm whale, and are currently considered for authorization. A brief description of these fisheries can be found below. The CA thresher shark/swordfish drift gillnet fishery (>14 inch mesh), is the only Federally-managed Category I fishery operating off the coast of California. The WA/OR/CA sablefish pot fishery is the only Federally-managed Category II fishery operating off the coasts of California, Oregon, and Washington. All other Category II fisheries that may interact with the marine mammal stocks observed off the coasts of California, Oregon, and Washington are state-managed and are not considered for authorization under this permit; however, M/SI related to these fisheries and all other human sources was evaluated in the draft NID. Participants in Category III fisheries are not required to obtain incidental take permits under MMPA section 101(a)(5)(E) but are required to report any mortality or injury of marine mammals incidental to their operations.

Basis for Determining Negligible Impact

Prior to issuing a permit to take ESA-listed marine mammals incidental to commercial fishing, NMFS must determine if the M/SI incidental to commercial fisheries will have a negligible impact on the affected species or stocks of marine mammals. NMFS satisfies this requirement through completion of a NID. We clarify that for purposes of the draft negligible impact analysis, incidental M/SI from commercial fisheries includes M/SI from entanglement in fishing gear or ingestion of fishing gear. Indirect effects,

such as the effects of removing prey from habitat, are not included in this analysis. A biological opinion prepared under ESA section 7 considers direct and indirect effects of Federal actions (available at *http://www.westcoast.fisheries.noaa.gov/*), and thus, contains a broader scope of analysis than is required by MMPA section 101(a)(5)(E).

Although the MMPA does not define ''negligible impact,'' NMFS has issued regulations providing a qualitative definition of ''negligible impact'' (50 CFR 216.103), and through scientific analysis, peer review, and public notice developed a quantitative approach for determining negligible impact. As it applies here, the definition of ''negligible impact'' is ''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 development of the approach is outlined in detail in the current draft NID made available through this notice and was described in previous notices for other permits to take threatened or endangered marine mammals incidental to commercial fishing (*e.g.,* 72 FR 60814, October 26, 2007; 78 FR 54553, September 4, 2013).

Criteria for Determining Negligible Impact

In 1999 NMFS adopted criteria for making NIDs for MMPA 101(a)(5)(E) permits (64 FR 28800, May 27, 1999). In applying the 1999 criteria to determine whether M/SI incidental to commercial fisheries will have a negligible impact on a listed marine mammal stock, Criterion 1 is whether total human-related M/SI is less than 10 percent of the stock's potential biological removal level (PBR). If total human-related M/SI is less than 10 percent of PBR, the analysis would be concluded, and the impact would be determined to be negligible. If Criterion 1 is not satisfied, NMFS may use one of the other criteria as appropriate. The remaining criteria describe alternatives under certain conditions. Criterion 2 is satisfied if the total human-related M/SI is greater than PBR, but commercial fisheries-related M/SI is less than 10 percent of PBR. If Criterion 2 is satisfied, vessels operating in individual fisheries may be permitted if management measures are being taken to address non-fisheries-related mortality and serious injury. Criterion 3 is satisfied if total commercial fisheries-related M/SI is greater than 10 percent of PBR and less than PBR, and the population is stable or increasing. Fisheries may then be permitted subject to individual review and certainty of data. Criterion 4 stipulates that if the population abundance of a stock is declining, the threshold level of 10 percent of PBR will continue to be used. Criterion 5 states that if total commercial fisheries-related M/SI is greater than PBR, permits may not be issued for that species or stock.

We considered two time frames for this analysis: 5 years (2010–2014) and 14 years (2001–2014). The first time frame we considered for both stocks of whales is the most recent five-year period for which data are available and have been analyzed (here, January 1, 2010 through December 31, 2014) and is typically used for NID analyses. A five-year time frame in many cases provides enough data to adequately capture year-to-year variations in take levels, while reflecting current environmental and fishing conditions, as they may change over time. However, NMFS' Guidelines for Assessing Marine Mammal Stocks (GAMMS) suggest that mortality estimates could be averaged over as many years as necessary to achieve a coefficient of variation of less than or equal to 0.3.

In addition, Carretta and Moore (2014) recommend pooling longer time series of data when bycatch is a rare event. For example, pooling 10 years of fishery data resulted in bycatch estimates within 25 percent of the true bycatch rate over 50 percent of the time (*i.e.,* estimates were within 25 percent of the true value more often than not). Key to this approach was that the fishery must have had sufficiently constant characteristics (*e.g.,* effort, gear, locations) to support the inference of consistent results across years such as with the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh). Rare bycatch events typically involve smaller populations paired with low observer coverage in a fishery. If true bycatch mortality is low, but near PBR, then estimation bias needs to be reduced to allow reliable evaluation of the bycatch estimate against a low removal threshold.

Currently, the humpback whale and the sperm whale stocks are the only ESA-listed marine mammal species interacting with the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) that meet the conditions described in Carretta and Moore (2014): These stocks have relatively small minimum population estimates and have been recorded as having been incidentally killed or seriously injured in rare events (in the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh). The CA/OR/WA stock of humpback whale has also been recorded as having been rarely incidentally killed or seriously injured in the WA/OR/CA sablefish pot fishery.

In 2001, a time/area closure of the drift gillnet fishery off central and northern California/southern Oregon to protect leatherback sea turtles was implemented through regulations, and resulted in a decrease in overall fishing effort and a shift in effort to southern California. Therefore, the post-2000 time period best represents the current spatial state of the fishery, so we used the 14-year period post-2000 to calculate mean annual mortality estimate for these two stocks of whales, based on recommendations contained in the GAMMS and Carretta and Moore (2014). This time frame also provides a comprehensive look at the WA/OR/CA sablefish pot fishery, given changes in oceanographic conditions, fishing practices, and reporting and stranding records.

A conservative, or precautionary, approach is taken in these analyses for evaluating the negligible impact of fisheries and other sources of injury or mortality, such as recreational fisheries and ship strikes, on these stocks. In certain cases, the maximum estimate of M/SI was used for the calculations. For example, if a ship strike occurred, but M/SI was not observed on scene or confirmed by necropsy of the stranded animal, and if further review of reports and other sources then confirmed M/SI, it was assumed for purposes of this analysis, that M/SI occurred. Additionally, M/SI from unknown or unidentified fisheries was conservatively considered to be from commercial fisheries. Furthermore, in using two time frames for the negligible impact analyses (2001–2014 and 2010–2014), we took a precautionary approach by ensuring that a NID could be made for both time frames considered.

Negligible Impact Determinations

Below is a summary of our application of the negligible impact criteria and determination regarding the effects of commercial fisheries off the U.S. west coast on the CA/OR/WA stocks of humpback whale and sperm whale.

Criterion 1 Analysis

Criterion 1 would be satisfied if the total human-related M/SI is less than 10 percent of PBR.

The 5-year (2010–2014) average annual human-related M/SI to the CA/OR/WA stock of humpback whales is 6.8 or 62.0 percent of the PBR (11.0). The 14-year (2001–2014) average annual human-related M/SI to the CA/OR/WA

stock of humpback whales is 5.1 or 46.4 percent of the PBR. The total annual human-related M/SI for this stock of humpback whales is not less than 10 percent of PBR for both time frames considered.

The 5-year (2010–2014) average annual human-related M/SI of the CA/OR/WA stock of sperm whales is 0.6 or 22.2 percent of the PBR (2.7). The 14-year (2001–2014) average annual human-related M/SI to the CA/OR/WA stock of sperm whales from all human sources is 0.9 or 33.3 percent of the PBR. The total annual human-caused M/SI for this stock of sperm whales is not less than 10 percent of the PBR for both time frames considered.

Criterion 1 was not satisfied because the total annual human-related M/SI for these stocks is not less than 10 percent of PBR for the time periods considered. As a result, the other criteria must be examined.

Criterion 2 Analysis

Criterion 2 would be satisfied if total human-related M/SI is greater than PBR and the total fisheries-related mortality is less than 10 percent of PBR. This criterion was not satisfied because total human-related M/SI (detailed above) is less than PBR, and total fisheries-related mortality (detailed below) is greater than 10 percent of PBR for each stock (both time frames analyzed). As a result, the other criteria were examined.

Criterion 3 Analysis

Unlike Criteria 1 and 2, which examine total human-related M/SI relative to PBR, Criterion 3 compares total fisheries-related M/SI to PBR. Criterion 3 would be satisfied if the total commercial fisheries-related M/SI (including state and Federal fisheries) is greater than 10 percent of and less than 100 percent of PBR for each stock for the respective time frame considered, and the populations of these stocks are considered to be stable or increasing. If the Criterion is met, vessels may be permitted subject to individual review and certainty of data.

Criterion 3 was satisfied for the CA/OR/WA humpback whale stock as the annual average fishery-related M/SI from all commercial fisheries is greater than 10 percent of and less than 100 percent of PBR, and the population is increasing (6–7 percent per year). The 5-year (2010–2014) average annual fishery-related M/SI from all commercial fisheries for the CA/OR/WA humpback whale stock is estimated at 5.6 or 51.0 percent of PBR and 4.1 or 37.3 percent of PBR for the 14-year period (2001–2014), which is between 10 percent and 100 percent of PBR. In addition, the stock has experienced a positive growth rate (6–7 percent per year). Accordingly, Criterion 3 is satisfied in determining that M/SI of the CA/OR/WA humpback whale stock incidental to commercial fishing would have a negligible impact on the stock.

In 2015, there was a significant increase in reports of entangled humpback whales off the U.S. west coast, primarily in the state-managed pot/trap fisheries. In addition, there were two fatal ship strikes of humpback whales. We evaluated the 2015 preliminary raw entanglement and ship strike data to understand how future data may impact this type of analysis. Serious injury determinations for 2015 will be completed in early 2017. If not all entanglements or ship strikes are determined to be M/SI, it is possible to conclude there is a negligible impact under Criterion 3 for both the 15-year and five-year time frames. Based on past humpback whale injury determinations from 2007 through 2014, 84 percent were determined to be M/SI.

Criterion 3 was satisfied for the CA/OR/WA sperm whale stock as the total fishery-related M/SI is greater than 10 percent of and less than 100 percent of PBR, and the population is stable. The 5-year (2010–2014) annual average fishery-related M/SI from all commercial fisheries for the CA/OR/WA sperm whale stock is estimated at 0.4 or 14.8 percent of PBR and 0.6 or 22.2 percent of PBR for the 14-year average (2001–2014), which is between 10 percent and 100 percent of PBR. The population is considered to be stable.

In 2015, there were no reports of entangled or ship-struck sperm whales. Therefore, the addition of one more year of data would not change the conclusion reached in the draft NID.

Accordingly, Criterion 3 is satisfied in determining that M/SI of the CA/OR/WA sperm whale stock incidental to commercial fishing would have a negligible impact on the stock.

In conclusion, based on the criteria outlined in 1999 (64 FR 28800), the final 2015 U.S. Pacific SAR (Carretta *et al,.* 2016), Carretta and Moore (2014), Moore and Barlow (2014), and the best available scientific information, available data and other sources, NMFS has determined that the M/SI incidental to the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) and the WA/OR/CA sablefish pot fishery will have a negligible impact on the CA/OR/WA stock of humpback whales and the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) will have a negligible impact on the CA/OR/WA stock of sperm whales. NMFS therefore proposes to issue the MMPA 101(a)(5)(E) permit. Specifically, NMFS proposes that vessels operating in these identified commercial fisheries within the range of the CA/OR/WA humpback and sperm whale stocks may be permitted subject to individual review of the fishery and the certainty of relevant data, and provided that the other provisions of section 101(a)(5)(E) are met.

Description of Fisheries

The following is an individual review of the two Federally-authorized fisheries classified as Category I and II in the 2016 LOF (81 FR 20550) which are known through observer records, fisher self-reports, and confirmed entanglement reports to kill or seriously injure ESA-listed marine mammals incidental to commercial fishing operations. Detailed descriptions of those fisheries can be found in the NMFS (2011) Biological Opinion on the operation of the Pacific groundfish fishery, which includes the WA/OR/CA sablefish pot fishery; the NMFS (2013) Biological Opinion for the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh); the 2015 SAR (Carretta *et al.* 2016); and the draft NID.

California Thresher Shark/Swordfish Drift Gillnet Fishery (>14 Inch Mesh)

Participants in the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) are required to have a valid permit issued annually by the California Department of Fish and Wildlife. In accordance with MMPA section 118(c), only those vessels participating in the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) that have registered with the Marine Mammal Authorization Program are authorized to take marine mammals incidental to their fishing operations. Vessels holding this authorization must comply with the Pacific Offshore Cetacean Take Reduction Plan and implementing regulations. Any vessel that violates regulations will be subject to enforcement action. The estimated number of vessels in the fishery is based upon the number of vessels that indicated intent to participate in the fishery according to historical reference and may not be an accurate estimate of the number of vessels actively engaged in fishing in any given year. The CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) is a limited entry program, managed with gear, seasons, and area closures. The number of vessels participating in the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) has decreased from 148 permits issued and 98 active vessels in 1998 to 72 permits issued and

18 active vessels in 2016. Information on the number of active permit holders was obtained from the ''Status of the U.S. west coast fisheries for HMS through 2004; Stock Assessment and Fishery Evaluation'' report, available from the Pacific Fishery Management Council Web site (*www.pcouncil.org*).

The fishery targets swordfish and thresher shark. It operates outside of state waters to about 150 nautical miles (nm) offshore ranging from the U.S./Mexico border in the south to the Oregon border in the north, depending on sea surface temperature conditions. Regulations restrict the fishery to waters outside 200 nm from February 1 through April 30, and outside 75 nm from May 1 through August 14, while allowing fishing inside 75 nm from August 15 through January 31. Vessels in this fishery targeting swordfish tend to set on warm ocean water temperature breaks, which do not appear along the California coast until late summer. Because of these restrictions, vessels are not active during February, March, and April, and very little fishing effort occurs during the months of May, June, and July.

In 2001, a seasonal (15 August–15 November) area closure was implemented in the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) north of Point Conception, to protect leatherback turtles that feed in the area and were observed entangled in previous fishing seasons. Additional seasonal/area closures in southern California have been established in the CA thresher shark/swordfish drift gillnet fishery to protect loggerhead turtles during a forecast or occurring El Niño event during the months of June, July and/or August.

The NMFS West Coast Region has operated an at-sea observer program in the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) since July 1990 to the present. The objectives of the NMFS observer program are to record, among other things, information on non-target fish species and protected species interactions. NMFS typically targets 20 percent observer coverage of the annual sets by the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) fleet, with close to 100 percent of net retrievals monitored on observed trips for, among other things, species identification and enumeration.

WA/OR/CA Sablefish Pot Fishery

The WA/OR/CA sablefish pot fishery targets sablefish using trapezoid, conical, or rectangular steel frame traps, wrapped with ≥2 inch nylon webbing. The fishery generally sets gear at depths between 80 and 300 fathoms off the west coast of the U.S. The fishery is managed under regulations implementing the Pacific Coast Groundfish FMP developed by the Pacific Fishery Management Council. There are four distinct segments of the Pacific coast groundfish fishery where sablefish may be harvested, by some or all of the participants, with pot gear: Limited entry fixed gear sablefish primary fishery and daily trip limit fishery; the trawl individual fishing quota (IFQ) fishery when vessels are ''gear switching'' (allowed since 2011); and the open access sablefish daily trip limit fishery. Further information about each of these segments of the groundfish fishery that may harvest sablefish with pot gear is provided below.

The limited entry fixed gear sablefish primary fishery occurs between 36° N. latitude (lat.) and the U.S.—Canada border and requires at least one limited entry permit, with both a fixed gear endorsement and a sablefish endorsement, be registered to a vessel. The primary fishery is composed of a three-tier system of cumulative landing quotas within a restricted season, from April 1 to October 31. Permits were assigned to a tier based on landing history when the system originally began in 1998. There are 32 Limited Entry Permits issued for the sablefish trap fishery on the West Coast. Fishing outside of the primary season or after fulfillment of tier quota is allowed, subject to limited entry fixed gear weekly and two-month cumulative limits. The limited entry permits are currently associated with vessels spread throughout the Pacific Northwest from Northern California through Washington, and some vessels registered to limited entry permits also fish in waters off Alaska. Up to three sablefish-endorsed permits may be stacked for cumulative landings on one vessel and may include both trap and longline gear endorsements.

The limited entry fixed gear daily trip limit fishery occurs coast wide, year-round. Vessels registered to limited entry permits with pot/trap gear endorsements may harvest sablefish with pot/trap gear year round, according to the applicable weekly and two-month cumulative limits, applicable to their time/area. Accounting for stacking of permits, there were 41 vessels using traps only and five using a combination of traps and longline to harvest sablefish in 2014.

The vessels participating in the limited entry trawl Shore-based IFQ Program may choose to harvest their sablefish quota with non-trawl gear, including pot gear, under provisions of the Program that allow for an activity called ''gear switching.'' Vessels fishing in the Shore-based IFQ Program under gear switching provisions are subject to most of the same requirements as those vessels fishing trawl gear to harvest their groundfish quota, including 100 percent observer coverage, fishing on their own individual quota, etc. However, regulations that apply specifically to non-trawl gears, like gear-specific area and depth restrictions, apply to vessels gear switching.

The open access fishery is comprised of vessels not registered to limited entry permits, is available to fishermen year round, and managed throughout the year with daily, weekly, and two-month trip limits. NOAA's Northwest Fisheries Science Center estimates 204 fishermen (number of state-issued permits, not reflective of number of active fishermen), participating in the open access sector in 2014 based on a query, conducted on June 17, 2014 of the NMFS groundfish Web site (*https://www.webapps.nwfsc.noaa.gov/apex_ifq/f?p=112:23*).

Participants in the sablefish fishery are required to keep daily logs of fishing activities. Depending on the area of the coast, fishing for sablefish with non-trawl gear (*e.g.* pot gear, *etc.*) is prohibited in certain depths by the Groundfish Non-Trawl Rockfish Conservation Area. Specific depth restrictions vary, and may be modified during the year, but generally prohibit setting sablefish pots between 30 fathoms and 100 fathoms (from Washington to central California) and between 60 fathoms and 150 fathoms (southern California). Federal regulations pertaining to depth-based closures for limited entry fixed gear can be found in Table 2 (North and South) of 50 Code of Federal Regulations (CFR) part 660, subpart E, and open access closures can be found in Table 3, 50 CFR part 660, subpart F. The state management agencies may close additional areas. For example, south of Point Arguello, near Santa Barbara, the minimum depth for setting traps targeting sablefish is 200 fathoms. Multiple traps are connected to a common ground line made of nylon or nylon blend and 5/16th or 3/8th inch wide. Limited entry permit holders commonly fish 20 to 50 traps per string, as opposed to open access fishermen who generally fish several smaller strings; up to eight strings with one to four traps per string, each with a float line and buoy stick.

Conclusions for Proposed Permit

Based on the individual review of the fisheries and the certainty of relevant data, and as described in the

accompanying draft NID, NMFS concludes that the M/SI incidental to the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) and the WA/OR/CA sablefish pot fishery will have a negligible impact on the CA/OR/WA stock of humpback whales and the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) will have a negligible impact on the CA/OR/WA stock of sperm whales.

The National Environmental Policy Act (NEPA) requires Federal agencies to evaluate the impacts of alternatives for their actions on the human environment. The impacts on the human environment of continuing and modifying the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) (as part of the HMS fisheries) and the WA/OR/CA sablefish pot fishery (as part of the West Coast groundfish fisheries), including the taking of threatened and endangered species of marine mammals, were analyzed in: the Pacific Fishery Management Council Highly Migratory Species FMP final environmental impact statement (August 2003); the Pacific Fishery Management Council Proposed Harvest Specifications and Management Measures for the 2013–2014 Pacific Coast Groundfish Fishery and Amendment 21–2 to the Pacific Coast FMP (September 2012); Risk assessment of U.S. West Coast groundfish fisheries to threatened and endangered marine species (NWFSC, 2012); and in the Final Biological Opinion prepared for the West Coast groundfish fisheries (NMFS, 2011) and the Biological Opinion for the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) (NMFS, 2013), pursuant to the ESA. Because this proposed permit would not modify any fishery operation and the effects of the fishery operations have been evaluated fully in accordance with NEPA, no additional NEPA analysis is required for this permit. Issuing the proposed permit would have no additional impact to the human environment or effects on threatened or endangered species beyond those analyzed in these documents. NMFS now reviews the remaining requirements to issue a permit to take the subject listed species incidental to the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) and WA/OR/CA sablefish pot fisheries.

Recovery Plans

Recovery Plans for humpback whales and sperm whales have been completed (see *http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals*). Accordingly, the requirement to have recovery plans in place or being developed is satisfied.

Vessel Registration

MMPA section 118(c) requires that vessels participating in Category I and II fisheries register to obtain an authorization to take marine mammals incidental to fishing activities. Further, section 118(c)(5)(A) provides that registration of vessels in fisheries should, after appropriate consultations, be integrated and coordinated to the maximum extent feasible with existing fisher licenses, registrations, and related programs. Participants in the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) and WA/OR/CA sablefish pot fisheries provide the information needed by NMFS to register their vessels for the MMPA incidental take authorization through the Federal limited entry permit process. Therefore, vessel registration for an MMPA authorization is integrated through those programs in accordance with MMPA section 118.

Monitoring Program

The CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) has been observed by NMFS since 1990. Levels of observer coverage vary over years but are adequate to produce reliable estimates of M/SI of listed species (*e.g.,* from 2001–2014, coverage ranged from approximately 12.0 to 37 percent). As part of the West Coast groundfish fishery and Magnuson-Stevens Fishery Conservation and Management Act objectives, the WA/OR/CA limited entry sablefish pot fishery, as managed under the groundfish FMP, has been observed between 13 percent and 57 percent between 2002 and 2014. Accordingly, as required by MMPA section 118, a monitoring program is in place for both fisheries.

Take Reduction Plans

Subject to available funding, MMPA section 118 requires the development and implementation of a Take Reduction Plan (TRP) in cases where a strategic stock interacts with a Category I or II fishery. The two stocks considered for this permit are designated as strategic stocks under the MMPA because they are listed as endangered under the ESA (MMPA section 3(19)(C)).

In 1996, NMFS convened a take reduction team (TRT) to develop a TRP to address the incidental taking of several strategic marine mammal stocks, including CA/OR/WA stocks of sperm whales and humpback whales, in the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh). The Pacific Offshore Cetacean TRP was implemented through regulations in October, 1997 (62 FR 51813) and has been in place ever since. Although a TRP is in place for the gillnet fishery, there is currently not one in place for the sablefish pot fishery.

The short- and long-term goals of a TRP are to reduce mortality and serious injury of marine mammals incidental to commercial fishing to levels below PBR and to a zero mortality rate goal, defined by NMFS as 10 percent of PBR. MMPA section 118(b)(2) states that fisheries maintaining such M/SI levels are not required to further reduce their M/SI rates. However, the obligations to develop and implement a TRP are subject to the availability of funding. MMPA section 118(f)(3) (16 U.S.C. 1387(f)(3)) contains specific priorities for developing TRPs. NMFS has insufficient funding available to simultaneously develop and implement TRPs for all strategic stocks that interact with Category I or Category II fisheries. As provided in MMPA section 118(f)(6)(A) and (f)(7), NMFS uses the most recent SAR and LOF as the basis to determine its priorities for establishing TRTs and developing TRPs. Through this process for developing TRTs, in 2015, NMFS evaluated the CA/OR/WA stock of humpback whales and the WA/OR/CA sablefish pot fishery and identified it as a lower priority compared to other marine mammal stocks and fisheries for establishing TRTs, based on population trends of the stock and M/SI levels incidental to that commercial fishery. In addition, NMFS continues to collect data to categorize fixed gear fisheries and assess their risk to large whales off the U.S. west coast. Accordingly, given these factors and NMFS' priorities, implementation of a TRP for the WA/OR/CA sablefish pot trap fishery and other similar Category II fisheries will be currently deferred under section 118 as other stocks/fisheries are a higher priority for any available funding for establishing new TRPs.

As noted in the summary above, all of the requirements to issue a permit to the following Federally-authorized fisheries have been satisfied: the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) and WA/OR/CA sablefish pot fishery. Accordingly, NMFS proposes to issue a permit to participants in these Category I and II fisheries for the taking of CA/OR/WA humpback whales and CA/OR/WA sperm whales incidental to the fisheries' operations. As noted under MMPA section 101(a)(5)(E)(ii), no permit is required for vessels in Category III fisheries. For incidental taking of

marine mammals to be authorized in Category III fisheries, any mortality or serious injury must be reported to NMFS. NMFS solicits public comments on the proposed permit and the preliminary determinations supporting the permit.

Dated: January 4, 2017.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2017–00265 Filed 1–9–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF128

Nominations for the Western and Central Pacific Fisheries Commission Permanent Advisory Committee

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

ACTION: Notice of request for nominations.

SUMMARY: NMFS, on behalf of the Secretary of Commerce, is seeking nominations for the advisory committee established under the Western and Central Pacific Fisheries Convention Implementation Act (Act). The Permanent Advisory Committee, composed of individuals from groups concerned with the fisheries covered by the Western and Central Pacific Fisheries Convention (Convention), will be given the opportunity to provide input to the United States Commissioners to the Western and Central Pacific Fisheries Commission (Commission) regarding the deliberations and decisions of the Commission.

DATES: Nominations must be received no later than February 24, 2017. Nominations received after the deadline will not be accepted.

ADDRESSES: Nominations should be directed to Michael Tosatto, Regional Administrator, NMFS Pacific Islands Regional Office, and may be submitted by any of the following means:

- *Email: pir.wcpfc@noaa.gov.* Include in the subject line the following document identifier: ''Permanent Advisory Committee nominations''. Email comments, including attachments, are limited to 5 megabytes.
- *Mail or hand delivery:* 1845 Wasp Boulevard, Bldg 176, Honolulu, HI 96818
- *Facsimile:* 808–725–5215.

FOR FURTHER INFORMATION CONTACT: Zora McGinnis, NMFS Pacific Islands Regional Office; telephone: 808–725–5037 facsimile: 808–725–5215; email: *zora.mcginnis@noaa.gov.*

SUPPLEMENTARY INFORMATION:

The Convention and the Commission

The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean in accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) and the Agreement for the Implementation of the Provisions of the UNCLOS Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. The Convention establishes the Commission, the secretariat of which is based in Pohnpei, Federated States of Micronesia.

The Convention applies to all highly migratory fish stocks (defined as all fish stocks of the species listed in Annex I of the UNCLOS occurring in the Convention Area, and such other species of fish as the Commission may determine), except sauries.

The United States actively supported the negotiations and the development of the Convention and signed the Convention when it was opened for signature in 2000. It participated as a cooperating non-member of the Commission since it became operational in 2005. The United States became a Contracting Party to the Convention and a full member of the Commission when it ratified the Convention in January 2007. Under the Act, the United States is to be represented on the Commission by five United States Commissioners, appointed by the President.

Permanent Advisory Committee

The Act (16 U.S.C. 6902) provides (in section 6902(d)) that the Secretary of Commerce, in consultation with the United States Commissioners to the Commission, will appoint individuals as members of the advisory committee established under the Act, referred to here as the ''Permanent Advisory Committee''.

The appointed members of the Permanent Advisory Committee are to include not less than 15 or more than 20 individuals selected from the various groups concerned with the fisheries covered by the Convention, providing, to the extent practicable, an equitable balance among such groups. On behalf of the Secretary of Commerce, NMFS is now seeking nominations for these appointments.

In addition to the 15–20 appointed members, the Permanent Advisory Committee includes the chair of the Western Pacific Fishery Management Council's Advisory Committee (or designee), and officials of the fisheries management authorities of American Samoa, Guam, and the Northern Mariana Islands (or their designees).

Members of the Permanent Advisory Committee will be invited to attend all non-executive meetings of the United States Commissioners to the Commission and at such meetings will be given opportunity to examine and be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission.

Each appointed member of the Permanent Advisory Committee will serve for a term of 2 years and is eligible for reappointment. This request for nominations is for the term to begin on August 3, 2017, and is for a term of 2 consecutive years.

The Secretaries of Commerce and State will furnish the Permanent Advisory Committee with relevant information concerning fisheries and international fishery agreements.

NMFS, on behalf of the Secretary of Commerce, will provide to the Permanent Advisory Committee administrative and technical support services as are necessary for its effective functioning.

Appointed members of the Permanent Advisory Committee will serve without pay, but while away from their homes or regular places of business in the performance of services for the advisory committee will be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code. They will not be considered Federal employees while performing service as members of the advisory committee except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code and Chapter 171 of title 28, United States Code.

Procedure for Submitting Nominations

Nominations for the Permanent Advisory Committee should be submitted to NMFS (see **ADDRESSES**). This request for nominations is for first-time nominees as well as previous and current Permanent Advisory Committee members. Self nominations are acceptable. Nominations should include

the following information: (1) Full name, address, telephone, and email address of nominee; (2) nominee's organization(s) or professional affiliation(s) serving as the basis for the nomination, if any; and (3) a background statement, not to exceed one page in length, describing the nominee's qualifications, experience and interests, specifically as related to the fisheries covered by the Convention.

Authority: 16 U.S.C. 6902.

Dated: January 4, 2017.

Emily H. Menashes,

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

[FR Doc. 2017–00259 Filed 1–9–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF139

List of Foreign Fisheries

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

ACTION: Notice; request for information.

SUMMARY: NMFS is seeking information on foreign commercial fishing operations that export fish and fish products to the United States and the level of incidental and intentional mortality and serious injury of marine mammals in those fisheries. NMFS will use this information to identify harvesting nations with commercial fishing operations that export fish and fish products to the United States and classify those fisheries based on their frequency of marine mammal interactions as either ''exempt'' or ''export'' fisheries.

DATES: Information should be received on or before March 1, 2017.

ADDRESSES: Information may be submitted by mail to: NMFS Office of International Affairs and Seafood Inspection, Attn: MMPA List of Foreign Fisheries Information, F/IS 1315 East-West Highway, Silver Spring, MD 20910, or electronically to: *Nina.Young@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Nina Young, phone 301–427–8383, or email *Nina.Young@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS published a final rule (81 FR 54390, August 15, 2016) implementing the import provisions of the Marine Mammal Protection Act (MMPA). This rule establishes conditions for evaluating a harvesting nation's regulatory program to address incidental and intentional mortality and serious injury of marine mammals in fisheries that export fish and fish products to the United States.

Under this rule, fish and fish products from fisheries identified by the Assistant Administrator for Fisheries in the List of Foreign Fisheries can only be imported into the United States if the harvesting nation has applied for and received a comparability finding from NMFS. The rule establishes procedures that a harvesting nation must follow and conditions to meet to receive a comparability finding for a fishery. The rule also establishes provisions for intermediary nations to ensure that intermediary nations do not import and re-export to the United States fish or fish products subject to an import prohibition.

NMFS will identify harvesting nations with commercial fishing operations that export fish and fish products to the United States and classify those fisheries based on the frequency of marine mammal interactions. NMFS will classify foreign commercial fishing operations exporting fish and fish products to the United States as either an ''exempt fishery'' or ''export fishery'' based on the reliable information provided by the harvesting nation or other readily available information.

NMFS defines ''exempt fishery'' as a foreign commercial fishing operation determined by the Assistant Administrator to be the source of exports of commercial fish and fish products to the United States that have a remote likelihood of, or no known, incidental mortality and serious injury of marine mammals in the course of commercial fishing operations. A commercial fishing operation that has a remote likelihood of causing incidental mortality and serious injury of marine mammals is one that collectively with other foreign fisheries exporting fish and fish products to the United States causes the annual removal of:

(1) Ten percent or less of any marine mammal stock's bycatch limit, or

(2) More than 10 percent of any marine mammal stock's bycatch limit, yet that fishery by itself removes 1 percent or less of that stock's bycatch limit annually, or

(3) Where reliable information has not been provided by the harvesting nation on the frequency of incidental mortality and serious injury of marine mammals caused by the commercial fishing operation, the Assistant Administrator may determine whether the likelihood of incidental mortality and serious injury is ''remote'' by evaluating information concerning factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, the species and distribution of marine mammals in the area, or other factors at the discretion of the Assistant Administrator.

A foreign fishery will not be classified as an exempt fishery unless the Assistant Administrator has reliable information from the harvesting nation, or other information to support such a finding.

Commercial fishing operations that NMFS determines meet the definition of an exempt fishery would still be required to obtain a comparability finding by having the harvesting nation demonstrate that it has either prohibited the intentional mortality or serious injury of marine mammals in the course of commercial fishing operations in these exempt fisheries, unless the intentional mortality or serious injury of a marine mammal is imminently necessary in self-defense or to save the life of a person in immediate danger; or that it has procedures to reliably certify that exports of fish and fish products to the United States are not the product of an intentional killing or serious injury of a marine mammal unless the intentional mortality or serious injury of a marine mammal is imminently necessary in self-defense or to save the life of a person in immediate danger.

Exempt fisheries would not have to meet the comparability finding requirement to have a regulatory program for incidental mortality and serious injury comparable in effectiveness to the U.S. regulatory program.

NMFS defines ''export fishery'' as a foreign commercial fishing operation determined by the Assistant Administrator to be the source of exports of commercial fish and fish products to the United States and to have more than a remote likelihood of incidental mortality and serious injury of marine mammals (as defined in the definition of an ''exempt fishery'') in the course of its commercial fishing operations. Where reliable information has not been provided by the harvesting nation on the frequency of incidental mortality and serious injury of marine mammals caused by the commercial fishing operation, the Assistant Administrator may determine whether the likelihood of incidental mortality and serious injury is more than ''remote'' by evaluating information concerning factors such as fishing techniques, gear used, methods used to

deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or other factors at the discretion of the Assistant Administrator that may inform whether the likelihood of incidental mortality and serious injury of marine mammals caused by the commercial fishing operation is more than ''remote.''

Commercial fishing operations not specifically identified in the current List of Foreign Fisheries as either exempt or export fisheries are deemed to be export fisheries until the next List of Foreign Fisheries is published unless the Assistant Administrator has reliable information from the harvesting nation to classify the foreign commercial fishing operation. Additionally, the Assistant Administrator may request additional information from the harvesting nation and may consider other relevant information about such commercial fishing operations and the frequency of incidental mortality and serious injury of marine mammals, to properly classify the foreign commercial fishing operation.

NMFS will publish in the **Federal Register** a List of Foreign Fisheries by harvesting nation, their fisheries, and their classifications. NMFS will publish a proposed List of Foreign Fisheries for public comment and a subsequent final List. To develop this list, NMFS has notified each harvesting nation with fisheries that export to the United States and requested that within 90 days of notification the harvesting nation submit reliable information about the commercial fishing operations identified, including the number of participants, number of vessels, gear type, target species, area of operation, fishing season, and any information regarding the frequency of marine mammal incidental mortality and serious injury, including programs to assess marine mammal populations.

Harvesting nations will also be requested to submit copies of any laws, decrees, regulations, or measures to reduce incidental mortality and serious injury of marine mammals in those fisheries or prohibit the intentional killing or injury of marine mammals.

NMFS will evaluate each harvesting nation's submission, any readily available information, request additional information from the harvesting nations, as necessary, and use this information to classify the fisheries. In the absence of quantifiable information or reliable information from the harvesting nation, NMFS will classify fisheries by analogy with similar U.S. fisheries and gear types interacting with similar marine mammal stocks using readily available information or available observer or logbook information per the procedures outlined in 50 CFR 229.2. Where no information or analogous fishery or fishery information exists, NMFS will classify the commercial fishing operation as an export fishery until such time as the harvesting nation provides reliable information to classify the fishery or such information is readily available to the Assistant Administrator in the course of preparing the List of Foreign Fisheries.

In revising the list, NMFS may reclassify a fishery if new substantive information indicates the need to re-examine and possibly reclassify a fishery. The List of Foreign Fisheries will be organized by harvesting nation and other defining factors including geographic location of harvest, gear-type, target species or a combination thereof. Based upon the List of Foreign Fisheries, the Assistant Administrator will consult with harvesting nations, informing them of the regulatory requirements for exempt and export fisheries to import fish and fish products into the United States. More information regarding this process can be found in the regulations codified at 50 CFR 216.24.

NMFS is soliciting information from harvesting nations; other foreign, regional, and local governments; regional fishery management organizations; nongovernmental organizations; industry organizations; academic institutions; and citizens and citizen groups to identify commercial fishing operations with intentional or incidental mortality and serious injury of marine mammals. For each item we are requesting you identify the exporting nation as the harvesting nation, the processing or intermediary nation, or both. For fisheries exporting fish and fish products to the United States NMFS is requesting the following information:

- Number of participants,
- Number of vessels,
- Gear type,
- Target species,
- Area of operation,
- Fishing season, and
- Information regarding the frequency of marine mammal incidental and intentional mortality and serious injury.

Such information may include fishing vessel records; reports of on-board fishery observers; information from off-loading facilities, port-side government officials, enforcement agents, transshipment vessel workers and fish importers; government vessel registries; RFMO or intergovernmental agreement documents, reports, and statistical document programs; appropriate catch certification programs; and published literature and reports on commercial fishing operations with intentional or incidental mortality and serious injury of marine mammals.

NMFS will consider all available information, as appropriate, when making a classification. Information should be as specific as possible as this will assist NMFS in its review. NMFS will consider several criteria when determining whether information is appropriate for use in making identifications, including:

- Corroboration of information;
- Whether multiple sources have been able to provide information in support of an identification;
- The methodology used to collect the information;
- Specificity of the information provided;
- Susceptibility of the information to falsification and alteration; and
- Credibility of the individuals or organization providing the information.

Dated: January 4, 2017.

John Henderschedt,

Director, Office for International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2017–00201 Filed 1–9–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Educational Partnership Program (EPP), Ernest F. Hollings Undergraduate Scholarship Program, Dr. Nancy Foster Scholarship Program, Recruitment, Training, and Research Program.

OMB Control Number: 0648–0568.

Form Number(s): None.

Type of Request: Regular (revision and extension of a current information collection).

Number of Respondents: 1,754.

Average Hours per Response: Student Performance Achievement Reporting

(SPAR) database form, 8; undergraduate application form, 600; reference forms, 1200; alumni update form, 200.

Burden Hours: 7,822.

Needs and Uses: This request is for revision and extension of a current information collection.

The National Oceanic and Atmospheric Administration (NOAA) Office of Education (OEd) collects, evaluates and analyzes student data for the purpose of selecting successful candidates, and for generating reports and news articles to communicate the success of its program. The OEd requires applicants to its undergraduate scholarship programs to complete an application in order to be considered. The application package requires two faculty and/or academic advisors to complete a NOAA student scholar reference form in support of the scholarship application. NOAA OEd student scholar alumni are also requested to provide information to NOAA for internal tracking purposes. NOAA OEd grant recipients are required to update the student tracker database with the required student information. There is also a revised alumni form whose use has extended to two more of the programs. The collected student data supports NOAA OEd's program performance measures. The Dr. Nancy Foster Scholarship Program and the NMFS Recruiting, Training, and Research Program also collect student data for their programs and are also covered by this notice.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; State, Local or Tribal Government.

Frequency: Annually and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: January 5, 2017.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2017–00276 Filed 1–9–17; 8:45 am]

BILLING CODE 3510–00–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before February 9, 2017.

ADDRESSES: Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (OIRA) to OMB within 30 days of the notice's publication, by email at *OIRAsubmissions@omb.eop.gov.* Please identify comments by OMB Control No. 3038–0025. Please provide the Commission with a copy of all submitted comments at the address listed below. Please refer to OMB Reference No. 3038–0025 found on *http://reginfo.gov.* Comments also may be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503 and to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581, or by Hand Deliver/Courier at the same address; or through the Agency's Web site at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.

FOR FURTHER INFORMATION CONTACT: Bianca Gomez, Counsel, Office of the General Counsel, Commodity Futures Trading Commission, (202) 418–5627; email: *bgomez@cftc.gov,* and refer to OMB Control No. 3038–0025.

SUPPLEMENTARY INFORMATION:

Title: Practice by Former Members and Employees of the Commission (OMB Control No. 3038–0025). This is a request for an extension of a currently approved information collection.

Abstract: Commission Rule 140.735–6 governs the practice before the Commission of former members and employees of the Commission and is intended to ensure that the Commission is aware of any existing conflict of interest. The rule generally requires former members and employees who are employed or retained to represent any person before the Commission within two years of the termination of their CFTC employment, to file a brief written statement with the Commission's Office of the General Counsel. The proposed rule was promulgated pursuant to the Commission's rulemaking authority contained in Section 8a(5) of the Commodity Exchange Act, 7 U.S.C. 12a(5) (1994), as amended.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on December 11, 2013 (78 FR 75333).

Burden statement: The respondent burden for this collection is estimated to average 0.10 hours per response to file the brief written statement. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Former Employees and their employers.

Estimated number of respondents: 30.

Estimated annual burden hours per respondent: 0.10 hours.

Estimated total annual responses: 30.

Estimated total annual burden on respondents: 3 hours.

Frequency of collection: On occasion.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: January 5, 2017.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2017–00281 Filed 1–9–17; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Intelligence University Board of Visitors; Notice of Federal Advisory Committee Meeting

AGENCY: National Intelligence University, Defense Intelligence Agency, Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the National Intelligence University Board of Visitors has been scheduled. The meeting is closed to the public.

DATES: Tuesday, January 24, 2017 (7:30 a.m. to 5:15 p.m.) and Wednesday, January 25, 2017 (7:30 a.m. to 1:00 p.m.).

ADDRESSES: Defense Intelligence Agency, 7400 Pentagon, ATTN: NIU, Washington, DC 20301–7400.

FOR FURTHER INFORMATION CONTACT: Dr. David R. Ellison, President, DIA National Intelligence University, Bethesda, MD 20816, Phone: (301) 243–2120.

Purpose: The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the National Intelligence University.

Agenda: The following topics are listed on the National Intelligence University Board of Visitors meeting agenda: Welcome/Tour of New Campus; Accreditation Update; Faculty Conversation; Strategic Initiatives; Faculty Performance/Workload; Programing, Budgeting, and Faculty Hiring; Certificate Program Review; NIU President Search; Board Business; Executive Session; Working Lunch with IC Senior Leaders.

The entire meeting is devoted to the discussion of classified information as defined in 5 U.S.C. 552b(c)(1) and therefore will be closed. Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the National Intelligence University Board of Visitors about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the National Intelligence University Board of Visitors. All written statements shall be submitted to the Designated Federal Officer for the National Intelligence University Board of Visitors, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/*.

Dated: January 5, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–00253 Filed 1–9–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 16–71]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Pamela Young, DSCA/SA&E–RAN, (703) 697–9107.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16–71 with attached Policy Justification and Sensitivity of Technology.

Dated: January 5, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 12 2016

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-71, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Philippines for defense articles and services estimated to cost $25 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

J.W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 16–71

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of the Philippines

(ii) *Total Estimated Value:*

Major Defense Equipment*	$20 million
Other	$ 5 million
TOTAL	$25 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Two (2) AN/SPS–77 Sea Giraffe 3D Air Search Radars

Non-Major Defense Equipment (MDE): Support services, including installation services, operator training, system operational testing, and documentation.

(iv) *Military Department:* Navy (LFK)

(v) *Prior Related Cases, if any:*

PI–P–SBV—$4.7M, Excess Defense Article (EDA) transfer of ex-USCG cutter Hamilton, now PF–15, BRP Gregorio Del Pilar

PI–P–SBW—$15.1M, EDA transfer of ex-USCG cutter Dallas, PF–16, now BRP Ramon Alcaraz

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex Attached.

(viii) *Date Report Delivered to Congress:* December 12, 2016

*as defined in Section 47(6) of the Arms Export Control Act.

Policy Justification

The Philippines—AN/SPS–77 Sea Giraffe 3D Air Search Radars

The Government of the Philippines has requested a possible sale of two (2) AN/SPS–77 Sea Giraffe 3D Air Search Radars, support services, including installation services, operator training, system operational testing, and documentation. The total estimated program cost is $25 million.

The Philippines seeks to increase its Maritime Domain Awareness (MDA) capabilities in order to improve monitoring of its vast territorial seas and Exclusive Economic Zones (EEZ). An effective Philippine MDA capability strengthens its self-defense capabilities and supports regional stability and U.S. national interests. This sale is consistent with U.S. regional objectives and will further enhance interoperability with the U.S. Navy, build upon a longstanding cooperative effort with the United States, and provide an enhanced capability with a valued partner in a geographic region of critical importance to the U.S. government.

The AN/SPS–77 Air Search Radars will be used to provide an enhanced ability to detect and track air contacts. The radars will be installed on two Hamilton-class cutters acquired through the Excess Defense Articles (EDA) program. The Philippines will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be VSE and Saab. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. or contractor representatives to the Philippines. U.S. contractors, under U.S. government oversight, will be in the Philippines for installation and associated support of this new radar on these Philippine Navy ships.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 16–71

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(l) of the Arms Export Control Act

Annex Item No. vii

(vii) *Sensitivity of Technology:*

1. A completely assembled AN/SPS–77 radar, which is a commercial product that is outfitted on USN LCS class ships, will be tailored for release to the Philippine Navy under this program. The operating characteristics and capability of this system as it will be delivered to the Philippines Navy will be UNCLASSIFIED.

2. AN/SPS–77 operation and maintenance documentation, software, and support is UNCLASSIFIED.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the Philippines can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal are have been authorized for release and export to the Government of the Philippines.

[FR Doc. 2017–00241 Filed 1–9–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Amendment of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Amendment of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is amending the charter for the United States Naval Academy Board of Visitors.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being amended in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(d). The amended charter and contact information for the Designated Federal Officer (DFO) can be obtained at *http://www.facadatabase.gov/*. The DoD is amending the charter for the United States Naval Academy Board of Visitors previously announced in the **Federal Register** on Wednesday, June 22, 2016 (81 FR 40679). Specifically, the DoD is amending the charter to update the estimated number of annual meetings of the United States Naval Academy Board of Visitors.

Dated: January 5, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–00239 Filed 1–9–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 16–57]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification.

This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Pamela Young, DSCA/SA&E–RAN, (703) 697–9107.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16–57 with attached Policy Justification and Sensitivity of Technology.

Dated: January 5, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 20 2016

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-57, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance for the Government of Norway for defense articles and services estimated to cost $1.75 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 16–57

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Norway

(ii) *Total Estimated Value:*

Major Defense Equipment *	$1.40 billion
Other	$ .35 billion
TOTAL	$1.75 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*
Major Defense Equipment (MDE):

Five (5) P–8A Patrol Aircraft, each includes: Commercial Engines, Tactical Open Mission Software (TOMS), Electro-Optical (EO) and Infrared (IO) MX–20HD, AN/AAQ–2(V)1 Acoustic System, AN/APY–10 Radar, ALQ–240 Electronic Support Measures

Eleven (11) Multifunctional Distribution System Joint Tactical Radio Systems (MIDS JTRS)

Eight (8) Guardian Laser Transmitter Assemblies (GLTA) for the AN/AAQ–24(V)N Eight (8) System Processors for AN/AAQ–24(V)N

Forty-two (42) AN/AAR–54 Missile Warning Sensors for the AN/AAQ–24(V)N

Fourteen (14) LN–251 with Embedded Global Positioning Systems (GPS)/ Inertial Navigations Systems (EGIs)

Two thousand (2,000) AN/SSQ–125 Multi-Static Active Coherent (MAC) Source Sonobuoys

Non-MDE includes: Spares, spare engine, support equipment, operational support systems for Tactical Operations Center and Mobile Tactical Operations Center (ToC/MToC), training, maintenance trainer/classrooms, publications, software, engineering and logistics technical assistance, Foreign Liaison Officer support, contractor engineering technical services, repair and return, transportation, aircraft ferry, and other associated training and support.

(iv) *Military Department:* Navy (SAN)

(v) *Prior Related Cases, if any:* This would be Norway's first purchase of the P–8A Patrol Aircraft. Norway has one related P–8A case, NO–P–GEN, which provides P–8A study and technical analysis support.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex Attached

(viii) *Date Report Delivered to Congress:* December 20, 2016

*as defined in Section 47(6) of the Arms Export Control Act.

Policy Justification

Norway—P–8A Aircraft and Associated Support

Norway has requested a possible sale of up to five (5) P–8A Patrol Aircraft, each includes: Commercial Engines, Tactical Open Mission Software (TOMS), Electro-Optical (EO) and Infrared (IO) MX–20HD, AN/AAQ–2(V)1 Acoustic System, AN/APY–10 Radar, ALQ–240 Electronic Support Measures. Also included are eleven (11) Multifunctional Distribution System Joint Tactical Radio Systems (MIDS JTRS); eight (8) Guardian Laser Transmitter Assemblies (GLTA) for the AN/AAQ–24(V)N; eight (8) System Processors for AN/AAQ–24(V)N; forty-two (42) AN/AAR- 54 Missile Warning Sensors for the AN/AAQ–24(V)N; fourteen (14) LN–251 with Embedded Global Positioning Systems (GPS)/ Inertial Navigation Systems (EGIs); and two thousand (2,000) AN/SSQ–125 Multi-Static Active Coherent (MAC) Source Sonobouys; spares; spare engine; support equipment; operational support systems; training; maintenance trainer/ classrooms; publications; software; engineering and logistics technical assistance; Foreign Liaison Officer support; contractor engineering technical services; repair and return; transportation; aircraft ferry; and other associated training and support. The total estimated program cost is $1.75 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a NATO ally which has been, and continues to be, an important force for political stability throughout the world. The proposed sale will allow Norway to maintain its Maritime Patrol Aircraft (MPA) capability following retirement of its P–3C MPA. This sale will strengthen collective NATO defense and enhance Norway's regional and global allied contributions.

Norway has procured and operated U.S. produced P–3 Orion MPAs for over 40 years, providing critical capabilities to NATO and coalition maritime operations. Norway has maintained a close MPA acquisition and sustainment relationship with the U.S. Navy over this period. The proposed sale will allow Norway to recapitalize, modernize, and sustain its MPA capability for the next 30 years. As a long-time P–3 operator, Norway will have no difficulty transitioning its MPA force to the P–8A and absorbing these aircraft into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor involved in this sale is The Boeing Company, Seattle, WA. Additional contractors include: Air Cruisers Co, LLC; Arnprior Aerospace, Canada; AVOX Zodiac Aerospace; BAE; Canadian Commercial Corporation (CCC)/EMS; Compass David Clark; DLS/ ViaSat, Carlsbad, CA; DRS; Exelis, McLean, VA; GC Micro, Petaluma, CA; General Electric, UK; Harris; Joint Electronics; Martin Baker; Northrop Grumman Corp, Falls Church, VA; Pole Zero, Cincinnati, OH; Raytheon, Waltham, MA; Raytheon, UK; Rockwell Collins, Cedar Rapids, IA; Spirit Aero, Wichita, KS; Symmetries Telephonies, Farmingdale, NY; Terma, Arlington, VA; Viking; and WESCAM. Norway does require an offset agreement. Any offset agreement will be defined in negotiations between the purchaser and the prime contractor.

Implementation of the proposed sale will require approximately five (5) contractor personnel to support the program in Norway.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 16–57

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vii

(vii) *Sensitivity of Technology:*

1. The P–8A aircraft is a militarized version of the Boeing 737–800 Next Generation (NG) commercial aircraft. The P–8A is replacing the P–3C as the Navy's long-range anti submarine warfare (ASW), anti-surface warfare (ASuW), intelligence, surveillance and reconnaissance (ISR) aircraft capable of broad-area, maritime, and littoral operations. The overall highest classification of the P–8A weapon system is SECRET. The P–8A mission systems hardware is largely unclassified, while individual software elements (mission systems, acoustics, ESM, etc.) are classified up to SECRET.

2. P–8A mission systems include:

a. Tactical Open Mission Software (TOMS). TOMS functions include environment planning, tactical aids, weapons planning aids, and data correlation. TOMS includes an algorithm for track fusion which automatically correlates tracks produced by on board and off board sensors.

b. Electro-Optical (EO) and Infrared (IR) MX–20HD. The EO/IR system

processes visible EO and IR spectrum to detect and image objects.

c. AN/AQQ–2(V)1 Acoustic System. The Acoustic sensor system is integrated within the mission system as the primary sensor for the aircraft ASW missions. The system has multi-static active coherent (MAC) 64 sonobuoy processing capability and acoustic sensor prediction tools.

d. AN/APY–10 Radar. The aircraft radar is a direct derivative of the legacy AN/APS- 137(V) installed in the P–3C. The radar capabilities include GPS selective availability anti-spoofing, SAR and ISAR imagery resolutions, and periscope detection mode.

e. ALQ–240 Electronic Support Measures (ESM). This system provides real time capability for the automatic detection, location, measurement, and analysis of RF-signals and modes. Real time results are compared with a library of known emitters to perform emitter classification and specific emitter identification (SEI).

f. Electronic Warfare Self Protection (EWSP). The aircraft EWSP consists of the ALQ–213 Electronic Warfare Management System (EWMS), ALE–47 Countermeasures Dispensing System (CMDS), and the AN/AAQ–24 Directional Infrared Countermeasure (DIRCM)/AAR–54 Missile Warning Sensors (MWS). The EWSP includes threat information.

3. If a technologically advanced adversary was to obtain access of the P–SA specific hardware and software elements, systems could be reverse engineered to discover USN capabilities and tactics. The consequences of the loss of this technology, to a technologically advanced or competent adversary, could result in the development of countermeasures or equivalent systems, which could reduce system effectiveness or be used in the development of a system with similar advanced capabilities.

4. A determination has been made that the recipient government can provide substantially the same degree of protection, for the technology being released as the U.S. Government. Support of the P–8A Patrol Aircraft to the Government of the Norway is necessary in the furtherance of U.S. foreign policy and national security objectives.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Norway.

[FR Doc. 2017–00248 Filed 1–9–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0058]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 9, 2017.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Improving Caregiver Outcomes through Structured Support Via Military Caregiver Peer Forums; OMB Control Number 0704–XXXX.

Type of Request: New.

Number of Respondents: 90.

Responses per Respondent: 1.

Annual Responses: 90.

Average Burden per Response: 1 hour.

Annual Burden Hours: 90.

Needs and Uses: The information collection requirement is necessary to assess how participants are using the Military Caregiver PEER (Personalized Experiences, Engagement and Resources) Forums, how participating in the PEER Forums benefits them, and the role that PEER Forums play in the landscape of social support services available to caregivers. Military Caregiver PEER Forums are located on military bases across the country where caregivers can convene, converse among their peers, share resources and best practices, and provide support for the challenges they face. The results will be used to determine how the PEER Forums are currently improving and might better continue to improve caregiver well-being by reducing caregiver burden and addressing caregiver isolation. DoD will use the information gathered by this project to assess the implementation of PEER Forums and implement improvements, if needed. A complementary objective is to use the information gathered by this project to provide DoD with a framework for ongoing monitoring and evaluation of PEER Forums.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Dod Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Dated: January 5, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–00267 Filed 1–9–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 16–66]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Pamela Young, DSCA/SA&E–RAN, (703) 697–9107.

The following is a copy of a letter to the Speaker of the House of

Representatives, Transmittal 16–66 with attached Policy Justification and Sensitivity of Technology.

Dated: January 5, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 12 2016

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-66, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the Government of Kuwait for defense articles and services estimated to cost $1.7 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

James Wilson
Dep Dir (A)

FOR J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified document provided under separate cover)

Transmittal No. 16–66

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Kuwait

(ii) *Total Estimated Value:*

Major Defense Equipment*	$ .04 billion
Other	$1.66 billion
TOTAL	$1.70 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Two hundred and forty (240) .50 Cal M2A1 Machine Guns

Four hundred and eighty (480) 7.62mm M240 Machine Guns

Two hundred and forty (240) AN/VRC–92E SINCGARS Radios

One thousand and eight five (1,085) AN/PVS–7B Night Vision Goggles

Non-MDE includes: Incorporation of cooling system/thermal management systems; Common Remotely Operated Weapons Station (CROWS) II—Low Profile Stabilized Weapon Stations; special armor; 120mm gun tubes; 2nd generation Forward Looking Infrared (FLIR) sights; embedded diagnostics; gunner's primary sights; Counter Sniper and Anti-Materiel Mount (CSAMM) hardware; upgrade/maintenance of engines and transmissions; depot level support; training devices; spare and repair parts; support equipment; tools and test equipment; technical data and publications; personnel training and training equipment; U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Army (UXA)

(v) *Prior Related Cases, if any:* FMS Case KU–B–JAT (9 July 1993, $1.9 billion), FMS Case KU–B–UKO (20 July 2001, $44.3 million), FMS Case KU–B–UKN (23 July 2001, $42 million), FMS Case KU–B–ULB (19 May 2006, $36.8 million), FMS Case KU–B–ULX (20 July 2011, $34.8 million).

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed To Be Sold:* See Annex Attached

(viii) *Date Report Delivered to Congress:* December 12, 2016

*as defined in Section 47(6) of the Arms Export Control Act.

Policy Justification

Government of Kuwait—Recapitalization of 218 M1A2 Tanks and Related Equipment and Support

The Government of Kuwait has requested a possible sale in support of its recapitalization of 218 M1A2 tanks, to include two hundred and forty (240) .50 Cal M2A1 machine guns; four hundred and eighty (480) 7.62mm M240 machine guns; two hundred and forty (240) AN/VRC–92E SINCGARS radios; and one thousand and eight five (1,085) AN/PVS–7B Night Vision Goggles. Also included is the incorporation of cooling system/thermal management systems; Common Remotely Operated Weapons Station (CROWS) II—Low Profile Stabilized Weapon Stations; special armor; 120mm gun tubes; 2nd generation Forward Looking Infrared (FLIR) sights; embedded diagnostics; gunner's primary sights; Counter Sniper and Anti-Materiel Mount (CSAMM) hardware; upgrade/maintenance of engines and transmissions; depot level support; training devices; spare and repair parts; support equipment; tools and test equipment; technical data and publications; personnel training and training equipment; U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of logistics support. Total estimated program cost is $1.7 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Kuwait intends to use this equipment to recapitalize its fleet of M1A2 full track tanks in order to modernize and extend the service of the tanks. Kuwait will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors involved in this program are: General Dynamics Land Systems, Sterling Heights, MI; Joint Services Manufacturing Center (JSMC), Lima, OH; Konsberg Defense Systems, Alexandria, VA, and Johnstown, PA; Raytheon, McKinney, TX; Meggitt Defense Systems, Irvine, CA; Palomar, Carlsbad, CA; Northrop Grumman, West Falls Church, VA; DRS Technologies, Arlington, VA; Lockheed Martin, Bethesda, MD; Honeywell, Morristown, NJ; Miltope, Hope Hull, AL. There are no known offset agreements proposed in connect with this potential sale.

Implementation of this proposed sale is estimated to require five to seven contractors and twenty-five to thirty U.S. Government representatives to Kuwait.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 16–66

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vii

(vii) *Sensitivity of Technology:*

1. Components considered to contain sensitive technology in the proposed sale are as follows:

a. M1A2 Thermal Imaging System (TIS)—The TIS constitutes a target acquisition system which, when operated with other tank systems gives the tank crew a substantial advantage over the potential threat. The TIS provides the crew with the ability to effectively aim and fire the tank main armament system under a broad range of adverse battlefield conditions. The hardware itself is UNCLASSIFIED. The engineering design and manufacturing data associated with the detector and infrared (IR) optics and coatings are considered sensitive. The technical data package is UNCLASSIFIED with the exception of the specifications for target acquisition range which is CONFIDENTIAL and hardening data is classified up to SECRET. The consequences of such compromise would increase potential enemy capabilities to neutralize effectiveness of the tank main armament system by denying the crew ability to acquire targets.

b. Special Armor—Major components of special armor are fabricated in sealed modules and in serialized removable subassemblies. Special armor vulnerability data for both chemical and kinetic energy rounds are classified SECRET. Engineering design and manufacturing data related to special armor are also classified SECRET. The consequences of such compromise of classified information would be the capability to neutralize or defeat the armor. The sale or transfer of armor modules are done on a government-to-government basis. This serves to minimize, but not eliminate, the danger of compromise.

c. 120mm Gun—the gun is composed of a 120mm smoothbore gun (cannon) manufactured at Watervliet Arsenal; ''long rod'' APFSDS warheads; and combustible cartridge case ammunition.

There may be a need to procure/produce new gun cannon tubes from Watervliet Arsenal. New cannons inducted at Anniston Army Depot would be inspected according to established criteria and shipped to Lima Army Tank Plant for tank upgrade process. Gun production and technology are generally known. Disclosure of gun production and technology specific to the 120mm (advance materials and tolerances) would degrade the advantage.

d. AGT–1500 Gas Turbine Propulsion System—The use of a gas turbine propulsion system in the M1A2 is a unique application of armored vehicle power pack technology. The hardware is composed of the AGT–1500 engine and transmission and is not UNCLASSIFIED. Manufacturing processes associated with the production of turbine blades, recuperator, bearings and shafts, and hydrostatic pump and motor are propriety and therefore commercially competition sensitive. Unauthorized release and exploitation of sensitive propulsion information would adversely impact U.S. commercial interests. Acquisition of production data by a potential enemy could enhance its ability to design and produce gas turbine engine propulsion system with application to land vehicles.

e. Compartmentation—A major survivability feature of the M1 tank is the compartmentation of fuel and ammunition. Compartmentation is the positive separation of the crew and critical components from combustible materials such that in the event that the fuel or ammunition is ignited or deteriorated by an incoming threat round, the crew is fully protected. Sensitive information includes the performance of the ammunition compartments as well as the compartment design parameters. The design of the compartments cannot be protected, however the guidelines, parametric inductions and test data used to develop the compartments do not have to be disclosed to permit a sale.

f. Common Remotely Operated Weapons Station—Low Profile (CROWS–LP)—The CROWS–LP (M153A2E1) is a commanders' weapon station. It allows for under armor operation of weapons—M2HB, M2A1, M250B, and M240. The CROWS–LP is an updated version of the M153A2 CROWS that is approximately 10 inches shorter; the CROWS–LP M153A2E1 increases visibility over the weapon station. The fire control system of the CROWS–LP allows the ''first-burst'' on target capability from stationary and moving platforms. The CROWS–LP ingratiates a day camera (VIM–C), thermal camera (TIM 1500), and laser range finder (STORM/STORM–PI). Engineering design and manufacturing data would provide potential enemy with the means to increase small arms fire control from under armor. The consequences of this would be improved enemy equipment in the field and decrease technological fire control advantages.

2. The M1 tank will include the following communications suite: Defense Advanced Global Positioning System (GPS) Receiver (DAGR); AN/VAS–5 Driver's Vision Enhancer (DVE) and Rear View Sensor System (RVSS); and Single Channel Ground and Airborne Radio System (SINCGARS).

a. Defense Advanced Global Positioning System (GPS) Receiver (DAGR)—DAGR is a lightweight (less than two pounds) hand-held or host platform-mounted, dual frequency, Selective Availability Anti-Spoofing Module (SAASM) based, Precise Positioning Service (PPS) device. The DAGR provides real-time positioning, velocity (ground speed), navigation, and timing (PVNT) information, in stand-alone (dismounted) and mounted (ground facilities, sea, air, and land vehicles) configurations. The DAGR can support missions involving land-based war-fighting and non-war fighting operations. The DAGR can also be used as a secondary or supplemental aid to aviation-based missions which involve operations in low-dynamic aircraft, and as an aid to navigation in water-borne operations. DAGR AN/PSN–13(A) is fitted with the Selective Availability Anti-Spoofing Module (SAASM) 3.7 and can accept cryptographic keys for increased PVNT accuracy and protection from intentional false or spoofed satellite signals. The AN/PSN–13(A) DAGR does not output classified information. If a technology advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to identify ways of countering the detection capabilities of the DAGR or improve the performance of their GPS receivers; however, information available for the SAASM would not be obtainable. SAASM is a tamper-resistant security module. The remaining hardware used in the DAGR is considered mature and available in other industrial nation's comparable performance thresholds.

b. Drivers Vision Enhancer (DVE) AN/VAS–5 and Rear View Sensor System (RVSS)—The AN/VAS–5 and RVSS are un-cooled thermal imaging systems developed for use while driving Combat Vehicles and Tactical Wheeled Vehicles. DVE and RVSS allow for tactical vehicle movement in support of operational missions in all environment conditions (day/night and all weather) and provides enhanced driving capability during limited visibility conditions (darkness, smoke, dust, fog, etc.). The DVE program provides night vision targeting capabilities for armored vehicles and long-range night vision reconnaissance capability to the warfighter. Engineering design and manufacturing data would provide a potential enemy with the means to upgrade the quality of efficiency of thermal devices production. The consequences of this would be improved enemy equipment of the field. Technical information regarding DVE and RVSS, including UNCLASSIFIED information, should generally not be considered for release. The highest level of information that must be disclosed for production, operation or sale of the end item is UNCLASSIFIED/FOR OFFICIAL USE ONLY.

c. Single Channel Ground and Airborne Radio System (SINCGARS)—The AN/VRC–92E and RT–1702 SINCGARS provides war-fighting commanders and troops with a highly reliable, secure, easily maintained Combat Net Radio (CNR) that has both voice and data handling capability in support of command and control operations. SINCGARS, with the Internet Controller, provides the communications link for the digitized force. SINCGARS is a radio fielded to tactical field elements. It facilitates the transmission of voice and/or data information, which allows for the conducting of a myriad of missions across the operational continuum. SINCGARS is available for the dismounted soldier, ground and aviation platforms. Training will vary for the radio (RT–1702) and spare and repair parts for the RT–1702 model are not supported by the Standard Army Supply Systems. There is sensitive or restricted information contained in the AN/VRC–92E or software. There would be adverse consequences of the AN/VRC–92E and software were to be lost to a technically advanced adversary. If a technology advances adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to identify ways of countering the Electronic Counter-Counter Measures (ECCM). The hardware used in the AN/VRC–92E and RT–1702 is considered mature.

3. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this sale, as outlined in the Policy

Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

4. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Kuwait.

[FR Doc. 2017–00246 Filed 1–9–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity (NACIQI), Office of Postsecondary Education, U.S. Department of Education.

ACTION: Announcement of an open meeting.

SUMMARY: This notice sets forth the agenda, time, and location for the February 22–24, 2017 meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI), and provides information to members of the public on requesting to make oral comments and submitting written statements at the meeting. The notice of this meeting is required under the Federal Advisory Committee Act (FACA) and the Higher Education Act (HEA) of 1965, as amended.

DATES: The NACIQI meeting will be held on February 22, 23, and 24, 2017, each day from 8:30 a.m. to 5:30 p.m.

ADDRESSES: Hilton Alexandria Old Town Hotel, 1767 King Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Jennifer Hong, Executive Director/Designated Federal Official, NACIQI, U.S. Department of Education, 400 Maryland Avenue SW., Room 6W250, Washington, DC 20202, telephone: (202) 453–7805, or email: *Jennifer.Hong@ed.gov.*

SUPPLEMENTARY INFORMATION:

NACIQI's Statutory Authority and Function: NACIQI is established under § 114 of the HEA. NACIQI advises the Secretary of Education with respect to:

- The establishment and enforcement of the standards of accrediting agencies or associations under subpart 2, part G, Title IV of the HEA, as amended.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV of the HEA and part C, subchapter I, chapter 34, Title 42, together with recommendations for improvement in such process.
- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory function relating to accreditation and institutional eligibility that the Secretary of Education may prescribe by regulation.

Meeting Agenda: Agenda items for the February 2017 are below.

Agencies Applying for Renewal of Recognition

1. American Podiatric Medical Association

Scope of Recognition: The accreditation and preaccreditation (''Provisional Accreditation'') throughout the United States of freestanding colleges of podiatric medicine and programs of podiatric medicine, including first professional programs leading to the degree of Doctor of Podiatric Medicine.

2. Commission on English Language Program Accreditation

Scope of Recognition: The accreditation of postsecondary, non-degree-granting English language programs and institutions in the United States.

3. The Council on Chiropractic Education

Scope of Recognition: The accreditation of programs leading to the Doctor of Chiropractic degree and single-purpose institutions offering the Doctor of Chiropractic program.

4. Joint Review Committee on Education in Radiologic Technology

Scope of Recognition: The accreditation of education programs in radiography, magnetic resonance, radiation therapy, and medical dosimetry, including those offered via distance education, at the certificate, associate, and baccalaureate levels.

Agency Seeking Review of Compliance Report

Western Association for Schools and Colleges, Accrediting Commission for Community and Junior Colleges (ACCJC) Compliance report includes the following: (1) Findings identified in the April 5, 2016 letter from the senior Department official following the December 2015 NACIQI meeting available at: *https://opeweb.ed.gov/aslweb/finalstaffreports.cfm,* (2) Findings identified in the January 4, 2016 Secretary's appeal decision available at: *http://oha.ed.gov/secretarycases/2014–10–O.pdf*, (3) The limitation on ACCJC's authority to approve single baccalaureate programs within the scope of accreditation of previously accredited institutions, as outlined in the April 5, 2016 letter from the senior Department official, (4) Review under 34 CFR 602.33 of complaints filed against the agency and analyzed by the staff.

Requested Scope of Recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') of community and other colleges with a primarily pre-baccalaureate mission located in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands, which offer certificates, associate degrees, and the first baccalaureate degree by means of a substantive change review offered by institutions that are already accredited by the agency, and such programs offered via distance education and correspondence education at these colleges. This recognition also extends to the Committee on Substantive Change of the Commission, for decisions on substantive changes, and the Appeals Panel.

Agency Applying for an Expansion of Scope

Accrediting Bureau of Health Education Schools

Current Scope of Recognition: The accreditation of private, postsecondary institutions in the United States offering predominantly allied health education programs and the programmatic accreditation of medical assistant, medical laboratory technician and surgical technology programs, leading to a certificate, diploma, Associate of Applied Science, Associate of Occupational Science, Academic Associate degree, or Baccalaureate degree, including those offered via distance education. This scope extends to the Substantive Change Committee, jointly with the Commission, for decisions on substantive changes.

Requested Scope of Recognition: The accreditation of private, postsecondary institutions in the United States offering predominantly allied health education programs and the programmatic accreditation of medical assistant, medical laboratory technician, and surgical technology programs, leading to

a certificate, diploma, Associate of Applied Science, Associate of Occupational Science, Academic Associate degree, Baccalaureate degree, and Master's degree, including those offered via distance education. The scope extends to the Substantive Change Committee, jointly with the Commission, for decisions on substantive change.

Application for Renewal of Recognition—State Agency for the Approval of Nurse Education

Missouri State Board of Nursing.

Election of a New Chairperson and Vice Chairperson

NACIQI will elect a new Chairperson and Vice Chairperson to serve three-year terms on the Committee.

Panel on Outcome Measures

Representatives from accrediting agencies and associations will be invited to discuss current initiatives regarding the consideration and review of outcome measures in the accreditation process.

National Coordinating Center Accreditation Workgroup

The National Coordinating Center for comprehensive transition and postsecondary programs for students with intellectual disabilities is established under § 777 of the HEA. Section 777(b)(5)(J) of the HEA requires the convening of a workgroup to develop and recommend model criteria, standards, and components of comprehensive transition programs for students with intellectual disabilities, and further requires a NACIQI member to serve on the workgroup. Section 777(b)(6) of the HEA requires a report to the Secretary, the authorizing committees, and NACIQI, on the recommendations of the workgroup not later than five years after the date of the establishment of the coordinating center which was in 2010. Members of the workgroup will provide a summary of their report to NACIQI and a new NACIQI representative to the workgroup will be selected.

NACIQI Policy Agenda

NACIQI will continue discussion regarding its policy agenda, and revisit how it will proceed in its review of accrediting agencies at future meetings, to include the Committee's use of a consent agenda for agencies undergoing review.

Meeting Discussion

In addition to following the HEA, the FACA, implementing regulations, and the NACIQI charter, as well as its customary procedural protocols, NACIQI inquiries will include the questions and topics listed in the pilot plan it adopted at its December 2015 meeting. A document entitled ''June 2016 Pilot Plan'' and available at: *http://sites.ed.gov/naciqi/files/naciqi-dir/2016-spring/pilot-project-march-2016.pdf,* outlines this pilot and provides further explanation and context framing NACIQI's work. As noted in this document, NACIQI's reviews of accrediting agencies will include consideration of data and information available on the accreditation data dashboards, *http://www2.ed.gov/admins/finaid/accred/accreditor-dashboards.pdf.* Accrediting agencies that will be reviewed for renewal of recognition will not be on the consent agenda and are advised to come prepared to answer questions related to the following:

- Decision activities of and data gathered by the agency.
  - NACIQI will inquire about the range of accreditation activities of the agency since its prior review for recognition, including discussion about the various favorable, monitoring, and adverse actions taken. Information about the primary standards cited for the monitoring and adverse actions that have been taken will be sought.
  - NACIQI will also inquire about what data the agency routinely gathers about the activities of the institutions it accredits and about how that data is used in their evaluative processes.
- Standards and practices with regard to student achievement.
  - How does your agency address ''success with respect to student achievement'' in the institutions it accredits?
  - Why was this strategy chosen? How is this appropriate in your context?
  - What are the student achievement challenges in the institutions accredited by your agency?
  - What has changed/is likely to change in the standards about student achievement for the institutions accredited by your agency?
  - In what ways have student achievement results been used for monitoring or adverse actions?
- Agency activities in improving program/institutional quality.
  - How does this agency define ''at risk?''
  - What tools does this agency use to evaluate ''at risk'' status?
  - What tools does this agency have to help ''at risk'' institutions improve?
  - What can the agency tell us about how well these tools for improvement have worked?

To the extent NACIQI's questions go to improvement of institutions and programs that are not at risk of falling into noncompliance with agency requirements, the responses will be used to inform NACIQI's general policy recommendations to the Department rather than its recommendations regarding recognition of any individual agency.

The discussions and issues described above regarding the pilot are in addition to, rather than substituting for, exploration by Committee members of any topic relevant to recognition.

Submission of requests to make an oral comment or to provide a written statement regarding a specific accrediting agency or state approval agency under review: Oral comments and written statements made will become part of the official record and will be considered by the Department and NACIQI in their deliberations. No individual in attendance or making oral presentations may distribute written materials at the meeting. Oral comments may not exceed three minutes.

Comments and statements about an agency's recognition after review of a compliance report must relate to issues identified in the compliance report and the criteria for recognition cited in the senior Department official's letter that requested the report, or in the Secretary's appeal decision, if any. Comments and statements about an agency seeking expansion of scope must be directed to the agency's ability to serve as a recognized accrediting agency with respect to the kinds of institutions or programs requested to be added. Comments and statements about the renewal of an agency's recognition based on a review of the agency's petition must relate to its compliance with the Criteria for the Recognition of Accrediting Agencies, or the Criteria and Procedures for Recognition of State Agencies for Approval of Nurse Education, as appropriate, which are available at http*://www.ed.gov/admins/finaid/accred/index.html.*

There are two methods the public may use to request to make a third-party oral comment of three minutes concerning one of the agencies scheduled for review at the February 22–24, 2017 meeting. To submit a written statement to NACIQI, please follow Method One.

Method One: Submit a request by email to the *ThirdPartyComments@ed.gov* mailbox. Please do not send material directly to NACIQI members. Written statements and requests to make oral comment must be received by February 15, 2017, and include the subject line ''Oral Comment Request:

(agency name),'' or ''Written Statement: (agency name).'' The email must include the name(s), title, organization/affiliation, mailing address, email address, telephone number, of the person(s) submitting a written statement or requesting to speak, and a brief summary (not to exceed one page) of the principal points to be made during the oral presentation, if applicable. All individuals submitting an advance request in accordance with this notice will be afforded an opportunity to speak.

Method Two: Register at the meeting location on February 22, 2017, from 7:30 a.m.–8:30 a.m., to make an oral comment during NACIQI's deliberations concerning a particular agency or institution scheduled for review. The requestor must provide his or her name, title, organization/affiliation, mailing address, email address, and telephone number. A total of up to fifteen minutes during each agency review will be allotted for oral commenters who register on February 22, 2017 by 8:30 a.m. Individuals will be selected on a first-come, first-served basis. If selected, each commenter may not exceed three minutes.

Access to Records of the Meeting: The Department will post the official report of the meeting on the NACIQI Web site within 90 days after the meeting. Pursuant to the FACA, the public may also inspect the materials at 400 Maryland Avenue SW., Washington, DC, by emailing *aslrecordsmanager@ed.gov* or by calling (202) 453–7110 to schedule an appointment.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available 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 Adobe 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.

Authority: 20 U.S.C. 1011c.

Gail McLarnon,

Acting Deputy Assistant Secretary for Planning, Policy, and Innovation.

[FR Doc. 2017–00306 Filed 1–9–17; 8:45 am]

BILLING CODE P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice: 2017–3001]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 92–29 Export-Import Bank Report of Premiums Payable for Exporters Only

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the paperwork Reduction Act of 1995. The application tool can be reviewed at: *http://exim.gov/sites/default/files/pub/pending/eib92-29.pdf*

DATES: Comments must be received on or before February 9, 2017 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038, Attn: OMB 3048–0017.

SUPPLEMENTARY INFORMATION: The Export Import Bank of the United States, pursuant to the Export Import Bank Act of 1945, as amended (12 U.S.C. 635, et.seq.), facilitates the finance of the export of U.S. goods and services. The ''Report of Premiums Payable for Exporters Only'' form will be used by exporters to report and pay premiums on insured shipments to various foreign buyers.

Title and Form Number: EIB 92–29 Export-Import Bank Report of Premiums Payable for Exporters Only.

OMB Number: 3048–0017.

Type of Review: Renewal.

Need and Use: The ''Report of Premiums Payable for Exporters Only'' form is used by exporters to report and pay premiums on insured shipments to various foreign buyers under the terms of the policy and to certify that premiums have been correctly computed and remitted. The 'Report of Premiums Payable for Exporters Only' is used by EXIM to determine the eligibility of the shipment(s) and to calculate the premium due to EXIM Bank for its support of the shipment(s) under its insurance program.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual number of respondents: 2,200.

Estimated time per respondent: 15 minutes.

Annual burden hours: 6,600 hours.

Frequency of reporting or use: Monthly.

Government Expenses:

Reviewing time per year: 6,600 hours.

Average wages per hour: $42.50.

Average cost per year: $280,500 (time * wages).

Benefits and overhead: 20%.

Total government cost: $336,600.

Bassam Doughman,

IT Program Manager, Office of the Chief Information Officer.

[FR Doc. 2017–00187 Filed 1–9–17; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION

[Docket No. AS17–01]

Appraisal Subcommittee; Proposed Revised Policy Statements

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Proposed revised Policy Statements.

SUMMARY: The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council requests public comment on a proposal to revise ASC Policy Statements (proposed Policy Statements). The proposed Policy Statements provide guidance to ensure State appraiser regulatory programs comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, and the rules promulgated thereunder. The proposed Policy

Statements would supersede the current ASC Policy Statements.

DATES: Comments must be received on or before April 10, 2017.

ADDRESSES: Commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. You may submit comments, identified by Docket Number AS17–01, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *Email: webmaster@asc.gov*. Include the docket number in the subject line of the message.
- *Fax:* (202) 289–4101. Include docket number on fax cover sheet.
- *Mail:* Address to Appraisal Subcommittee, Attn: Lori Schuster, Management and Program Analyst, 1401 H Street NW., Suite 760, Washington, DC 20005.
- *Hand Delivery/Courier:* 1401 H Street NW., Suite 760, Washington, DC 20005.

In general, the ASC will enter all comments received into the docket and publish those comments on the Federal eRulemaking (*Regulations.gov*) Web site without change, including any business or personal information that you provide, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. At the close of the comment period, all public comments will also be made available on the ASC's Web site at *https://www.asc.gov* (follow link in ''What's New'') as submitted, unless modified for technical reasons.

You may review comments by any of the following methods:

- *Viewing Comments Electronically:* Go to *https://www.regulations.gov*. Enter ''Docket ID AS17–01'' in the Search box and click ''Search.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Viewing Comments Personally:* You may personally inspect comments at the ASC office, 1401 H Street NW., Suite 760, Washington, DC 20005. To make an appointment, please call Lori Schuster at (202) 595–7578.

FOR FURTHER INFORMATION CONTACT: James R. Park, Executive Director, at (202) 595–7575, or Alice M. Ritter, General Counsel, at (202) 595–7577, Appraisal Subcommittee, 1401 H Street NW., Suite 760, Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

I. Background

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (Title XI), established the ASC.[1] The purpose of Title XI is to provide protection of Federal financial and public policy interests by upholding Title XI requirements for appraisals performed for federally related transactions.[2] Pursuant to Title XI, one of the ASC's core functions is to monitor the requirements established by the States [3] for certification and licensing of appraisers qualified to perform appraisals in connection with federally related transactions. This is accomplished through periodic ASC Compliance Reviews of each State appraiser regulatory program (Appraiser Program) to determine compliance or lack thereof with Title XI, and to assess implementation of minimum requirements for credentialing of appraisers as adopted by the Appraiser Qualifications Board (*The Real Property Appraiser Qualification Criteria* or AQB Criteria).

Title XI as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) [4] expanded the ASC's core functions to include monitoring of the requirements established by States that elect to register and supervise the operations and activities of appraisal management companies [5] (AMCs). States electing to register and supervise AMCs must implement minimum requirements in accordance with the AMC Rule.[6] As a result, States with an AMC regulatory program (AMC Program) will be evaluated during the ASC's Compliance Review to determine compliance or lack thereof with Title XI, and to assess implementation of the minimum requirements for State registration and supervision of AMCs as established by the AMC Rule. The amendments to Title XI by the Dodd-Frank Act also allow States with an AMC Program to add information about AMCs in their State to the National Registry of AMCs (AMC Registry). The proposed Policy Statements include guidance to the States regarding how AMC Programs will be evaluated during ASC Compliance Reviews.

II. Overview of Proposed Policy Statements

The ASC is issuing these proposed Policy Statements [7] in three parts to provide States with the necessary information to maintain their Appraiser Programs and AMC Programs in compliance with Title XI and the rules promulgated thereunder:

➢ Part A, *Appraiser Program*—Policy Statements 1 through 7 correspond with the categories that are: (a) Evaluated during the Appraiser Program Compliance Review; and (b) included in the *ASC's Compliance Review Report of the Appraiser Program.*

➢ Part B, *AMC Program*—Policy Statements 8 through 11 correspond with the categories that are: (a) Evaluated during the AMC Program Compliance Review; and (b) included in the *ASC's Compliance Review Report of the AMC Program.*

➢ Part C, *Interim Sanctions*—Policy Statement 12 sets forth required procedures in the event that interim sanctions are imposed against a State by the ASC for non-compliance in either the Appraiser Program or the AMC Program.

The proposal also includes two appendices:

[1] The ASC Board is comprised of seven members. Five members are designated by the heads of the FFIEC agencies (Board of Governors of the Federal Reserve System [Board], Consumer Financial Protection Bureau [CFPB], Federal Deposit Insurance Corporation [FDIC], Office of the Comptroller of the Currency [OCC], and National Credit Union Administration [NCUA]). The other two members are designated by the heads of the Department of Housing and Urban Development (HUD) and the Federal Housing Finance Agency (FHFA).

[2] Refers to any real estate related financial transaction which: (a) A federal financial institutions regulatory agency engages in, contracts for, or regulates; and (b) requires the services of an appraiser. (Title XI § 1121(4), 12 U.S.C. 3350.)

[3] The 50 States, the District of Columbia, and four Territories, which are the Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, Guam, and United States Virgin Islands.

[4] Public Law 111–203, 124 Stat. 1376.

[5] Title XI § 1103(a)(1)(B), 12 U.S.C. 3332.

[6] The Dodd-Frank Act added section 1124 to Title XI, *Appraisal Management Company Minimum Requirements,* which required the OCC, Board, FDIC, NCUA, CFPB, and FHFA to establish, by rule, minimum requirements for the registration and supervision of AMCs by States that elect to register and supervise AMCs pursuant to Title XI and the rules promulgated thereunder. (Title XI § 1124(a), 12 U.S.C. 3353(a)). Those rules were finalized and published on June 9, 2015, at 80 **Federal Register** 32658 with an effective date of August 10, 2015. (12 CFR 34.210–34.216; 12 CFR 225.190–225.196; 12 CFR 323.8–323.14; 12 CFR 1222.20–1222.26)

[7] These Policy Statements, adopted [date to be inserted when final], supersede all previous Policy Statements adopted by the ASC.

1. Appendix A provides an overview of the Compliance Review process; and

2. Appendix B provides a glossary of terms.

III. Statement-by-Statement

The following provides a section by section highlight of changes presented in the proposed Policy Statements.

Introduction and Purpose

The ASC proposes to expand the introduction to include the monitoring of States that elect to register and supervise the operations and activities of AMCs, and to include an explanation of the proposed Policy Statements' three parts and appendices.

Part A: Appraiser Program

Policy Statement 1: Statutes, Regulations, Policies and Procedures Governing State Appraiser Programs

The ASC proposes modify Policy Statement 1 to include a definition of trainee appraiser to better reflect how changes to Title XI affect Appraiser Programs with trainee requirements.

Policy Statement 2: Temporary Practice

The ASC proposes to modify Policy Statement 2 to clarify requirements for temporary practice and includes requirements to track temporary practice permits and maintain documentation.

Policy Statement 3: National Registry of Appraisers

The ASC proposes to modify Policy Statement 3 to clarify requirements regarding States' submission of registry fees and eligibility of appraisers for the Appraiser Registry.

Policy Statement 4: Application Process

The ASC proposes to modify Policy Statement 4 to include additional guidance to States implementing AQB Criteria regarding the background of applicants for credentials and requires States to document applicant files with evidence supporting decisions made regarding individual appraisers. Policy Statement 4 as proposed also provides additional guidance on requirements for States to validate renewal requirements for appraisers and provides parameters for auditing education-related affidavits. Finally, Policy Statement 4 as proposed clarifies the requirement that States engage analysts who are knowledgeable about the *Uniform Standards of Professional Appraisal Practice* (USPAP) and document how the analysts are qualified.

Policy Statement 5: Reciprocity

The ASC proposes to modify Policy Statement 5 to include a requirement that States obtain and maintain sufficient relevant documentation pertaining to an application for issuance of a credential by reciprocity.

Policy Statement 6: Education

The ASC proposes to modify Policy Statement 6 to clarify that States may not continue to accept AQB approved courses after the AQB's expiration date unless the course content is reviewed and approved by the State.

Policy Statement 7: Enforcement

The ASC proposes to modify Policy Statement 7 to clarify the requirement that States consider USPAP violations when investigating a complaint whether or not USPAP violations were the basis for the complaint.

Part B: AMC Program

As proposed, Policy Statements 8, 9 & 10 duplicate the provisions of Policy Statements 1, 3 & 7 to every extent possible. The standard language is intentional and will create better understanding of the Policy Statements by the States as they will be able to anticipate how to comply based on their understanding of the Policy Statements they have been following. Differences are discussed below.

Policy Statement 8: Statutes, Regulations, Policies and Procedures Governing State AMC Programs

The ASC proposes a new Policy Statement 8 to reflect the statutory provision that States are not required to establish an AMC Program, but clarify for those States that establish AMC Programs the ASC oversight during ASC Compliance Reviews. As proposed, Policy Statement 8 reiterates that States with an AMC Program must: (1) Establish and maintain an AMC Program with the legal authority and mechanisms consistent with the AMC Rule; (2) impose requirements on AMCs consistent with the AMC Rule; and (3) enforce and document ownership limitations for State-registered AMCs. As proposed, Policy Statement 8 informs States that while they may have a more expansive definition of an AMC in their State statute, only AMCs that meet the federal definition in Title XI may be included on the AMC Registry.

Policy Statement 9: National Registry of AMCs (AMC Registry)

The ASC proposes a new Policy Statement 9 to clarify requirements for States with an AMC Program to maintain the AMC Registry in the same way they maintain the Appraiser Registry.

Policy Statement 10: State Agency Enforcement

The ASC proposes a new Policy Statement 10 to clarify requirements for States' AMC enforcement programs in those States with an AMC Program.

Policy Statement 11: Statutory Implementation Period

The ASC proposes a new Policy Statement 11 to clarify the statutory implementation period and any extensions that may be granted.

Part C: Interim Sanctions

Policy Statement 12: Interim Sanctions

The ASC proposes a new Policy Statement 12 which modifies existing Policy Statement 8 to clarify interim sanctions which may be imposed on State Programs when those programs fail to be effective. The proposed procedures include due process provisions and rules of evidence, and would establish timeliness for proceedings.

IV. Request for Comment

The ASC seeks comment on all aspects of the proposed Policy Statements. In addition, the ASC requests comments on whether the proposed Policy Statements provide State Programs with the necessary information to understand the ASC's expectations during a Compliance Review.

The text of the proposed Policy Statements is as follows:

Contents

Introduction and Purpose
Part A: Appraiser Program
Policy Statement 1
Statutes, Regulations, Policies and Procedures Governing State Appraiser Programs
A. State Regulatory Structure
B. Funding and Staffing
C. Minimum Criteria
D. Federally Recognized Appraiser Classifications
E. Non-Federally Recognized Credentials
F. Appraisal Standards
G. Exemptions
H. ASC Staff Attendance at State Board Meetings
I. Summary of Requirements
Policy Statement 2
Temporary Practice
A. Requirement for Temporary Practice
B. Excessive Fees or Burdensome Requirements
C. Summary of Requirements
Policy Statement 3
National Registry of Appraisers
A. Requirements for the National Registry of Appraisers
B. Registry Fee and Invoicing Policies

C. Access to Appraiser Registry Data
D. Information Sharing
E. Summary of Requirements
Policy Statement 4
Application Process
A. Processing of Applications
B. Qualifying Education for Initial or Upgrade Applications
C. Continuing Education for Reinstatement and Renewal Applications
D. Experience for Initial or Upgrade Applications
E. Examination
F. Summary of Requirements
Policy Statement 5
Reciprocity
A. Reciprocity Policy
B. Application of Reciprocity Policy
C. Appraiser Compliance Requirements
D. Well-Documented Application Files
E. Summary of Requirements
Policy Statement 6
Education
A. Course Approval
B. Distance Education
C. Summary of Requirements
Policy Statement 7
State Agency Enforcement
A. State Agency Regulatory Program
B. Enforcement Process
C. Summary of Requirements
Part B: AMC Program
Policy Statement 8
Statutes, Regulations, Policies and Procedures Governing State AMC Programs
A. Participating States and ASC Oversight
B. Relation to State Law
C. Funding and Staffing
D. Minimum Requirements for Registration and Supervision of AMCs as Established by the AMC Rule
E. Summary of Requirements
Policy Statement 9
National Registry of AMCs (AMC Registry)
A. Requirements for the AMC Registry
B. Registry Fee and Invoicing Policies
C. Reporting Requirements
D. Access to AMC Registry Data
E. Summary of Requirements
Policy Statement 10
State Agency Enforcement
A. State Agency Regulatory Program
B. Enforcement Process
C. Summary of Requirements
Policy Statement 11
Statutory Implementation Period
Part C: Interim Sanctions
Policy Statement 12
Interim Sanctions
A. Authority
B. Opportunity To Be Heard or Correct Conditions
C. Procedures
Appendices
Appendix A—Compliance Review Process
Appendix B—Glossary of Terms

Introduction and Purpose

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as amended (Title XI) established the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC).[8] The purpose of Title XI is to provide protection of Federal financial and public policy interests by upholding Title XI requirements for appraisals performed for federally related transactions. Specifically, those appraisals shall be performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

Pursuant to Title XI, one of the ASC's core functions is to monitor the requirements established by the States[9] for certification and licensing of appraisers qualified to perform appraisals in connection with federally related transactions.[10] Title XI as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act)[11] expanded the ASC's core functions to include monitoring of the requirements established by States that elect to register and supervise the operations and activities of appraisal management companies[12] (AMCs).[13]

The ASC performs periodic Compliance Reviews[14] of each State appraiser regulatory program (Appraiser Program) to determine compliance or lack thereof with Title XI, and to assess implementation of minimum requirements for credentialing of appraisers as adopted by the Appraiser Qualifications Board (*The Real Property Appraiser Qualification Criteria* or AQB Criteria). As a result of the Dodd-Frank Act amendments to Title XI, States with an AMC regulatory program (AMC Program) will be evaluated during the Compliance Review to determine compliance or lack thereof with Title XI, and to assess implementation of the minimum requirements for State registration and supervision of AMCs as established by the AMC Rule.[15]

The ASC is issuing these revised Policy Statements[16] in three parts to provide States with the necessary information to maintain their Appraiser Programs and AMC Programs in compliance with Title XI:

➢ Part A, *Appraiser Program*—Policy Statements 1 through 7 correspond with the categories that are: (a) Evaluated during the Appraiser Program Compliance Review; and (b) included in the *ASC's Compliance Review Report of the Appraiser Program.*

➢ Part B, *AMC Program*—Policy Statements 8 through 11 correspond with the categories that are: (a) Evaluated during the AMC Program Compliance Review; and (b) included in the *ASC's Compliance Review Report of the AMC Program.*

➢ Part C, *Interim Sanctions*—Policy Statement 12 sets forth required procedures in the event that interim sanctions are imposed against a State by the ASC for non-compliance in either the Appraiser Program or the AMC Program.

Part A: Appraiser Program

Policy Statement 1

Statutes, Regulations, Policies and Procedures Governing State Appraiser Programs

A. State Regulatory Structure

Title XI requires the ASC to monitor each State appraiser certifying and licensing agency for the purpose of determining whether each such agency has in place policies, practices and procedures consistent with the requirements of Title XI.[17] The ASC recognizes that each State may have legal, fiscal, regulatory or other factors that may influence the structure and organization of its Appraiser Program. Therefore, a State has flexibility to structure its Appraiser Program so long as it meets its Title XI-related responsibilities.

States should maintain an organizational structure for appraiser certification, licensing and supervision

[8] The ASC board is made up of seven members. Five members are designated by the heads of the FFIEC agencies (Board of Governors of the Federal Reserve System, Bureau of Consumer Financial Protection, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and National Credit Union Administration). The other two members are designated by the heads of the Department of Housing and Urban Development and the Federal Housing Finance Agency.

[9] See Appendix B, Glossary of Terms, for the definition of ''State.''

[10] See Appendix B, Glossary of Terms, for the definition of ''federally related transaction.''

[11] Public Law 111–203, 124 Stat. 1376.

[12] Title XI § 1103(a)(1)(B), 12 U.S.C. 3332.

[13] See Appendix B, Glossary of Terms, for the definition of ''appraisal management company'' or AMC.

[14] See Appendix A, Compliance Review Process.

[15] The Dodd-Frank Act required the Office of the Comptroller of the Currency; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; National Credit Union Administration; Bureau of Consumer Financial Protection; and Federal Housing Finance Agency to establish, by rule, minimum requirements to be imposed by a participating State appraiser certifying and licensing agency on AMCs doing business in the State. (Title XI § 1124(a), 12 U.S.C. 3353(a)). Those rules were finalized and published on June 9, 2015, at 80 **Federal Register** 32658 with an effective date of August 10, 2015. (12 CFR 34.210–34.216; 12 CFR 225.190–225.196; 12 CFR 323.8–323.14; 12 CFR 1222.20–1222.26.)

[16] These Policy Statements, adopted [date to be inserted when final], supersede all previous Policy Statements adopted by the ASC.

[17] Title XI § 1118(a), 12 U.S.C. 3347.

that avoids conflicts of interest. A State agency may be headed by a board, commission or an individual. State board [18] or commission members, or employees in policy or decision-making positions, should understand and adhere to State statutes and regulations governing performance of responsibilities consistent with the highest ethical standards for public service. In addition, Appraiser Programs using private entities or contractors should establish appropriate internal policies, procedures and safeguards to promote compliance with the State agency's responsibilities under Title XI and these Policy Statements.

B. Funding and Staffing

The Dodd-Frank Act amended Title XI to require the ASC to determine whether States have sufficient funding and staffing to meet their Title XI requirements. Compliance with this provision requires that a State must provide its Appraiser Program with funding and staffing sufficient to carry out its Title XI-related duties. The ASC evaluates the sufficiency of funding and staffing as part of its review of all aspects of an Appraiser Program's effectiveness, including the adequacy of State boards, committees, or commissions responsible for carrying out Title XI-related duties.

C. Minimum Criteria

Title XI requires States to adopt and/or implement all relevant AQB Criteria. Requirements established by a State for certified residential or certified general appraisers, as well as requirements established for licensed appraisers, trainee appraisers and supervisory appraisers must meet or exceed applicable AQB Criteria.

D. Federally Recognized Appraiser Classifications

State Certified Appraisers

''State certified appraisers'' means those individuals who have satisfied the requirements for residential or general certification in a State whose criteria for certification meet or exceed the applicable minimum AQB Criteria. Permitted scope of practice and designation for State certified residential or certified general appraisers must be consistent with State and Federal laws, including regulations and supplementary guidance.

State Licensed Appraisers

''State licensed appraisers'' means those individuals who have satisfied the requirements for licensing in a State whose criteria for licensing meet or exceed the applicable minimum AQB Criteria. The permitted scope of practice and designation for State licensed appraisers must be consistent with State and Federal laws, including regulations and supplementary guidance.

Trainee Appraisers

''Trainee appraisers'' means those individuals who have satisfied the requirements for credentialing in a State whose criteria for credentialing meet or exceed the applicable minimum AQB Criteria. Any minimum qualification requirements established by a State for individuals in the position of ''trainee appraiser'' or ''supervisory appraiser'' must meet or exceed the applicable minimum AQB Criteria. ASC staff will evaluate State designations such as ''registered appraiser,'' ''apprentice appraiser,'' ''provisional appraiser,'' or any other similar designation to determine if, in substance, such designation is consistent with a ''trainee appraiser'' designation and, therefore, administered to comply with Title XI. The permitted scope of practice and designation for trainee appraisers must be consistent with State and Federal laws, including regulations and supplementary guidance.

Any State or Federal agency may impose additional appraiser qualification requirements for trainee, State licensed, certified residential or certified general classifications, if they consider such requirements necessary to carry out their responsibilities under Federal and/or State statutes and regulations, so long as the additional qualification requirements do not preclude compliance with AQB Criteria.

E. Non-Federally Recognized Credentials

States using non-federally recognized credentials or designations [19] must ensure that they are easily distinguished from the federally recognized credentials.

F. Appraisal Standards

Title XI and the Federal financial institutions regulatory agencies' regulations mandate that all appraisals performed in connection with federally related transactions be in written form, prepared in accordance with generally accepted appraisal standards as promulgated by the Appraisal Standards Board (ASB) in the Uniform Standards of Professional Appraisal Practice (USPAP), and be subject to appropriate review for compliance with USPAP.[20] States that have incorporated USPAP into State law should ensure that statutes or regulations are updated timely to adopt the current version of USPAP, or if State law allows, automatically incorporate the latest version of USPAP as it becomes effective. States should consider ASB Advisory Opinions, Frequently Asked Questions, and other written guidance issued by the ASB regarding interpretation and application of USPAP.

Any State or Federal agency may impose additional appraisal standards if they consider such standards necessary to carry out their responsibilities, so long as additional appraisal standards do not preclude compliance with USPAP or the Federal financial institutions regulatory agencies' appraisal regulations for work performed for federally related transactions.

The Federal financial institutions regulatory agencies' appraisal regulations define ''appraisal'' and identify which real estate-related financial transactions require the services of a State certified or licensed appraiser. These regulations define ''appraisal'' as a ''written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s) supported by the presentation and analysis of relevant market information.'' Per these regulations, an appraiser performing an appraisal review which includes the reviewer providing his or her own opinion of value constitutes an appraisal. Under these same regulations, an appraisal review that does not include the reviewer providing his or her own opinion of value does not constitute an appraisal. Therefore, under the Federal financial institutions regulatory agencies' regulations, only those transactions that involve appraisals for federally related transactions require the services of a State certified or licensed appraiser.

G. Exemptions

Title XI and the Federal financial institutions regulatory agencies' regulations specifically require the use of State certified or licensed appraisers in connection with the appraisal of certain real estate-related financial

[18] *See* Appendix B, *Glossary of Terms,* for the definition of ''State board.''

[19] *See* Appendix B, *Glossary of Terms,* for the definition of ''non-federally recognized credentials or designations.''

[20] *See* Appendix B, *Glossary of Terms* for the definition of ''Uniform Standards of Professional Appraisal Practice.''

transactions.[21] A State may not exempt any individual or group of individuals from meeting the State's certification or licensing requirements if the individual or group member performs an appraisal when Federal statutes and regulations require the use of a certified or licensed appraiser. For example, an individual who has been exempted by the State from its appraiser certification or licensing requirements because he or she is an officer, director, employee or agent of a federally regulated financial institution would not be permitted to perform an appraisal in connection with a federally related transaction.

H. ASC Staff Attendance at State Board Meetings

The efficacy of the ASC's Compliance Review process rests on the ASC's ability to obtain reliable information about all areas of a State's Appraiser Program. ASC staff regularly attends open State board meetings as part of the on-site Compliance Review process. States are expected to make available for review by ASC staff minutes of closed meetings and executive sessions. States are encouraged to allow ASC staff to attend closed and executive sessions of State board meetings where such attendance would not violate State law or regulation or be inconsistent with other legal obligations of the State board. ASC staff is obligated to protect information obtained during the Compliance Review process concerning the privacy of individuals and any confidential matters.

I. Summary of Requirements

1. States must require that appraisals be performed in accordance with the latest version of USPAP.[22]

2. States must, at a minimum, adopt and/or implement all relevant AQB Criteria.[23]

3. States must have policies, practices and procedures consistent with Title XI.[24]

4. States must have funding and staffing sufficient to carry out their Title XI-related duties.[25]

5. States must use proper designations and permitted scope of practice for certified residential; certified general; licensed; and trainee classifications.[26]

6. State board members, and any persons in policy or decision-making positions, must perform their responsibilities consistent with Title XI.[27]

7. States' certification and licensing requirements must meet the minimum requirements set forth in Title XI.[28]

8. State requirements for trainee appraisers and supervisory appraisers must meet or exceed the AQB Criteria.

9. State agencies must be granted adequate authority by the State to maintain an effective regulatory Appraiser Program in compliance with Title XI.[29]

Policy Statement 2

Temporary Practice

A. Requirement for Temporary Practice

Title XI requires State agencies to recognize, on a temporary basis, the certification or license of an out-of-State appraiser entering the State for the purpose of completing an appraisal assignment [30] for a federally related transaction. States are not, however, required to grant temporary practice permits to trainee appraisers. The out-of-State appraiser must register with the State agency in the State of temporary practice (Host State). A State may determine the process necessary for ''registration'' provided such process complies with Title XI and does not impose ''excessive fees or burdensome requirements,'' as determined by the ASC.[31] Thus, a credentialed appraiser [32] from State A has a statutory right to enter State B (the Host State) to perform an assignment concerning a federally related transaction, so long as the appraiser registers with the State agency in State B prior to performing the assignment. Though Title XI contemplates reasonably free movement of credentialed appraisers across State lines, an out-of-State appraiser must comply with the Host State's real estate appraisal statutes and regulations and is subject to the Host State's full regulatory jurisdiction. States should utilize the National Registry of Appraisers to verify credential status on applicants for temporary practice.

B. Excessive Fees or Burdensome Requirements

Title XI prohibits States from imposing excessive fees or burdensome requirements, as determined by the ASC, for temporary practice.[33] Adherence by State agencies to the following mandates and prohibitions will deter the imposition of excessive fees or burdensome requirements.

Host State agencies must:

a. Issue temporary practice permits on an assignment basis;

b. issue temporary practice permits within five business days of receipt of a completed application, or notify the applicant and document the file as to the circumstances justifying delay or other action;

c. issue temporary practice permits designating the permit's effective date;

d. take regulatory responsibility for a temporary practitioner's unethical, incompetent and/or fraudulent practices performed while in the State;

e. notify the appraiser's home State agency [34] in the case of disciplinary action concerning a temporary practitioner;

f. allow at least one temporary practice permit extension through a streamlined process;

g. track all temporary practice permits using a permit log which includes the name of the applicant, date application received, date completed application received, date of issuance, and date of expiration, if any (States are strongly encouraged to maintain this information in an electronic, sortable format); and

h. maintain documentation sufficient to demonstrate compliance with this Policy Statement.

Host State agencies may not:

a. limit the valid time period of a temporary practice permit to less than 6 months (unless the applicant requests a specific end date and the applicant is allowed an extension if required to complete the assignment, the applicant's credential is no longer in active status during that period of time);

b. limit an appraiser to one temporary practice permit per calendar year; [35]

[21] Title XI § 1112, 12 U.S.C. 3341; Title XI § 1113, 12 U.S.C. 3342; Title XI § 1114, 12 U.S.C. 3343.

[22] Title XI § 1101, 12 U.S.C. 3331; Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

[23] Title XI §§ 1116(a), (c) and (e), 12 U.S.C. 3345; Title XI § 1118(a), 12 U.S.C. 3347.

[24] Title XI § 1118(a), 12 U.S.C. 3347.

[25] *Id;* Title XI § 1118(b), 12 U.S.C. 3347.

[26] Title XI §§ 1116(a), (c) and (e), 12 U.S.C. 3345; Title XI § 1118(a), 12 U.S.C. 3347; Title XI § 1113, 12 U.S.C. 3342; AQB *Real Property Appraiser Qualification Criteria.*

[27] Title XI § 1118(a), 12 U.S.C. 3347.

[28] Title XI §§ 1116(a), (c) and (e), 12 U.S.C. 3345.

[29] Title XI § 1118(b), 12 U.S.C. 3347.

[30] *See* Appendix B, *Glossary of Terms,* for the definition of ''assignment.''

[31] Title XI § 1122(a)(2), 12 U.S.C. 3351.

[32] *See* Appendix B, *Glossary of Terms,* for the definition of ''credentialed appraisers.''

[33] Title XI § 1122(a) (2), 12 U.S.C. 3351.

[34] See Appendix B, Glossary of Terms, for the definition of ''home State agency.''

[35] State agencies may establish by statute or regulation a policy that places reasonable limits on the number of times an out-of-State certified or licensed appraiser may exercise his or her temporary practice rights in a given year. If such a policy is not established, a State agency may choose not to honor an out-of-State certified or licensed appraiser's temporary practice rights if it has made a determination that the appraiser is abusing his or her temporary practice rights and is regularly engaging in real estate appraisal services within the State.

c. charge a temporary practice permit fee exceeding $250, including one extension fee;

d. impose State appraiser qualification requirements for education, experience and/or exam upon temporary practitioners;

e. require temporary practitioners to obtain a certification or license in the State of temporary practice;

f. require temporary practitioners to affiliate with an in-State licensed or certified appraiser;

g. refuse to register licensed or certified appraisers seeking temporary practice in a State that does not have a licensed or certified level credential; or

h. prohibit temporary practice.

Home State agencies may not:

a. delay the issuance of a written ''letter of good standing'' or similar document for more than five business days after receipt of a request; or

b. fail to consider and, if appropriate, take disciplinary action when one of its certified or licensed appraisers is disciplined by another State.

C. Summary of Requirements

1. States must recognize, on a temporary basis, appraiser credentials issued by another State if the property to be appraised is part of a federally related transaction.[36]

2. State agencies must adhere to mandates and prohibitions as determined by the ASC that deter the imposition of excessive fees or burdensome requirements for temporary practice.[37]

Policy Statement 3

National Registry of Appraisers

A. Requirements for the National Registry of Appraisers

Title XI requires the ASC to maintain a National Registry of State certified and licensed appraisers who are eligible to perform appraisals in federally related transactions (Appraiser Registry).[38] Title XI further requires the States to transmit to the ASC: (1) A roster listing individuals who have received a State certification or license in accordance with Title XI; (2) reports on the issuance and renewal of licenses and certifications, sanctions, disciplinary actions, revocations and suspensions; and (3) the registry fee as set by the ASC[39] from individuals who have received certification or licensing. States must notify the ASC as soon as practicable if a credential holder listed on the Appraiser Registry does not qualify for the credential held.

Roster and registry fee requirements apply to all individuals who receive State certifications or licenses, originally or by reciprocity, whether or not the individuals are, in fact, performing or planning to perform appraisals in federally related transactions. If an appraiser is certified or licensed in more than one State, the appraiser is required to be on each State's roster of certified or licensed appraisers, and a registry fee is due from each State in which the appraiser is certified or licensed.

Only AQB-compliant certified and licensed appraisers in active status on the Appraiser Registry are eligible to perform appraisals in connection with federally related transactions. Only those appraisers whose registry fees have been transmitted to the ASC will be eligible to be on the Appraiser Registry for the period subsequent to payment of the fee.

Some States may give State certified or licensed appraisers an option to not pay the registry fee. If a State certified or licensed appraiser chooses not to pay the registry fee, then the Appraiser Program must ensure that any potential user of that appraiser's services is aware that the appraiser is not eligible to perform appraisals for federally related transactions. The Appraiser Program must place a conspicuous notice directly on the face of any evidence of the appraiser's authority to appraise stating, ''Not Eligible To Appraise Federally Related Transactions,'' and the appraiser must not be listed in active status on the Appraiser Registry.

The ASC extranet application allows States to update their appraiser credential information directly to the Appraiser Registry. Only Authorized Registry Officials are allowed to request access for their State personnel (see section C below). The ASC will issue a User Name and Password to the designated State personnel responsible for that State's Appraiser Registry entries. Designated State personnel are required to protect the right of access, and not share their User Name or Password with anyone. State agencies must adopt and implement a written policy to protect the right of access, as well as the ASC issued User Name and Password. The ASC will provide detailed specifications regarding the data elements on the Appraiser Registry.

B. Registry Fee and Invoicing Policies

Each State must remit to the ASC the annual registry fee, as set by the ASC, for State certified or licensed appraisers within the State to be listed on the Appraiser Registry. Requests to prorate refunds or partial-year registrations will not be granted. If a State collects multiple-year fees for multiple-year certifications or licenses, the State may choose to remit to the ASC the total amount of the multiple-year registry fees or the equivalent annual fee amount. The ASC will, however, record appraisers on the Appraiser Registry only for the number of years for which the ASC has received payment. Nonpayment by a State of an appraiser's registry fee may result in the status of that appraiser being listed as ''inactive.'' States must reconcile and pay registry invoices in a timely manner (45 calendar days after the invoice date). When a State's failure to pay a past due invoice results in appraisers being listed as inactive, the ASC will not change those appraisers back to active status until payment is received from the State. An inactive status on the Appraiser Registry, for whatever the reason, renders an appraiser ineligible to perform appraisals in connection with federally related transactions.

C. Access to Appraiser Registry Data

The ASC Web site provides free access to the public portion of the Appraiser Registry at *www.asc.gov*. The public portion of the Appraiser Registry data may be downloaded using predefined queries or user-customized applications.

Access to the full database, which includes non-public data (*e.g.,* certain disciplinary action information), is restricted to authorized State and Federal regulatory agencies. States must designate a senior official, such as an executive director, to serve as the State's Authorized Registry Official, and provide to the ASC, in writing, information regarding the designated Authorized Registry Official. States must ensure that the authorization information provided to the ASC is updated and accurate.

D. Information Sharing

Information sharing (routine exchange of certain information among lenders, governmental entities, State agencies and the ASC) is essential for carrying out the purposes of Title XI. Title XI requires the ASC, any other Federal agency or instrumentality, or any federally recognized entity to report any action of a State certified or licensed appraiser that is contrary to the

[36] Title XI § 1122(a)(1), 12 U.S.C. 3351.

[37] Title XI § 1122(a)(2), 12 U.S.C. 3351.

[38] Title XI § 1103(a) (3), 12 U.S.C. 3332.

[39] Title XI § 1109, *Roster of State certified or licensed appraisers; authority to collect and transmit fees,* requires the ASC to consider at least once every 5 years whether to adjust the dollar amount of the registry fees to account for inflation. (Title XI § 1109(a), 12 U.S.C. 3338.)

purposes of Title XI to the appropriate State agency for disposition. The ASC believes that full implementation of this Title XI requirement is vital to the integrity of the system of State appraiser regulation. States are encouraged to develop and maintain procedures for sharing of information among themselves.

The Appraiser Registry's value and usefulness are largely dependent on the quality and frequency of State data submissions. Accurate and frequent data submissions from all States are necessary to maintain an up-to-date Appraiser Registry. States must submit appraiser data in a secure format to the ASC at least monthly. If there are no changes to the data, the State agency must notify the ASC of that fact in writing. States are encouraged to submit data as frequently as possible.

States must report all disciplinary action [40] taken against an appraiser to the ASC via the extranet application within 5 business days after the disciplinary action is final, as determined by State law.[41] States not reporting via the extranet application must provide, in writing to the ASC, a description of the circumstances preventing compliance with this requirement.[42]

For the most serious disciplinary actions (*i.e.,* voluntary surrenders, suspensions and revocations, or any action that interrupts a credential holder's ability to practice), the appraiser's status must be changed on the Appraiser Registry to ''inactive,'' thereby making the appraiser ineligible to perform appraisals for federally related transactions or other transactions requiring the use of State certified or licensed appraisers.[43]

Title XI also contemplates the reasonably free movement of certified and licensed appraisers across State lines. This freedom of movement assumes, however, that certified and licensed appraisers are, in all cases, held accountable and responsible for their actions while performing appraisal activities.

E. Summary of Requirements

1. States must reconcile and pay registry invoices in a timely manner (45 calendar days after the invoice date).[44]

2. States must report all disciplinary action taken against an appraiser to the ASC via the extranet application within 5 business days after the disciplinary action is final, as determined by State law.[45]

3. States not reporting via the extranet application must provide, in writing to the ASC, a description of the circumstances preventing compliance with this requirement.[46]

4. For the most serious disciplinary actions (*i.e.,* voluntary surrenders, suspensions and revocations, or any action that interrupts a credential holder's ability to practice), the appraiser's status must be changed on the Appraiser Registry to ''inactive,'' thereby making the appraiser ineligible to perform appraisals for federally related transactions or other transactions requiring the use of State certified or licensed appraisers.[47]

5. States must designate a senior official, such as an executive director, who will serve as the State's Authorized Registry Official, and provide to the ASC, in writing, information regarding the selected Authorized Registry Official, and any individual(s) authorized to act on their behalf.[48]

6. States must ensure that the authorization information provided to the ASC is updated and accurate.[49]

7. States using the ASC extranet application must implement written policies to ensure that all personnel with access to the Appraiser Registry protect the right of access and not share the User Name or Password with anyone.[50]

8. States must ensure the accuracy of all data submitted to the Appraiser Registry.[51]

9. States must submit appraiser data (other than discipline) to the ASC at least monthly. If a State's data does not change during the month, the State agency must notify the ASC of that fact in writing.[52]

10. If a State certified or licensed appraiser chooses not to pay the registry fee, the State must ensure that any potential user of that appraiser's services is aware that the appraiser's certificate or license is limited to performing appraisals only in connection with non-federally related transactions.[53]

Policy Statement 4

Application Process

AQB Criteria sets forth the minimum education, experience and examination requirements applicable to all States for credentialing of real property appraisers (certified, licensed, trainee and supervisory). In the application process, States must, at a minimum, employ a reliable means of validating both education and experience credit claimed by applicants for credentialing.[54] Effective January 1, 2017, AQB Criteria also requires States to assess whether an applicant for a real property appraiser credential possesses a background that would not call into question public trust. The basis for such assessment shall be a matter left to the individual States, and must, at a minimum, be documented to the file.

A. Processing of Applications

States must process applications in a consistent, equitable and well-documented manner. Applications for credentialing should be timely processed by State agencies (within 90 calendar days after receipt of a completed application). Any delay in the processing of applications must be sufficiently documented in the file to explain the delay. States must ensure appraiser credential applications submitted for processing do not contain invalid examinations as established by AQB Criteria.

States must obtain and maintain sufficient relevant documentation pertaining to an application for issuance, upgrade and renewal of a credential so as to enable understanding of the facts and determinations in the matter and the reasons for those determinations. Files must include documentation of:

1. Application receipt date;
2. Education;
3. Experience;
4. Examination;
5. Continuing education; and
6. Any administrative or disciplinary action taken in connection with the application process, including results of any continuing education audit.

B. Qualifying Education for Initial or Upgrade Applications

States must verify that:

(1) The applicant's claimed education courses are acceptable under AQB Criteria; and

(2) the applicant has successfully completed courses consistent with AQB

[40] *See* Appendix B, *Glossary of Terms,* for the definition of ''disciplinary action.''

[41] *Id.*

[42] Title XI § 1118(a), 12 U.S.C. 3347.

[43] *Id.*

[44] Title XI § 1118(a), 12 U.S.C. 3347; Title XI § 1109(a), 12 U.S.C. 3338.

[45] *Id.*

[46] Title XI § 1118(a), 12 U.S.C. 3347.

[47] *Id.*

[48] Id.

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] Includes applications for credentialing of trainee, licensed, certified residential or certified general classifications.

Criteria for the appraiser credential sought.

States may not accept an affidavit for claimed qualifying education from applicants for any federally recognized credential.[55] States must maintain adequate documentation to support verification of education claimed by applicants.

C. Continuing Education for Reinstatement and Renewal Applications

1. Reinstatement Applications

States must verify that:

(1) The applicant's claimed continuing education courses are acceptable under AQB Criteria; and

(2) the applicant has successfully completed all continuing education consistent with AQB Criteria for reinstatement of the appraiser credential sought.

States may not accept an affidavit for continuing education claimed from applicants for reinstatement. Applicants for reinstatement must submit documentation to support claimed continuing education and States must maintain adequate documentation to support verification of claimed education.

2. Renewal Applications

States must ensure that continuing education courses for renewal of an appraiser credential are consistent with AQB Criteria and that continuing education hours required for renewal of an appraiser credential were completed consistent with AQB Criteria. States may accept affidavits for continuing education credit claimed for credential renewal so long as the State implements a reliable validation procedure that adheres to the following objectives and requirements:

a. Validation Objectives

The State's validation procedures must be structured to permit acceptable projections of the sample results to the entire population of subject appraisers. Therefore, the sample must include an adequate number of affidavits selected from each federally recognized credential level to have a reasonable chance of identifying appraisers who fail to comply with AQB Criteria, and the sample must include a statistically relevant representation of the appraiser population being sampled.

b. Minimum Standards

(1) Validation must include a prompt post-approval audit. Each audit of an affidavit for continuing education credit claimed must be completed within 60 business days from the date the credential is scheduled for renewal (based on the credential's expiration date). To ensure the audit is a statistically relevant representation, a sampling of credentials that were renewed after the scheduled expiration date and/or beyond the date the sample was selected, must also be audited to ensure that a credential holder may not avoid being selected for a continuing education audit by renewing early or late.

(2) States must audit the continuing education-related affidavit for each credentialed appraiser selected in the sampling procedure.

(3) States must determine that education courses claimed conform to AQB Criteria and that the appraiser successfully completed each course.

(4) When a State determines that an appraiser's continuing education does not meet AQB Criteria, and the appraiser has failed to complete any remedial action offered, the State must take appropriate action to suspend the appraiser's eligibility to perform appraisals in federally related transactions until such time that the requisite continuing education has been completed. The State must notify the ASC within five (5) business days after taking such action in order for the appraiser's record on the Appraiser Registry to be updated appropriately.

(5) If a State determines that a renewal applicant knowingly falsely attested to completing the continuing education required by AQB Criteria, the State must take appropriate administrative and/or disciplinary action and report such action, if deemed to be discipline, to the ASC within five (5) business days.

(6) If more than ten percent of the audited appraisers fail to meet the AQB Criteria, the State must take remedial action [56] to address the apparent weakness of its affidavit process. The ASC will determine on a case-by-case basis whether remedial actions are effective and acceptable.

(7) In the case of a renewal being processed after the credential's expiration date, but within the State's allowed grace period for a late renewal, the State must establish a reliable process to audit affidavits for continuing education (*e.g.,* requiring documentation of all continuing education).

c. Documentation

States must maintain adequate documentation to support its affidavit renewal and audit procedures and actions.

d. List of Education Courses

To promote accountability, the ASC encourages States accepting affidavits for continuing education credit claimed for credential renewal to require that the appraiser provide a list of courses to support the affidavit.

D. Experience for Initial or Upgrade Applications

States must ensure that appraiser experience logs conform to AQB Criteria. States may not accept an affidavit for experience credit claimed by applicants for any federally recognized credential.[57]

1. Validation Required

States must implement a reliable validation procedure to verify that each applicant's experience meets AQB Criteria, including but not limited to, being USPAP compliant and containing the required number of hours and months.

2. Validation Procedures, Objectives and Requirements

a. Selection of Work Product

States must determine the hours and time period claimed on the experience log are accurate and analyze a representative sample of the applicant's

[55] If a State accepts education-related affidavits from applicants for initial licensure in any non-certified classification, upon the appraiser's application to upgrade to a certified classification, the State must require documentation to support the appraiser's educational qualification for the certified classification, not just the incremental amount of education required to move from the non-certified to the certified classification. This requirement applies to all federally recognized credentials.

[56] For example:

(1) A State may conduct an additional audit using a higher percentage of audited appraisers; or

(2) a State may publicly post action taken to sanction non-compliant appraisers to increase awareness in the appraiser community of the importance of compliance with continuing education requirements.

[57] *See* Policy Statement 1D and E for discussion of ''federally recognized credential'' and ''non-federally recognized credential.'' If prior to July 1, 2013, a State accepted experience-related affidavits from applicants for initial licensure in any non-certified classification, upon the appraiser's application to upgrade to a certified classification, the State must require experience documentation to support the appraiser's qualification for the certified classification, not just the incremental amount of experience required to move from the non-certified to the certified classification. For example, if a State accepted an experience affidavit from an appraiser to support the appraiser's initial hours to qualify for the licensed classification, and subsequently that appraiser applies to upgrade to the certified residential classification, the State must require documentation to support the full experience hours required for the certified residential classification, not just the difference in hours between the two classifications.

work product for compliance with USPAP. Appraiser Program staff or State board members must select the work product to be reviewed; applicants may not have any role in selection of work product.

b. USPAP Compliance

For appraisal experience to be acceptable under AQB Criteria, it must be USPAP compliant. States must exercise due diligence in determining whether submitted documentation of experience or work product demonstrates compliance with USPAP. Persons analyzing work product for USPAP compliance must be knowledgeable about appraisal practice and USPAP, and States must be able to document how such persons are so qualified.

c. Determination of Experience Time Periods

When measuring the experience time period required by AQB Criteria, States must review each appraiser's experience log and note the dates of the first and last acceptable appraisal activity performed by the applicant. At a minimum, the time period spanned between those appraisal activities must comply with the AQB Criteria.

d. Supporting Documentation

States must maintain adequate documentation to support validation methods. The applicant's file, either electronic or paper, must include the information necessary to identify each appraisal assignment selected and analyzed by the State, notes, letters and/or reports prepared by the official(s) evaluating the report for USPAP compliance, and any correspondence exchanged with the applicant regarding the appraisals submitted. This supporting documentation may be discarded upon the completion of the first ASC Compliance Review performed after the credential issuance or denial for that applicant.

E. Examination

States must ensure that an appropriate AQB-approved qualifying examination is administered for each of the federally recognized appraiser classifications requiring an examination.

F. Summary of Requirements

Processing of Applications

1. States must process applications in a consistent, equitable and well-documented manner.[58]

2. States must ensure appraiser credential applications submitted for processing do not contain invalid examinations as established by AQB Criteria.[59]

3. States must obtain and maintain sufficient relevant documentation pertaining to an application for issuance, upgrade or renewal of a credential so as to enable understanding of the facts and determinations in the matter and the reasons for those determinations.[60]

Education

1. States must verify that the applicant's claimed education courses are acceptable under AQB Criteria, whether for initial credentialing, renewal, upgrade or reinstatement.[61]

2. States must verify that the applicant has successfully completed courses consistent with AQB Criteria for the appraiser credential sought, whether for initial credentialing, renewal, upgrade or reinstatement.[62]

3. States must maintain adequate documentation to support verification.[63]

4. States may not accept an affidavit for education claimed from applicants for any federally recognized credential.[64]

5. States may not accept an affidavit for continuing education claimed from applicants for reinstatement.[65]

6. States may accept affidavits for continuing education credit claimed for credential renewal so long as the State implements a reliable validation procedure.[66]

7. Audits of affidavits for continuing education credit claimed must be completed within sixty (60) business days from the date the credential is scheduled for renewal (based on the credential's expiration date).[67]

8. In the case of a renewal being processed after the credential's expiration date, but within the State's allowed grace period for a late renewal, the State must establish a reliable process to audit affidavits for continuing education (*e.g.,* requiring documentation of all continuing education).[68]

9. States are required to take remedial action when it is determined that more than ten percent of audited appraiser's affidavits for continuing education credit claimed fail to meet the minimum AQB Criteria.[69]

10. States are required to take appropriate administrative and/or disciplinary action when it is determined that an applicant knowingly falsely attested to completing continuing education.[70]

11. When a State determines that an appraiser's continuing education does not meet AQB Criteria, and the appraiser has failed to complete any remedial action offered, the State must take appropriate action to suspend the appraiser's eligibility to perform appraisals in federally related transactions until such time that the requisite continuing education has been completed. The State must notify the ASC within five (5) business days after taking such action in order for the appraiser's record on the Appraiser Registry to be updated appropriately.[71]

Experience

1. States may not accept an affidavit for experience credit claimed from applicants for any federally recognized credential.[72]

2. States must ensure that appraiser experience logs conform to AQB Criteria.[73]

3. States must use a reliable means of validating appraiser experience claims on all initial or upgrade applications for appraiser credentialing.[74]

4. States must select the work product to be analyzed for USPAP compliance on all initial or upgrade applications for appraiser credentialing.[75]

5. States must analyze a representative sample of the applicant's claimed hours and work product on all initial or upgrade applications for appraiser credentialing.[76]

6. States must exercise due diligence in determining whether submitted documentation of experience or work product demonstrates compliance with USPAP on all initial or upgrade applications for appraiser credentialing.[77]

7. Persons analyzing work product for USPAP compliance must be knowledgeable about appraisal practice and USPAP, and States must be able to document how such persons are so qualified.[78]

[58] Title XI § 1118(a), 12 U.S.C. 3347.

[59] Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

[60] Title XI § 1118(a), 12 U.S.C. 3347.

[61] *Id.*

[62] *Id.*

[63] Title XI § 1118(a), 12 U.S.C. 3347.

[64] *Id.*

[65] *Id.*

[66] Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

[67] Title XI § 1118(a), 12 U.S.C. 3347.

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

[74] Title XI § 1118(a), 12 U.S.C. 3347.

[75] Title XI § 1118(a), 12 U.S.C. 3347.

[76] *Id.*

[77] *Id.*

[78] *Id.*

Examination

1. States must ensure that an appropriate AQB-approved qualifying examination is administered for each of the federally recognized credentials requiring an examination.[79]

Policy Statement 5

Reciprocity

A. Reciprocity Policy

Title XI contemplates the reasonably free movement of certified and licensed appraisers across State lines. The ASC monitors Appraiser Programs for compliance with the reciprocity provision of Title XI as amended by the Dodd-Frank Act.[80] Title XI requires that in order for a State's appraisers to be eligible to perform appraisals for federally related transactions, the State must have a policy in place for issuing reciprocal credentials IF:

a. The appraiser is coming from a State (Home State) that is ''in compliance'' with Title XI as determined by the ASC; AND

b. (i) the appraiser holds a valid credential from the Home State; AND

(ii) the credentialing requirements of the Home State [81] meet or exceed those of the reciprocal credentialing State (Reciprocal State).[82]

An appraiser relying on a credential from a State that does not have such a policy in place may not perform appraisals for federally related transactions. A State may be more lenient in the issuance of reciprocal credentials by implementing a more open door policy. However, States cannot impose additional impediments to obtaining reciprocal credentials.

For purposes of implementing the reciprocity policy, States with an ASC Finding [83] of ''Poor'' do not satisfy the ''in compliance'' provision for reciprocity. Therefore, States are not required to recognize, for purposes of granting a reciprocal credential, the license or certification of an appraiser credentialed in a State with an ASC Finding of ''Poor.''

B. Application of Reciprocity Policy

The following examples illustrate application of reciprocity in a manner that complies with Title XI. The examples refer to the reciprocity policy requiring issuance of a reciprocal credential IF:

a. The appraiser is coming from a State that is ''in compliance''; AND

b. (i) the appraiser holds a valid credential from that State; AND

(ii) the credentialing requirements of that State (as they currently exist) meet or exceed those of the reciprocal credentialing State (as they currently exist).

Example 1. Additional Requirements Imposed on Applicants

State A requires that prior to issuing a reciprocal credential the applicant must certify that disciplinary proceedings are not pending against that applicant in any jurisdiction. Under b(ii) above, if this requirement is not imposed on all of its own applicants for credentialing, STATE A cannot impose this requirement on applicants for reciprocal credentialing.

Example 2. Credentialing Requirements

An appraiser is seeking a reciprocal credential in STATE A. The appraiser holds a valid credential in STATE Z, even though it was issued in 2007. This satisfies b(i) above. However, in order to satisfy b(ii), STATE A would evaluate STATE Z's credentialing requirements as they currently exist to determine whether they meet or exceed STATE A's current requirements for credentialing.

Example 3. Multiple State Credentials

An appraiser credentialed in several States is seeking a reciprocal credential in State A. That appraiser's initial credentials were obtained through examination in the original credentialing State and through reciprocity in the additional States. State A requires the applicant to provide a ''letter of good standing'' from the State of original credentialing as a condition of granting a reciprocal credential. State A may not impose such a requirement since Title XI does not distinguish between credentials obtained by examination and credentials obtained by reciprocity for purposes of granting reciprocal credentials.

C. Appraiser Compliance Requirements

In order to maintain a credential granted by reciprocity, appraisers must comply with the credentialing State's policies, rules and statutes governing appraisers, including requirements for payment of certification and licensing fees, as well as continuing education.[84]

D. Well-Documented Application Files

States must obtain and maintain sufficient relevant documentation pertaining to an application for issuance of a credential by reciprocity so as to enable understanding of the facts and determinations in the matter and the reasons for those determinations.

E. Summary of Requirements

1. States must have a reciprocity policy in place for issuing a reciprocal credential to an appraiser from another State under the conditions specified in Title XI in order for the State's appraisers to be eligible to perform appraisals for federally related transactions.[85]

2. States may be more lenient in the issuance of reciprocal credentials by implementing a more open door policy; however, States may not impose additional impediments to issuance of reciprocal credentials.[86]

3. States must obtain and maintain sufficient relevant documentation pertaining to an application for issuance of a credential by reciprocity so as to enable understanding of the facts and determinations in the matter and the reasons for those determinations.[87]

Policy Statement 6

Education

AQB Criteria sets forth minimum requirements for appraiser education courses. This Policy Statement addresses proper administration of education requirements for compliance with AQB Criteria. (For requirements concerning qualifying and continuing education in the application process, see Policy Statement 4, *Application Process*.)

A. Course Approval

States must ensure that approved appraiser education courses are consistent with AQB Criteria and maintain sufficient documentation to support that approved appraiser education courses conform to AQB Criteria.

States should ensure that course approval expiration dates assigned by the State coincide with the endorsement period assigned by the AQB's Course Approval Program or any other AQB-approved organization providing approval of course design and delivery. States may not continue to accept AQB approved courses after the AQB's expiration date unless the course content is reviewed and approved by the State.

[79] Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

[80] Title XI § 1122(b), 12 U.S.C. 3351.

[81] As they exist at the time of application for reciprocal credential.

[82] *Id.*

[83] *See* Appendix A, *Compliance Review Process,* for an explanation of ASC Findings.

[84] A State may offer to accept continuing education (CE) for a renewal applicant who has satisfied CE requirements of a home State; however, a State may not impose this as a requirement for renewal, thereby imposing a requirement for the renewal applicant to retain a home State credential.

[85] Title XI § 1122(b), 12 U.S.C. 3351.

[86] *Id.*

[87] Title XI § 1118(a), 12 U.S.C. 3347.

States should ensure that educational providers are afforded equal treatment in all respects.[88] States are encouraged to accept courses approved by the AQB's Course Approval Program.

B. Distance Education

States must ensure that distance education courses meet AQB Criteria and that the delivery mechanism for distance education courses offered by a non-academic provider, including secondary providers, has been approved by an AQB-approved organization providing approval of course design and delivery.

States may not continue to accept courses after the AQB-approved organization's approval of course design and delivery date has expired.

C. Summary of Requirements

1. States must ensure that appraiser education courses are consistent with AQB Criteria.[89]

2. States must maintain sufficient documentation to support that approved appraiser courses conform to AQB Criteria.[90]

3. States must ensure the delivery mechanism for distance education courses offered by a non-academic provider, including secondary providers, has been approved by an AQB-approved organization providing approval of course design and delivery.[91]

Policy Statement 7

State Agency Enforcement

A. State Agency Regulatory Program

Title XI requires the ASC to monitor the States for the purpose of determining whether the State processes complaints and completes investigations in a reasonable time period, appropriately disciplines sanctioned appraisers and maintains an effective regulatory program.[92]

B. Enforcement Process

States must ensure that the system for processing and investigating complaints[93] and sanctioning appraisers is administered in a timely, effective, consistent, equitable, and well-documented manner.

1. Timely Enforcement

States must process complaints of appraiser misconduct or wrongdoing in a timely manner to ensure effective supervision of appraisers, and when appropriate, that incompetent or unethical appraisers are not allowed to continue their appraisal practice. Absent special documented circumstances, final administrative decisions regarding complaints must occur within one year (12 months) of the complaint filing date. Special documented circumstances are those extenuating circumstances (fully documented) beyond the control of the State agency that delays normal processing of a complaint such as: Complaints involving a criminal investigation by a law enforcement agency when the investigative agency requests that the State refrain from proceeding; final disposition that has been appealed to a higher court; documented medical condition of the respondent; ancillary civil litigation; and complex cases that involve multiple individuals and reports. Such special documented circumstances also include those periods when State rules require referral of a complaint to another State entity for review and the State agency is precluded from further processing of the complaint until it is returned. In that circumstance, the State agency should document the required referral and the time period during which the complaint was not under its control or authority.

2. Effective Enforcement

Effective enforcement requires that States investigate allegations of appraiser misconduct or wrongdoing, and if allegations are proven, take appropriate disciplinary or remedial action. Dismissal of an alleged violation solely due to an ''absence of harm to the public'' is inconsistent with Title XI. Financial loss or the lack thereof is not an element in determining whether there is a violation. The extent of such loss, however, may be a factor in determining the appropriate level of discipline.

Persons analyzing complaints for USPAP compliance must be knowledgeable about appraisal practice and USPAP and States must be able to document how such persons are so qualified.

States must analyze each complaint to determine whether additional violations, especially those relating to USPAP, should be added to the complaint.

Closure of a complaint based solely on a State's statute of limitations that results in dismissal of a complaint without the investigation of the merits of the complaint is inconsistent with the Title XI requirement that States assure effective supervision of the activities of credentialed appraisers.[94]

3. Consistent and Equitable Enforcement

Absent specific documented facts or considerations, substantially similar cases within a State should result in similar dispositions.

4. Well-Documented Enforcement

States must obtain and maintain sufficient relevant documentation pertaining to a matter so as to enable understanding of the facts and determinations in the matter and the reasons for those determinations.

a. Complaint Files

Complaint files must:

- Include documentation outlining the progress of the investigation;
- demonstrate that appraisal reports are analyzed and any USPAP violations are identified and considered, whether or not they were the subject of the complaint;
- include rationale for the final outcome of the case (*i.e.,* dismissal or imposition of discipline);
- include documentation explaining any delay in processing, investigation or adjudication;
- contain documentation that all ordered or agreed upon discipline, such as probation, fine, or completion of education is tracked and that completion of all terms is confirmed; and
- be organized in a manner that allows understanding of the steps taken throughout the complaint, investigation, and adjudicatory process.

b. Complaint Logs

States must track all complaints using a complaint log. The complaint log must record all complaints, regardless of their procedural status in the investigation and/or resolution process, including complaints pending before the State board, Office of the Attorney General, other law enforcement agencies, and/or offices of administrative hearings.

The complaint log must include the following information (States are strongly encouraged to maintain this

[88] For example:

(1) Consent agreements requiring additional education should not specify a particular course provider when there are other providers on the State's approved course listing offering the same course; and

(2) courses from professional organizations should not be automatically approved and/or approved in a manner that is less burdensome than the State's normal approval process.

[89] Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

[90] Title XI § 1118(a), 12 U.S.C. 3347.

[91] Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria.*

[92] Title XI § 1118(a), 12 U.S.C. 3347.

[93] *See* Appendix B, *Glossary of Terms,* for the definition of ''complaint.''

[94] Title XI § 1117, 12 U.S.C. 3346.

information in an electronic, sortable format):

1. Case number
2. Name of respondent
3. Actual date the complaint was received by the State
4. Source of complaint (*e.g.,* consumer, lender, AMC, bank regulator, appraiser, hotline) or name of complainant
5. Current status of the complaint
6. Date the complaint was closed (*e.g.,* final disposition by the administrative hearing agency, Office of the Attorney General, State Appraiser Regulatory Agency or Court of Appeals)
7. Method of disposition (*e.g.,* dismissal, letter of warning, consent order, final order)
8. Terms of disposition (*e.g.,* probation, fine, education, mentorship)
9. In the case of open complaints, the most recent activity and date thereof (*e.g.,* respondent's response to complaint received, contacted AG for a status update, Board voted to offer a consent agreement)

C. Summary of Requirements

1. States must maintain relevant documentation to enable understanding of the facts and determinations in the matter and the reasons for those determinations.[95]

2. States must resolve all complaints filed against appraisers within one year (12 months) of the complaint filing date, except for special documented circumstances.[96]

3. States must ensure that the system for processing and investigating complaints and sanctioning appraisers is administered in an effective, consistent, equitable, and well-documented manner.[97]

4. States must track complaints of alleged appraiser misconduct or wrongdoing using a complaint log.[98]

5. States must appropriately document enforcement files and include rationale.[99]

6. States must regulate, supervise and discipline their credentialed appraisers.[100]

7. Persons analyzing complaints for USPAP compliance must be knowledgeable about appraisal practice and USPAP, and States must be able to document how such persons are so qualified.[101]

[95] Title XI § 1118(a), 12 U.S.C. 3347.

[96] *Id.*

[97] *Id.*

[98] *Id.*

[99] *Id.*

[100] *Id.*

[101] *Id.*

Part B: AMC Program

Policy Statement 8

Statutes, Regulations, Policies and Procedures Governing State AMC Programs

A. Participating States and ASC Oversight

States are not required to establish an AMC registration and supervision program. For those States electing to participate in the registration and supervision of AMCs (participating States), ASC staff will informally monitor the State's progress to implement the requirements of Title XI and the AMC Rule.[102] Formal ASC oversight of State AMC Programs will begin at the next regularly scheduled Compliance Review of a State after the following occurs:

1. A State decides to be a participating State pursuant to the AMC Rule;

2. A State establishes an AMC program in accordance with the AMC Rule; and

3. A State begins reporting to the National Registry of AMCs (AMC Registry).

Formal ASC oversight will consist of evaluating AMC Programs in participating States during the Compliance Review process to determine compliance or lack thereof with Title XI, and to assess implementation of the minimum requirements for State registration and supervision of AMCs as established by the AMC Rule. Upon expiration of the statutory implementation period (see Policy Statement 11, *Statutory Implementation Period*), Compliance Reviews will include ASC oversight of AMC Programs for any participating State.

B. Relation to State Law

Participating States may establish requirements in addition to those in the AMC Rule.

Participating States may also have a more expansive definition of AMCs.[103] However, if a participating State has a more expansive definition of AMCs than in Title XI (thereby encompassing State regulation of AMCs that are not within the Title XI definition of AMC), the State must ensure such AMCs are identified as such in the State database, just as States currently do for non-federally recognized credentials or designations. Only those AMCs that meet the Federal definition of AMC will be eligible to be on the AMC Registry.

C. Funding and Staffing

The Dodd-Frank Act amended Title XI to require the ASC to determine whether participating States have sufficient funding and staffing to meet their Title XI requirements. Compliance with this provision requires that a State must provide its AMC Program with funding and staffing sufficient to carry out its Title XI-related duties. The ASC evaluates the sufficiency of funding and staffing as part of its review of all aspects of an AMC Program's effectiveness, including the adequacy of State boards, committees, or commissions responsible for carrying out Title XI-related duties.

D. Minimum Requirements for Registration and Supervision of AMCs as Established by the AMC Rule

1. AMC Registration and Supervision

If a State chooses to participate in the registration and supervision of AMCs in accordance with the AMC Rule, the State will be required to comply with the minimum requirements set forth in the AMC Rule. States should refer to the AMC Rule for compliance requirements [104] as this Policy Statement merely summarizes what the AMC Rule requires of participating States.

(a) The AMC Rule includes requirements for participating States to establish and maintain within the State appraiser certifying and licensing agency an AMC Program with the legal authority and mechanisms to:

(1) Review and approve or deny AMC initial registration applications and/or renewals for registration;

(2) Examine records of AMCs and require AMCs to submit information;

(3) Verify that appraisers on AMCs' panels hold valid State credentials;

[102] Title XI § 1103(a)(1)(B), 12 U.S.C. 3332. AMC Rule means the interagency final rule on minimum requirements for State registration and supervision of AMCs (12 CFR 34.210–34.216; 12 CFR 225.190–225.196; 12 CFR 323.8–323.14; 12 CFR 1222.20–1222.26.

[103] Title XI as amended by the Dodd-Frank Act defines ''appraisal management company'' to mean, in part, an external third party that oversees a network or panel of more than 15 appraisers (State certified or licensed) in a State, or 25 or more appraisers nationally (two or more States) within a given year. (12 U.S.C. 3350(11)). Title XI as amended by the Dodd-Frank Act also allows States to adopt requirements in addition to those in the AMC Rule. (12 U.S.C. 3353(b)). For example, States may decide to supervise entities that provide appraisal management services, but do not meet the size thresholds of the Title XI definition of AMC. If a State has a more expansive regulatory framework that covers entities that provide appraisal management services but do not meet the Title XI definition of AMC, the State should only submit information regarding AMCs meeting the Title XI definition to the AMC Registry.

[104] *See* footnote 102.

(4) Conduct investigations of AMCs to assess potential violations of appraisal-related laws, regulations, or orders;

(5) Discipline, suspend, terminate, or deny renewal of the registration of an AMC that violates appraisal-related laws, regulations, or orders; and

(6) Report an AMC's violation of appraisal-related laws, regulations, or orders, as well as disciplinary and enforcement actions and other relevant information about an AMC's operations, to the ASC.

(b) The AMC Rule includes requirements for participating States to impose requirements on AMCs that are not Federally regulated AMCs [105] to:

(1) Register with and be subject to supervision by the State appraiser certifying and licensing agency;

(2) Engage only State-certified or State-licensed appraisers for federally related transactions in conformity with any federally related transaction regulations;

(3) Establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type;

(4) Direct the appraiser to perform the assignment in accordance with USPAP; and

(5) Establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of section 129E(a) through (i) of the Truth in Lending Act, 15 U.S.C. 1639e(a) through (i), and regulations thereunder.

2. Ownership Limitations for State-Registered AMCs

A. Appraiser Certification or Licensing of Owners

An AMC subject to State registration shall not be registered by a State or included on the AMC Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause,[106] as determined by the State appraiser certifying and licensing agency. A State's process for review could, for example, be by questionnaire, or affidavit, or background screening, or otherwise. States must document to the file the State's method of review and the result.

B. Good Moral Character of Owners

An AMC shall not be registered by a State if any person that owns more than 10 percent of the AMC—

(1) Is determined by the State not to have good moral character; or

(2) Fails to submit to a background investigation carried out by the State.

A State's process for review could, for example, be by questionnaire, or affidavit, or background screening, or otherwise. The ASC would expect written documentation of the State's method of review and the result.

3. Requirements for Federally Regulated AMCs

Participating States are not required to identify Federally regulated AMCs [107] operating in their States, but rather the Federal financial institution regulatory agencies are responsible for requiring such AMCs to identify themselves to participating States and report required information.

A Federally regulated AMC shall not be included on the AMC Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the ASC.

E. Summary of Requirements

1. Participating States must establish and maintain an AMC Program with the legal authority and mechanisms consistent with the AMC Rule.[108]

2. Participating States must impose requirements on AMCs consistent with the AMC Rule.[109]

3. Participating States must enforce and document ownership limitations for State-registered AMCs.[110]

4. Only those AMCs that meet the Federal definition of AMC will be eligible to be on the AMC Registry. Therefore, participating States that have a more expansive definition of AMCs than in the AMC Rule must ensure such non-Federally recognized AMCs are identified as such in the State database.[111]

5. States must have funding and staffing sufficient to carry out their Title XI-related duties.[112]

Policy Statement 9

National Registry of AMCs (AMC Registry)

A. Requirements for the AMC Registry

Title XI requires the ASC to maintain the AMC Registry of AMCs that are either registered with and subject to supervision of a participating State or are operating subsidiaries of a Federally regulated financial institution.[113] Title XI further requires the States to transmit to the ASC: (1) Reports on a timely basis of supervisory activities involving AMCs, including investigations resulting in disciplinary action being taken; and (2) the registry fee as set by the ASC [114] from AMCs that are either registered with a participating State or are Federally regulated AMCs.[115]

As with appraiser registry fees, Title XI, § 1109(a)(4)(b) requires the AMC registry fee to be collected by each participating State and transmitted to the ASC. Therefore, as with appraisers, an AMC will pay a registry fee in each participating State in which the AMC operates. As with appraisers, an AMC operating in multiple participating States will pay a registry fee in multiple States in order to be on the AMC Registry for each State.

States must notify the ASC as soon as practicable if an AMC listed on the AMC Registry is no longer registered with or operating in the State. The ASC extranet application allows States to update their AMC information directly to the AMC Registry.

B. Registry Fee and Invoicing Policies

Each State must remit to the ASC the annual registry fee, as set by the ASC, for AMCs to be listed on the AMC Registry. Requests to prorate refunds or partial-year registrations will not be granted. If a State collects multiple-year fees for multiple-years, the State may choose to remit to the ASC the total amount of the multiple-year registry fees

[105] ''Federally regulated AMCs,'' meaning AMCs that are subsidiaries owned and controlled by an insured depository institution or an insured credit union and regulated by a Federal financial institutions regulatory agency, are not required to register with the State (Title XI § 1124(c), 12 U.S.C. 3353(c)).

[106] An AMC subject to State registration is not barred from being registered by a State or included on the AMC Registry of AMCs if the license or certificate of the appraiser with an ownership interest was not revoked for a substantive cause and has been reinstated by the State or States in which the appraiser was licensed or certified. (12 CFR 34.210–34.216; 12 CFR 225.190–225.196; 12 CFR 323.8 –323.14; 12 CFR 1222.20–1222.26).

[107] *See* footnote 105.

[108] 12 CFR 34.210–34.216; 12 CFR 225.190–225.196; 12 CFR 323.8–323.14; 12 CFR 1222.20–1222.26.

[109] *Id.*

[110] *Id.*

[111] Title XI § 1118(b), 12 U.S.C. 3347.

[112] *Id.*

[113] Title XI § 1103(a)(6), 12 U.S.C. 3332.

[114] Title XI § 1109(a)(4), 12 U.S.C. 3338.

[115] Title XI § 1109(a)(3) and (4), 12 U.S.C. 3338.

or the equivalent annual fee amount. The ASC will, however, record AMCs on the AMC Registry only for the number of years for which the ASC has received payment. States must reconcile and pay registry invoices in a timely manner (45 calendar days after receipt of the invoice).

C. Reporting Requirements

State agencies must report all disciplinary action [116] taken against an AMC to the ASC via the extranet application within 5 business days after the disciplinary action is final, as determined by State law. States not reporting via the extranet application must provide, in writing to the ASC, a description of the circumstances preventing compliance with this requirement. For the most serious disciplinary actions (*e.g.,* any action that interrupts an AMCs ability to provide appraisal management services), the AMCs status must be changed on the AMC Registry to ''inactive.'' A Federally regulated AMC operating in a State must report to the State the information required to be submitted by the State to the ASC, pursuant to the ASC's policies regarding the determination of the AMC Registry fee.

D. Access to AMC Registry Data

The ASC Web site provides free access to the public portion of the AMC Registry at *www.asc.gov.* The public portion of the AMC Registry data may be downloaded using predefined queries or user-customized applications.

Access to the full database, which includes non-public data (*e.g.,* certain disciplinary action information), is restricted to authorized State and Federal regulatory agencies. States must designate a senior official, such as an executive director, to serve as the State's Authorized Registry Official, and provide to the ASC, in writing, information regarding the designated Authorized Registry Official. States must ensure that the authorization information provided to the ASC is updated and accurate.

E. Summary of Requirements

1. States must reconcile and pay registry invoices in a timely manner (45 calendar days after receipt of the invoice).[117]

2. State agencies must report all disciplinary action taken against an AMC to the ASC via the extranet application within 5 business days after the disciplinary action is final, as determined by State law.[118]

3. States not reporting via the extranet application must provide, in writing to the ASC, a description of the circumstances preventing compliance with this requirement.[119]

4. For the most serious disciplinary actions (*e.g.,* any action that interrupts an AMC's ability to provide appraisal management services), the AMC's status must be changed on the AMC Registry to ''inactive.'' [120]

5. States must notify the ASC as soon as practicable if an AMC listed on the AMC Registry is no longer registered with or operating in the State.

6. States must designate a senior official, such as an executive director, who will serve as the State's Authorized Registry Official, and provide to the ASC, in writing, information regarding the selected Authorized Registry Official, and any individual(s) authorized to act on their behalf.[121]

7. States using the ASC extranet application must implement written policies to ensure that all personnel with access to the AMC Registry protect the right of access and not share the User Name or Password with anyone.[122]

8. States must ensure the accuracy of all data submitted to the AMC Registry.[123]

Policy Statement 10

State Agency Enforcement

A. State Agency Regulatory Program

Title XI requires the ASC to monitor the States for the purpose of determining whether the State processes complaints and completes investigations in a reasonable time period, appropriately disciplines sanctioned AMCs and maintains an effective regulatory program.[124]

B. Enforcement Process

States must ensure that the system for processing and investigating complaints [125] and sanctioning AMCs is administered in a timely, effective, consistent, equitable, and well-documented [126] manner.

1. Timely Enforcement

States must process complaints against AMCs in a timely manner to ensure effective supervision of AMCs. Absent special documented circumstances, final administrative decisions regarding complaints must occur within one year (12 months) of the complaint filing date. Special documented circumstances are those extenuating circumstances (fully documented) beyond the control of the State agency that delays normal processing of a complaint such as: Complaints involving a criminal investigation by a law enforcement agency when the investigative agency requests that the State refrain from proceeding; final disposition that has been appealed to a higher court; documented medical condition of the respondent; ancillary civil litigation; and complex fraud cases that involve multiple individuals and reports. Such special documented circumstances also include those periods when State rules require referral of a complaint to another State entity for review and the State agency is precluded from further processing of the complaint until it is returned. In that circumstance, the State agency should document the required referral and the time period during which the complaint was not under its control or authority.

2. Effective Enforcement

Effective enforcement requires that States investigate complaints, and if allegations are proven, take appropriate disciplinary or remedial action.

3. Consistent and Equitable Enforcement

Absent specific documented facts or considerations, substantially similar cases within a State should result in similar dispositions.

4. Well-Documented Enforcement

States must obtain and maintain sufficient relevant documentation pertaining to a matter so as to enable understanding of the facts and determinations in the matter and the reasons for those determinations.

a. Complaint Files

Complaint files must:

- Include documentation outlining the progress of the investigation;
- include rationale for the final outcome of the case (*i.e.,* dismissal or imposition of discipline);
- include documentation explaining any delay in processing, investigation or adjudication;
- contain documentation that all ordered or agreed upon discipline is tracked and that completion of all terms is confirmed; and
- be organized in a manner that allows understanding of the steps taken

[116] *See* Appendix B, *Glossary of Terms,* for the definition of ''disciplinary action.''

[117] Title XI § 1118(a), 12 U.S.C. 3347; Title XI § 1109(a), 12 U.S.C. 3338.

[118] Title XI § 1118(a), 12 U.S.C. 3347.

[119] *Id.*

[120] *Id.*

[121] *Id.*

[122] *Id.*

[123] *Id.*

[124] Title XI § 1118(a), 12 U.S.C. 3347.

[125] *See* Appendix B, *Glossary of Terms,* for the definition of ''complaint.''

[126] *See* Appendix B, *Glossary of Terms,* for the definition of ''well-documented.''

throughout the complaint, investigation, and adjudicatory process.

b. Complaint Logs

States must track all complaints using a complaint log. The complaint log must record all complaints, regardless of their procedural status in the investigation and/or resolution process, including complaints pending before the State board, Office of the Attorney General, other law enforcement agencies, and/or offices of administrative hearings. The complaint log must include the following information (States are strongly encouraged to maintain this information in an electronic, sortable format):

1. Case number
2. Name of respondent
3. Actual date the complaint was received by the State
4. Source of complaint (*e.g.,* consumer, lender, AMC, bank regulator, appraiser, hotline) or name of complainant
5. Current status of the complaint
6. Date the complaint was closed (*e.g.,* final disposition by the administrative hearing agency, Office of the Attorney General, State AMC Program or Court of Appeals)
7. Method of disposition (*e.g.,* dismissal, letter of warning, consent order, final order)
8. Terms of disposition (*e.g.,* probation, fine)
9. In the case of open complaints, the most recent activity and date thereof (*e.g.* respondent's response to complaint received, contacted Attorney General for a status update, Board voted to offer a consent agreement)

C. Summary of Requirements

1. States must maintain relevant documentation to enable understanding of the facts and determinations in the matter and the reasons for those determinations.[127]

2. States must resolve all complaints filed against appraisers within one year (12 months) of the complaint filing date, except for special documented circumstances.[128]

3. States must ensure that the system for processing and investigating complaints and sanctioning AMCs is administered in an effective, consistent, equitable, and well-documented manner.[129]

4. States must track complaints of alleged appraiser misconduct or wrongdoing using a complaint log.[130]

5. States must appropriately document enforcement files and include rationale.[131]

Policy Statement 11

Statutory Implementation Period

Title XI and the AMC Rule set forth the statutory implementation period.[132] The AMC Rule was effective on August 9, 2015. As of 36 months from that date (August 9, 2018), an AMC may not provide appraisal management services for a federally related transaction in a non-participating State unless the AMC is a Federally regulated AMC. Appraisal management services may still be provided for federally related transactions in non-participating States by individual appraisers, by AMCs that are below the minimum statutory panel size threshold, and as noted, by Federally regulated AMCs.

The ASC, with the approval of the Federal Financial Institutions Examination Council (FFIEC), may extend this statutory implementation period for an additional 12 months if the ASC makes a finding that a State has made substantial progress toward implementing a registration and supervision program for AMCs that meets the standards of Title XI.[133]

Part C: Interim Sanctions

Policy Statement 12

Interim Sanctions

A. Authority

Title XI grants the ASC authority to impose sanctions on a State that fails to have an effective Appraiser or AMC Program.[134] The ASC may remove a State credentialed appraiser or a registered AMC from the Appraiser or AMC Registry on an interim basis, not to exceed 90 days, pending State agency action on licensing, certification, registration and disciplinary proceedings as an alternative to or in advance of a non-recognition proceeding.[135] In determining whether an Appraiser or AMC Program is effective, the ASC shall conduct an analysis as required by Title XI. An ASC Finding of Poor on the Compliance Review Report [136] issued to a State at the conclusion of an ASC Compliance Review may trigger an analysis by the ASC for potential interim sanction(s). The following provisions apply to the exercise by the ASC of its authority to impose interim sanction(s) on State agencies.

B. Opportunity To Be Heard or Correct Conditions

The ASC shall provide the State agency with:

1. Written notice of intention to impose an interim sanction; and

2. opportunity to respond or to correct the conditions causing such notice to the State. Notice and opportunity to respond or correct the conditions shall be in accordance with section C, *Procedures.*

C. Procedures

This section prescribes the ASC's procedures which will be followed in arriving at a decision by the ASC to impose an interim sanction against a State agency.

1. Notice

The ASC shall provide a written Notice of intention to impose an interim sanction (Notice) to the State agency. The Notice shall contain the ASC's analysis as required by Title XI of the State's licensing and certification of appraisers, the registration of AMCs, the issuance of temporary licenses and certifications for appraisers, the receiving and tracking of submitted complaints against appraisers and AMCs, the investigation of complaints, and enforcement actions against appraisers and AMCs.[137] The ASC shall verify the State's date of receipt, and publish both the Notice and the State's date of receipt in the **Federal Register**.

2. State Agency Response

Within 15 days of receipt of the Notice, the State may submit a response to the ASC's Executive Director. Alternatively, a State may submit a Notice Not to Contest with the ASC's Executive Director. The filing of a Notice Not to Contest shall not constitute a waiver of the right to a judicial review of the ASC's decision, findings and conclusions. Failure to file a Response within 15 days shall constitute authorization for the ASC to find the facts to be as presented in the Notice and analysis. The ASC, for good cause shown, may permit the filing of a Response after the prescribed time.

3. Briefs, Memoranda and Statements

Within 45 days after the date of receipt by the State agency of the Notice as published in the **Federal Register**, the State agency may file with the ASC's Executive Director a written brief,

[127] Title XI § 1118(a), 12 U.S.C. 3347.

[128] *Id.*

[129] *Id.*

[130] *Id.*

[131] *Id.*

[132] Title XI § 1124(f)(1), 12 U.S.C. 3353 and 12 CFR 34.210–34.216; 12 CFR 225.190–225.196; 12 CFR 323.8–323.14; 12 CFR 1222.20–1222.26.

[133] Title XI § 1124(f)(2), 12 U.S.C. 3353.

[134] Title XI § 1118(a), 12 U.S.C. 3347.

[135] *Id.*

[136] *See Appendix A—Compliance Review Process.*

[137] Title XI § 1118(a), 12 U.S.C. 3347.

memorandum or other statement providing factual data and policy and legal arguments regarding the matters set out in the Notice and analysis.

4. Oral Presentations to the ASC

Within 45 days after the date of receipt by the State agency of the Notice as published in the **Federal Register**, the State may file a request with the ASC's Executive Director to make oral presentation to the ASC. If the State has filed a request for oral presentation, the matter shall be heard within 45 days. An oral presentation shall be considered as an opportunity to offer, emphasize and clarify the facts, policies and laws concerning the proceeding, and is not a Meeting [138] of the ASC. On the appropriate date and time, the State agency will make the oral presentation before the ASC. Any ASC member may ask pertinent questions relating to the content of the oral presentation. Oral presentations will not be recorded or otherwise transcribed. Summary notes will be taken by ASC staff and made part of the record on which the ASC shall decide the matter.

5. Conduct of Interim Sanction Proceedings

(a) Written Submissions

All aspects of the proceeding shall be conducted by written submissions, with the exception of oral presentations allowed under subsection 4 above.

(b) Disqualification

An ASC member who deems himself or herself disqualified may at any time withdraw. Upon receipt of a timely and sufficient affidavit of personal bias or disqualification of such member, the ASC will rule on the matter as a part of the record.

(c) Authority of ASC Chairperson

The Chairperson of the ASC, in consultation with other members of the ASC whenever appropriate, shall have complete charge of the proceeding and shall have the duty to conduct it in a fair and impartial manner and to take all necessary action to avoid delay in the disposition of proceedings.

(d) Rules of Evidence

Except as is otherwise set forth in this section, relevant material and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act (5 U.S.C. 551–559) and other applicable law.

6. Decision of the ASC and Judicial Review

Within 90 days after the date of receipt by the State agency of the Notice as published in the **Federal Register**, or in the case of oral presentation having been granted, within 30 days after presentation, the ASC shall issue a final decision, findings and conclusions and shall publish the decision promptly in the **Federal Register**. The final decision shall be effective on issuance. The ASC's Executive Director shall ensure prompt circulation of the decision to the State agency. A final decision of the ASC is a prerequisite to seeking judicial review.

7. Computing Time

Time computation is based on business days. The date of the act, event or default from which the designated period of time begins to run is not included. The last day is included unless it is a Saturday, Sunday, or Federal holiday, in which case the period runs until the end of the next day which is not a Saturday, Sunday or Federal holiday.

8. Documents and Exhibits

Unless otherwise provided by statute, all documents, papers and exhibits filed in connection with any proceeding, other than those that may be withheld from disclosure under applicable law, shall be placed by the ASC's Executive Director in the proceeding's file and will be available for public inspection and copying.

9. Judicial Review

A decision of the ASC under this section shall be subject to judicial review. The form of proceeding for judicial review may include any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction in a court of competent jurisdiction.[139]

Appendices

Appendix A—Compliance Review Process

The ASC monitors State Appraiser and AMC Programs for compliance with Title XI. The monitoring of State Programs is largely accomplished through on-site visits known as a Compliance Review (Review). A Review is conducted over a two- to four-day period, and is scheduled to coincide with a meeting of the Program's decision-making body whenever possible. ASC staff reviews the Appraiser Program and the seven compliance areas addressed in Policy Statements 1 through 7. ASC staff reviews a participating State's AMC Program and the four compliance areas addressed in Policy Statements 8 through 11. Sufficient documentation demonstrating compliance must be maintained by a State and made available for inspection during the Review. ASC staff reviews a sampling of documentation in each of the compliance areas. The sampling is intended to be representative of a State Program in its entirety.

Based on the Review, ASC staff provides the State with an ASC staff report for the Appraiser Program, and if applicable, an ASC staff report for the AMC Program, detailing preliminary findings. The State is given 60 days to respond to the ASC staff report(s). At the conclusion of the Review, a Compliance Review Report (Report) is issued to the State for the Appraiser Program, and if applicable, a Report is also issued for the AMC Program, with the ASC Finding on each Program's overall compliance, or lack thereof, with Title XI. Deficiencies resulting in non-compliance in any of the compliance areas are cited in the Report. ''Areas of Concern'' which potentially expose a Program to compliance issues in the future are also addressed in the Report. The ASC's final disposition is based upon the ASC staff report, the State's response and staff's recommendation.

The following chart provides an explanation of the ASC Findings and rating criteria for each ASC Finding category. The ASC Finding places particular emphasis on whether the State is maintaining an effective regulatory Program in compliance with Title XI.

ASC finding	Rating criteria	Review cycle *
Excellent	• State meets all Title XI mandates and complies with requirements of ASC Policy Statements. • State maintains a strong regulatory Program. • Very low risk of Program failure.	Two-year.

[138] The proceeding is more in the nature of a Briefing not subject to open meeting requirements. The presentation is an opportunity for the State to brief the ASC—to offer, emphasize and clarify the facts, policies and laws concerning the proceeding, and for the ASC members to ask questions.

[139] 5 U.S.C. 703—*Form and venue of proceeding.* Additional consideration is given to the fact that this stage of the proceeding is pre-decisional.

ASC finding	Rating criteria	Review cycle *
Good	• State meets the majority of Title XI mandates and complies with the majority of ASC Policy Statement requirements. • Deficiencies are minor in nature. • State is adequately addressing deficiencies identified and correcting them in the normal course of business. • State maintains an effective regulatory Program. • Low risk of Program failure.	Two-year.
Needs Improvement	• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements. • Deficiencies are material but manageable and if not corrected in a timely manner pose a potential risk to the Program. • State may have a history of repeated deficiencies but is showing progress toward correcting deficiencies. • State regulatory Program needs improvement. • Moderate risk of Program failure.	Two-year with additional monitoring.
Not Satisfactory	• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements. • Deficiencies present a significant risk and if not corrected in a timely manner pose a well-defined risk to the Program. • State may have a history of repeated deficiencies and requires more supervision to ensure corrective actions are progressing. • State regulatory Program has substantial deficiencies. • Substantial risk of Program failure.	One-year.
Poor [140]	• State does not meet Title XI mandates and does not comply with requirements of ASC Policy Statements. • Deficiencies are significant and severe, require immediate attention and if not corrected represent critical flaws in the Program. • State may have a history of repeated deficiencies and may show a lack of willingness or ability to correct deficiencies. • High risk of Program failure.	Continuous monitoring.

* (Program history or nature of deficiency may warrant a more accelerated Review Cycle.)

The ASC has two primary Review Cycles: Two-year and one-year. Most States are scheduled on a two-year Review Cycle. States may be moved to a one-year Review Cycle if the ASC determines more frequent on-site Reviews are needed to ensure that the State maintains an effective Program. Generally, States are placed on a one-year Review Cycle because of non-compliance issues or serious areas of concerns that warrant more frequent on-site visits. Both two-year and one-year Review Cycles include a review of all aspects of the State's Program.

The ASC may conduct Follow-up Reviews and additional monitoring. A Follow-up Review focuses only on specific areas identified during the previous on-site Review. Follow-up Reviews usually occur within 6–12 months of the previous Review. In addition, as a risk management tool, ASC staff identifies State Programs that may have a significant impact on the nation's appraiser regulatory system in the event of Title XI compliance issues. For States that represent a significant percentage of the credentials on the Appraiser Registry, ASC staff performs annual on-site Priority Contact visits. The primary purpose of the Priority Contact visit is to review topical issues, evaluate regulatory compliance issues, and maintain a close working relationship with the State. This is not a complete Review of the Program. The ASC will also schedule a Priority Contact visit for a State when a specific concern is identified that requires special attention. Additional monitoring may be required where a deficiency is identified and reports on required or agreed upon corrective actions are required monthly or quarterly. Additional monitoring may include on-site monitoring as well as off-site monitoring.

Appendix B—Glossary of Terms

Appraisal management company (AMC): Refers to, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25 or more nationally within a given year—

(A) To recruit, select, and retain appraisers;

(B) to contract with licensed and certified appraisers to perform appraisal assignments;

(C) to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

(D) to review and verify the work of appraisers.

AQB Criteria: Refers to the *Real Property Appraiser Qualification Criteria* as established by the Appraiser Qualifications Board of the Appraisal Foundation setting forth minimum education, experience and examination requirements for the licensure and certification of real property appraisers, and minimum requirements for ''Trainee'' and ''Supervisory'' appraisers.

Assignment: As referenced herein, for purposes of temporary practice, ''assignment'' means one or more real estate appraisals and written appraisal report(s) covered by a single contractual agreement.

Complaint: As referenced herein, any document filed with, received by, or serving as the basis for possible inquiry by the State agency regarding alleged violation of Title XI, Federal or State law or regulation, or USPAP by a credentialed appraiser or appraiser applicant, for allegations of unlicensed appraisal activity, or complaints involving AMCs. A complaint may be in the form of a referral, letter of inquiry, or other document alleging misconduct or wrongdoing.

Credentialed appraisers: Refers to State licensed, certified residential or certified general appraiser classifications.

Disciplinary action: As referenced herein, corrective or punitive action taken by or on behalf of a State agency which may be formal or informal, or may be consensual or involuntary, resulting in any of the following:

a. Revocation of credential or registration
b. suspension of credential or registration
c. written consent agreements, orders or reprimands
d. probation or any other restriction on the use of a credential
e. fine
f. voluntary surrender [141]

[140] An ASC Finding of ''Poor'' may result in significant consequences to the State. *See* Policy Statement 5, *Reciprocity; see also* Policy Statement 12, *Interim Sanctions.*

[141] A voluntary surrender that is not deemed disciplinary by State law or regulation, or is not related to any disciplinary process need not be reported as discipline provided the individual's

g. other acts as defined by State statute or regulation as disciplinary

With the exception of voluntary surrender, suspension or revocation, such action may be exempt from reporting to the National Registry if defined by State statute, regulation or written policy as ''non-disciplinary.''

Federally related transaction: Refers to any real estate related financial transaction which:

(a) A federal financial institutions regulatory agency engages in, contracts for, or regulates; and

(b) requires the services of an appraiser. (See Title XI § 1121(4), 12 U.S.C. 3350.)

Federal financial institutions regulatory agencies: Refers to the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration. (*See* Title XI § 1121(6), 12 U.S.C. 3350).

Home State agency: As referenced herein, State agency or agencies that grant an appraiser a licensed or certified credential. Residency in the home State is not required. Appraisers may have more than one home State agency.

Non-federally recognized credentials or designations: Refers to any State appraiser credential or designation other than trainee, State licensed, certified residential or certified general classifications as defined in Policy Statement 1, and which is not recognized by Title XI.

Real estate related financial transaction: Any transaction involving:

(a) The sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;

(b) the refinancing of real property or interests in real property; and

(c) the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities. (*See* Title XI § 1121(5), 12 U.S.C. 3350).

State: Any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, and the United States Virgin Islands. (American Samoa does not have a Program).

State board: As referenced herein, ''State board'' means a group of individuals (usually appraisers, AMC representatives, bankers, consumers, and/or real estate professionals) appointed by the Governor or a similarly positioned State official to assist or oversee State Programs. A State agency may be headed by a board, commission or an individual.

Uniform Standards of Professional Appraisal Practice (USPAP): Refers to appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation establishing minimum requirements for development and reporting of appraisals, including real property appraisal. Title XI requires appraisals prepared by State certified and licensed appraisers to be performed in conformance with USPAP.

Well-documented: Means that States obtain and maintain sufficient relevant documentation pertaining to a matter so as to enable understanding of the facts and determinations in the matter and the reasons for those determinations.

* * * * *

By the Appraisal Subcommittee.

Dated: January 3, 2017.

Arthur Lindo,

Chairman.

[FR Doc. 2017–00262 Filed 1–9–17; 8:45 am]

BILLING CODE P

Appraiser Registry record is updated to show the credential is inactive.

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 3, 2017.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528. Comments can also be sent electronically to *Comments.applications@rich.frb.org:*

1. *Bay Banks of Virginia, Inc.,* Kilmarnock, Virginia; to acquire 100 percent of the voting securities of Virginia BanCorp, Inc., Petersburg, Virginia, and thereby indirectly acquire Virginia Commonwealth Bank, Petersburg, Virginia.

Board of Governors of the Federal Reserve System, January 4, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–00176 Filed 1–9–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice for comment regarding the Federal Reserve proposal to extend without revision, the clearance under the Paperwork Reduction Act for the following information collection activity.

SUMMARY: The Board of Governors of the Federal Reserve System (Board or Federal Reserve) invites comment on a proposal to extend for three years, without revision, the Registration of Mortgage Loan Originators.

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.

DATES: Comments must be submitted on or before March 13, 2017.

ADDRESSES: You may submit comments, identified by *CFPB Reg G,* by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* .
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, 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 Web site 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.

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 Web site 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:

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 proposed revisions 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: Registration of Mortgage Loan Originators.

Agency form number: CFPB Reg G.

OMB control number: 7100–0328.

Frequency: Annually.

Respondents: Employees of state member banks, certain subsidiaries of state member banks, branches and agencies of foreign banks that are regulated by the Federal Reserve, and commercial lending companies of foreign banks who act as residential mortgage loan originators (MLOs).

Estimated number of respondents: MLOs *(new):* Initial set up and disclosure, 173 respondents; MLOs *(existing):* Maintenance and disclosure, 21,656 respondents; MLOs *(existing):* Updates for changes, 10,828 respondents; and Depository Institutions, and subsidiaries, 741 respondents.

Estimated average hours per response: MLOs *(new):* Initial set up and disclosure, 3.5 hours; MLOs *(existing):* Maintenance and disclosure, 0.85 hours; MLOs *(existing):* Updates for changes, 0.25 hours; and Depository Institutions, and subsidiaries, 118 hours.

Estimated annual burden hours: MLOs *(new):* Initial set up and disclosure, 606 hours; MLOs *(existing):* Maintenance and disclosure, 18,408 hours; MLOs *(existing):* Updates for changes, 2,707 hours; and Depository Institutions, and subsidiaries, 87,438 hours.

General Description of Report: In accordance with the Secure and Fair Enforcement for Mortgage Licensing Act (S.A.F.E. Act), the Consumer Financial Protection Bureau's (CFPB) Regulation G requires residential mortgage loan originators (MLOs) to register with the Nationwide Mortgage Licensing System and Registry (the Registry), obtain a unique identifier, maintain this registration, and disclose to consumers upon request and through the Registry their unique identifier and the MLO's employment history and publicly adjudicated disciplinary and enforcement actions. The CFPB's regulation also requires the institutions employing these MLOs to adopt and follow written policies and procedures to ensure their employees comply with these requirements and to conduct annual independent compliance tests to assure compliance. The CFPB's rule applies to a broad range of financial institutions and their employees, including Board-supervised institutions/employees, such as state member banks and their non-functionally-regulated subsidiaries, state uninsured branches and agencies of foreign banks, and commercial lending companies owned or controlled by foreign banks.

Legal authorization and confidentiality: The Board's Legal Division has determined that Section 1507 of the S.A.F.E. Act, (12 U.S.C. 5106), requires that the CFPB develop and maintain a system for registering individual MLOs of covered financial institutions regulated by a federal banking agency with the Nationwide Mortgage Licensing System and Registry. Section 1504 of the S.A.F.E. Act, (12 U.S.C. 5103), requires that an individual desiring to engage in the business of a loan originator maintain an annual federal registration (or be licensed by an equivalent state regulatory scheme) and appear on the Registry with a unique identifier. Section 1007.103 of the CFPB's Regulation G implements this registration scheme; Section 1007.104 requires the adoption of appropriate policies and procedures by covered financial institutions; and Section 1007.105 requires that covered financial institutions provide the unique identifiers of MLOs to consumers. (12 CFR 1007.103–.105). Under Section 1061 of the Dodd-Frank Act, (12 U.S.C. 5581(c)), ''a transferor agency [such as the Board] that is a prudential regulator shall have . . . ''authority to require reports from . . . conduct examinations for . . . and enforce compliance with Federal consumer financial laws'' with respect to the Board-supervised entities enumerated above. Therefore, the Board is authorized to collect this information with respect to the institutions we supervise for this purpose. This information collection is mandatory.

As noted above, the unique identifier of MLOs must be made public and is not considered confidential. In addition, most of the information that MLOs submit in order to register with the Nationwide Mortgage Licensing System and Registry will be publicly available.

However, certain identifying data about individuals who act as MLOs are entitled to confidential treatment under (b)(6) of the Freedom of Information Act (FOIA), which protects from disclosure information that ''would constitute a clearly unwarranted invasion of personal privacy.'' (5 U.S.C. 552(b)(6)).

With respect to the information collection requirements imposed on depository institutions, because the requirements require that depository institutions retain their own records and make certain disclosures to customers, the FOIA would only be implicated if the Board's examiners obtained a copy of these records as part of the examination or supervision process of a financial institution. However, records obtained in this manner are exempt from disclosure under FOIA exemption (b)(8), regarding examination-related materials. (5 U.S.C. 552(b)(8)).

Board of Governors of the Federal Reserve System, January 5, 2017.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2017–00289 Filed 1–9–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 25, 2017.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Steven Bell individually and as Trustee Steven Bell Revocable Trust under Agreement, dtd 10/21/2009; Paula Bell Trustee Paula Bell Revocable Trust under Agreement dtd 10/21/2009; Elizabeth Killian Trustee Elizabeth Bell Killian Revocable Trust, dtd 08/03/2005; Rebecca Kettleson Trustee Rebecca Lynn Kettleson Revocable Trust, dtd 06/10/2005; Margaret Bell Trustee Margaret S. Bell Revocable Trust, dtd 05/25/2005; Steve Bell Trustee Paula Bell 2009 GRAT FBO Children, Paula Bell Second 2009 GRAT FBO Rebecca Kettleson, Paula Bell Second 2009 GRAT FBO Elizabeth Killian, and Paula Bell Second 2009 GRAT FBO Margaret Bell; Chad or Deborah Kane Trustees Chad and Deborah Kane Revocable Trust, dtd 01/22/2016; Steven Bell Trustee Paula Bell GRAT FBO Chad Kane; Steven Bell Trustee Paula Bell Second GRAT FBO Chad Kane; Catherine Bell Trustee Catherine Bell Revocable Trust, dtd 05/06/2010; James and Susan Mance Trustees Mance Family Revocable Trust; Linda Growney Trustee Linda Growney Revocable Trust dtd 06/09/2008; (Control Group);* to retain voting shares of WoodTrust Financial Corporation, and thereby indirectly control WoodTrust Bank, both of Wisconsin Rapids, Wisconsin.

B. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *T.H. Bradley, Jr., Magnolia, Arkansas, as trustee of the T.H. Bradley, Jr. Revocable Trust, Paula Bradley Smith, Magnolia, Arkansas, as trustee of the Paula Bradley Smith Revocable Trust, Thomas E. Smith, Magnolia, Arkansas, individually and as trustee of the Thomas E. Smith Revocable Trust, and Shannon Bradley Stuart, Magnolia, Arkansas;* to collectively acquire additional voting shares of Magnolia Banking Corporation, Magnolia, Arkansas and thereby acquire Farmers Bank and Trust Company Maganola, Arkansas.

Board of Governors of the Federal Reserve System, January 4, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–00177 Filed 1–9–17; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)—Health Disparities Subcommittee (HDS)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

TIME AND DATE: 1:30 p.m.–3:00 p.m., EST, February 2, 2017.

PLACE: Teleconference.

STATUS: Open to the public, limited only by the space and phone lines available. The public is welcome to participate during the public comment period, which is tentatively scheduled from 2:40 p.m. to 2:50 p.m. This meeting will also be available by teleconference. Please dial (866) 918–8397 and enter code 9346283.

PURPOSE: The Subcommittee will provide advice to the CDC Director through the ACD on strategic and other health disparities and health equity issues and provide guidance on opportunities for CDC.

MATTERS FOR DISCUSSION: The Health Disparities Subcommittee members will receive an update on selected recommendations of the HDS and on progress toward a Workforce Diversity Indicator.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Leandris Liburd, Ph.D., M.P.H., M.A., Designated Federal Officer, Health Disparities Subcommittee, Advisory Committee to the Director, CDC, 1600 Clifton Road NE., M/S K–77, Atlanta, Georgia 30329. Telephone (404) 498–6482, Email: *ACDirector@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2017–00207 Filed 1–9–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–2088–17]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including; the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by March 13, 2017.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number __, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–2088–17 Community Mental Health Center Cost Report

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Community Mental Health Center Cost Report; *Use:* Providers of services participating in the Medicare program are required under sections 1815(a) and 1861(v)(1)(A) of the Social Security Act (42 U.S.C. 1395g) to submit annual information to achieve settlement of costs for health care services rendered to Medicare beneficiaries. In addition, regulations at 42 CFR 413.20 and 413.24 require adequate cost data and cost reports from providers on an annual basis.

The Form CMS–2088–17 cost report is needed to determine a provider's reasonable costs incurred in furnishing medical services to Medicare beneficiaries and reimbursement due to or due from a provider. The primary function of the cost report is to collect data that is used by CMS to support program operations, payment refinement activities and to make Medicare Trust Fund projections. *Form Number:* CMS–2088–17 (OMB control number: 0938–0037); *Frequency:* Yearly; *Affected Public:* Private Sector (Business or other for-profits, Not-for-Profit Institutions); *Number of Respondents:* 219; *Total Annual Responses:* 219; *Total Annual Hours:* 19,710. (For policy questions regarding this collection contact Jill Keplinger at 410–786–4550.)

Dated: January 4, 2017.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2017–00198 Filed 1–9–17; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Renewal of Office of Community Services (OCS) Community Economic Development (CED) Standard Reporting Format.

OMB No.: 0970–0386.

Description: The Office of Community Services (OCS) will continue collecting key information about projects funded through the Community Economic Development (CED) program. The legislative requirement for this program is in Title IV of the Community Opportunities, Accountability and Training and Educational Services Act (COATS Human Services Reauthorization Act) of October 27, 1998, Public Law 105–285, section 680(b) as amended. The reporting format, Performance Progress Report (PPR), collects information concerning the outcomes and management of CED projects. OCS will use the data to critically review the overall design and effectiveness of the program.

The PPR will continue to be administered to all active grantees of the CED program. Grantees will be required to use this reporting tool for their semi-annual reports to be submitted twice a year. The current PPR replaced both the annual questionnaire and other semi-annual reporting formats, which resulted in an overall reduction in burden for the grantees while significantly improving the quality of the data collected by OCS. OCS seeks to renew this PPR to continue to collect quality data from grantees. To ensure the burden on grantees is not increased, all questions on the current PPR will remain the same—we propose adding only one question to the PPR regarding the total number of jobs grantees are creating with grant funds. Many

grantees have asked about this element on the current PPR and currently do not have a place to report that information. This is information that most grantees are already collecting. Adding this field will allow grantees to provide this information in a consistent format and allow OCS to more accurately reflect the total number of jobs created through the CED program. Since grantees are already familiar with the current format and elements, and all questions on the PPR will remain the same (with one added question based on grantee feedback), there will be no additional burden on grantees.

Respondents: Current CED grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Questionnaire for current OCS—CED grantees	170	2	1.50	510

Estimated Total Annual Burden Hours: 510.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov*.

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2017–00202 Filed 1–9–17; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0008]

Agency Information Collection Activities: Proposed Collection; Comment Request; Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection in the guidance on citizen petitions and petitions for stay of action subject to section 505(q) of the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: Submit either electronic or written comments on the collection of information by March 13, 2017.

ADDRESSES: 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):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, 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–2009–D–0008 for ''Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act.'' 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 Division of Dockets Management 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 Division of Dockets

Management. 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: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

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 Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North 10A12M, 11601 Landsdown St., North Bethesda, MD 20852, *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.

Guidance for Industry on Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act, OMB Control Number 0910–0679—Extension

FDA's guidance for industry entitled ''Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act'' provides information regarding FDA's current thinking on interpreting section 914 of Title IX of the Food and Drug Administration Amendments Act (FDAAA) (Pub. L. 110–85). Section 914 of FDAAA added new section 505(q) to the FD&C Act (21 U.S.C. 355(q)) and governs certain citizen petitions and petitions for stay of Agency action that request that FDA take any form of action related to a pending application submitted under section 505(b)(2) or 505(j) (21 U.S.C. 355(b)(2) or 21 U.S.C. 355(j)) of the FD&C Act. The guidance describes FDA's interpretation of section 505(q) of the FD&C Act regarding how the Agency will determine if: (1) The provisions of section 505(q) addressing the treatment of citizen petitions and petitions for stay of Agency action (collectively, petitions) apply to a particular petition and (2) a petition would delay approval of a pending abbreviated new drug application (ANDA) or a 505(b)(2) application. The guidance also describes how FDA will interpret the provisions of section 505(q) requiring that: (1) A petition includes a certification and (2) supplemental information or comments to a petition include a verification. Finally, the guidance addresses the relationship between the review of petitions and pending ANDAs and 505(b)(2) applications for which the Agency has not yet made a decision on approvability.

The Food and Drug Administration Safety and Innovation Act (FDASIA) was signed into law on July 9, 2012 (Pub. L. 112–144). Section 1135 of FDASIA amended section 505(q) of the FD&C Act in two ways. First, it shortened FDA's deadline from 180 days to 150 days for responding to petitions subject to section 505(q) of the FD&C Act. Second, it expanded the scope of section 505(q) of the FD&C Act to include certain petitions concerning applications submitted under section 351(k) of the Public Health Service (PHS) Act (42 U.S.C. 262), the abbreviated pathway for the approval of biosimilar biological products. Accordingly, we are now including submissions pertaining to biosimilar biological product applications in the information collection burden estimates in this document.

Section 505(q)(1)(H) of the FD&C Act requires that citizen petitions and petitions for stay of Agency action that are subject to section 505(q) include a certification to be considered for review by FDA. Section 505(q)(1)(I) of the FD&C Act requires that supplemental information or comments to such citizen petitions and petitions for stay of Agency action include a verification to be accepted for review by FDA. The guidance sets forth the criteria the Agency will use in determining if the provisions of section 505(q) of the FD&C Act apply to a particular citizen petition or petition for stay of Agency action. The guidance states that one of the criteria for a citizen petition or petition for stay of Agency action to be subject to section 505(q) of the FD&C Act is that a related ANDA or 505(b)(2) application is pending at the time the citizen petition or petition for stay is submitted. Because petitioners or commenters may not be aware of the existence of a pending ANDA or 505(b)(2) application, the guidance recommends that all petitioners challenging the approvability of a possible ANDA or 505(b)(2) application include the certification required in section 505(q)(1)(H) of the FD&C Act and that petitioners and commenters submitting supplements or comments, respectively, to a citizen petition or petition for stay of action challenging the approvability of a possible ANDA or 505(b)(2) application include the verification required in section 505(q)(1)(I) of the FD&C Act. The guidance also recommends that if a petitioner submits a citizen petition or petition for stay of Agency action that is missing the required certification but is otherwise within the scope of section 505(q) of the FD&C Act, and the petitioner would like FDA to review the citizen petition or petition for stay of Agency action, the petitioner should submit a letter withdrawing the deficient petition and submit a new petition that contains the required certification.

FDA currently has OMB approval for the collection of information entitled ''General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions'' (OMB control

number 0910–0191). This collection of information includes, among other things: (1) The format and procedures by which an interested person may submit to FDA, in accordance with § 10.20 (21 CFR 10.20), a citizen petition requesting the Commissioner of Food and Drugs (Commissioner) to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action (§ 10.30(b) (21 CFR 10.30(b))); (2) the submission of written comments on a filed citizen petition (§ 10.30(d)); (3) the submission of a supplement or amendment to or a letter to withdraw a filed citizen petition (§ 10.30(g)); (4) the format and procedures by which an interested person may request, in accordance with § 10.20, the Commissioner to stay the effective date of any administrative action (§ 10.35(b) (21 CFR 10.35(b))); and (5) the submission of written comments on a filed petition for administrative stay of action (§ 10.35(c)). This information collection includes citizen petitions, petitions for administrative stay of action, comments to petitions, supplements to citizen petitions, and letters to withdraw a citizen petition, as described previously in this document, which are subject to section 505(q) of the FD&C Act and described in the guidance.

We are requesting OMB approval for the following collection of information submitted to FDA under section 505(q) of the FD&C Act and the guidance:

- The certification required under section 505(q)(1)(H) of the FD&C Act for citizen petitions that are subject to section 505(q) and/or that are challenging the approvability of a possible ANDA, 505(b)(2) application, or biosimilar biological product application. Although the submission of a certification for citizen petitions is approved under OMB control number 0910–0191, the certification would be broadened under section 505(q) of the FD&C Act and the guidance.
- The certification required under section 505(q)(1)(H) of the FD&C Act for petitions for stay of Agency action that are subject to section 505(q) and/or that are challenging the approvability of a possible ANDA, 505(b)(2) application, or biosimilar biological product application.
- The verification required under section 505(q)(1)(I) of the FD&C Act for comments to citizen petitions.
- The verification required under section 505(q)(1)(I) of the FD&C Act for comments to petitions for stay of Agency action.
- The verification required under section 505(q)(1)(I) of the FD&C Act for supplements to citizen petitions.
- Supplements to petitions for stay of Agency action.
- The verification required under section 505(q)(1)(I) of the FD&C Act for supplements to petitions for stay of Agency action.
- The letter submitted by a petitioner withdrawing a deficient petition for stay of Agency action that is missing the required certification but is otherwise within the scope of section 505(q) of the FD&C Act.

Section 505(q)(1)(B) and (C) of the FD&C Act and the guidance state that if FDA determines that a delay in approval of an ANDA, 505(b)(2) application, or biosimilar biological product application is necessary based on a petition subject to section 505(q), the applicant may submit to the petition docket clarifications or additional data to allow FDA to review the petition promptly. This information collection is not included in this analysis because it is currently approved under OMB control number 0910–0001 (21 CFR 314.54, 314.94, and 314.102).

Based on FDA's knowledge of citizen petitions and petitions for stay of Agency action subject to section 505(q) of the FD&C Act that have been submitted to FDA, as well as the Agency's familiarity with the time needed to prepare a supplement, a certification, and a verification, FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FD&C Act section	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Certification for citizen petitions (505(q)(1)(H))	38	1.37	52	0.5 (30 minutes)	26
Certification for petitions for stay of Agency action (505(q)(1)(H)).	3	1	3	0.5 (30 minutes)	1.5
Verification for comments to citizen petitions (505(q)(1)(I)).	12	1.66	20	0.5 (30 minutes)	10
Verification for comments to petitions for stay of Agency action (505(q)(1)(I)).	1	1	1	0.5 (30 minutes)	.5
Verification for supplements to citizen petitions (505(q)(1)(I)).	7	2.29	16	0.5 (30 minutes)	8
Supplements to petitions for stay of Agency action	1	1	1	6	6
Verification for supplements to petitions for stay of Agency action (505(q)(1)(I)).	1	1	1	0.5 (30 minutes)	0.5
Letter withdrawing a petition for stay of Agency action.	3	1	3	0.5 (30 minutes)	1.5
Total hours					54

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 3, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–00193 Filed 1–9–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–2175]

Recommendations for Assessment of Blood Donor Eligibility, Donor Deferral and Blood Product Management in Response to Ebola Virus; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a document entitled ''Recommendations for Assessment of Blood Donor Eligibility, Donor Deferral and Blood Product Management in Response to Ebola Virus; Guidance for Industry.'' The guidance document notifies blood establishments that FDA has determined Ebola virus to be a transfusion-transmitted infection (TTI) and provides blood establishments that collect blood and blood components for transfusion or further manufacture, including Source Plasma, with FDA recommendations for assessing blood donor eligibility, donor deferral, and blood product management in the event that an outbreak of Ebola virus disease (EVD) with widespread transmission is declared in at least one country. The guidance document applies to Ebola virus (species *Zaire ebolavirus*). The recommendations apply to routine collection of blood and blood components for transfusion or further manufacture, including Source Plasma. The guidance announced in this notice finalizes the draft guidance of the same title dated December 2015.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: 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):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2014–D–2175 for ''Recommendations for Assessment of Blood Donor Eligibility, Donor Deferral and Blood Product Management in Response to Ebola Virus; Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management 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 Division of Dockets Management. 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: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

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 Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Jessica T. Walker, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Recommendations for Assessment of Blood Donor Eligibility, Donor Deferral and Blood Product Management in Response to Ebola Virus; Guidance for Industry.'' The guidance document notifies blood establishments that FDA has determined Ebola virus to be a TTI under 21 CFR

630.3(*l*) because of the severity of the disease and the risk of transmission by blood and blood products. The guidance also provides blood establishments that collect blood and blood components for transfusion or further manufacture, including Source Plasma, with FDA recommendations for assessing blood donor eligibility, donor deferral, and blood product management in the event that an outbreak of EVD with widespread transmission occurs in at least one country.

Ebola virus is a member of the family *Filoviridae* that can cause severe hemorrhagic fever in humans and non-human primates with historically high morbidity and mortality rates of up to 90 percent. However, in the 2014 outbreak in West Africa, the mortality rate was markedly lower. In humans, EVD is typically characterized at onset by fever, severe headache, muscle pain, and weakness, followed by diarrhea, vomiting, abdominal pain, and sometimes diffuse hemorrhage (bleeding or bruising). In previous outbreaks of EVD, symptoms generally appeared within 21 days and most often within 4 to 10 days following infection; however, based on mathematical models, symptom onset later than 21 days is estimated as possible in 0.1 to 12 percent of cases. Although viremia in survivors typically resolves within 21 days of disease onset, infectious virus and viral ribonucleic acid (RNA) has been detected in other body components or fluids (*e.g.,* aqueous humor, semen, and vaginal fluids) for longer periods. For instance, infectious virus and viral RNA have been detected in semen up to 82 and 272 days post-EVD onset, respectively, and a case of sexual transmission of Ebola virus was reported in which the patient was exposed to Ebola virus through sexual contact with a survivor 179 days after likely disease onset.

Transmission of Ebola virus from human to human occurs by direct contact with body fluids (such as blood, urine, stool, saliva, semen, vaginal fluids, or vomit) of symptomatic infected individuals. Therefore, blood and blood products from symptomatic individuals, if they were to donate, would have the potential of transmitting Ebola virus to recipients.

Under 21 CFR 630.10(a) and (f)(1), a donor must be in good health and have a normal temperature at the time of donation. Standard procedures that are in place to assure that the donor feels healthy at the time of donation serve as an effective safeguard against collecting blood or blood components from a donor who seeks to donate after the onset of clinical symptoms of EVD. FDA is providing guidance to reduce the risks of collecting blood and blood components from potentially Ebola virus-infected persons during the asymptomatic incubation period before the onset of clinical symptoms, as well as from individuals with a history of Ebola virus infection or disease.

The guidance recommends blood establishments update their donor educational materials to instruct donors with a history of Ebola virus infection or disease to not donate blood or blood components. In the event that one or more countries is classified by Centers for Disease Control and Prevention (CDC) as having widespread transmission of Ebola virus, blood establishments must update their donor history questionnaire (DHQ), including the full-length and abbreviated DHQ and accompanying materials, to assess donors for a history of Ebola virus infection or disease and travel to, or residence in, an area endemic for Ebola virus. The guidance recommends indefinite deferral of a donor with a history of Ebola virus infection or disease and for a donor who has been a resident of or has travelled to a country with widespread transmission of EVD, FDA recommends that establishments defer a donor for 8 weeks from the time of the donor's departure from that country. The guidance document provides additional recommendations for blood establishments in the event that one or more countries are classified by CDC as having widespread transmission of Ebola virus. For a donor who has had close contact with a person confirmed to have EVD or a person under investigation for Ebola virus infection or disease in whom diagnosis is pending, FDA recommends that establishments defer a donor for 8 weeks after the last contact. In addition, FDA recommends that establishments defer a donor for 8 weeks after the last sexual contact with a person known to have recovered from EVD, regardless of the time since the person's recovery. FDA also recommends that establishments defer for a period of 8 weeks after exposure a donor who has been notified by a Federal, State, or local public health authority that he or she may have been exposed to a person with EVD.

The guidance includes FDA recommendations on retrieval and quarantine of blood and blood components from a donor later determined to have Ebola virus infection or disease or risk factors for Ebola virus infection or disease, notification of consignees, and reporting a biological product deviation to FDA. The guidance also addresses convalescent plasma intended for transfusion.

In the **Federal Register** of December 3, 2015 (80 FR 75681), FDA announced the availability of the draft guidance of the same title dated December 2015. FDA received comments on the draft guidance and those comments were considered as the guidance was finalized. A summary of changes made in the final guidance includes: (1) Notifying blood establishments that FDA has determined Ebola virus to be a TTI under § 630.30(*l*); (2) providing a recommendation that the donor educational materials instruct donors with a history of EVD to self-defer; (3) adding a recommended timeframe for when blood establishments should discontinue donor questioning after CDC declares there is no longer widespread transmission of Ebola virus; and (4) clarifying certain recommendations on product retrieval, quarantine, and notification of consignees of blood and blood components from donors at risk of Ebola virus infection or disease. In addition, editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance of the same title dated December 2015.

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 recommendations for assessment of blood donor eligibility, donor deferral, and blood product management in response to Ebola virus. 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.

II. 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 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR 600.14 and 606.171 have been approved under OMB control number 0910–0458; the collections of information in 21 CFR 601.12 and Form FDA 356h have been approved under OMB control number 0910–0338; the collections of information in 21 CFR 606.160 have been approved under OMB control numbers 0910–0116 and 0910–0795; and the collections of information in 21

CFR 630.10 and 630.40 have been approved under OMB control number 0910–0795.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: January 3, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–00200 Filed 1–9–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–4646]

Annual Reporting by Prescription Drug Wholesale Distributors and Third-Party Logistics Providers: Questions and Answers; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Annual Reporting by Prescription Drug Wholesale Distributors and Third-Party Logistics Providers: Questions and Answers.'' This draft addresses questions about and clarifies FDA's expectations for annual reporting to FDA by prescription drug wholesale distributors (wholesale distributors) and third-party logistics providers (3PLs) as required under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) as amended by the Drug Supply Chain Security Act (DSCSA).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by March 13, 2017.

ADDRESSES: 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):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, 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–4646 for ''Annual Reporting by Prescription Drug Wholesale Distributors and Third-Party Logistics Providers: Questions and Answers; Draft Guidance for Industry; Availability.'' 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 Division of Dockets Management 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 Division of Dockets Management. 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: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

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 Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3130, *WDD3PLRequirements@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the DSCSA (Title II of Pub. L. 113–54) amended section 503(e)

of the FD&C Act (21 U.S.C. 353(e)) to require, under section 503(e)(2)(A) of the FD&C Act (as amended), annual reporting by wholesale distributors, beginning on January 1, 2015. Section 503(e)(2)(B) of the FD&C Act (as amended) requires FDA to make certain information about wholesale distributors' licensure available to the public on FDA's Web site. Section 205 of the DSCSA added section 584 to the FD&C Act (21 U.S.C. 360eee–3); under section 584 of the FD&C Act (as amended), 3PL facilities are required to report annually, beginning on November 27, 2014.

FDA previously published the draft guidance ''DSCSA Implementation: Annual Reporting by Prescription Drug Wholesale Distributors and Third-Party Logistics Providers'' (Annual Reporting draft guidance), which described who must report, what should be reported, when to report, and how to report (December 9, 2014, 79 FR 73083). The Annual Reporting draft guidance is available on the Wholesale Distributor and Third-Party logistics Providers Reporting Web page at *http://www.fda.gov/Drugs/DrugSafety/DrugIntegrityandSupplyChainSecurity/DrugSupplyChainSecurityAct/ucm423749.htm*. This draft guidance supplements the information in the Annual Reporting draft guidance by addressing questions and comments that FDA received about annual reporting since publication of the Annual Reporting draft guidance. Topics covered in this guidance include clarifications about who must report, what should be reported, when to report, and how to report. This guidance also addresses questions related to the public availability of reported information.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). FDA intends to finalize this draft guidance and the Annual Reporting draft guidance in one unified final guidance on annual reporting requirements under the DSCSA. Once issued that unified final guidance will represent the current thinking of FDA regarding annual reporting by prescription drug wholesale distributors and third-party logistics providers. It will not establish any rights for any person and will not be binding on FDA or the public. You will be able to use an alternative approach to that described in the final guidance if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *https://www.regulations.gov.*

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA), 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.

This draft guidance addresses proposed information collections that are subject to review by OMB under the PRA. These information collections were also addressed in the draft guidance entitled ''Drug Supply Chain Security Act Implementation: Annual Reporting by Prescription Drug Wholesale Distributors and Third-Party Logistics Providers,'' the availability of which was announced in a notice published in the **Federal Register** of December 9, 2014. In that **Federal Register** notice, FDA published a 60-day notice requesting public comment on the proposed collections of information (79 FR 73083). This draft guidance provides further clarification regarding those information collections.

In compliance with the PRA, FDA intends to submit these proposed collections of information to OMB for review and approval, including providing notice of that submission and opportunity for the public to comment to OMB on the proposed information collections. In accordance with the PRA, the agency will inform the public of OMB approval, including the associated currently valid OMB control number, before conducting or sponsoring a collection of information.

Dated: January 4, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–00233 Filed 1–9–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Function and Delegations of Authority for the Department of Health and Human Services (HHS) is being amended at Chapter AC, ''Office of the Assistant Secretary for Health (OASH), as last amended at 75 FR 53304–53305, dated August 31, 2010. This amendment reflects the realignment of personnel oversight, administration and management functions for the Office of Adolescent Health in the OASH. Specifically, this notice establishes the Division of Research and Evaluation, the Division of Strategic Communications, and the Division of Program Operations within the Office of Adolescent Health. The changes are as follows:

I. Under Part A, Chapter AC, under Office of the Assistant Secretary for Health, make the following changes:

A. Under Section ACR.20, Organization, ''M. Office of Adolescent Health (ACR)'' replace the entire section with:

The Office of Adolescent Health is headed by a Director who reports to the Assistant Secretary for Health.

B. Under Section ACR. 20, Functions, ''M. Office of Adolescent Health (ACR)'' replace the entire section with:

1. Office of Adolescent Health (ACR). The Office of Adolescent Health (OAH), headed by the Director of the Office of Adolescent Health, is responsible for implementing the provisions assigned to it under Section 1708 of the Public Health Service Act (42 U.S.C. 300u–7). The Office, by providing Department-wide leadership working with PHS agencies and other HHS Operating Divisions and Staff Divisions and the private sector, establishes, coordinates and advocates policies, programs and activities for the improvement of adolescent health. OAH supports grant programs, evaluation and research studies, services, prevention and health promotion activities, training, education, partnership engagement, and information dissemination activities. The Office: (1) Oversees operations and administrative management, personnel management, and budget formulation and execution for programs managed within OAH; (2) coordinates legislative and policy activities related to adolescent health and OAH programs; (3) coordinates correspondence control and executive secretariat functions; (4) serves as a focal point within HHS to coordinate the continuing

implementation of health objectives for adolescents, assures liaison occurs with relevant HHS agencies and offices, and facilitates access to services for adolescents; (5) negotiates and awards grants and enters into cooperative agreements and contracts with public and nonprofit entities; (6) enters into interagency agreements with other PHS/Federal organizations in support of adolescent health; (7) ensures the appropriate exercise of delegated authorities and responsibilities; (8) develops a broad range of health information and health promotion materials; (9) supports the planning and conduct of research and evaluation studies; (10) designs, manages and monitors evaluation studies, and information collection review and approval processes; (11) assesses the focus and impact of ongoing programs and activities, and prepares evaluation studies and reports; (12) disseminates information about program activities and research evaluation studies, including in peer reviewed publications; (13) oversees the implementation and administration of competitive grants and cooperative agreements, monitors grantee activities, and prepares analytical reports on program trends; (14) provides training and technical assistance for grant programs and professionals working with adolescents, manages capacity building needs for grant programs, and assesses performance of grantee operations; (15) supports the replication and use of evidence-based approaches and fosters innovative strategies in programs serving adolescents; (16) manages the development of grant funding announcements and contract scopes of work and the review and award of program grants; (17) manages information, education and awareness activities, and media and press relations; (18) develops and coordinates strategic plans and special initiatives; (19) oversees public health information and promotes OAH programs and partnerships; (20) manages exhibits and develops visual and other graphic and social media materials regarding adolescent health, and ensures compliance with 508 requirements; (21) manages adolescent health information, including the OAH Web site and social media, consistent with the policies of the HHS Assistant Secretary for Public Affairs; (22) coordinates, develops, researches, and prepares briefing materials on issues of adolescent health.

II. Delegations of Authority. Directives or orders made by the Secretary, Assistant Secretary for Health, or Director, Office of Adolescent Health, all delegations and re-delegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further re-delegation, provided they are consistent with this reorganization.

III. Funds, Personnel, and Equipment. Transfer of organizations and functions affected by this reorganization shall be accompanied by direct and support funds, positions, personnel, records, equipment, supplies, and other resources.

Dated: January 5, 2017.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2017–00312 Filed 1–9–17; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information From Organizations Utilizing Business Models Supporting Private Sector Vaccine Management

AGENCY: National Vaccine Program Office, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This is a Request for Information (RFI) about business models, existing, under development or planned, that support health care providers for any of the components related to private-sector immunization services (*e.g.,* excluding vaccines provided through federal and state programs, such as the Vaccines for Children Program, Children's Health Insurance Program, Medicaid, and Medicare): Vaccine purchase, distribution, storage and handling, inventory management, reporting to Immunization Information Systems (IIS), including models for populating IIS directly/automatically from electronic health records (EHRs), immunization coverage assessment, forecasting vaccine demand, and billing. The RFI is being issued by the National Vaccine Program Office (NVPO) of the U.S. Department of Health and Human Services.

The NVPO is located in the Office of the Assistant Secretary for Health (ASH), Office of the Secretary (OS), U.S. Department of Health and Human Services (HHS). The NVPO is responsible for coordinating and ensuring collaboration among the many federal agencies involved in vaccine and immunization activities.

The National Vaccine Program was established in compliance with Title XXI of the Public Health Service Act (Pub. L. 99–660) (§ 2101) (42 U.S. Code 300aa–et seq (PDF—78 KB)) to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. Development of a National Vaccine Plan (NVP) has been mandated to the NVPO as a mechanism for the Director of the National Vaccine Program (the Assistant Secretary for Health) to communicate priorities for both federal and non-federal stakeholders regarding vaccine research and the development, testing, licensing, production, procurement, distribution, and effective use of vaccines in order to carry out the program's responsibilities. Goal 4 of the plan, Ensure a Stable Supply of, Access to, and Better Use of Recommended Vaccines in the United States, focuses in part on increasing and improving access to vaccines in health care provider settings. This RFI seeks information on innovative business models to support health care providers to increase and improve their ability to provide immunization services, as described below.

In its efforts to promote vaccination coverage across the lifespan, the NVPO is seeking information about business models, existing, under development or planned, that enable health care providers to offer vaccines to their privately-insured/private-pay patients. The NVPO is most interested in innovative business models aimed at reducing any of the barriers to implementing vaccination services such as vaccine purchase, billing, storage and handling, IIS reporting, including models for populating IIS directly/automatically from EHRs, forecasting vaccine demand, and managing private vaccine inventories. In addition, the NVPO is interested in models that can demonstrate improvements in the immunization coverage rates of the patients seen in the health care settings utilizing such models as well as improvements in reporting to IIS.

DATES: Information from Organizations Utilizing Business Models Supporting Private Sector Vaccine Management responsive to this RFI should be submitted as described in the **ADDRESSES** section below no later than midnight, 12:00 a.m. EDT on January 25, 2017.

ADDRESSES: Information from Organizations Utilizing Business Models Supporting Private Sector Vaccine Management responsive to this RFI should be submitted in Portable

Document Format (PDF) only and be submitted via email to *nvpo@hhs.gov.* The name(s) of all PDF files uploaded should begin with ''NVPO_RFI_ MODEL'' followed by the organization name and the sequential number of the file, if more than one file is submitted. All submissions responsive to this RFI must be made as indicated above. Mailed paper submissions will not be reviewed.

FOR FURTHER INFORMATION CONTACT: National Vaccine Program Office, Office of the Assistant Secretary for Health, Department of Health and Human Services; telephone (202) 690–5566; email: *nvpo@hhs.gov.*

SUPPLEMENTARY INFORMATION: Responses to this RFI should include the organization's full name and headquarters location. They should also include the name of a point-of-contact and his/her email and conventional mailing addresses. Companies are invited to respond to the following request for information:

1. Description of the business model, existing, under development or planned, and how it addresses any of the following:

a. Purchase of vaccines for privately-insured/private pay patients

b. Bill private insurers for vaccines and vaccine administration

c. Proper storage and handling of privately-purchased vaccines

d. Management of private vaccine inventories separate from public vaccine inventories

e. Report vaccine administration to IIS, including models for populating IIS directly/automatically from EHRs

f. Forecast vaccine demand

g. Quality improvement efforts to improve vaccination coverage

h. Ability to conduct mass vaccination clinics as part of an emergency response

i. Implementation of vaccination as part of occupational health clinics (including federally-sponsored occupational health clinics).

2. Description of the practices served, or planned to be served, including geographic locations, patients served (*e.g.,* pediatrics, specialists, health care providers serving adults, etc.), and practice types (*e.g.,* large health system, private practices, group practices, etc.).

3. Summary of any evaluations of the business model's effectiveness in expanding accessibility to vaccines for privately-insured patients to new groups of health care providers who did not previously provide immunizations or to existing health care providers to expand their immunization services and/or improvements in vaccination coverage for patients served by participating practices.

This request for information is for informational purposes only and shall not be construed as a solicitation for funding applications/proposals or as creating an obligation on the part of the government. The government will not pay for the preparation costs of any information submitted in response to this RFI. Responses to any of the above areas are welcome; respondents should not feel compelled to address all the issues identified in the request. Responses will be compiled without company identifiers and shared with HHS Operating Divisions (*e.g.,* the Centers for Disease Control and Prevention) and advisory committees as appropriate. Public release of the data submitted is governed by the Freedom of Information Act (*https://www.hhs.gov/foia/*). Response to the RFI will not be returned.

Information collection sponsored by the NVPO required for the purposes of informing the National Vaccine Program and the National Vaccine Plan is not subject to Chapter 35 of title 44, United States Code [the Paperwork Reduction Act] as indicated in 42 U.S.C. 300aa–1 note (section 321 of Pub. L. 99–660).

Dated: January 4, 2017.

Roula K. Sweis,

Chief of Operations and Management, National Vaccine Program Office.

[FR Doc. 2017–00245 Filed 1–9–17; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 30 Day Proposed Information Collection: Environmental Health Assessment of Tribal Child Care Centers in the Pacific Northwest

AGENCY: Indian Health Service, HHS.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Indian Health Service (IHS) is submitting to the Office of Management and Budget (OMB) a request for an extension of a previously approved collection of information titled, ''Indian Health Service Environmental Health Assessment of Tribal Child Care Centers in the Pacific Northwest'' (OMB Control Number 0917–NEW), which expired September 23, 2016. This proposed information collection project was recently published in the **Federal Register** (81 FR 48437) on July 25, 2016, and allowed 60 days for public comment. The IHS received no comments regarding this collection. The purpose of this notice is to allow 30 days for public comment to be submitted directly to OMB.

A copy of the supporting statement is available at *www.regulations.gov* (see Docket ID IHS–2015–0003).

DATES: February 9, 2017. Your comments regarding this information collection are best assured of having full effect if received within 30 days of the date of this publication.

ADDRESSES: Send your written comments, requests for more information on the collection, or requests to obtain a copy of the data collection instrument and instructions to Ms. Celeste Davis by one of the following methods:

- *Mail:* Ms. Holly Thompson Duffy, Environmental Protection Specialist, Division of Environmental Health Services/Emergency Management Coordinator, U.S. DHHS/Indian Health Service, 1414 NW Northrup St., 800, Portland, OR 97209.
- *Phone:* 509–455–3539.
- *Email: Holly.Thompsonduffy@ihs.gov.*
- *Fax:* 503–414–7776.

SUPPLEMENTARY INFORMATION: The Indian Health Service is submitting the proposed information collection to OMB for review, as required by section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995. This notice is soliciting comments from members of the public and affected agencies as required by 44 U.S.C. 3506(c)(2)(A) concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques of other forms of information technology, *e.g.,* permitting electronic submission of responses.

Title of Proposal: Environmental Health Assessment of Tribal Child Care Centers in the Pacific Northwest.

OMB Control Number: To be assigned.

Need for the Information and Proposed Use: The Portland Area Indian Health Service (IHS) and Environmental

Protection Agency (EPA) seek to conduct an environmental health assessment of Tribal child care centers in Portland Area Indian Country (in the states of Washington, Oregon, and Idaho). There is a significant data gap regarding the levels of lead, allergens, pesticides, and polychlorinated biphenyls (PCBs) in child care centers within Portland Area Indian Country. This research will help us understand the potential for exposure to these chemicals among children who attend. For example, *Eliminating Childhood Lead Poisoning: A Federal Strategy Targeting Lead Paint Hazards,* produced by the President's Task Force on Environmental Health Risks and Safety Risks to Children, discusses the need for more data on lead levels in licensed child care facilities. Also, data is limited on the interrelationships between exposure factors, building factors, and community factors and their combined impact on children's exposures from chemical agents in child care environments. Non-chemical stressors, such as noise, number of windows in the child care center, tree cover, and shade cover in play area, will be included in data collection. Community factors, such as mapping the locations of the child care facilities, roads, and agricultural operations, will be included in data collection in order to evaluate the relationship between indoor air quality and the outdoor environment.

IHS and EPA will also incorporate follow-up outreach and education with facilities to explain results and suggest corrective actions to remediate or reduce exposures from lead, allergens, pesticides, and PCBs that are detected in the facilities. The principal purpose of this project is to provide valuable data about the levels of lead, allergens, pesticides, and PCBs in child care facilities located in Portland Area Indian Country. This project will help prioritize services and funding based on known needs and risks in order to help facilities obtain needed services. This data may help Tribes secure funding from the Federal Head Start program and other funding sources for repairs, rehabilitations or other corrective action. This study may also provide Federal Head Start and Tribal programs with data to improve standards and initiate policy changes, if necessary. IHS will also provide indoor air quality kits to the facilities and environmental health training to center staff to provide methods and practices for preventing and controlling indoor environmental hazards. This project may be replicated in other IHS areas.

Agency Form Numbers: None.

Members of Affected Public: Operators of Tribal child care facilities and pesticide applicators who work in child care facilities.

Status of the Proposed Information Collection: New request.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Annual number of responses, Average burden hour per response, and Total annual burden hours.

Data collection instrument	Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (hours)	Estimated burden hours
Child Care Center Director Questionnaire.	Child Care Center Director	45	1	1.5	67.5
Pesticide Applicator Questionnaire	Pesticide Applicator	30	1	0.5	15
Total		75			82.5

There are no direct costs to respondents other than time to voluntarily complete the forms and submit them for consideration.

Dated: December 14, 2016.

Mary Smith,

Principal Deputy Director, Indian Health Service.

[FR Doc. 2016–31799 Filed 1–9–17; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Indian Health Professions Preparatory, Indian Health Professions Pre-Graduate and Indian Health Professions Scholarship Programs

Announcement Type: Initial CFDA Numbers: 93.971, 93.123, and 93.972

Key Dates

Application Deadline: February 28, 2017, for continuing students

Application Deadline: March 28, 2017, for new students

Application Review: May 8–22, 2017

Continuation Award Notification Deadline: June 5, 2017

New Award Notification Deadline: July 5, 2017

Award Start Date: August 1, 2017

Acceptance/Decline of Awards Deadline: August 15, 2017

I. Funding Opportunity Description

The Indian Health Service (IHS) is committed to encouraging American Indians and Alaska Natives to enter the health professions and to assuring the availability of Indian health professionals to serve Indians. The IHS is committed to the recruitment of students for the following programs:

- The Indian Health Professions Preparatory Scholarship authorized by Section 103 of the Indian Health Care Improvement Act, Public Law 94–437 (1976), as amended (IHCIA), codified at 25 U.S.C. 1613(b)(1).
- The Indian Health Professions Pre-graduate Scholarship authorized by Section 103 of the IHCIA, codified at 25 U.S.C. 1613(b)(2).
- The Indian Health Professions Scholarship authorized by Section 104 of the IHCIA, codified at 25 U.S.C. 1613a.

Full-time and part-time scholarships will be funded for each of the three scholarship programs.

The scholarship award selections and funding are subject to availability of funds appropriated for the scholarship program.

II. Award Information

Type of Award

Scholarship.

Estimated Funds Available

An estimated $13.7 million will be available for fiscal year (FY) 2017 awards. The IHS Scholarship Program (IHSSP) anticipates, but cannot guarantee, due to possible funding changes, student scholarship selections from any or all of the approved disciplines in the Preparatory, Pre-graduate or Health Professions Scholarship Programs for the scholarship period 2017–2018. Due to the rising cost of education and the decreasing number of scholars who can be funded by the IHSSP, the IHSSP has

changed the funding policy for Preparatory and Pre-graduate Scholarship awards and reallocated a greater percentage of its funding in an effort to increase the number of Health Professions Scholarships, and inherently the number of service-obligated scholars, to better meet the health care needs of the IHS and its Tribal and urban Indian health care system partners.

Anticipated Number of Awards

Approximately 20 new and 10 continuing awards will be made under the Health Professions Preparatory and Pre-graduate Scholarship Programs for Indians. The awards are for ten months in duration, with an additional two months for approved summer school requests, and will cover both tuition and fees and other related costs (ORC). The average award to a full-time student is approximately $31,919.52. An estimated 263 awards will be made under the Indian Health Professions Scholarship Program. The awards are for 12 months in duration and will cover both tuition and fees and ORC. The average award to a full-time student is approximately $48,500.00.

Project Period

The project period for the IHS Health Professions Preparatory Scholarship stipend support, tuition, fees and ORC is limited to two years for full-time students and the part-time equivalent of two years, not to exceed four years for part-time students. The project period for the Health Professions Pre-graduate Scholarship stipend support, tuition, fees and ORC is limited to four years for full-time students and the part-time equivalent of four years, not to exceed eight years for part-time students. The IHS Indian Health Professions Scholarship provides stipend support, tuition, fees, and ORC and is limited to four years for full-time students and the part-time equivalent of four years, not to exceed eight years for part-time students.

III. Eligibility Information

This is a limited competition announcement. New and continuation scholarship awards are limited to ''Indians'' as defined at 25 U.S.C. Section 1603(13). **Note:** The definition of ''Indians'' for Section 103 Preparatory and Pre-graduate scholarships is broader than the definition of ''Indians'' for the Section 104 Health Professions scholarship, as specified below. Continuation awards are non-competitive.

1. Eligibility

The Health Professions Preparatory Scholarship awards are made to American Indians (Federally recognized Tribal members, including those from Tribes terminated since 1940, first and second degree descendants of Federally recognized Tribal members, State recognized Tribal members and first and second degree descendants of State recognized Tribal members), or Eskimo, Aleut and other Alaska Natives who:

- Have successfully completed high school education or high school equivalency; and
- Have been accepted for enrollment in a compensatory, pre-professional general education course or curriculum.

The Health Professions Pre-graduate Scholarship awards are made to American Indians (Federally recognized Tribal members, including those from Tribes terminated since 1940, first and second degree descendants of Tribal members, and State recognized Tribal members, first and second degree descendants of Tribal members), or Eskimo, Aleut and other Alaska Natives who:

- Have successfully completed high school education or high school equivalency; and
- Have been accepted for enrollment or are enrolled in an accredited pre-graduate program leading to a baccalaureate degree in pre-medicine, pre-dentistry, pre-optometry or pre-podiatry.

The Indian Health Professions Scholarship may be awarded only to an individual who is a member of a Federally recognized Indian Tribe, Eskimo, Aleut or other Alaska Native as provided by Section 1603(13) of the IHCIA. Membership in a Tribe recognized only by a State does not meet this statutory requirement. To receive an Indian Health Professions Scholarship, an otherwise eligible individual must be enrolled in an appropriately accredited school and pursuing a course of study in a health profession as defined by Section 1603(10) of the IHCIA.

2. Cost Sharing/Matching

The Scholarship Program does not require matching funds or cost sharing to participate in the competitive grant process.

3. Benefits From State, Local, Tribal and Other Federal Sources

Awardees of the Health Professions Preparatory Scholarship, Health Professions Pre-graduate Scholarship, or Health Professions Scholarship, who accept outside funding from other scholarship, grant and fee waiver programs, will have these monies applied to their student account tuition and fees charges at the college or university they are attending, before the IHS Scholarship Program will pay any of the remaining balance, unless said outside scholarship, grant or fee waiver award letter specifically excludes use for tuition and fees. These outside funding sources must be reported on the student's invoicing documents submitted by the college or university they are attending. Student loans and Veterans Administration (VA)/G.I. Bill Benefits accepted by Health Professions Scholarship recipients will have no effect on the IHSSP payment made to their college or university.

IV. Application Submission Information

1. Electronic Application System and Application Handbook Instructions and Forms

Applicants must go online to *www.ihs.gov/scholarship/online_application/index.cfm* to apply for an IHS scholarship and access the Application Handbook instructions and forms for submitting a properly completed application for review and funding consideration. Applicants are strongly encouraged to seek consultation from their Area Scholarship Coordinator (ASC) in preparing their scholarship application for award consideration. ASC's are listed on the IHS Web site at: *http://www.ihs.gov/scholarship/contact/areascholarshipcoordinators/*.

This information is listed below. Please review the following list to identify the appropriate IHS ASC for your State.

IHS area office and states/locality served	Scholarship coordinator address
Great Plains Area IHS: Nebraska, Iowa, North Dakota, South Dakota ...	Ms. Holly Blacksmith, IHS Area Scholarship Coordinator, Great Plains Area IHS, 115 4th Avenue SE., Aberdeen, SD 57401, Tel: 605–226–7502.

IHS area office and states/locality served	Scholarship coordinator address
Alaska Native Tribal Health Consortium: Alaska	Ms. Laura Hudson, IHS Area Scholarship Coordinator, Alaska Area Native Health, 3900 Ambassador Drive, Anchorage, AK 99508, Tel: (907) 729–4592.
Albuquerque Area IHS: Colorado, New Mexico	Ms. Jeanette Garcia, IHS Area Scholarship Coordinator, Albuquerque Area IHS, 4101 Indian Schools Rd., NE., Suite 225, Albuquerque, NM 87110, Tel: (505) 256–6729.
Bemidji Area IHS: Illinois, Indiana, Michigan, Minnesota, Wisconsin	Mr. Tony Buckanaga, IHS Area Scholarship Coordinator, Bemidji Area IHS, 522 Minnesota Avenue NW., Room 115A, Bemidji, MN 56601, Tel: (218) 444–0486, 1–800–892–3079 (toll free).
Billings Area IHS: Montana, Wyoming	Mr. Delon Rock Above, Alternate: Ms. Bernice Hugs, IHS Area Scholarship Coordinator, Billings Area IHS, Area Personnel Office, P.O. Box 36600, 2900 4th Avenue, North, Suite 400, Billings, MT 59107, Tel: (406) 247–7215.
California Area IHS: California	Mr. Sergio Islas, IHS Area Scholarship Coordinator, California Area IHS, 650 Capitol Mall, Suite 7–100, Sacramento, CA 95814, Tel: (916) 930–3983 ext. 724.
Nashville Area IHS: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, District of Columbia.	Ms. Alyssa Janis, IHS Area Scholarship Coordinator, Nashville Area IHS, 711 Stewarts Ferry Pike, Nashville, TN 37214, Tel: (615) 467–1502.
Navajo Area IHS: Arizona, New Mexico, Utah	Ms. Aletha John, IHS Area Scholarship Coordinator, Navajo Area IHS, P.O. Box 9020, Window Rock, AZ 86515, Tel: (928) 871–1360.
Oklahoma City Area IHS: Kansas, Missouri, Oklahoma, Texas	Mr. Keith Bohanan, IHS Area Scholarship Coordinator, Oklahoma City Area IHS, 701 Market Drive, Oklahoma City, OK 73114, Tel: (405) 951–3789, 1–800–722–3357 (toll free).
Phoenix Area IHS: Arizona, Nevada, Utah	Ms. Trudy Begay, IHS Area Scholarship Coordinator, Phoenix Area IHS, Southwest Region Human Resources, Hopi Health Care Center, P.O. Box 4000, Polacca, Arizona 86042, Tel: (928) 737–6374.
Portland Area IHS: Idaho, Oregon, Washington	Ms. Heidi Hulsey, IHS Area Scholarship Coordinator, Portland Area IHS, 1414 NW Northrup Street, Suite 800, Portland, Oregon 97209, Tel: (503) 414–7745.
Tucson Area IHS: Arizona	Ms. Trudy Begay, (See Phoenix Area).

2. Content and Form Submission

Each applicant will be responsible for entering their basic applicant account information online, in addition to submitting required documents, in accordance with the IHS Scholarship Program Application Handbook instructions, to the: IHS Scholarship Program Branch Office, 5600 Fishers Lane, Mail Stop: OHR (11E53A), Rockville, Maryland 20857. Applicants must initiate an application through the online portal or the application will be considered incomplete. For more information on how to use the online portal, go to *www.ihs.gov/scholarship.* The portal will be open on December 20, 2016. The application will be considered complete when the following documents are received:

- Online application is submitted by deadline.
- Current Letter of Acceptance from college/university or proof of application to a college/university or health professions program.
- Official transcripts for all colleges/universities attended (or high school transcripts or Certificate of Completion of Home School Program or General Education Diploma (GED) for applicants who have not taken college courses).
- Cumulative Grade Point Average (GPA): Calculated by the applicant.
- Applicant's Documents for Indian Eligibility.

A. If you are a member of a Federally recognized Tribe or Alaska Native (recognized by the Secretary of the Interior), provide evidence of membership such as:

(1) Certification of Tribal enrollment by the Secretary of the Interior, acting through the Bureau of Indian Affairs (BIA) Certification: Form 4432—Category A or D, (whichever is applicable); or

(2) In the absence of BIA certification, documentation that you meet requirements of Tribal membership as prescribed by the charter, articles of incorporation or other legal instrument of the Tribe and have been officially designated as a Tribal member as evidenced by an accompanying document signed by an authorized Tribal official, *i.e.,* Tribal enrollment card showing enrollment number; or

(3) Other evidence of Tribal membership satisfactory to the Secretary of the Interior.

Note: If you meet the criteria of Form 4432-Category B or C, you are eligible only for the Preparatory or Pre-graduate Scholarships, which have eligibility criteria as follows in Section B.

B. *For Preparatory or Pre-graduate Scholarships, only:* If you are a member of a Tribe terminated since 1940 or a State recognized Tribe and first or second degree descendant, provide official documentation that you meet the requirements of Tribal membership as prescribed by the charter, articles of incorporation or other legal instrument of the Tribe and have been officially designated as a Tribal member as evidenced by an accompanying document signed by an authorized Tribal official; or other evidence, satisfactory to the Secretary of the Interior, that you are a member of the Tribe. In addition, if the terminated or State recognized Tribe of which you are a member is not on a list of such Tribes published by the Secretary of the Interior in the **Federal Register**, you must submit an official signed document that the Tribe has been terminated since 1940 or is recognized by the State in which the Tribe is located in accordance with the law of that State.

C. *For Preparatory or Pre-graduate Scholarships, only:* If you are not a Tribal member, but are a natural child or grandchild of a Tribal member you must submit: (1) Evidence of that fact, *e.g.,* your birth certificate and/or your parent's/grandparent's birth/death certificate showing the name of the Tribal member; and (2) evidence of your

parent's or grandparent's Tribal membership in accordance with paragraphs A and B. The relationship to the Tribal member must be clearly documented. Failure to submit the required documentation will result in the application not being accepted for review.

- Two Faculty/Employer Evaluations with faculty evaluators identified, evaluations transmitted and completed in the online applicant portal.
- Online narratives-reasons for requesting the scholarship.
- Delinquent Debt Form completed in the online applicant portal.
- Course Curriculum Verification completed in the online applicant portal.
- Curriculum for Major.

3. Submission Dates

Application Receipt Date: The online continuation application submission deadline for *continuation* applicants is Tuesday, February 28, 2017. No supporting documents will be accepted after this postal date, except final Letters of Acceptance, which must be submitted no later than postal date Tuesday, May 30, 2017.

Application Receipt Date: New applicants must submit their application to include all supporting documents by the postal deadline of Tuesday, March 28, 2017. No supporting documents will be accepted after this date, except final Letters of Acceptance, which must be submitted no later than Tuesday, May 30, 2017.

Supporting documents shall be considered as meeting the deadline if they are received by the IHSSP branch office, postmarked on or before the deadline date. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing and the application will not be considered for funding. Receipts of any kind will not be accepted as proof in meeting the postal deadline.

New and continuation applicants may check the status of their application receipt and processing by logging into their online account at *https://www.ihs.gov/scholarship/online_application/index.cfm.* Applications received with postmarks after the announced deadline date will not be considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

No more than 5% of available funds will be used for part-time scholarships this fiscal year. Students are considered part-time if they are enrolled for a minimum of six hours of instruction and are not considered in full-time status by their college/university. Documentation must be received from part-time applicants that their school and course curriculum allows less than full-time status. Both part-time and full-time scholarship awards will be made in accordance with the authorizing statutes at 25 U.S.C §§ 1613 and 1613a and the regulations at 42 CFR part 136 Subpart J, Subdivisions J–3, J–4, and J–8 and this information will be published in all IHSSP Application and Student Handbooks as they pertain to the IHSSP.

6. Other Submissions Requirements

New and continuation applicants are responsible for using the online application system. See section 3. Submission Dates for application deadlines.

V. Application Review Information

1. Criteria

Applications will be reviewed and scored with the following criteria.

- Academic Performance (40 Points)

Applicants are rated according to their academic performance as evidenced by transcripts and faculty evaluations. In cases where a particular applicant's school has a policy not to rank students academically, faculty members are asked to provide a personal judgment of the applicant's achievement. Preparatory, Pre-graduate and Health Professions applicants with a cumulative GPA below 2.0 are not eligible for award.

- Faculty/Employer Recommendations (30 Points)

Applicants are rated according to evaluations by faculty members, current and/or former employers and Tribal officials regarding the applicant's potential in the chosen health related professions.

- Stated Reasons for Asking for the Scholarship and Stated Career Goals Related to the Needs of the IHS (30 Points)

Applicants must provide a brief written explanation of reasons for asking for the scholarship and of their career goals. Applicants are considered for scholarship awards based on their desired career goals and how these goals relate to current Indian health personnel needs.

The applicant's narrative will be judged on how well it is written and its content.

Applications for each health career category are reviewed and ranked separately.

- Applicants who are closest to graduation or completion of training are awarded first. For example, senior and junior applicants under the Health Professions Pre-graduate Scholarship receive funding before freshmen and sophomores.

- Priority Categories

The following is a list of health professions that will be considered for funding in each scholarship program in FY 2017.

○ Indian Health Professions Preparatory Scholarships limited to junior year and above students pursuing the following degrees.

A. Pre-Clinical Psychology.
B. Pre-Nursing.
C. Pre-Pharmacy.
D. Pre-Social Work (Jr. and Sr. preparing for an MS in social work).

○ Indian Health Professions Pre-graduate Scholarships limited to junior year and above students pursuing the following degrees.

A. Pre-Dentistry.
B. Pre-Medicine.
C. Pre-Optometry.
D. Pre-Podiatry.

○ Indian Health Professions Scholarship.

A. Medicine—Allopathic and Osteopathic doctorate degrees.
B. Nursing—Associate Degree in Nursing (ADN).
C. Nursing—Bachelor of Science (BSN) (Priority consideration will be given to Registered Nurses employed by the IHS; in a program conducted under a contract or compact entered into under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) and its amendments; or in a program assisted under Title V of the IHCIA).
D. Nursing (NP, DNP)—Nurse Practitioner/Advanced Practice Nurse in Family Practice, Psychiatry, Geriatric, Women's Health, Pediatric Nursing.
E. Nursing—Certified Nurse Midwife (CNM).
F. Certified Registered Nurse Anesthetist (CRNA).
G. Physician Assistant (certified).
H. Dentistry—DDS or DMD degrees.
I. Social Work—Master's degree.
J. Chemical Dependency Counseling—Master's degree.
K. Clinical Psychology—Ph.D. or PsyD.
L. Counseling Psychology—Ph.D.
M. Optometry—OD.

N. Pharmacy—PharmD.
O. Podiatry—DPM.
P. Physical Therapy—MS, DPT.

2. Review and Selection Process.

The applications will be reviewed and scored by the IHS Scholarship Program's Application Review Committee appointed by the IHS. Reviewers will not be allowed to review an application from their area or their own Tribe. Each application will be reviewed by three reviewers. The average score of the three reviews provides the final ranking score for each applicant. To determine the ranking of each applicant, these scores are sorted from the highest to the lowest within each scholarship health discipline by date of graduation and score. If several students have the same date of graduation and score within the same discipline, the computer will randomly sort the ranking list and will not sort by alphabetical name. Selections are then made from the top of each ranking list to the extent that funds allocated by the IHS among the three scholarships are available for obligation.

VI. Award Administration Information

1. Award Notices

It is anticipated that recipients applying for extension of their scholarship funding will be notified in writing during the first week of June 2017 and new applicants will be notified in writing during the first week of July 2017. An Award Letter will be issued to successful applicants. Unsuccessful applicants will be notified in writing, which will include a brief explanation of the reason(s) the application was not successful and provide the name of the IHS official to contact if more information is desired.

2. Administrative and National Policy Requirements

Regulations at 42 CFR 136.304 provide that the IHS shall, from time to time, publish a list of allied health professions eligible for consideration for the award of IHS Indian Health Professions Preparatory and Pre-graduate Scholarships and IHS Indian Health Professions Scholarships. Section 104(b)(1) of the IHCIA, 25 U.S.C. 1613a(b)(1), authorizes the IHS to determine the distribution of scholarships among the health professions.

Awards for the Indian Health Professions Scholarships will be made in accordance with the IHCIA, 25 U.S.C. 1613a and 42 C.F.R §§ 136.330–136.334. Awardees shall incur a service obligation prescribed under the IHCIA, Section 1613a(b), which shall be met by service, through full-time clinical practice (as detailed on page 18 of the IHS Scholarship Program Service Commitment Handbook at *http://www.ihs.gov/scholarship/handbooks/service_commitment_handbook.pdf*):

(1) In the IHS;

(2) In a program conducted under a contract or compact entered into under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) and its amendments;

(3) In a program assisted under Title V of the Indian Health Care Improvement Act (Pub. L. 94–437) and its amendments; or

(4) In a private practice option of his or her profession if the practice (a) is situated in a health professional shortage area, designated in regulations promulgated by the Secretary of Health and Human Services (Secretary) and (b) addresses the health care needs of a substantial number (75% of the total served) of Indians as determined by the Secretary in accordance with guidelines of the Service.

Pursuant to the IHCIA Section 1613a(b)(3)(C), an awardee of an IHS Health Professions Scholarship may, at the election of the awardee, meet his/her service obligation prescribed under IHCIA Section 1613a(b) by a program specified in options (1)–(4) above that:

(i) Is located on the reservation of the Tribe in which the awardee is enrolled; or

(ii) Serves the Tribe in which the awardee is enrolled, if there is an open vacancy available in the discipline for which the awardee was funded under the IHS Health Professions Scholarship during the required 90-day placement period.

In summary, all awardees of the Indian Health Professions Scholarship are reminded that acceptance of this scholarship will result in a service obligation required by both statute and contract, which must be performed, through full-time clinical practice, at an approved service payback facility. The IHS Director (Director) reserves the right to make final decisions regarding assignment of scholarship recipients to fulfill their service obligation.

Moreover, the Director has the authority to make the final determination, designating a facility, whether managed and operated by IHS, or one of its Tribal or urban Indian partners, consistent with IHCIA, as approved for scholar obligated service payback.

3. Reporting

Scholarship Program Minimum Academic Requirements

It is the policy of the IHS that a scholarship awardee funded under the Indian Health Professions Scholarship Program of the IHCIA must maintain a 2.0 cumulative GPA, remain in good academic standing each semester/trimester/quarter, maintain full-time student status (institutional definition of ''minimum hours'' constituting full-time enrollment applies) or part-time student status (institutional definition of ''minimum and maximum'' hours constituting part-time enrollment applies) for the entire academic year, as indicated on the scholarship application submitted for that academic year. The Health Professions Scholarship awardee may not change his or her enrollment status between terms of enrollment during the same academic year unless approved in advance by the Branch Chief of Scholarships. New recipients may request a Leave of Absence during the first year on a case by case basis. New recipients may not request a leave of absence prior to the start of the first academic year. All requests for leave of absence are to be approved in advance by the Director, Division of Health Professions Support. All leave of absence requests during the first year must include the following. A written request from the scholarship recipient, an official letter from the academic program administrator supporting the leave of absence and certification from the academic program that the scholar recipient has been approved a leave of absence, has not been removed or withdrawn from the academic program and will be fully returned to the original academic program upon return from the approved leave of absence. In addition to these requirements, a Health Professions Scholarship awardee must be enrolled in an approved/accredited school for a health professions degree.

An awardee of a scholarship under the IHS Health Professions Preparatory and Health Professions Pre-graduate Scholarship authority must maintain a minimum 2.0 cumulative GPA, remain in good standing each semester/trimester/quarter and be a full-time student (institutional definition of ''minimum hours'' constituting full-time enrollment applies, typically 12 credit hours per semester) or a part-time student (institutional definition of ''minimum and maximum'' hours constituting part-time enrollment applies, typically 6–11 credit hours). The Preparatory and Pre-graduate awardee may not change from part-time status to full-time status or vice versa in

the same academic year unless approved in advance by the Branch Chief of Scholarships. New recipients may not request a Leave of Absence prior to the start of the first academic year.

The following reports must be sent to the IHSSP at the identified time frame. Each scholarship awardee will have access to online Student and Service Commitment Handbooks and required program forms and instructions on when, how, and to whom these must be submitted, by logging into the IHSSP Web site at *www.ihs.gov/scholarship.* If a scholarship awardee fails to submit these forms and reports as required, they will be ineligible for continuation of scholarship support and scholarship award payments will be discontinued.

A. Recipient's and Initial Progress Report

Within thirty (30) days from the beginning of each semester/trimester/quarter, scholarship awardees must submit a Recipient's Initial Program Progress Report (Form IHS–856–8, found on the IHS Scholarship Program Web site at *http://www.ihs.gov/scholarship/programresources/studentforms/*).

B. Transcripts

Within thirty (30) days from the end of each academic period, *i.e.,* semester/trimester/quarter, or summer session, scholarship awardees must submit an Official Transcript showing the results of the classes taken during that period.

C. Notification of Academic Problem

If at any time during the semester/trimester/quarter, scholarship awardees are advised to reduce the number of credit hours for which they are enrolled below the minimum of the 12 (or the number of hours considered by their school as full-time) for a full-time student or at least six hours for part-time students, or if they experience academic problems, they must submit this report (Form IHS–856–9, found on the IHS Scholarship Program Web site at *www.ihs.gov/scholarship*).

D. Change of Status

- Change of Academic Status

Scholarship awardees must immediately notify their Scholarship Program Analyst if they are placed on academic probation, dismissed from school, or voluntarily withdraw for any reason (personal or medical).

- Change of Health Discipline

Scholarship awardees may not change from the approved IHSSP health discipline during the school year. If an unapproved change is made, scholarship payments will be discontinued.

- Change in Graduation Date

Any time that a change occurs in a scholarship awardee's expected graduation date, they must notify their Scholarship Program Analyst immediately in writing. Justification must be attached from the school advisor. Approvals must be made by the Branch Chief of Scholarships.

VII. Agency Contacts

1. Questions on the application process may be directed to the appropriate IHS Area Scholarship Coordinator.

2. Questions on other programmatic matters may be addressed to: Chief, Scholarship Program, 5600 Fishers Lane, Mail Stop: OHR (11E53A), Rockville, Maryland 20857, Telephone: (301) 443–6197 (This is not a toll-free number).

3. Questions on payment information may be directed to: Mr. Craig Boswell, Grants Scholarship Coordinator, Division of Grants Management, Indian Health Service, 5600 Fishers Lane, Mail Stop: (07E57B), Rockville, Maryland 20857, Telephone: (301) 443–0243 (This is not a toll-free number).

VIII. Other Information

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2020,* a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Education and Community-Based Programs. Potential applicants may download a copy of *Healthy People 2020* from *http://www.healthypeople.gov.*

Interested individuals are reminded that the list of eligible health and allied professions is effective for applicants for the 2017–2018 academic year. These priorities will remain in effect until superseded. Applicants who apply for health career categories not listed as priorities during the current scholarship cycle will not be considered for a scholarship award.

Dated: January 3, 2017.

Elizabeth A. Fowler,

Deputy Director for Management, Operations Indian Health Service.

[FR Doc. 2017–00257 Filed 1–9–17; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), 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 Library of Medicine Special Emphasis Panel G08.

Date: February 16–17, 2017.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Zoe E. Huang, MD, Scientific Review Officer, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: January 4, 2017.

Michelle Trout,

Program Analyst, Office of the Federal Advisory Committee Policy.

[FR Doc. 2017–00183 Filed 1–9–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Availability of the Office of Dietary Supplements Strategic Plan for 2017–2021

SUMMARY: The Office of Dietary Supplements (ODS) at the National Institutes of Health (NIH) has completed a strategic planning process resulting in the development of the ODS Strategic Plan for 2017–2021, entitled *Strengthening Knowledge and Understanding of Dietary Supplements.* The strategic plan is available in pdf format on the ODS Web site: *https://*

ods.od.nih.gov/About/StrategicPlan2017–2021.aspx

FOR FURTHER INFORMATION CONTACT: Office of Dietary Supplements, National Institutes of Health, 6100 Executive Boulevard, Room 3B01, Bethesda, MD 20892–7517, Email: *ODS@nih.gov.*

SUPPLEMENTARY INFORMATION: The ODS Strategic Plan for 2017–2021 presents a refreshed set of goals, strategies, and activities that ODS plans for the next 5 years. It also provides a review of ODS activities and accomplishments between 2010 and 2016, and includes examples of ODS collaborative projects and programs and summaries of its extramural investments. It was shaped by input, comments, and advice from ODS's stakeholder communities throughout the federal government, academia, the dietary supplement industry, consumer advocacy and education groups, and interested consumers.

Background

The mission of ODS is to support, conduct, and coordinate scientific research and provide intellectual leadership for the purpose of strengthening the knowledge and understanding of dietary supplements to foster an enhanced quality of life and health for the U.S. population. ODS was established in the Office of the Director, NIH, in 1995 as a major provision of the Dietary Supplement Health and Education Act of 1994.

Dated: January 3, 2017.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2017–00316 Filed 1–9–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council.

Date: February 14–15, 2017.

Open: February 14, 2017, 8:30 a.m. to 4:15 p.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: February 15, 2017, 8:30 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Gwen W. Collman, Ph.D., Director, Division of Extramural Research & Training, National Institutes of Health, Nat. Inst. of Environmental Health Sciences, 615 Davis Dr. KEY615/3112, Research Triangle Park, NC 27709 (919) 541–4980, *collman@niehs.nih.gov.*

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.

Information is also available on the Institute's/Center's home page: *http://www.niehs.nih.gov/about/boards/naehsc/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 4, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–00182 Filed 1–9–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Reproduction, Andrology, and Gynecology Subcommittee.

Date: February 24, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dennis E. Leszczynski, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health And Human Development, NIH, 6710B Rockledge Drive, Bethesda, MD 20817, (301) 435–2717, *leszczyd@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 4, 2017.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–00181 Filed 1–9–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) National Advisory Council (NAC) on February 3, 2017.

The meeting will include a brief reflection on the February 2, 2017, Joint National Advisory Council meeting (JNAC), followed by a discussion on *The 21st Century Cures Act.* There will be a council discussion regarding the *Transition.*

The meeting is open to the public and will be held at 5600 Fishers Lane, Rockville, MD. Attendance by the public will be limited to space available. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Council. Written submissions should be received by the contact person by January 25, 2017. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact by January 25, 2017. Five minutes will be allotted for each presentation.

The meeting may be accessed via telephone. To attend on site; obtain the call-in number, access code, and/or web access link; submit written or brief oral comments; or request special accommodations for persons with disabilities, please register on-line at: *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate with SAMHSA's Committee Management Officer, CDR Carlos Castillo (see contact information below).

Substantive meeting information and a roster of Council members may be obtained either by accessing the SAMHSA Council's Web site at *http://www.samhsa.gov/about-us/advisory-councils/* or by contacting CDR Castillo. Substantive program information may be obtained after the meeting by accessing the SAMHSA Council's Web site, *http://nac.samhsa.gov/,* or by contacting CDR Castillo.

Council Name: Substance Abuse and Mental Health Services Administration, National Advisory Council.

Date/Time/Type: February 3, 2017, 8:30 a.m. to 12:30 p.m. (EDT), Open.

Place: 5600 Fishers Lane, Rockville, Maryland 20857.

Contact: CDR Carlos Castillo, Committee Management Officer and Designated Federal Official, SAMHSA National Advisory Council, 5600 Fishers Lane, Room 18E77A, Rockville, Maryland 20857 (mail), Telephone: (240) 276–2787, Email: *carlos.castillo@samhsa.hhs.gov*.

Carlos Castillo,

Committee Management Officer, SAMHSA.

[FR Doc. 2017–00229 Filed 1–9–17; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the combined meeting on February 1, 2017, of the Substance Abuse and Mental Health Services Administration's (SAMHSA) four National Advisory Councils: The SAMHSA National Advisory Council (NAC), the Center for Mental Health Services NAC, the Center for Substance Abuse Prevention NAC, the Center for Substance Abuse Treatment NAC; and the two SAMHSA Advisory Committees: Advisory Committee for Women's Services (ACWS) and the Tribal Technical Advisory Committee (TTAC).

SAMHSA's National Advisory Councils were established to advise the Secretary, Department of Health and Human Services (HHS); the Administrator, SAMHSA; and SAMHSA's Center Directors concerning matters relating to the activities carried out by and through the Centers and the policies respecting such activities.

Under Section 501 of the Public Health Service Act, the ACWS is statutorily mandated to advise the SAMHSA Administrator and the Associate Administrator for Women's Services on appropriate activities to be undertaken by SAMHSA and its Centers with respect to women's substance abuse and mental health services.

Pursuant to Presidential Executive Order No. 13175, November 6, 2000, and the Presidential Memorandum of September 23, 2004, SAMHSA established the TTAC for working with Federally-recognized Tribes to enhance the government-to-government relationship, and honor Federal trust responsibilities and obligations to Tribes and American Indian and Alaska Natives. The SAMHSA TTAC serves as an advisory body to SAMHSA.

The theme for the February 1, 2017 combined meeting is *Translating Science to Service (and Back Again).* It will include remarks from the Deputy Assistant Secretary for Mental Health and Substance Abuse, and a report on SAMHSA's priorities and updates by the Centers and Office Directors. There will be a panel discussion by the directors of the National Institute of Mental Health (NIMH); the National Institute on Drug Abuse (NIDA) and the Acting Deputy Director of the National Institute on Alcohol Abuse and Alcoholism (NIAAA). U.S. Rep. Tim Murphy has been invited to offer the Special Remarks, which will be followed by breakout groups discussions with the following titles: Suicide Prevention; Underage Drinking; and MAT and Naloxone.

The meeting is open to the public and will be held at the Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857. Attendance by the public will be limited to space available. Interested persons may present data, information, or views orally or in writing, on issues pending before the Council. Written submissions should be forwarded to the contact person by January 25, 2017. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact by January 25, 2017. Five minutes will be allotted for each presentation.

The meeting may be accessed via telephone and web conferencing will be available. To attend on site; obtain the call-in number, access code, and/or web access link; submit written or brief oral comments; or request special accommodations for persons with disabilities, please register on-line at: *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate with SAMHSA's Committee Management Officer, CDR Carlos Castillo (see contact information below).

Meeting information and a roster of Council members may be obtained either by accessing the SAMHSA Council's Web site at *http://www.samhsa.gov/about-us/advisory-councils/* or by contacting CDR Castillo. Substantive program information may be obtained after the meeting by accessing the SAMHSA Council's Web site, *http://nac.samhsa.gov/,* or by contacting CDR Castillo.

Council Names: Substance Abuse and Mental Health Services Administration National Advisory Council, Center for Mental Health Services National Advisory Council, Center for Substance Abuse Prevention National Advisory Council, Center for Substance Abuse Treatment National Advisory Council,

Advisory Committee for Women's Services, Tribal Technical Advisory Committee

Date/Time/Type: February 2, 2017, 8:30 a.m. to 5:00 p.m. EDT, Open.

Place: Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857.

Contact: CDR Carlos Castillo, Committee Management Officer and Designated Federal Official, SAMHSA National Advisory Council, Room 18E77A, 5600 Fishers Lane, Rockville, Maryland 20857 (mail), Telephone: (240) 276–2787, Email: *carlos.castillo@samhsa.hhs.gov*.

Carlos Castillo,

Committee Management Officer, SAMHSA.

[FR Doc. 2017–00228 Filed 1–9–17; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0437]

Update to Alternative Planning Criteria (APC) National Guidelines

AGENCY: Coast Guard, DHS.

ACTION: Reopening of comment period.

SUMMARY: The Coast Guard is reopening the comment period on the draft Alternative Planning Criteria (APC) National Guidelines. The available draft is the same as that which was made available for comment in May 2016. The APC Guidelines would provide the maritime industry with updated information on the development and submission of an APC request made pursuant to existing regulations. In addition to providing guidance to vessel owners and operators on developing APC requests, the APC Guidelines would also facilitate consistency in the review of APC requests by Coast Guard personnel. Comments previously submitted do not need to be submitted again.

DATES: Comments must reach the USCG by April 10, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0437 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email CDR Scott Stoermer, USCG Headquarters, 2703 Martin Luther King Jr. Ave. SE., Stop 7516, Washington DC, 20593, *scott.a.stoermer@uscg.mil,* (202) 372–2234.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments (or related material) on the draft APC Guidelines. We will consider all submissions and may adjust our final action based on your comments. If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Discussion

The U.S. Coast Guard Office of Marine Environmental Response Policy is continuing to refine its national-level policy to clarify APC submissions and processes pursuant to 33 CFR 155.1065 and 155.5067. We made a draft policy available for public comment on May 27, 2016 (81 FR 33685), and held a public meeting on September 21, 2016, during the public comment period (81 FR 54584). The Coast Guard is aware of APC's critical role in tank and non-tank vessel response preparedness, and therefore desires to thoroughly consider all facets of the policy's implementation. Although open to any comments, the Coast Guard is specifically interested in comments related to the economic impact of the policy, especially in remote areas. Additionally, the Coast Guard is interested in public comment regarding the exercise and verification aspects of the policy.

The Coast Guard will consider all of the information received from public comments, including the comments received at the public meeting held on September 21, 2016, as well as written comments submitted during the open comment periods.

This notice is issued under authority of 5 U.S.C. 552.

Dated: January 4, 2017.

Joseph B. Loring,

Office of Marine Environmental Response Policy.

[FR Doc. 2017–00319 Filed 1–9–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0006]

Tribal Declarations Pilot Guidance

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This document provides notice of the availability of the final policy *Tribal Declarations Pilot Guidance.* The Federal Emergency Management Agency (FEMA) published a notice of availability and request for comment for the proposed policy on January 8, 2016 at 81 FR 943.

DATES: This policy is effective January 10, 2017.

ADDRESSES: This final policy is available online at *http://www.regulations.gov* and on FEMA's Web site at *http://www.fema.gov.* The proposed and final policy, all related **Federal Register** Notices, and all public comments received during the comment period are available at *http://www.regulations.gov* under docket ID FEMA–2013–0006. You may also view a hard copy of the final policy at the Office of Chief Counsel, Federal Emergency Management Agency, Room 8NE, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Jessica Specht, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202–212–2288.

SUPPLEMENTARY INFORMATION: The Sandy Recovery Improvement Act of 2013 amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as

amended, 42 U.S.C. 5121 *et seq.,* to provide federally-recognized Indian Tribal governments the option to request a Presidential emergency or major disaster declaration.[1] On January 8, 2016, FEMA published a notice seeking comment on a proposed pilot program to manage declaration requests from Indian Tribal governments. In response to comments received, FEMA made several revisions to the proposed guidance, including reducing the minimum damage amount from the proposed amount of $300,000 to $250,000, and expanding eligibility for individual assistance under a Tribal declaration to non-enrolled individuals who are members of the Tribal community.

FEMA is now issuing a final policy implementing the pilot program. This final policy does not have the force or effect of law.

(Authority: Pub. L. 113–2.)

Dated: January 4, 2017.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2017–00315 Filed 1–9–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0130]

Agency Information Collection Activities: Record of Abandonment of Lawful Permanent Resident Status, Form I–407; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on October 24, 2016, at 81 FR 73128, allowing for a 60-day public comment period. USCIS did not receive any comment in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 9, 2017. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov*. Comments may also be submitted via fax at (202) 395–5806. (This is not a toll-free number.) All submissions received must include the agency name and the OMB Control Number 1615–0130.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2013–0005 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Record of Abandonment of Lawful Permanent Resident Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I407; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Lawful Permanent Residents (LPRs) use Form I–407 to inform USCIS and formally record their abandonment of lawful permanent resident status. U.S. Citizenship and Immigration Services uses the information collected in Form I–407 to record the LPR's abandonment of lawful permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,527 responses at 15 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,132 annual burden hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $30,691.

Dated: January 4, 2017.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2017–00231 Filed 1–9–17; 8:45 am]

BILLING CODE 9111–97–P

[1] Public Law 113–2, 1110.

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–NEW]

Agency Information Collection Activities: Citizenship and Integration Direct Services Grant Program, Form G–1482; Existing Collection in Use Without an OMB Control Number

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until March 13, 2017.

ADDRESSES: All submissions received must include the OMB Control Number 1615–NEW in the subject box, the agency name and Docket ID USCIS–2016–0002. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2016–0002;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2016–0002 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Existing Collection in Use without an OMB Control Number.

(2) *Title of the Form/Collection:* Citizenship and Integration Direct Services Grant Program.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–1482; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Not-for-profit institutions. The USCIS Office of Citizenship (OoC) will use the information collected during the grant application period to determine the number of, and amounts for, approved grant applications. In recent years USCIS has been authorized to expend funds that are collected for adjudication and naturalization services and deposited into the Immigration Examination Fee Account for the Citizenship and Integration Grant Program (CIGP). The USCIS Office of Citizenship will use the data being collected from grant recipients after funding awards have been made to conduct an ongoing evaluation of citizenship education and naturalization outcomes for program participants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G–1482 is 300 and the estimated hour burden per response is 40 hours. The estimated total number of respondents for the post award evaluation is 85 and the estimated hour burden per response is 28 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 42,940 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is 2,524,872.

Dated: January 4, 2017.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2017–00230 Filed 1–9–17; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2016–N234]; [FXES11130800000–167–FF08E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing recovery permits to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before February 9, 2017.

ADDRESSES: Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; see **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests.

Applicants

Permit No. TE–94654B

Applicant: Mesa Biological, LLC., Bakersfield, California.

The applicant requests a new permit to take (harass by survey, capture, handle, and release) the Fresno kangaroo rat (*Dipodomys nitratoides exilis*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), giant kangaroo rat (*Dipodomys ingens*), Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*), Pacific pocket mouse (*Perognathus longimembris pacificus*), Buena Vista Lake shrew (*Sorex ornatus relictus*), and blunt-nosed leopard lizard (*Gambelia silus*), in conjunction with survey activities and scientific research throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–068745

Applicant: Jeffery T. Wilcox, Vallejo, California.

The applicant requests a permit renewal and amendment to take (harass by survey, capture, handle, collect tissue samples, and release) the California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*) in conjunction with survey and research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–069534

Applicant: Victor C. Novik, San Diego, California.

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*); and take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) and Riverside fairy shrimp (*Streptocephalus woottoni*), in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–57065B

Applicant: Steven Morris, Huntington Beach, California.

The applicant requests a new permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–95006A

Applicant: Steven C. Chen, San Luis Obispo, California.

The applicant requests a permit renewal and amendment to take (harass by survey, capture, handle, and release) the Fresno kangaroo rat (*Dipodomys nitratoides exilis*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), giant kangaroo rat (*Dipodomys ingens*), San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*), Stephens' kangaroo rat (*Dipodomys stephensi*), Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*), and California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*); and take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*), and Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–221411

Applicant: Center for Natural Lands Management, Temecula, California.

The applicant requests a permit renewal to take (harass by survey, capture, handle, mark, and release) the tidewater goby (*Eucyclogobius newberryi*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), giant kangaroo rat (*Dipodomys ingens*), San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*), Stephens' kangaroo rat (*Dipodomys stephensi*), and California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*); take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*); take (harass by survey, locate and monitor nests, and remove brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests) the southwestern willow flycatcher (*Empidonax traillii extimus*); take (locate and monitor nests and remove brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests) the least Bell's vireo (*Vireo bellii pusillus*); and remove/reduce to possession from lands under Federal jurisdiction *Acanthomintha ilicifolia* (San Diego thorn-mint) and *Ambrosia pumila* (San Diego ambrosia) in conjunction with survey, population monitoring, and research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–043630

Applicant: San Francisco Estuary Institute, Richmond, California.

The applicant requests a permit renewal to take (harass by survey using taped vocalization callback, and collect non-viable eggs) the California Ridgway's rail (California clapper r.) (*Rallus obsoletus obsoletus*) (*R. longirostris o.*) in conjunction with survey and research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–177979

Applicant: Allison Rudalevige, Garden Grove, California.

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–14134C

Applicant: Lawrence Travanti, Roseville, California.

The applicant requests a new permit to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–02351A

Applicant: Timothy Searl, Hemet, California.

The applicant requests a new permit to take (harass by survey; and locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*); take (locate and monitor nests) least Bell's vireo (*Vireo bellii pusillus*); and take (harass by survey, capture, handle, and release) the San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*) and Stephens' kangaroo rat (*Dipodomys stephensi*) in conjunction with surveys and population monitoring activities throughout the range of the species for the purpose of enhancing the species' survival.

Permit No. TE–14532C

Applicant: Hannah Donaghe, Santa Barbara, California.

The applicant requests a new permit to take (harass by survey, capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with survey and population monitoring activities throughout the range of the species for the purpose of enhancing the species' survival.

Permit No. TE–31406A

Applicant: California State Parks, Ventura, California.

The applicant requests a permit renewal to take (harass by survey, locate and monitor nests, install symbolic fencing, and install and use remote cameras in nesting areas) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*) in conjunction with survey and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–01768B

Applicant: Brian Karpman, Costa Mesa, California.

The applicant requests a permit renewal to take (locate and monitor nests and remove brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with survey and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–814222

Applicant: California Department of Parks and Recreation, San Diego, California.

The applicant requests a permit renewal to take (harass by survey, and locate and monitor nests) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*); take (harass by survey; locate and monitor nests, and remove brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests) the southwestern willow flycatcher (*Empidonax traillii extimus*); and take (locate and monitor nests, and remove brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with survey and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–14554C

Applicant: Jaime Morales, Carlsbad, California.

The applicant requests a new permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species in California, for the purpose of enhancing the species' survival.

Permit No. TE–14558C

Applicant: Colleen DelVecchio, Ojai, California.

The applicant requests a permit renewal to take (harass by survey, and locate and monitor nests) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*) in conjunction with survey and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–14560C

Applicant: Lance Woolley, San Diego, California.

The applicant requests a new permit to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–835365

Applicant: California Department of Water Resources, West Sacramento, California.

The applicant requests a permit renewal and amendment to take (harass by survey, capture, handle, and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*); take (perform egg mass surveys; and harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*)); take (harass by survey using taped vocalization) the California Ridgway's rail (California clapper r.) (*Rallus obsoletus obsoletus*) (*R. longirostris o.*); and take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey and research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–128462

Applicant: Jonathan Feenstra, Altadena, California.

The applicant requests a permit renewal to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–006559

Applicant: Dale Powell, Riverside, California.

The applicant requests a permit amendment to take (harass by survey, capture, and release) the Casey's June beetle (*Dinacoma caseyi*); and take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in California, for the purpose of enhancing the species' survival.

Permit No. TE–787376

Applicant: Bloom Biological Inc., Santa Ana, California.

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the Pacific pocket mouse (*Perognathus longimembris pacificus*) and the arroyo toad (arroyo southwestern) (*Anaxyrus californicus*); take (harass by performing predator management activities) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*); take (harass by survey, locate and monitor nests, capture, handle, measure, weigh, band, color-band, and release) the southwestern willow flycatcher (*Empidonax traillii extimus*); and take (harass by survey, locate and monitor nests, remove brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized vireo nests; capture, measure, weigh, band, color-band, and release) least Bell's vireo (*Vireo bellii pusillus*) in conjunction with survey, population monitoring, and scientific research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–14587C

Applicant: Andrew McGuirk, Rocklin, California.

The applicant requests a new permit to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–036499

Applicant: Golden Gate National Recreation Area, San Francisco, California.

The applicant requests a permit renewal and amendment to take (harass by survey, capture, handle, collect voucher specimens, and release) the tidewater goby (*Eucyclogobius newberryi*), and California freshwater shrimp (*Syncaris pacifica*); take (harass by survey, capture, handle, and release) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*); take (harass by survey and pursuit) the mission blue butterfly (*Icaricia icarioides missionensis*) and San Bruno elfin butterfly (*Callophrys mossii bayensis*); and remove/reduce to possession from lands under Federal jurisdiction *Arctostaphylos montana* subsp. *ravenii* (=*A. hookeri* subsp. *ravenii*) (Raven's manzanita), *Suaeda californica* (California seablite), *Clarkia franciscana* (Presidio clarkia), *Lessingia germanorum* (=*L.g.* var. *germanorum*) (San Francisco lessingia), *Hesperolinon congestum* (Marin dwarf flax), *Potentilla hickmanii* (Hickman's potentilla), *Arenaria paludicola* (marsh sandwort), and *Arctostaphylos franciscana* (Franciscan manzanita) in conjunction with survey, research, habitat restoration, and invasive species management activities in Marin, San Francisco, and San Mateo Counties in California for the purpose of enhancing the species' survival.

Permit No. TE–14615C

Applicant: Christopher Allen, Bishop, California.

The applicant requests a permit renewal to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey activities in Mono and Inyo Counties in California for the purpose of enhancing the species' survival.

Permit No. TE–27502B

Applicant: Patricia Schuyler, Vista, California.

The applicant requests a new permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species in California, for the purpose of enhancing the species' survival.

Permit No. TE–039466

Applicant: U.S. Geological Survey, Idaho Cooperative Fish and Wildlife Research Unit, Moscow, Idaho.

The applicant requests a permit amendment to take (harass by capture, handle, band, attach satellite transmitter, and release) the Yuma Ridgway's rail (Yuma clapper rail) (*Rallus obsoletus yumanensis*) (*R. longirostris* y.) in conjunction with surveys and population studies throughout the range of the species in Arizona, California, and Nevada for the purpose of enhancing the species' survival.

Permit No. TE–36118B

Applicant: Callie Amoaku, Escondido, California.

The applicant requests a new permit to take (harass by survey, capture, handle, and release) the Casey's June beetle (*Dinacoma caseyi*); and take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species in California, for the purpose of enhancing the species' survival.

Permit No. TE–181713

Applicant: Cynthia Hartley, Ventura, California.

The applicant requests a permit amendment to take (harass by nest monitoring using trail cameras) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*) in conjunction with survey and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–799568

Applicant: Dana Kamada, San Clemente, California.

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*); take (harass by survey, locate and monitor nests, remove brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests; capture, measure,

weigh, band, color-band, and release) the southwestern willow flycatcher (*Empidonax traillii extimus*); take (locate and monitor nests, remove brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized vireo nests; capture, measure, weigh, band, color-band, and release) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with survey, population monitoring, and research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–802089

Applicant: Patricia Tatarian, Santa Rosa, California.

The applicant requests a permit renewal to take (harass by survey, capture, handle, mark, PIT-tag, implant radio transmitters, collect tissue for genetic analysis, collect voucher specimens, and release) the California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*) in conjunction with survey and research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–14831C

Applicant: Orange County Zoo, Orange, California.

The applicant requests a new permit to take (acquire, care for, and educationally exhibit non-releasable individuals) the San Joaquin kit fox (*Vulpes macrotis mutica*), giant kangaroo rat (*Dipodomys ingens*), arroyo toad (arroyo southwestern) (*Anaxyrus californicus*), and Mexican wolf (*Canis lupus* ssp. *baileyi*) in conjunction with general husbandry of the acquired specimens at the Orange County Zoo in Orange, California, for the purpose of enhancing the species' survival.

Permit No. TE–13632B

Applicant: Elena Gregg, Chico, California.

The applicant requests a new permit to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–79192A

Applicant: Dallas Pugh, San Diego, California.

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species in California, for the purpose of enhancing the species' survival.

Permit No. TE–097516

Applicant: Thomas Ryan, Monrovia, California.

The applicant requests a permit amendment to take (harass by attaching global positioning system (gps) tags) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*) in conjunction with telemetry and scientific research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–96471A

Applicant: Mason Holmes, San Ramon, California.

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–14862C

Applicant: Joseph Vu, Westminster, California.

The applicant requests a new permit to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with survey and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–796284

Applicant: David Rogers, Lawrence, Kansas.

The applicant requests a permit renewal to take (harass by survey, capture, handle, measure, and release) the Morro shoulderband snail (Banded dune) (*Helminthoglypta walkeriana*) and California freshwater shrimp (*Syncaris pacifica*); and take (harass by survey, capture, handle, release, collect adult vouchers, collect branchiopod cysts, retain in captivity, propagate, process soil, microscopically identify eggs/cysts; and perform hatching experiments for species identifications) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey and research activities throughout the range of the species for the purpose of enhancing the species' survival.

Permit No. TE–776608

Applicant: Monk and Associates, Inc., Walnut Creek, California.

The applicant requests a permit renewal to take (harass by survey, capture, handle, measure, mark, and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*); take (harass by survey, capture, handle, collect tissue samples for genetic analysis, collect voucher specimens, and release) the California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*)); and take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey, research, and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–094642

Applicant: Howard Shaffer, Los Angeles, California.

The applicant requests a permit renewal and amendment to take (harass by survey; capture; handle; mark; insert passive integrated transponder (PIT) tags; swab for disease; release; relocate; collect eggs and tissue or small individuals for genetic analysis; sacrifice/remove from the wild for voucher specimens; captive rear; conduct stomach flushing for a diet study; and conduct instructional workshops involving field survey methods) the California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*); take (harass by survey; capture, handle; mark and release;

relocate; collect eggs and tissue or small individuals for genetic analysis; sacrifice/remove from the wild for voucher specimens) the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*); and take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*) in conjunction with survey, population monitoring, and research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Public Comments

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

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.

Angela Picco,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2017–00285 Filed 1–9–17; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR931000L63100000.HD000016X]

Renewal of Approved Information Collection; OMB Control No. 1004–0168

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) to continue the collection of information to monitor right-of-way compliance and determine road use and road maintenance fees to be charged to permit holders for tramroads and logging roads. The Office of Management and Budget (OMB) previously approved this information collection activity, and assigned it control number 1004–0168.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. For maximum consideration, written comments should be received on or before February 9, 2017.

ADDRESSES: Please submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0168), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *OIRA_submission@omb.eop.gov.* Please provide a copy of your comments to the BLM. You may do so via mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: Jean Sonneman at 202–245–0050.

Electronic mail: jesonnem@blm.gov.

Please indicate ''Attn: 1004–0168'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Dustin Wharton, at 541–471–6659. Persons who use a telecommunication device for the deaf may call the Federal Relay Service at 1–800–877–8339, to leave a message for Mr. Wharton. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501–3521) and OMB regulations at 5 CFR part 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. In order to obtain and renew an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)).

As required at 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on July 13, 2016 (81 FR 45302), and the comment period ended September 12, 2016. The BLM received no comments. The BLM now requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments as directed under **ADDRESSES** and **DATES**. Please refer to OMB control number 1004–0168 in your correspondence. 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.

The following information pertains to this request:

Title: Tramroads and Logging Roads (43 CFR part 2810).

Form: BLM OR Form 2812–6, Report of Road Use.

OMB Control Number: 1004–0168.

Abstract: The BLM issues permits and enters into right-of-way agreements to govern the use and construction of tramroads and logging roads. Permits required for these agreements provide for fees to be charged by the United States for road use and maintenance. The permittee must file the BLM OR Form 2812–6, Report of Road Use, annually, biannually, quarterly, or monthly, depending on the terms of the permit or agreement for a right-of-way on BLM lands. Information in the form is used by the BLM to monitor right-of-way compliance and to determine appropriate fees associated with road use and maintenance.

Frequency: On occasion.

Description of Respondents: Individuals seeking a right-of-way agreement for tramroads and logging roads.

Estimated Number of Responses Annually: 272.

Estimated Reporting and Recordkeeping ''Hour'' Burden Annually: 2,176.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden Annually: None.

The estimated burdens are itemized in the following table:

A. Type of response and 43 CFR citation	B. Number of responses	C. Hours per response	D. Total hours (column B × column C)
Form OR–2812–6, Report of Road Use 43 CFR 2812.3 and 43 CFR 2812.5	272	8	2,176

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2017–00258 Filed 1–9–17; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF INTERIOR

National Park Service

[NPS–WASO–NRSS–EQD–SSB XXXXX; PPWONRADE3, PPMRSNR1Y.NM000 (177)]

Proposed Information Collection; National Park Service Visitor Survey Card

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve an information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other federal agencies to take this opportunity to comment on this IC. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

DATES: To ensure that your comments on this IC are considered, we must receive them on or before March 13, 2017.

ADDRESSES: Direct all written comments on this IC to Phadrea Ponds, Information Collection Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *phadrea_ponds@nps.gov* (email). Please reference Information Collection 1024–0216 in the subject line.

FOR FURTHER INFORMATION CONTACT: Bret Meldrum, Chief Social Science Program, 1201 Oakridge Drive, Fort Collins, CO, 80525 (mail) or *bret_meldrum@nps.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Park Service (NPS) is required to provide an understanding of visitor satisfaction and an understanding of the park and agency's performance related to The Government Performance and Results Act (GPRA) NPS Goals IIa1 (visitor satisfaction) and IIb1 (visitor understanding and appreciation). The Visitor Survey Card (VSC) was developed to measure each park unit's performance related to these two goals. The Visitor Survey Card contains eight questions regarding visitor evaluations of service and facility quality, awareness of park significance, and basic demographic information. Each year, all NPS units nationwide (approximately 332) are required to collect data using the Visitor Survey Card. Data and information collected through the VSC are used to measure and report performance related to a broad list of GPRA Goals and to provide feedback used by Superintendents and other managers to develop performance improvement plans.

II. Data

OMB Number: 1024–0216.

Title: National Park Service Visitor Survey Card.

Type of Request: Renewal.

Affected Public: General Public, any person visiting the park during the sampling period.

Respondent Obligation: Voluntary.

Frequency of Collection: One-time, on occasion.

Estimated Number of Annual Responses: 175,000.

Annual Burden Hours: 4,116 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

III. Request for Comments

We invite comments concerning this information collection on:

- The practical utility of the information being gathered;
- The accuracy of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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: January 4, 2017.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2017–00211 Filed 1–9–17; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–967]

Certain Document Cameras and Software for Use Therewith; Commission Decision To Rescind a Limited Exclusion Order and Cease and Desist Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has rescinded a limited exclusion order denying entry of certain document cameras and software for use therewith and a cease and desist order against QOMO HiteVision, LLC (''QOMO'') based on settlement.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*. Hearing-impaired persons are advised that information on

this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 24, 2015, based on a complaint filed on behalf of Pathway Innovations & Technologies, Inc. of San Diego, California (''Complainant''). 80 FR 57642 (September 24, 2015). The complaint alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the sale for importation, importation, or sale within the United States after importation of certain document cameras and software for use therewith by reason of infringement of certain claims of U.S. Design Patent No. D647,906; U.S. Design Patent No. D674,389; U.S. Design Patent No. D715,300; and U.S. Patent No. 8,508,751. The Commission's notice of investigation named the following respondents: Recordex USA, Inc., of Long Island City, New York (''Recordex''); QOMO of Wixom, Michigan; and Adesso, Inc. of Walnut, California (''Adesso''). The Office of Unfair Import Investigations was named as a party but has subsequently withdrawn from the investigation. Adesso was terminated based on a consent order stipulation and consent order. Order No. 5 (unreviewed) (Nov. 23, 2015). QOMO was found to be in default. Order No. 10 (unreviewed) (Dec. 7, 2015). Recordex was terminated based on settlement. Order No. 19 (unreviewed) (May 13, 2016).

On December 7, 2015, the Commission determined not to review an initial determination finding QOMO in default. On August 5, 2016, the Commission issued a limited exclusion order and cease and desist order directed to QOMO.

On November 22, 2016, Complainant filed a petition to rescind the limited exclusion order and cease and desist order because the parties had entered into a settlement agreement. The petition argued that the parties' agreement constitutes changed circumstances sufficient under Commission Rule 210.76(a)(1) to warrant rescission of the limited exclusion order and cease and desist order.

The Commission has determined to grant the petition and to rescind the limited exclusion order and cease and desist order direct to QOMO.

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: January 4, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–00179 Filed 1–9–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[Docket No. ODAG 167]

National Commission on Forensic Science Extension of the Deadline for the Solicitation of Applications for Additional Statistician Commission Membership

AGENCY: Department of Justice.

ACTION: Extension of the deadline for the solicitation of applications for additional Commission membership with subject matter expertise in statistics for the National Commission on Forensic Science.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, a notice that announced the solicitation of applications for additional Commission membership on the National Commission on Forensic Science specifically to fill a current statistician Commissioner vacancy was published in the **Federal Register** on December 27, 2016 and that applications must be received on or before January 11, 2017 (81 FR 95196). This notice announces the extension of the deadline for the solicitation of applications for this Commissioner vacancy until January 26, 2017.

DATES: Applications must be received on or before January 26, 2017.

ADDRESSES: All applications should be submitted to: Jonathan McGrath, Designated Federal Officer, 810 7th Street NW., Washington, DC 20531, by email at *Jonathan.McGrath@usdoj.gov.*

FOR FURTHER INFORMATION CONTACT: Jonathan McGrath, Designated Federal Officer, 810 7th Street NW., Washington, DC 20531, by email *Jonathan.McGrath@usdoj.gov,* or by phone at (202) 514–6277.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. App.), a notice that announced the solicitation of applications for additional Commission membership on the National Commission on Forensic Science specifically to fill a current Commissioner vacancy with expertise in statistics was published in the **Federal Register** on December 27, 2016 and that applications must be received on or before January 11, 2017 (81 FR 95196). This notice announces the extension of the deadline for the solicitation of applications for this Commissioner vacancy until January 26, 2017.

The National Commission on Forensic Science was chartered on April 23, 2013 and the charter was renewed on April 23, 2015. The Commission is co-chaired by the Department of Justice and National Institute of Standards and Technology. The Commission provides recommendations and advice to the Department of Justice concerning national methods and strategies for: Strengthening the validity and reliability of the forensic sciences (including medico-legal death investigation); enhancing quality assurance and quality control in forensic science laboratories and units; identifying and recommending scientific guidance and protocols for evidence seizure, testing, analysis, and reporting by forensic science laboratories and units; and identifying and assessing other needs of the forensic science communities to strengthen their disciplines and meet the increasing demands generated by the criminal and civil justice systems at all levels of government. Commission membership includes Federal, State, and Local forensic science service providers; research scientists and academicians; prosecutors, defense attorneys, and judges; law enforcement; and other relevant backgrounds. The Commission reports to the Attorney General, who through the Deputy Attorney General, shall direct the work of the Commission in fulfilling its mission.

The duties of the Commission include: (a) Recommending priorities for standards development; (b) reviewing and recommending endorsement of guidance identified or developed by subject-matter experts; (c) developing proposed guidance concerning the intersection of forensic science and the courtroom; (d) developing policy recommendations, including a uniform code of professional responsibility and minimum requirements for training, accreditation and/or certification; and (e) identifying and assessing the current and future needs of the forensic sciences to strengthen their disciplines and meet growing demand.

Members will be appointed by the Attorney General in consultation with the Director of the National Institute of Standards and Technology and the vice-chairs of the Commission. Additional members will be selected to fill vacancies to maintain a balance of perspective and diversity of experiences, including Federal, State, and Local forensic science service

providers; research scientists and academicians; Federal, State, Local prosecutors, defense attorneys and judges; law enforcement; and other relevant stakeholders. DOJ encourages submissions from applicants with respect to diversity of backgrounds, professions, ethnicities, gender, and geography. The Commission shall consist of approximately 30 voting members. Members will serve without compensation. The Commission generally meets four times each year at approximately three-month intervals. The next Commission meetings will be held on January 9–10, 2017 and April 10–11, 2017 in Washington, DC Additional information regarding the Commission can be found at: *http://www.justice.gov/ncfs.*

Note: The Commission is developing a draft Views document on Statistical Statements in Forensic Testimony, and it is anticipated that the additional Commissioner member will contribute to the Commission's discussions on this topic, as well as all other Commission activities. On December 12, 2016, the Department of Justice published in the **Federal Register** a Notice announcing the January 9–10, 2017, Federal Advisory Committee Meeting of the National Commission on Forensic Science (81 FR 89509). That Notice also announced that comments on draft work products can be submitted through *www.regulations.gov* starting on December 23, 2016. Any comments should be posted to *www.regulations.gov* no later than January 25, 2017.

Applications: Any qualified person may apply to be considered for appointment to this advisory committee. Each application should include: (1) A resume or curriculum vitae; (2) a statement of interest describing the applicant's relevant experience; and (3) a statement of support from the applicant's employer. Potential candidates may be asked to provide detailed information as necessary regarding financial interests, employment, and professional affiliations to evaluate possible sources of conflicts of interest. The application period will remain open through January 26, 2017. The applications must be sent in one complete package, by email, to Jonathan McGrath (contact information above) with the subject line of the email entitled, ''NCFS Membership 2017.'' Other sources, in addition to the **Federal Register** notice, may be utilized in the solicitation of applications.

Dated: January 4, 2017.

Jonathan McGrath,

Designated Federal Officer, National Commission on Forensic Science.

[FR Doc. 2017–00210 Filed 1–9–17; 8:45 am]

BILLING CODE 4410–18–P

OFFICE OF MANAGEMENT AND BUDGET

Discount Rates for Cost-Effectiveness Analysis of Federal Programs

AGENCY: Office of Management and Budget.

ACTION: Revisions to Appendix C of OMB Circular A–94.

SUMMARY: The Office of Management and Budget revised Circular A–94 in 1992. The revised Circular specified certain discount rates to be updated annually when the interest rate and inflation assumptions used to prepare the Budget of the United States Government were changed. These discount rates are found in Appendix C of the revised Circular. The updated discount rates are shown below. The discount rates in Appendix C are to be used for cost-effectiveness analysis, including lease-purchase analysis, as specified in the revised Circular. They do not apply to regulatory analysis.

DATES: The revised discount rates will be in effect through December 2017.

FOR FURTHER INFORMATION CONTACT: Gideon Lukens, Office of Economic Policy, Office of Management and Budget, (202) 395–3316.

Devin O'Connor,

Associate Director for Economic Policy, Office of Management and Budget.

Attachment

OMB Circular No. A–94

Appendix C

(Revised November 2016)

Discount Rates for Cost-Effectiveness, Lease Purchase, and Related Analyses

Effective Dates. This appendix is updated annually. This version of the appendix is valid for calendar year 2017. A copy of the updated appendix can be obtained in electronic form through the OMB home page at *http://www.whitehouse.gov/omb/circulars_a094/a94_appx-c/.* The text of the Circular is found at *http://www.whitehouse.gov/omb/circulars_a094/,* and a table of past years' rates is located at *http://www.whitehouse.gov/sites/default/files/omb/assets/a94/dischist.pdf.* Updates of the appendix are also available upon request from OMB's Office of Economic Policy (202–395–3316).

Nominal Discount Rates. A forecast of nominal or market interest rates for calendar year 2017 based on the economic assumptions for the 2018 Budget is presented below. These nominal rates are to be used for discounting nominal flows, which are often encountered in lease-purchase analysis.

NOMINAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES

[in percent]

3-Year	5-Year	7-Year	10-Year	20-Year	30-Year
1.4	1.7	1.9	2.1	2.5	2.8

Real Discount Rates. A forecast of real interest rates from which the inflation premium has been removed and based on the economic assumptions from the 2018 Budget is presented below. These real rates are to be used for discounting constant-dollar flows, as is often required in cost-effectiveness analysis.

REAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES

[in percent]

3-Year	5-Year	7-Year	10-Year	20-Year	30-Year
−0.5	−0.3	0.0	0.1	0.5	0.7

Analyses of programs with terms different from those presented above may use a linear interpolation. For example, a four-year project can be evaluated with a rate equal to the average of the three-year and five-year rates. Programs with durations longer than 30 years may use the 30-year interest rate.

[FR Doc. 2017–00209 Filed 1–9–17; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2017–018]

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 not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: NARA must receive requests for copies in writing by February 9, 2017. 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: 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 the Army, Agency-wide (DAA–AU–2016–0063, 1 item, 1 temporary item). Master files of an electronic information system used to provide background data for safety and occupational health programs.

2. Department of Homeland Security, Transportation Security Administration (DAA–0560–2017–0001, 1 item, 1 temporary item). Files related to employee requests for a change in duty station due to a personal hardship.

3. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2016–0021, 5 items, 5 temporary items). Applications for approval of potential job-creating commercial enterprises that immigrant investors may finance.

4. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2016–0022, 8 items, 8 temporary items). Applications for a travel document to demonstrate to a commercial transportation carrier a permanent resident's eligibility to enter the United States.

5. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2017–0001, 9 items, 9 temporary items). Petitions from large multinational corporations to be granted approval to participate in a simplified process for requesting visas for intra-company transfers of managers and professionals.

6. Department of Justice, Federal Bureau of Investigation (DAA–0065–2016–0002, 1 item, 1 temporary item). Master files of an electronic information system used to track actions and results related to encounters between law enforcement officials and known or suspected terrorists, including

namecheck verification results and encounter analysis.

7. Department of the Treasury, Bureau of Engraving and Printing (DAA–0318–2017–0001, 2 items, 2 temporary items). Facility security surveillance recordings.

8. Federal Communications Commission, International Bureau (DAA–0173–2016–0012, 6 items, 6 temporary items). Records related to meetings of the International Telecommunications Union.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2017–00192 Filed 1–9–17; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Federal Advisory Committee on International Exhibitions (FACIE) Panel Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions (FACIE) Panel will be held by teleconference from the National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC 20506 as follows (all meetings are Eastern time and ending times are approximate): *Federal Advisory Committee on International Exhibitions* (application review): This meeting will be closed.

DATES: February 23, 2017—2:00 p.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *plowitzk@arts.gov,* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of July 5, 2016, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Dated: January 5, 2017.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2017–00244 Filed 1–9–17; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 3 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference unless otherwise noted.

DATES: All meetings are Eastern time and ending times are approximate:

Music (review of applications): This meeting will be closed.

Date and time: February 8, 2017—3:00 p.m. to 5:00 p.m.

State/Regional (review of partnership agreements): This meeting will be open.

Date and time: February 8, 2017—2:00 p.m. to 2:40 p.m.

State/Regional (review of applications): This meeting will be closed.

Date and time: February 8, 2017—2:45 p.m. to 3:15 p.m.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506—*plowitzk@arts.gov,* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of July 5, 2016, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

Dated: January 5, 2017.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2017–00243 Filed 1–9–17; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346; NRC–2010–0298]

FirstEnergy Nuclear Operating Company; Davis-Besse Nuclear Power Station, Unit No. 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Renewed Facility Operating License No. NPF–3 for the Davis-Besse Nuclear Power Station, Unit No. 1 (Davis-Besse), as requested by FirstEnergy Nuclear Operating Company (FENOC, the licensee).

DATES: The environmental assessment (EA) referenced in this document is available on January 10, 2017.

ADDRESSES: Please refer to Docket ID NRC–2010–0298 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0298. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*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

ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Blake Purnell, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1380; email: *Blake.Purnell@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of an amendment to Renewed Facility Operating License No. NPF–3, issued to FENOC, for Davis-Besse, located on the south-western shore of Lake Erie in Ottawa County, Ohio, approximately 21 miles east of Toledo, Ohio. The proposed amendment would revise Davis-Besse Technical Specification (TS) 5.5.3, ''Radioactive Effluent Controls Program,'' to allow an increase in the instantaneous concentrations of radioactive material released in liquid effluents and an increase in the instantaneous dose rates from radioactive material released in gaseous effluents. The licensee would continue to maintain the same TS and regulatory limitations on the overall level of effluent control at Davis-Besse, including limitations on the dose to a member of the public in an unrestricted area. In accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and section 51.21 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC performed an EA. Based on the results of the EA that follows, the NRC has concluded that the proposed action will have no significant environmental impact, and is issuing a finding of no significant impact.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would revise the radiological effluent controls program in Davis-Besse TS 5.5.3, specifically TS 5.5.3.b and TS 5.5.3.g, to be consistent with TS 5.5.4.b and TS 5.5.4.g, respectively, in NUREG–1430, ''Standard Technical Specifications, Babcock and Wilcox Plants,'' Revision 4.0, published in April 2012 (ADAMS Accession No. ML12100A177). TS 5.5.4, ''Radiological Effluent Controls Program,'' of NUREG–1430, Revision 4.0, contains guidance on the standard format and content of the TSs for the implementation of certain 10 CFR 50.36a requirements applicable to Davis-Besse. In June 1999, the NRC approved Technical Specification Task Force (TSTF) Traveler TSTF–258, Revision 4, ''Changes to Section 5.0, Administrative Controls'' (ADAMS Accession No. ML040620102), which included similar changes to the radioactive effluents control program to what the licensee has proposed. The changes in TSTF–258, Revision 4, were subsequently incorporated into NUREG–1430.

Davis-Besse TS 5.5.3.b provides limitations on the instantaneous concentrations of radioactive material in liquid effluents released to unrestricted areas. Currently, the licensee may release liquid effluents with instantaneous radioactive material concentrations less than or equal to the average annual concentration values in 10 CFR part 20, appendix B, Table 2, Column 2. The proposed change would allow the licensee to release liquid effluents with instantaneous radioactive material concentrations up to 10 times the annual average concentration values in 10 CFR part 20, appendix B, Table 2, Column 2. The current limits are equivalent to a dose rate limit of 50 millirem (mrem) per year (approximately 0.0057 mrem per hour). The revised limits are equivalent to a dose rate limit of 500 mrem per year (approximately 0.057 mrem per hour).

Davis-Besse TS 5.5.3.g provides limitations on the instantaneous dose rate resulting from radioactive material released in gaseous effluent from the site. The licensee proposes to change the instantaneous dose rate limits in TS 5.5.3.g such that they are no longer based on the average annual effluent concentrations in air that are tabulated in 10 CFR part 20, appendix B, Table 2, Column 1. The current limits correspond to a dose rate limit of 50 mrem (approximately 0.0057 mrem per hour) per year for inhalation of the gaseous effluent, or a dose rate limit of 100 mrem per year (approximately 0.011 mrem per hour) if submersion in the gaseous effluent (*i.e.,* external dose) is more limiting.

For noble gases, the revised Davis-Besse TS 5.5.3.g would allow an increase in the instantaneous whole body external dose rate limit to 500 mrem per year (approximately 0.057 mrem per hour) and an increase in the instantaneous skin dose rate limit to 3000 mrem per year (approximately 0.34 mrem per hour). For iodine-131, iodine-133, tritium, and all radionuclides in particulate form with half-lives greater than 8 days, the revised Davis-Besse TS 5.5.3.g would establish an instantaneous organ dose rate limit of 1500 mrem per year (approximately 0.17 mrem per hour).

The proposed action is in accordance with the licensee's application dated February 9, 2016 (ADAMS Accession No. ML16041A115).

Need for the Proposed Action

The proposed action would provide the licensee with operational flexibility to temporarily increase the concentrations of radioactive material in gaseous and liquid effluents released from the site.

Environmental Impacts of the Proposed Action

The NRC has evaluated the proposed action and concludes that the proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite.

The licensee would still be required by Davis-Besse TS 5.5.3 to monitor, sample, and analyze gaseous and liquid effluents, and to determine the cumulative and projected dose contributions from radioactive effluents for the current calendar quarter and current calendar year at least every 31 days. The licensee must continue to meet the criteria in 10 CFR part 50, appendix I, ''Numerical Guides for Design Objectives and Limiting Conditions for Operation to Meet the Criterion 'As Low as is Reasonably Achievable' for Radioactive Material in Light-Water-Cooled Nuclear Power Reactor Effluents,'' which: (1) Limit the annual public dose from liquid effluents to 3 mrem to the total body and 10 mrem to any organ, (2) limit the annual air dose due to gaseous effluents to 10 millirad for gamma radiation and 20 millirad for beta radiation, and (3) limit annual organ doses to members of the public to 15 mrem for iodines and particulates. The regulations in 10 CFR 20.1301 require the licensee to limit the dose to members of the public to 100 mrem total effective dose equivalent annually and 2 mrem in any 1 hour from external sources. The regulations in 40 CFR part 190 require the licensee to limit the annual dose to a member of the public to 25 mrem whole body, 75 mrem thyroid, and 25 mrem to any other organ. As stated above, the revised TSs would limit dose rates from instantaneous releases to substantially less than 1 mrem per hour.

Thus, the proposed action would allow an increase in the instantaneous concentrations of radioactive material released in liquid effluents and an increase in the instantaneous dose rates

from radioactive material released in gaseous effluents, without allowing an increase in the dose limits to members of the public in unrestricted areas specified in 10 CFR 20.1301, Appendix I to 10 CFR part 50, and 40 CFR 190.

With regard to potential non-radiological impacts, the proposed action does not have any foreseeable impacts to land, air quality, or water resources, including impacts to biota. In addition, there are also no known socioeconomic or environmental justice impacts or impacts to historic and cultural resources associated with the proposed action. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the TS amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed TS amendment request and the ''no action'' alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants [NUREG–1437], Supplement 52, Regarding Davis-Besse Nuclear Power Station, Final Report,'' Volumes 1 and 2, dated April 2015 (ADAMS Accession Nos. ML15112A098 and ML15113A187, respectively).

Agencies and Persons Consulted

The staff did not enter into consultation with any other Federal agency or with the State of Ohio regarding the environmental impact of the proposed action.

III. Finding of No Significant Impact

The licensee has requested an amendment to revise Davis-Besse TS 5.5.3 to provide operational flexibility by allowing an increase in the instantaneous concentrations of radioactive material released in liquid effluents and an increase in the instantaneous dose rates from radioactive material released in gaseous effluents. The licensee would continue to maintain the TS and regulatory limitations on the overall level of effluent control at Davis-Besse, including limitations on the dose to a member of the public in an unrestricted area. Based on the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Dated at Rockville, Maryland, this 4th day of January 2017.

For the Nuclear Regulatory Commission.

Blake A. Purnell,

Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2017–00263 Filed 1–9–17; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, January 12, 2017 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Piwowar, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: January 5, 2017.

Brent J. Fields,

Secretary.

[FR Doc. 2017–00376 Filed 1–6–17; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79734; File No. SR–NSCC–2016–007]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of Proposed Rule Change To Accommodate Shorter Standard Settlement Cycle and Make Other Changes

January 4, 2017.

On November 7, 2016, National Securities Clearing Corporation NSCC filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2016–007, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on November 25, 2016.[3] The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description of the Proposed Rule Change

The proposed rule change consists of amendments to NSCC's Rules & Procedures (''Rules'') [4] in order to ensure, according to NSCC, that the Rules are consistent with the anticipated industry-wide move to a shorter standard settlement cycle for certain securities [5] from the third business day after the trade date (''T+3'') to the second business day after the trade date (''T+2''), as described below. However, NSCC would not implement

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79356 (November 18, 2016), 81 FR 85299 (November 25, 2016) (SR–NSCC–2016–007); (''Notice'').

[4] Capitalized terms not defined herein are defined in the Rules, *available at http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[5] The financial services industry, in coordination with its regulators, is planning to shorten the standard settlement cycle for equities, corporate and municipal bonds, unit investment trusts and financial instruments comprised of the foregoing products traded on the secondary market from T+3 to T+2 (''Shortened Settlement Cycle''). *See* Securities Exchange Act Release No. 78962 (September 28, 2016), 81 FR 69240 (October 5, 2016) (S7–22–16) (Amendment to Securities Transaction Settlement Cycle).

the proposed rule change until NSCC files with the Commission a subsequent proposed rule change, under Rule 19b–4,[6] to establish an effective date for the proposed change.

While the core functions of NSCC would continue to operate in the same way in the Shortened Settlement Cycle, NSCC has determined that the move to T+2 would necessitate certain amendments to the Rules because currently the Rules are designed to accommodate a T+3 settlement cycle. In particular, NSCC has identified and proposes to change (i) rules that have timeframes and/or cutoff times that are tied to the current T+3 standard settlement cycle, and (ii) rules affected by process changes relating to the Shortened Settlement Cycle. In addition, NSCC also proposes to make a number of technical changes and corrections to the Rules.

A. Rules Tied to the Current T+3 Standard Settlement Cycle

NSCC proposes changes to the following Rules because they contain provisions that are tied to the current T+3 standard settlement cycle and would need to be changed to facilitate the move to Shortened Settlement Cycle:

1. Rule 4A (Supplemental Liquidity Deposits)

In Section 2, delete references to the ''third Settlement Day'' and replace them with references to the ''second Settlement Day'' in the definition of ''Options Expiration Activity Period.''

2. Procedure II (Trade Comparison and Recording Service)

In Section C.1.(p), with regards to trade input and comparison of debt securities transactions submitted for non-standard settlement, delete the reference to ''T+2 and T+1 settlement'' and replace it with ''T+1 settlement.''

In Section D.2.(A)(1)(b), with regards to municipal and corporate debt securities, delete the reference to ''two days'' and replace it with ''one day.''

In Section F.2, with regards to the Settlement Date for the Index Receipts, delete the reference to ''T+1, T+2 or T+3'' and replace it with ''T+1 or T+2.''

In Section G, with regards to the eligibility of trades to be settled in the normal settlement cycle and the cutoff time for updating the totals reported for such trades, delete references to ''T+3'' and replace them with ''T+2.''

3. Procedure III (Trade Recording Service (Interface With Qualified Clearing Agencies))

In Section B, with regards to the Settlement Date for the exercise or assignment of options at The Options Clearing Corporation, delete the reference to ''three days'' and replace it with ''two days.''

4. Procedure V (Balance Order Accounting Operation)

In Section C, (i) with regards to the timing for the netting of trades in Balance Order Securities, delete references to ''T and T+1'' and replace them with ''T'' and (ii) with regards to the listing of the Clearance Cash Adjustment amount for all Balance Orders on the Consolidated Trade Summary, delete the reference to the Consolidated Trade Summary being available on T+2.

5. Procedure VII (CNS Accounting Operation)

In Section B, (i) with regards to the timing of the comparison or recording of trades in CNS Securities for inclusion on the Consolidated Trade Summary, delete the words ''T+1 up to'' and (ii) with regards to the timing of as-of trades in CNS Securities that are reported on the Consolidated Trade Summary, delete references to ''T+2'' and ''T+3'' and replace them with ''T+1'' and ''T+2,'' respectively.

In Section G.3, with regards to the time period for determining the rate of the split for adjustments to Current Market Price in the case of stock splits, delete the reference to ''last two days'' and replace it with ''one day.''

In Section H.4(b), (i) with regards to timing related to securities subject to voluntary reorganizations, delete references to protect periods of ''two days,'' ''three days,'' and ''greater than three days'' and replace them with ''one day,'' ''two days,'' and ''greater than two days,'' respectively, and delete references to ''E+2,'' ''E+3,'' and ''E+4'' and replace them with ''E+1,'' ''E+2,'' and ''E+3,'' respectively; (ii) in the table listing the time frames for the processing of securities subject to voluntary reorganizations with a protect period, delete the reference to ''two days or less'' and replace it with ''one day or less'' as well as delete the entries for the two-day protect period; and (iii) with regards to the timing for the recording of ID Net Service eligible transactions on the Miscellaneous Activity Report, delete the words ''on the night of T+2.''

In Section K, with regards to the timing for advising a Member about its potential liability with respect to a short position or a short Settling Trade position in a security to which an exercise privilege attaches, delete the reference to ''T+2'' and replace it with ''T+1.''

6. Procedure XIII (Definitions)

In the definition for ''T,'' delete the reference to ''T+3'' and replace it with ''T+2.''

7. Procedure XVI (ID Net Service)

In Procedure XVI, with regards to the timing for processing by NSCC of ID Net Service transactions, delete references to ''the evening of T+2'' and ''the night of T+2'' and replace them with ''the evening prior to Settlement Date'' and ''the night prior to Settlement Date,'' respectively.

8. Addendum A (Fee Structure)

In Section E.1, with regards to the fee for Index Creation and Redemption instructions submitted for regular way settlement, delete the explanatory parenthetical ''(T+3)'' and replace it with ''(T+2).''

9. Addendum K (Interpretation of the Board of Directors Application of Clearing Fund

In Section I.2, with regards to the endpoint of NSCC's guaranty for balance order transactions, delete the reference to ''T+3'' and replace it with ''T+2.''

B. Rules Covering Processes Affected by a Shortened Settlement Cycle

According to NSCC, it conducted an in-depth review of its internal operational processes to identify those processes that would require changes in order to accommodate the Shortened Settlement Cycle. In connection with that review, NSCC has identified the following provisions in the Rules that would need to be updated in connection with such process changes:

1. Procedure V (Balance Order Accounting Operation)

In Section B, with regards to trades that are to be processed on a trade-for-trade basis, clarify that such processing occurs for trades that are compared or otherwise entered into the Balance Order Accounting Operation on SD–1, ''after the cutoff time established by the Corporation.'' This is because under the Shortened Settlement Cycle, trades that are compared or otherwise entered into the Balance Order Accounting Operation on SD–1 would be processed as multilaterally netted balance orders when reported on the Consolidated Trade Summary issued at approximately 12:00 p.m. ET on SD–1. Trades compared and reported thereafter would

[6] 17 CFR 240.19b–4.

continue to be processed on a trade-for-trade basis.

Similarly, in Section B, with regards to trades that are to be processed on a trade-for-trade basis, clarify that such process occurs for securities that are subject to a voluntary corporate reorganization which have a trade date on or before the expiration of the voluntary corporate reorganization and which are compared or received ''on SD–1, after the cutoff time established by the Corporation'' and not ''after SD–1.'' This shift in cutoff time is because ''as of'' regular way trades compared and received prior to 11:30 a.m. on SD–1 would be processed as multilaterally netted balance orders when reported on the Consolidated Trade Summary issued at approximately 12:00 p.m. ET on SD–1. ''As of'' regular way trades compared and reported thereafter would continue to be processed on a trade-for-trade basis.

2. Procedure VII (CNS Accounting Operation)

In Section D.1, with regards to the timing of the distribution of Projection Reports, delete the reference to ''[e]ach morning'' and replace it with ''[t]wice a day'' because currently NSCC distributes the Projection Report only once a day; however, after the implementation of the Shortened Settlement Cycle, NSCC would be distributing the Projection Reports twice a day to enable Members to view their updated positions on a more timely basis.

C. Other Technical Changes and Corrections

During its review of the Rules in connection with the Shortened Settlement Cycle, NSCC has identified the following technical changes and/or corrections that it proposes to make to the Rules in order to ensure that the Rules remain consistent and accurate:

- In Rule 3, Section 1(c), add a footnote that identifies the term ''CUSIP'' as a registered trademark of the American Bankers Association.
- In Procedure II, Section G, correct a grammatical error.
- In Procedure VII, Sections B and D, correct grammatical errors.
- In Procedure X, Section B, delete the reference to the timeframe for the delivery of Liability Notices to the contra party by Members holding the receive balance orders for warrants, rights, convertible securities or certain other securities so the Members would remain solely subject to the schedules of the relevant exchanges.
- In Procedure XIII, delete the incorrect reference to ''Settlement Day'' and replace it with ''Settlement Date'' in the definition for ''T'' to clarify that T+2 would normally be the Settlement Date after the implementation of the Shortened Settlement Cycle.
- In Procedure XVI, correct a grammatical error.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[7] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. The Commission believes the proposal is consistent with Section 17A(b)(3)(F) of the Act.

Section 17A(b)(3)(F) of the Act requires, in part, that NSCC's Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.[8] The Commission believes that the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) because by conforming NSCC's timeframes and/or cutoff times to accommodate the Shortened Settlement Cycle, the proposal would help ensure that securities transactions would be promptly and accurately cleared and settled within the Shortened Settlement Cycle. Similarly, the related process changes proposed are designed to update NSCC's operations in order to facilitate the move to the Shortened Settlement Cycle and, by extension, facilitate the prompt and accurate clearance and settlement of securities transactions submitted to NSCC for clearing and settlement. Therefore, the proposed rule change would help promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[9]

As the proposed rule change pertains to technical changes to the Rules, the Commission finds the technical changes also consistent with Section 17A(b)(3)(F) of the Act[10] because the technical updates are designed to make the Rules more clear, consistent, and current for Members that rely on them. Therefore, the proposed technical changes would help support NSCC's prompt and accurate clearance and settlement of securities transactions made by Members.

[7] 15 U.S.C. 78s(b)(2)(C).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] *Id.*

[10] *Id.*

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposals are consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[11] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR–NSCC–2016–007 be, and hereby is, *approved*.[12]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

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BILLING CODE 8011–01–P

[11] 15 U.S.C. 78q–1.

[12] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79739; File No. SR–NSCC–2016–009]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adjust Fees Related to Insurance and Retirement Processing Services

January 4, 2017.

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 December 28, 2016, National Securities Clearing Corporation (''NSCC'') 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 clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder.[4] The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to Addendum A (Fee Structure) of Rules & Procedures (''Rules'') of NSCC in order to implement a tiered pricing structure for the Settlement Processing for Insurance (''STL'')SM feature of NSCC's Insurance and Retirement Processing Services (''I&RS''), as described below.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would adjust the fee schedule associated with NSCC's I&RS.[6] Specifically, NSCC proposes to implement a tiered pricing structure for the STL feature.[7] Currently, NSCC charges a flat rate of $0.65 per transaction per side for the STL feature.[8] The proposed tiered structure would reduce the monthly fees for increased STL volumes. Therefore, under the proposed tiered pricing structure, a monthly transaction volume between 0–20,000 items would be charged a fee of $0.65 per transaction, per side; a monthly transaction volume between 20,001–30,000 items would be charged a fee of $0.35 per transaction, per side; a monthly transaction volume between 30,001–40,000 items would be charged a fee of $0.25 per transaction, per side; and a monthly transaction volume over 40,000 items would be charged a fee of $0.15 per transaction, per side. As with all I&RS products, volume would be calculated on an aggregate basis among qualified insurance carrier members or qualified distributor members, as applicable.[9]

The proposed fee structure is intended to incentivize use of the STL feature by discounting transaction fees for members that reach the defined transaction tier volume thresholds. In addition, by basing the fee on each member's utilization of the STL feature, the proposed rule change would reduce STL fees to further align these fees with the costs of providing the service because, as volumes increase the cost of providing this service decreases.

The proposed changes would take effect on January 1, 2017.

2. Statutory Basis

Section 17A(b)(3)(D) of the Act[10] requires that NSCC's Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members. The proposed fee is equitably allocated among members because it is based on each member's utilization of the STL feature, as measured by their monthly STL volume.

In addition, NSCC believes that the proposed fee is reasonable because it would enable NSCC to better align its revenue for STL with the costs and expenses required for NSCC to provide this service to its members, while also providing this service to members at a lower cost. Specifically, as STL volumes increase, the costs of providing the STL feature decreases. NSCC has determined that reducing the fees as volumes increase would better align the revenue from STL to the cost of providing this service to members.

Therefore, NSCC believes the proposed rule change is consistent with Section 17A(b)(3)(D).[11]

(B) Clearing Agency's Statement on Burden on Competition

NSCC believes that the proposed rule change could have an impact on competition because the proposed rule change would charge a lower fee for higher STL volumes. NSCC believes, however, that any burden on competition that would be created by the proposed rule change would be necessary and appropriate in furtherance of the Act. Specifically, the proposed rule change is necessary to better align the fees charged for the STL feature with the costs and expenses required for NSCC to provide this service to its members, because, as volumes increase the cost of providing this service decreases. The proposed rule change is appropriate because, as stated, the proposed fee would be equitably allocated among members based on each member's utilization of the STL feature, as measured by their monthly STL volume.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. NSCC will notify the Commission of any written comments received by NSCC.

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[12] and subparagraph (f) of Rule 19b–4 thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NSCC–2016–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

[5] Capitalized terms not defined herein are defined in the Rules, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf*.

[6] I&RS is a suite of non-guaranteed services that enables NSCC members using I&RS to exchange information and settle payments with respect to insurance products, retirement plans or programs, and other benefit plans or programs. *See* Rule 57 (Insurance and Retirement Processing Services), *supra* note 5.

[7] STL automates and centralizes the settlement of money/funding activities between insurance companies and their intermediaries, such as broker-dealers, banks, and insurance agencies, that distribute participating insurance products. STL is a service within the In Force Transaction suite of services within I&RS. *See* Section 9 of Rule 57 (Insurance and Retirement Processing Services), *supra* note 5.

[8] *See* Section IV(K)(3), TIER 4 of Addendum A of the Rules, *supra* note 5.

[9] *See* note 6 to Section IV(K) of Addendum A of the Rules, *supra* note 5.

[10] 15 U.S.C. 78q–1(b)(3)(D).

[11] *Id.*

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

All submissions should refer to File Number SR–NSCC–2016–009. 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 Web site (*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 Web site 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 NSCC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2016–009 and should be submitted on or before January 31, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–00223 Filed 1–9–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79741; File No. SR–ISEGemini–2016–25]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules To Extend a Pilot Program

January 4, 2017.

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 December 23, 2016, ISE Gemini, LLC (''ISE Gemini'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to extend a pilot program to quote and to trade certain options classes in penny increments.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.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

Under the Penny Pilot Program, the minimum price variation for all participating options classes, except for the Nasdaq–100 Index Tracking Stock (''QQQQ''), the SPDR S&P 500 Exchange Traded Fund (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot Program is currently scheduled to expire on December 31, 2016.[3] The Exchange proposes to extend the Penny Pilot Program through June 30, 2017, and to provide a revised date for adding replacement issues to the Penny Pilot Program. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following January 1, 2017. The replacement issues will be selected based on trading activity for the most recent six month period excluding the month immediately preceding the replacement (*i.e.,* beginning June 1, 2016, and ending November 30, 2016). This filing does not propose any substantive changes to the Penny Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh any increase in quote traffic.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[4] Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] because it is designed to promote just and equitable principles of trade, 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. In particular, the proposed rule change, which extends the Penny Pilot Program for an additional six months, will enable public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[6] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Penny Pilot Program, the proposed rule change will allow for further analysis of the Penny Pilot Program and a determination of how the Penny Pilot Program should be

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 78201 (June 30, 2016), 81 FR 44393 (July 7, 2016) (SR–ISE Gemini–2016–06).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(8).

structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [9] normally does not become operative prior to 30 days after the date of the filing.[10] However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an Email to *rule-comments@sec.gov*. Please include File No. SR–ISEGemini–2016–25 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–ISEGemini–2016–25. 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 Web site (*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 Web site viewing and printing in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISEGemini–2016–25 and should be submitted by January 31, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

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[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 pre-filing requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79728; File No. SR–NYSEMKT–2016–126]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule Related to Co-Location Services To Increase LCN and IP Network Fees and Add a Description of Access to Trading and Execution Services and Connectivity to Included Data Products

January 4, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 22, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice To solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE MKT Equities Price List (''Price List'') and the NYSE Amex Options Fee Schedule (''Fee Schedule'') related to co-location services to (a) provide a more detailed description of the access to trading and execution services and connectivity to data provided to Users with local area networks available in the data center; and (b) modify certain fees for access to the local area networks in the Exchange's data center. The proposed change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedules related to co-location [4] services offered by the Exchange to (a) provide a more detailed description of the access to trading and execution services and connectivity to data provided to Users [5] with connections to the Liquidity Center Network (''LCN'') and internet protocol (''IP'') network, local area networks available in the data center; and (b) modify certain fees for access to the LCN and IP networks. The Exchange proposes to implement the fee changes effective January 1, 2017.

The Exchange offers LCN access of 1, 10 and 40 Gigabits (''Gb'') as well as a lower-latency 10 Gb LCN connection, referred to as the ''LCN 10 Gb LX.'' [6] The Exchange offers IP network access in 1, 10 and 40 Gb capacities.[7] A User also may purchase access to the LCN or IP network through purchase of 1 Gb or 10 Gb bundled network access or a Partial Cabinet Solution bundle, which include 1 and 10 Gb LCN and IP network connections.[8]

Access to Trading and Execution Services and Connectivity to Data

As the Exchange has previously stated, a User's connection to the LCN or IP network provides it access to the Exchange's trading and execution systems and Exchange market data products.[9] More specifically, when a User purchases access to the LCN or IP network, it will receive *access* to the trading and execution systems of the Exchange and its Affiliate SROs (the ''Exchange Systems''), provided the User has authorization from the Exchange or relevant Affiliate SRO. In addition, when a User purchases access to the LCN or IP network, it will receive *connectivity* to certain market data products (the ''Included Data Products''), provided the User has have entered into a contract with the provider of the data feed. The Exchange proposes to revise the Price List and Fee Schedule to provide a more detailed description of the *access* to the Exchange Systems (''Access'') and *connectivity* to Included Data Products (''Connectivity'') that comes with connections to the LCN or IP network when the User has authorization from the Exchange or Affiliate SRO for such access or has a contract from the market data provider for such connectivity.

Access to certification and testing feeds comes with the purchase of some Included Data Products from the provider of such data. Certification feeds are used to certify that a User conforms to any relevant technical requirements for receipt of data or access to Exchange Systems. Test feeds provide Users an environment in which to conduct tests with non-live data, including testing for upcoming Exchange releases and product enhancements or the User's own software development. Such feeds are solely used for certification and testing and do not carry live production data. When access to certification and testing feeds comes with the purchase of an Included Data Product from the provider of such data, the purchase of access to the IP network from the Exchange [10] will provide Connectivity to such certification and testing feeds

The Exchange provides Access and Connectivity as conveniences to Users. Use of Access or Connectivity is completely voluntary, and several other access and connectivity options are available to a User. As alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the Secure Financial

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80) (the ''Original Co-location Filing''). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Price List and Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (''NYSE LLC'') and NYSE Arca, Inc. (''NYSE Arca'' and, together with NYSE LLC, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67).

[6] *See* Original Co-location Filing, *supra* note 4, at 59299; and Securities Exchange Act Release Nos. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67) (notice of filing and immediate effectiveness of proposed rule change to offer LCN 40 Gb connection); and 70886 (November 15, 2013), 78 FR 69904 (November 21, 2013) (SR–NYSEMKT–2013–92) (notice of filing and immediate effectiveness of proposed rule change to offer LCN 10 Gb LX connection).

[7] *See* Securities Exchange Act Release 74220 (February 6, 2015), 80 FR 7894 (February 12, 2015) (SR–NYSEMKT–2015–08) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections as co-location services) (the ''IP Network Release'') and 76373 (November 5, 2015), 80 FR 70024 (November 12, 2015) (SR–NYSEMKT–2015–90) (notice of filing and immediate effectiveness of proposed rule change to offer 40 Gb IP network connection).

[8] *See* Securities Exchange Act Release Nos. 62731 (August 16, 2010), 75 FR 51515 (August 20, 2010) (SR–NYSEMKT–2010–80) (notice of proposed rule change to reflect fees charged for co-location services, including bundled network access; and 77071 (February 5, 2016), 81 FR 7382 (February 11, 2016) (SR–NYSEMKT–2015–89) (notice of filing and accelerated approval of proposed rule change to offer Partial Cabinet Bundle Options).

[9] *See* Original Co-location Filing, *supra* note 4, at 59299 (''According to Amex, SFTI and LCN both provide Users with access to the Exchange's trading and execution systems and to the Exchange's proprietary market data products.'') and IP Network Release, *supra* note 7, at 7894 (''Like the LCN, the IP network provides Users with access to the Exchange's trading and execution systems and to the Exchanges' proprietary market data products.''). The IP network was previously sometimes referred to as SFTI. *See id.*

[10] Access to certification and testing feeds is only available over the IP network. A User that does not have an IP network connection may obtain an IP network circuit for purposes of testing and certification for free for three months. *See* IP Network Release, *supra* note 7, at 7894.

Transaction Infrastructure (''SFTI'') network, or a combination thereof.[11]

Access to Exchange Systems

As the Exchange has previously stated, Users' connections to the LCN or IP networks include access to Exchange Systems when the User has authorization from the Exchange or relevant Affiliate SRO.[12] The Exchange notes that including access to Exchange Systems with the purchase of access to the LCN or IP network is consistent with Nasdaq's colocation service, which does not charge its co-located customers a separate fee for access to Exchange Systems.[13]

Accordingly, the Exchange proposes to add a new note to the Price List and Fee Schedule stating the following:

When a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the NYSE, NYSE MKT and NYSE Arca (Exchange Systems), subject, in each case, to authorization by the NYSE, NYSE MKT or NYSE Arca, as applicable. Such access includes access to the customer gateways that provide for order entry, order receipt (*i.e.* confirmation that an order has been received), receipt of drop copies and trade reporting (*i.e.* whether a trade is executed or cancelled), as well as for sending information to shared data services for clearing and settlement. A User can change the access it receives at any time, subject to authorization by NYSE, NYSE MKT or NYSE Arca, as applicable. NYSE, NYSE MKT and NYSE Arca also offer access to Exchange Systems to their members, such that a User does not have to purchase access to the LCN or IP network to obtain access to Exchange Systems.

Connectivity to Included Data Products

The majority of the Included Data Products are proprietary feeds of the Exchange and the Affiliate SROs.[14] The Included Data Products also include the data feeds disseminated by the Consolidated Tape Association (''CTA'') (such data feeds, the ''NMS feeds''). CTA is responsible for disseminating consolidated, real-time trade and quote information in NYSE listed securities (Network A) and NYSE MKT, NYSE Arca and other regional exchanges' listed securities (Network B) pursuant to a national market system plan.[15] The NMS feeds include the Consolidated Tape System and Consolidated Quote System data streams, as well as Options Price Reporting Authority feeds.

In order to connect to an Included Data Product, a User enters into a contract with the provider of such data, pursuant to which the User is charged for the Included Data Product. After the User and data provider enter into the contract and the Exchange receives authorization from the provider of the data feed, the Exchange provides the User with connectivity to the Included Data Product over the User's LCN or IP network port. The Exchange does not charge the User separately for such connectivity to the Included Data Product, as it is included in the purchase of the access to the LCN or IP network.

The Included Data Products are available over both the LCN and IP network.[16] For a User that purchases access to the LCN and IP network, the Exchange works with such User to allocate its connectivity to Included Data Products between its LCN and IP network connections. Some Included Data Products require a network connection with a minimum Gb size in order to accommodate the feed.[17] The Included Data Products do not provide access or order entry to the Exchange's execution system.

The Exchange offers connectivity to Included Data Products in three forms: as a resilient feed, as ''Feed A'' or as ''Feed B.'' Resilient feeds include two copies of the same feed, for redundancy purposes. Feed A and Feed B are identical feeds.[18]

For some Included Data Products, connectivity to identical Feeds A and B is only available on the IP network.

The Included Data Products are as follows:

NMS Feeds
NYSE:
NYSE Alerts.
NYSE BBO.
NYSE Integrated Feed.
NYSE OpenBook.
NYSE Order Imbalances.
NYSE Trades.

NYSE Amex Options
NYSE Arca:
NYSE ArcaBook.
NYSE Arca BBO.
NYSE Arca Integrated Feed.
NYSE Arca Order Imbalances.
NYSE Arca Trades.
NYSE Arca Options
NYSE Best Quote and Trades (BQT)
NYSE Bonds
NYSE MKT:
NYSE MKT Alerts.
NYSE MKT BBO.
NYSE MKT Integrated Feed.
NYSE MKT OpenBook.
NYSE MKT Order Imbalances.
NYSE MKT Trades.

In addition to the above list of Included Data Products, the Exchange proposes to add the following language to the Price List and Fee Schedule:

When a User purchases access to the LCN or IP network it receives connectivity to any of the Included Data Products that it selects, subject to any technical provisioning requirements and authorization from the provider of the data feed. Market data fees for the Included Data Products are charged by the provider of the data feed. A User can change the Included Data Products to which it receives connectivity at any time, subject to authorization from the provider of the data feed. The Exchange is not the exclusive method to connect to the Included Data Products.

[11] A User that opted to obtain connectivity to Included Data Products through another User, a telecommunication provider, third party wireless network, or the SFTI network would receive the corresponding testing and certification feeds.

[12] *See* note 9, *supra.*

[13] *See* Nasdaq Stock Market Rule 7034—Connectivity to Nasdaq.

[14] *See* Securities Exchange Act Release Nos. 44138 (December 7, 2001), 66 FR 64895 (December 14, 2001) (SR–NYSE–2001–42) (establishing fees for NYSE OpenBook); 50844 (December 13, 2004), 69 FR 76806 (December 22, 2004) (SR–NYSE–2004–53) (establishing fee for NYSE Alerts); 59290 (January 23, 2009) 74 FR 5707 (January 30, 2009) (SR–NYSE–2009–05) (establishing pilot program for NYSE Trades); 59543 (March 9, 2009), 74 FR 11159 (March 16, 2009) (establishing fee for NYSE Order Imbalances); 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR–NYSE–2010–30) (establishing NYSE BBO); 65669 (Nov. 2, 2011), 76 FR 69311 (Nov. 8, 2011) (SR–NYSEArca–2011–78) (establishing the NYSE Arca Integrated Feed); 73553 (Nov. 6, 2014), 79 FR 67491 (Nov. 13, 2014) (SR–NYSE–2014–40) (establishing the NYSE Best Quote & Trades Data Feed); 74128 (Jan. 23, 2015), 80 FR 4951 (Jan. 29, 2015) (SR–NYSE–2015–03) (establishing the NYSE Integrated Feed); 74127 (Jan. 23, 2015), 80 FR 4956 (Jan. 29, 2015) (SR–NYSEMKT–2015–06) (establishing the NYSE MKT Integrated Feed); and 76968 (January 22, 2016), 81 FR 4689 (January 27, 2016) (establishing NYSE Arca Order Imbalances).

[15] The Included Data Products do not include the data feeds disseminated pursuant to the ''Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis'' (the ''UTP Plan''). The UTP Plan is responsible for disseminating consolidated, real-time trade and quote information in Nasdaq Stock Exchange LLC listed securities (Network C).

[16] As noted above, certification and testing feeds included by a data provider with an Included Data Product are only available over the IP network.

[17] Because each Included Data Product uses part of a User's bandwidth, a User may wish to limit the number of Included Data Products that it receives to those that it requires.

[18] A User that wants redundancy would connect to both Feed A and Feed B or two resilient feeds, using two different ports. A User may opt to connect both Feed A and Feed B to the same port, the effect of which would be the same as if the User had connected to a resilient feed. The form of feed that a User selects may affect the connection it requires. For example, a User connecting to the NYSE Arca Integrated Feed, NYSE Integrated Feed or NYSE MKT Integrated Feed would need at least a 1 Gb IP network connection in order to connect to either Feed A or Feed B. To connect to a resilient feed, the User would require an LCN or IP network connection of at least 10 Gb.

Fees for Access to the LCN and IP Network

Users that connect to the LCN or IP network pay an initial non-recurring charge and a monthly recurring charge (''MRC''). A User that purchases five 10 GB LCN Circuits receives the sixth 10 GB LCN Circuit without being subject to an additional MRC.

The Exchange proposes to amend the MRCs for 10 and 40 Gb LCN circuits, 10 Gb LX LCN circuits, 10 and 40 Gb IP network circuits, and the 10 Gb bundled network access (together, the ''Network Access Services''). The Exchange has not increased the MRCs for the Network Access Services since they were first filed: the proposed change will be the first increase in such fees.[19]

The proposed changes to the Network Access Service MRCs are as follows:

Type of service	Description	Amount of current MRC	Amount of proposed MRC
LCN Access	10 Gb Circuit	$12,000	$14,000
LCN Access	10 Gb LX Circuit	20,000	22,000
LCN Access	40 Gb Circuit	20,000	22,000
Bundled Network Access (2 LCN connections, 2 IP network connections, and 2 optic connections to outside access center).	10 Gb Bundle	47,000	53,000
IP Network Access	10 Gb Circuit	10,000	11,000
IP Network Access	40 Gb Circuit	17,000	18,000

The initial non-recurring charge for the Network Access Services would not change, and Users that purchase five 10 Gb LCN circuits will continue to receive the sixth 10 Gb LCN Circuit without an additional MRC. The Exchange does not propose to change the fees associated with 1 Gb LCN and 1 Gb IP network access, 1 Gb bundled network access, or the Partial Cabinet Solution bundles.

Currently, the Price List and Fee Schedule use both ''Gb'' and ''GB'' as an abbreviation for gigabits. To make the usage consistent, the Exchange proposes to make non-substantive changes to the Price List and Fee Schedule to replace ''GB'' with ''Gb.''

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [20] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its Affiliate SROs.[21]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(5) of the Act,[23] in particular, because 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 regulating, clearing, settling, processing information with respect to, and 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that revising the Price List and Fee Schedule to provide a more detailed description of the Access and Connectivity Users receive with their purchase of access to the LCN or IP network would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed changes would make the descriptions of access to the LCN and IP network more accessible and transparent, thereby providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP network. Including the more detailed description of Access and Connectivity in the Price List and Fee Schedule is consistent with Nasdaq's Rule 7034, which includes similar information.[24]

Co-location was created to permit Users ''to rent space on premises controlled by the Exchange in order that

[19] The 10 Gb LCN circuits and 10 Gb bundled network access were first filed in 2010, and the 40 Gb LCN and 10 Gb LX LCN circuits were first filed in 2013. The 10 and 40 Gb IP network circuits were first filed in 2015. *See* Securities Exchange Act Release Nos. 62731, supra note 8; 65240 (Aug. 31, 2011), 76 FR 55434 (Sept. 7, 2011) (SR–NYSEAmex–2011–65) (notice of filing and immediate effectiveness of proposed rule change adding MRC for 10 Gb circuit); 70285 (Aug. 29, 2013), 78 FR 54697 (Sept. 5, 2013) (SR–NYSEMKT–2013–71) (notice of filing and immediate effectiveness of proposed rule change to offer LCN 40 Gb connection); 70982 (Dec. 4, 2013), 78 FR 74197 (Dec. 10, 2013) (SR–NYSEMKT–2013–97) (notice of filing and immediate effectiveness of proposed rule change amending price list in order to provide fees for LCN 10 Gb LX); 74220 (Feb. 6, 2015), 80 FR 7894 (Feb. 12, 2015) (SR–NYSEMKT–2015–08) (notice of filing and immediate effectiveness of proposed rule change to offer 1 Gb and 10 Gb IP network connections); and 76373 (Nov. 5, 2015), 80 FR 70024 (Nov. 12, 2015) (SR–NYSEMKT–2015–90) (notice of filing and immediate effectiveness of proposed rule change to offer 40 Gb IP network connection).

[20] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies, as compared to Users that are not co-located, in sending orders to, and receiving market data from, the Exchange.

[21] *See* SR–NYSEMKT–2013–67, *supra* note 5, at 50471. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2016–92 and SR–NYSEArca–2016–172.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] *See* Nasdaq Stock Market Rule 7034—Market Data Connectivity (''Pricing is for connectivity only and is similar to connectivity fees imposed by other vendors. The fees are generally based on the amount of bandwidth needed to accommodate a particular feed and Nasdaq is not the exclusive method to get market data connectivity. Market data fees are charged independently by the Nasdaq Stock Market and other exchanges.'')

they may locate their electronic servers in close physical proximity to the Exchange's trading and execution systems.'' [25] The expectation was that normally Users ''would expect reduced latencies in sending orders to the Exchange and in receiving market data from the Exchange.'' [26] Accordingly, the Exchange believes the Access and Connectivity is directly related to the purpose of co-location, and so revising the Price List and Fee Schedule to increase the description of such Access and Connectivity would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general protect investors and the public interest by increasing the transparency around Access and Connectivity.

Further, the Exchange believes that revising the Price List and Fee Schedule to provide a more detailed description of the Access and Connectivity Users receive with their purchase of access to the LCN or IP network would promote just and equitable principles of trade and remove impediments to, and perfect the mechanisms of, a free and open market and a national market system as it would make clear that all Users that voluntarily select to access the LCN or IP network would receive the same Access and Connectivity, and would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Users are not required to use any of their bandwidth to access Exchange Systems or connect to an Included Data Product unless they wish to do so. Rather, a User only receives the Access and Connectivity that it selects, and a User can change what Access or Connectivity it receives at any time, subject to authorization from the data provider or relevant Exchange or Affiliate SRO.

The Exchange believes that the proposed changes remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering Access and Connectivity, the Exchange gives each User additional options for addressing its access and connectivity needs, responding to User demand for access and connectivity options. Providing Access and Connectivity helps each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of access and connectivity that best suits its needs. The Exchange provides Access and Connectivity as conveniences to Users. Use of Access or Connectivity is completely voluntary, and each User has several other access and connectivity options available to it. As alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof.

Similarly, the Exchange believes that the proposed fee changes remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering the Network Access Services, the Exchange gives each User options for access to the LCN and IP network, responding to User demand for options. Users have the convenience of choosing among the array of different Network Access Services available, as well as the 1 Gb LCN and 1 Gb IP network access options, 1 Gb bundled network access and Partial Cabinet Solutions, helping them tailor their data center operations to the requirements of their business operations by allowing them to select the capacity, form and latency of connectivity that best suits their needs.

The Exchange believes that the proposed fee changes remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the Exchange provides Network Access Services as conveniences to Users. Use of Network Access Services is completely voluntary, and each User has several other options available to it. As alternatives to using the Network Access Services provided by the Exchange, a User may access or connect to the Exchange through another User, as well as through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof.

The Exchange believes that conforming the use of ''Gb'' would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed changes would make the Price List and Fee Schedule more transparent, thereby providing market participants with additional clarity.

The Exchange also believes that the proposed rule changes are consistent with Section 6(b)(4) of the Act,[27] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed changes are consistent with Section 6(b)(4) of the Act [28] for multiple reasons. The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

The Exchange believes that the proposed changes to the Network Access Service MRCs would provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because the Network Access Services are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users). All Users that voluntarily purchase a Network Access Service would be charged the same amount for the same

[25] Original Co-Location Filing, *supra* note 4, at 59299.

[26] *Id.*

[27] 15 U.S.C. 78f(b)(4).

[28] 15 U.S.C. 78f(b)(4).

service. As is currently the case, the purchase of any colocation service (including Network Access Services) would be completely voluntary. Furthermore, each of the Network Access Services can be purchased independently of each other, and independently of any other colocation services or products that a User may choose.

The Exchange believes that the proposed changes to the Network Access Service MRCs are reasonable, equitably allocated and not unfairly discriminatory because the MRCs for the Network Access Services have been the same since they were first filed, with some MRCs dating to the inception of co-location in 2010.[29] During the time since the MRCs for the Network Access Services were filed, however, the Exchange has made numerous improvements to the network hardware and technology infrastructure. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users, including the increasing demand for bandwidth, and has established additional administrative controls. The Exchange offers the Network Access Services as conveniences to Users, but in order to do so must provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of the Network Access Services, including by responding to any production issues. The Exchange accordingly believes that the proposed changes to the Network Access Service MRCs will allow them to more accurately reflect the value of the services provided.

The Exchange believes the proposed fees are reasonable because they allow the Exchange to defray or cover the costs associated with offering the Network Access Services while providing Users the benefit of choosing among the array of different Network Access Services available, as well as the 1 Gb LCN and 1 Gb IP network access options, 1 Gb bundled network access and Partial Cabinet Solutoins, helping them tailor their data center operations to the requirements of their business operations by allowing them to select the capacity, form and latency of connectivity that best suits their needs.

In addition, the Exchange believes the proposed increases in the MRCs for the Network Access Services are reasonable because they reflect the inclusion of additional data products in the list of Included Data Products. More specifically, the Exchange has opted to include connectivity to the three integrated feeds and the NYSE BQT as Included Data Products.

The Exchange believes that its proposed MRCs for the Network Access Services are comparable to the fees Nasdaq charges its co-location customers. For instance, the ongoing monthly fees for 40 Gb and 10 Gb fiber connections to Nasdaq are $20,000 and $10,000, respectively, compared to the proposed $22,000 and $14,000 for the 40 Gb and 10 Gb LCN circuits and $18,000 and $11,000 for the 40 Gb and 10 Gb IP network circuits, respectively.[30]

Excluding the Partial Cabinet Solutions with 10 Gb connections to the LCN and IP networks from the proposed changes to MRCs is a business decision that the Exchange believes is reasonable, equitably allocated and not unfairly discriminatory because the MRCs for the Partial Cabinet Solutions have been in place less than a year, and so the Exchange believes they more accurately reflect the value of the services provided than those in place for longer periods.[31] The Exchange believes that excluding the Partial Cabinet Solution MRCs from the present proposed changes would continue to make it more cost effective for smaller Users, including those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome, to utilize co-location.[32]

Excluding the 1 Gb LCN, 1 Gb IP network access and 1 Gb bundled network access options from the proposed changes to the MRC is a business decision that the Exchange believes is reasonable, equitably allocated and not unfairly discriminatory, because the Exchange believes that the current MRCs for the services reflect the value of the services provided to the smallest connections. In addition, Users with 1 Gb connections generally do not connect to the new Included Data Products, which generally require a larger connection than 1 Gb.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[33] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users). The Exchange believes that the proposed changes are reasonable and designed to be fair and equitable, and therefore, will not unduly burden any particular group of Users.

The Exchange believes that providing Users with Access and Connectivity does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such Access and Connectivity satisfies User demand for access and connectivity options, and each User has several other access and connectivity options available to it. As alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof. Users that opt to use Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contract with the relevant market or content provider may receive access or connectivity. In this way, the proposed changes would enhance competition by helping Users tailor their Access and Connectivity to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

The Exchange believes that revising the Price List and Fee Schedule to

[29] *See* note 19, *supra.* The 10 LCN circuits and 1 Gb bundled network access were first filed in 2010, and the 40 Gb LCN and 10 Gb LX LCN circuits were first filed in 2013. The 10 and 40 Gb IP network circuits were first filed in 2015.

[30] *See* Nasdaq Stock Market Rule 7034—Connectivity to Nasdaq.

[31] The order approving the proposed rule change to provide that co-location services include the Partial Cabinet Solution Bundles was issued in February, 2016. *See* Securities Exchange Act Release No. 77071, *supra* note 8.

[32] *See id.,* at 7384.

[33] 15 U.S.C. 78f(b)(8).

provide a more detailed description of the Access and Connectivity available to Users would make such descriptions more accessible and transparent, thereby providing market participants with clarity as to what Access and Connectivity is available to them and what the related costs are, thereby enhancing competition by ensuring that all Users have access to the same information regarding Access and Connectivity.

Similarly, the Exchange believes that the proposed changes to the Network Access Service MRCs would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, by offering the Network Access Services, the Exchange gives each User options for access to the LCN and IP network, responding to User demand for options. All Users that voluntarily purchase Network Access Services would be charged the same amount for the same services. As is currently the case, the purchase of any colocation service (including network and capacities) would be completely voluntary. Furthermore, each of the Network Access Services can be purchased independently of each other, and independently of any other colocation services or products that a User may choose.

The Exchange believes that the proposed changes to the Network Access Service MRCs would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the MRCs for the Network Access Services have been the same since they were first filed, with some MRCs dating to the inception of co-location in 2010.[34] During the time since the MRCs for the Network Access Services were filed, however, the Exchange has made numerous improvements to the network hardware and technology infrastructure. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users, including the increasing demand for bandwidth, and has established additional administrative controls. The Exchange offers the Network Access Services as conveniences to Users, but in order to do so must provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of the Network Access Services, including by responding to any production issues. The Exchange accordingly believes that the proposed changes to the Network Access Service MRCs will allow them to more accurately reflect the value of the services provided.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations.

Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [35] of the Act and subparagraph (f)(2) of Rule 19b–4 [36] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [37] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSEMKT–2016–126 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–NYSEMKT–2016–126. 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 Web site (*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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

[34] *See* note 19, *supra.*

[35] 15 U.S.C. 78s(b)(3)(A).

[36] 17 CFR 240.19b–4(f)(2).

[37] 15 U.S.C. 78s(b)(2)(B).

available publicly. All submissions should refer to File No. SR–NYSEMKT–2016–126, and should be submitted on or before January 31, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–00212 Filed 1–9–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79732; File No. SR–NYSEArca–2016–145]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change To Conform to Proposed Amendment to Rule 15c6–1(a) Under the Securities Exchange Act of 1934 To Shorten the Standard Settlement Cycle From Three Business Days After the Trade Date (''T+3'') to Two Business Days After the Trade Date (''T+2'')

January 4, 2017.

I. Introduction

On November 4, 2016, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') 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 conform its rules to an amendment proposed by the Commission to Rule 15c6–1(a) under the Securities Exchange Act of 1934 (''Act'') to shorten the standard settlement cycle for most broker-dealer transactions from three business days after the trade date (''T+3'') to two business days after the trade date (''T+2'').[3] The proposed rule change was published for comment in the **Federal Register** on November 23, 2016.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to adopt new NYSE Arca Equities Rule 7.4T (Ex-Dividend or Ex-Right Dates), to conform to a proposed amendment to Rule 15c6–1(a) under the Act that would shorten the standard settlement cycle to T+2.

A. Current T+3 Settlement Cycle

Currently, Exchange Rule 7.4 provides that transactions in stocks traded ''regular'' shall be ''ex-dividend'' or ''ex-rights,'' as the case may be, on the second business day preceding the record date fixed by the company or the date of the closing of transfer books, except when the Board of Directors rules otherwise.[5] Further, current Exchange Rule 7.4 provides that, should the record date or closing of transfer books occur on a day other than a business day, the rule shall apply for the third preceding business day.

B. Proposed T+2 Settlement Cycle

Proposed new Exchange Rule 7.4T would provide that transactions in stocks traded ''regular'' shall be ''ex-divided'' or ''ex-rights,'' as the case may be, on the business day preceding the record date fixed by the company or the date of the closing of transfer books, except when the Board of Directors rules otherwise.[6] Further, proposed Rule 7.4T would provide that, should the record date or closing of transfer books occur on a day other than a business day, the rule would apply for the second preceding business day.

C. Operative Date

The Exchange proposes for the new rule to be adopted but not yet operative. The current T+3 rule would remain in effect until the Exchange files a separate proposed rule change, to delete the current T+3 rule and make operative the proposed T+2 rule. The Exchange would announce the operative date of the T+2 rule by issuing an Information Memo.

III. Discussion and Commission's Findings

After careful review of the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[7] Specifically, the Commission finds that the rule change is consistent with Section 6(b)(5) of the Act,[8] which requires that the rules of a national securities exchange be designed, among other things, 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 to protect investors and the public interest.

The Commission notes that the proposal would conform Exchange Rule 7.4 to the amendment that the Commission has proposed to Rule 15c6–1(a) under the Act. The Commission also notes that the proposed amendment to Rule 15c6–1(a) under the Act has not yet been adopted by the Commission, and that the Exchange has, accordingly, not proposed to make its amended rule effective at present. Instead, the Exchange has proposed to establish the operative date of the Exchange's proposal by filing a separate proposed rule change. The Commission expects that any proposed rule change to establish the operative date of the Exchange's proposal would correspond with the compliance date of any amendment to Rule 15c6–1(a) that is adopted by the Commission.

For the reasons noted above, the Commission finds that the proposal is consistent with the requirements of the Act and would 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 to protect investors and the public interest.

IV. Conclusion

It is therefore ordered that, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSEArca–2016–145), be and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–00216 Filed 1–9–17; 8:45 am]

BILLING CODE 8011–01–P

[38] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78962 (Sept. 28, 2016), 81 FR 69240 (Oct. 5, 2016) (File No. S7–22–16).

[4] *See* Securities Exchange Act Release No. 79337 (Nov. 17, 2016), 81 FR 84635 (Nov. 23, 2016).

[5] *See* Exchange Rule 7.4.

[6] *See* Proposed Exchange Rule 7.4T.

[7] In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79735; File No. SR–ISEGemini–2016–14]

Self-Regulatory Organizations; ISE Gemini, LLC; Order Approving a Proposed Rule Change To Modify the Response Times in the Block Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism

January 4, 2017.

I. Introduction

On November 8, 2016, ISE Gemini, LLC (the ''Exchange'' or ''ISE Gemini'') 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 amend ISE Gemini Rules 716 (Block Trades) and 723 (Price Improvement Mechanism for Crossing Transactions) to modify the response times in the Block Order Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism (''PIM'') from 500 milliseconds to a time period designated by the Exchange of no less than 100 milliseconds and no more than 1 second. The proposed rule change was published for comment in the **Federal Register** on November 25, 2016.[3] No comment letters were received on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

ISE Gemini Rule 716 (Block Trades) contains the requirements applicable to the execution of orders using the Block Order Mechanism, Facilitation Mechanism, and Solicited Order Mechanism. The Block Order Mechanism allows ISE Gemini members to obtain liquidity for the execution of a block-size order.[4] The Facilitation and Solicited Order Mechanisms allow ISE Gemini members to enter cross transactions seeking price improvement.[5] ISE Gemini Rule 723 (Price Improvement Mechanism for Crossing Transactions) contains the requirements applicable to the execution of orders using the PIM. The PIM allows ISE Gemini members to enter cross transactions of any size. The Facilitation, Solicited Order Mechanisms, and PIM allow for ISE Gemini members to designate certain customer orders for price improvement and submit such orders into one of the mechanisms with a matching contra order. Once such an order is submitted, ISE Gemini commences an auction by broadcasting a message to all ISE Gemini members that includes the series, price, size, and side of the market.[6] Further, responses within the PIM (*i.e.,* Improvement Orders), are also broadcast to market participants during the auction.

Orders entered into the Block Order Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and PIM are currently exposed to all market participants for 500 milliseconds, giving them an opportunity to enter additional trading interest before the orders are automatically executed. Under the proposal, ISE Gemini would determine an exposure period for each of the four mechanisms that is no less than 100 milliseconds and no more than 1 second.[7]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,[10] which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that, given the electronic environment of ISE Gemini, reducing each of the exposure periods from 500 milliseconds to no less than 100 milliseconds could facilitate the prompt execution of orders, while continuing to provide market participants with an opportunity to compete for exposed bids and offers. To substantiate that its members could receive, process, and communicate a response back to ISE Gemini within 100 milliseconds, ISE Gemini stated that it surveyed all ISE Gemini members that responded to an auction in the period beginning July 1, 2015 and ending January 15, 2016. Each of the fifteen members surveyed indicated that they can currently receive, process, and communicate a response back to ISE Gemini within 100 milliseconds. To implement the reduced exposure periods and help ensure that ISE Gemini's and its members' systems are working properly given the faster response times, ISE Gemini will reduce the auction time over a period of weeks, ending at 100 milliseconds. Upon effectiveness of the proposal, and at least six weeks prior to implementation of the proposed rule change, ISE Gemini will issue a circular to its members, informing them of the implementation date of the reduction of the auction from 500 milliseconds to the auction time designated by ISE Gemini (100 milliseconds), to allow members the opportunity to perform systems changes. ISE Gemini also represented that it will issue a circular at least four weeks prior to any future changes, as permitted by its rules, to the auction time.[11] In addition, ISE Gemini reviewed all executions occurring in the mechanisms by ISE Gemini members from March 28, 2016 to April 25, 2016. This review of executions in the mechanisms indicated that approximately 98% of responses that resulted in price improving executions at the conclusion of an auction were submitted within 500 milliseconds. Approximately 94% of responses that resulted in price improving executions

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79353 (November 18, 2016), 81 FR 85280 (''Notice'').

[4] Block-size orders are orders for 50 contracts or more. *See* ISE Gemini Rule 716(a).

[5] Only block-size orders can be entered into the Facilitation Mechanism, whereas only orders for 500 contracts or more can be entered into the Solicited Order Mechanism. *See* ISE Gemini Rule 716(d) and (e).

[6] ISE Gemini members may choose to hide the size, side, and price when entering orders into the Block Order Mechanism.

[7] While the proposed rule change would allow ISE Gemini to increase the exposure period up to 1 second, ISE Gemini stated that it currently intends to decrease the time period allowed for responses to 100 milliseconds. *See* Notice, *supra* note 3, at 85281. ISE Gemini further noted that its proposal is consistent with exposure periods permitted in similar mechanisms on other options exchanges. *See id.* at 85281. *See also* Securities Exchange Act Release Nos. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR–BX–2015–032) and 77557 (April 7, 2016), 81 FR 21935 (April 13, 2016) (SR–Phlx–2016–40).

[8] 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).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(8).

[11] *See* Notice, *supra* note 3, at 85282.

at the conclusion of an auction were submitted within 100 milliseconds, and 83% were submitted within 50 milliseconds of the initial order.[12] Furthermore, with regard to the impact of the proposal on system capacity, ISE Gemini has analyzed its capacity and represented that it has the necessary systems capacity to handle the potential additional traffic associated with the additional transactions that may occur with the implementation of the reduction in the auction duration to no less than 100 milliseconds.[13]

Based on ISE Gemini's statements, the Commission believes that market participants should continue to have opportunities to compete for exposed bids and offers within an exposure period of no less than 100 milliseconds and no more than 1 second.[14] Accordingly, the Commission believes that it is consistent with the Act for the Exchange to modify the response times in the Block Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and PIM from 500 milliseconds to a time period designated by the Exchange of no less than 100 milliseconds and no more than 1 second.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–ISEGemini–2016–14) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–00219 Filed 1–9–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32412; File No. 812–14675]

Krane Funds Advisors, LLC, *et al.;* Notice of Application

January 4, 2017.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; and (f) certain Funds (''Feeder Funds'') to create and redeem Creation Units in-kind in a master-feeder structure.

APPLICANTS: Krane Funds Advisors, LLC (the ''Initial Adviser''), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940, KraneShares Trust (the ''Trust''), a Delaware statutory trust that is registered under the Act as an open-end management investment company with multiple series, and SEI Investments Distribution Company (the ''Initial Distributor''), a Pennsylvania corporation and broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'').

FILING DATES: The application was filed on July 20, 2016 and amended on November 29, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 26, 2017, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: the Initial Adviser and the Trust, 1270 Avenue of the Americas, Suite 2217, New York, New York 10020; and the Initial Distributor, One Freedom Valley Drive, Oaks, Pennsylvania 19456.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–3038, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'', which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

[12] *See id.*

[13] *See id.*

[14] The Commission notes that the ability to designate such an exposure time period is consistent with the rules of other options exchanges. *See supra* note 7. *See also* NASDAQ Phlx Rule 1080(n)(ii)(A)(4) and NASDAQ BX Options Rules Chapter VI, Section 9(ii)(A)(3).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

[1] Applicants request that the order apply to the initial series of the Trust and any future series of the Trust offering exchange-traded shares, as well as other existing or future open-end management companies or existing or future series thereof offering exchange-traded shares (and their respective existing or future Master Funds, as defined below), that will utilize active management investment strategies (collectively, ''Future Funds''). Any Future Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions (''Portfolio Holdings''). Each Fund will disclose on its Web site the identities and quantities of the Portfolio Holdings that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c-1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Holdings and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Holdings currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[2] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–00226 Filed 1–9–17; 8:45 am]

BILLING CODE 8011–01–P

[2] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79730; File No. SR–NYSE–2016–92]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Exchange's Price List Related to Co-location Services To Increase LCN and IP Network Fees and Add a Description of Access To Trading and Execution Services and Connectivity to Included Data Products

January 4, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the

[1] 15 U.S.C.78s(b)(1).

''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 22, 2016, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Price List related to co-location services to (a) provide a more detailed description of the access to trading and execution services and connectivity to data provided to Users with local area networks available in the data center, and (b) modify certain fees for access to the local area networks in the Exchange's data center. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List related to co-location [4] services offered by the Exchange to (a) provide a more detailed description of the access to trading and execution services and connectivity to data provided to Users [5] with connections to the Liquidity Center Network (''LCN'') and internet protocol (''IP'') network, local area networks available in the data center, and (b) modify certain fees for access to the LCN and IP networks. The Exchange proposes to implement the fee changes effective January 1, 2017.

The Exchange offers LCN access of 1, 10 and 40 Gigabits (''Gb'') as well as a lower-latency 10 Gb LCN connection, referred to as the ''LCN 10 Gb LX.'' [6] The Exchange offers IP network access in 1, 10 and 40 Gb capacities.[7] A User also may purchase access to the LCN or IP network through purchase of 1 Gb or 10 Gb bundled network access or a Partial Cabinet Solution bundle, which include 1 and 10 Gb LCN and IP network connections.[8]

Access to Trading and Execution Services and Connectivity to Data

As the Exchange has previously stated, a User's connection to the LCN or IP network provides it access to the Exchange's trading and execution systems and Exchange market data products.[9] More specifically, when a User purchases access to the LCN or IP network, it will receive *access* to the trading and execution systems of the Exchange and its Affiliate SROs (the ''Exchange Systems''), provided the User has authorization from the Exchange or relevant Affiliate SRO. In addition, when a User purchases access to the LCN or IP network, it will receive *connectivity* to certain market data products (the ''Included Data Products''), provided the User has have entered into a contract with the provider of the data feed. The Exchange proposes to revise the Price List to provide a more detailed description of the *access* to the Exchange Systems (''Access'') and *connectivity* to Included Data Products (''Connectivity'') that comes with connections to the LCN or IP network when the User has authorization from the Exchange or Affiliate SRO for such access or has a contract from the market data provider for such connectivity.

Access to certification and testing feeds comes with the purchase of some Included Data Products from the provider of such data. Certification feeds are used to certify that a User conforms to any relevant technical requirements for receipt of data or access to Exchange Systems. Test feeds provide Users an environment in which to conduct tests with non-live data, including testing for upcoming Exchange releases and product enhancements or the User's own software development. Such feeds are solely used for certification and testing and do not carry live production data. When access to certification and testing feeds comes with the purchase of an Included Data Product from the provider of such data, the purchase of access to the IP network from the Exchange [10] will provide Connectivity to such certification and testing feeds.'

The Exchange provides Access and Connectivity as conveniences to Users. Use of Access or Connectivity is completely voluntary, and several other access and connectivity options are available to a User. As alternatives to

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56) (the ''Original Co-location Filing''). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE MKT LLC (''NYSE MKT'') and NYSE Arca, Inc. (''NYSE Arca'' and, together with NYSE MKT, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59).

[6] *See* Original Co-location Filing, *supra* note 4, at 59311; and Securities Exchange Act Release Nos. 70206 (Aug. 15, 2013), 78 FR 51765 (Aug. 21, 2013) (SR–NYSE–2013–59) (notice of filing and immediate effectiveness of proposed rule change to offer LCN 40 Gb connection); and 70888 (Nov. 15, 2013), 78 FR 69907 (Nov. 21, 2013) (SR–NYSE–2013–73) (notice of filing and immediate effectiveness of proposed rule change to offer LCN 10 Gb LX connection).

[7] *See* Securities Exchange Act Release Nos. 74222 (Feb. 6, 2015), 80 FR 7888 (Feb. 12, 2015) (SR–NYSE–2015–05) (notice of filing and immediate effectiveness of proposed rule change to offer IP network connections as co-location services) (the ''IP Network Release''), and 76369 (Nov. 5, 2015), 80 FR 70027 (Nov. 12, 2015) (SR–NYSE–2015–54) (notice of filing and immediate effectiveness of proposed rule change to offer 40 Gb IP network connection).

[8] *See* Securities Exchange Act Release Nos. 62732 (Aug 16, 2010), 75 FR 51512 (August 20, 2010) (notice of proposed rule change to reflect fees charged for co-location services, including bundled network access); and 77072 (February 5, 2016), 81 FR 7394 (February 11, 2016) (SR–NYSE–2015–53) (notice of filing and accelerated approval of proposed rule change to offer Partial Cabinet Bundle Options).

[9] *See* Original Co-location Filing, *supra* note 4, at 59311 (''According to NYSE, SFTI and LCN both provide Users with access to the Exchange's trading and execution systems and to the Exchange's proprietary market data products.'') and IP Network Release, *supra* note 7, at 7889 (''Like the LCN, the IP network provides Users with access to the Exchange's trading and execution systems and to the Exchanges' proprietary market data products.''). The IP network was previously sometimes referred to as SFTI. *See id.*

[10] Access to certification and testing feeds is only available over the IP network. A User that does not have an IP network connection may obtain an IP network circuit for purposes of testing and certification for free for three months. *See* IP Network Release, *supra* note 7, at 7889.

using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the Secure Financial Transaction Infrastructure (''SFTI'') network, or a combination thereof.[11]

Access to Exchange Systems

As the Exchange has previously stated, Users' connections to the LCN or IP networks include access to Exchange Systems when the User has authorization from the Exchange or relevant Affiliate SRO.[12] The Exchange notes that including access to Exchange Systems with the purchase of access to the LCN or IP network is consistent with Nasdaq's colocation service, which does not charge its co-located customers a separate fee for access to Exchange Systems.[13]

Accordingly, the Exchange proposes to add a new note to its Price List stating the following:

When a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the NYSE, NYSE MKT and NYSE Arca (Exchange Systems), subject, in each case, to authorization by the NYSE, NYSE MKT or NYSE Arca, as applicable. Such access includes access to the customer gateways that provide for order entry, order receipt (*i.e.* confirmation that an order has been received), receipt of drop copies and trade reporting (*i.e.* whether a trade is executed or cancelled), as well as for sending information to shared data services for clearing and settlement. A User can change the access it receives at any time, subject to authorization by NYSE, NYSE MKT or NYSE Arca, as applicable. NYSE, NYSE MKT and NYSE Arca also offer access to Exchange Systems to their members, such that a User does not have to purchase access to the LCN or IP network to obtain access to Exchange Systems.

Connectivity to Included Data Products

The majority of the Included Data Products are proprietary feeds of the Exchange and the Affiliate SROs.[14] The Included Data Products also include the data feeds disseminated by the Consolidated Tape Association (''CTA'') (such data feeds, the ''NMS feeds''). CTA is responsible for disseminating consolidated, real-time trade and quote information in NYSE listed securities (Network A) and NYSE MKT, NYSE Arca and other regional exchanges' listed securities (Network B) pursuant to a national market system plan.[15] The NMS feeds include the Consolidated Tape System and Consolidated Quote System data streams, as well as Options Price Reporting Authority feeds.

In order to connect to an Included Data Product, a User enters into a contract with the provider of such data, pursuant to which the User is charged for the Included Data Product. After the User and data provider enter into the contract and the Exchange receives authorization from the provider of the data feed, the Exchange provides the User with connectivity to the Included Data Product over the User's LCN or IP network port. The Exchange does not charge the User separately for such connectivity to the Included Data Product, as it is included in the purchase of the access to the LCN or IP network.

The Included Data Products are available over both the LCN and IP network.[16] For a User that purchases access to the LCN and IP network, the Exchange works with such User to allocate its connectivity to Included Data Products between its LCN and IP network connections. Some Included Data Products require a network connection with a minimum Gb size in order to accommodate the feed.[17] The Included Data Products do not provide access or order entry to the Exchange's execution system.

The Exchange offers connectivity to Included Data Products in three forms: as a resilient feed, as ''Feed A'' or as ''Feed B.'' Resilient feeds include two copies of the same feed, for redundancy purposes. Feed A and Feed B are identical feeds.[18]

For some Included Data Products, connectivity to identical Feeds A and B is only available on the IP network.

The Included Data Products are as follows:

NMS feeds
NYSE:
NYSE Alerts
NYSE BBO
NYSE Integrated Feed
NYSE OpenBook
NYSE Order Imbalances
NYSE Trades
NYSE Amex Options
NYSE Arca:
NYSE ArcaBook
NYSE Arca BBO
NYSE Arca Integrated Feed
NYSE Arca Order Imbalances
NYSE Arca Trades
NYSE Arca Options
NYSE Best Quote and Trades (BQT)
NYSE Bonds
NYSE MKT:
NYSE MKT Alerts
NYSE MKT BBO
NYSE MKT Integrated Feed
NYSE MKT OpenBook
NYSE MKT Order Imbalances
NYSE MKT Trades

[11] A User that opted to obtain connectivity to Included Data Products through another User, a telecommunication provider, third party wireless network, or the SFTI network would receive the corresponding testing and certification feeds.

[12] *See* note 9, *supra.*

[13] *See* Nasdaq Stock Market Rule 7034—Connectivity to Nasdaq.

[14] *See* Securities Exchange Act Release Nos. 44138 (December 7, 2001), 66 FR 64895 (December 14, 2001) (SR–NYSE–2001–42) (establishing fees for NYSE OpenBook); 50844 (December 13, 2004), 69 FR 76806 (December 22, 2004) (SR–NYSE–2004–53) (establishing fee for NYSE Alerts); 59290 (January 23, 2009) 74 FR 5707 (January 30, 2009) (SR–NYSE–2009–05) (establishing pilot program for NYSE Trades); 59543 (March 9, 2009), 74 FR 11159 (March 16, 2009) (establishing fee for NYSE Order Imbalances); 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR–NYSE–2010–30) (establishing NYSE BBO); 65669 (Nov. 2, 2011), 76 FR 69311 (Nov. 8, 2011) (SR–NYSEArca–2011–78) (establishing the NYSE Arca Integrated Feed); 73553 (Nov. 6, 2014), 79 FR 67491 (Nov. 13, 2014) (SR–NYSE–2014–40) (establishing the NYSE Best Quote & Trades Data Feed); 74128 (Jan. 23, 2015), 80 FR 4951 (Jan. 29, 2015) (SR–NYSE–2015–03) (establishing the NYSE Integrated Feed); 74127 (Jan. 23, 2015), 80 FR 4956 (Jan. 29, 2015) (SR–NYSEMKT–2015–06) (establishing the NYSE MKT Integrated Feed); and 76968 (January 22, 2016), 81 FR 4689 (January 27, 2016) (establishing NYSE Arca Order Imbalances).

[15] The Included Data Products do not include the data feeds disseminated pursuant to the ''Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis'' (the ''UTP Plan''). The UTP Plan is responsible for disseminating consolidated, real-time trade and quote information in Nasdaq Stock Exchange LLC listed securities (Network C).

[16] As noted above, certification and testing feeds included by a data provider with an Included Data Product are only available over the IP network.

[17] Because each Included Data Product uses part of a User's bandwidth, a User may wish to limit the number of Included Data Products that it receives to those that it requires.

[18] A User that wants redundancy would connect to both Feed A and Feed B or two resilient feeds, using two different ports. A User may opt to connect both Feed A and Feed B to the same port, the effect of which would be the same as if the User had connected to a resilient feed. The form of feed that a User selects may affect the connection it requires. For example, a User connecting to the NYSE Arca Integrated Feed, NYSE Integrated Feed or NYSE MKT Integrated Feed would need at least a 1 Gb IP network connection in order to connect to either Feed A or Feed B. To connect to a resilient feed, the User would require an LCN or IP network connection of at least 10 Gb.

In addition to the above list of Included Data Products, the Exchange proposes to add the following language to the Price List:

When a User purchases access to the LCN or IP network it receives connectivity to any of the Included Data Products that it selects, subject to any technical provisioning requirements and authorization from the provider of the data feed. Market data fees for the Included Data Products are charged by the provider of the data feed. A User can change the Included Data Products to which it receives connectivity at any time, subject to authorization from the provider of the data feed. The Exchange is not the exclusive method to connect to the Included Data Products.

Fees for Access to the LCN and IP Network

Users that connect to the LCN or IP network pay an initial non-recurring charge and a monthly recurring charge (''MRC''). A User that purchases five 10 GB LCN Circuits receives the sixth 10 GB LCN Circuit without being subject to an additional MRC.

The Exchange proposes to amend the MRCs for 10 and 40 Gb LCN circuits, 10 Gb LX LCN circuits, 10 and 40 Gb IP network circuits, and the 10 Gb bundled network access (together, the ''Network Access Services''). The Exchange has not increased the MRCs for the Network Access Services since they were first filed: the proposed change will be the first increase in such fees.[19]

The proposed changes to the Network Access Service MRCs are as follows:

Type of service	Description	Amount of current MRC	Amount of proposed MRC
LCN Access	10 Gb Circuit	$12,000	$14,000
LCN Access	10 Gb LX Circuit	20,000	22,000
LCN Access	40 Gb Circuit	20,000	22,000
Bundled Network Access (2 LCN connections, 2 IP network connections, and 2 optic connections to outside access center).	10 Gb Bundle	47,000	53,000
IP Network Access	10 Gb Circuit	10,000	11,000
IP Network Access	40 Gb Circuit	17,000	18,000

The initial non-recurring charge for the Network Access Services would not change, and Users that purchase five 10 Gb LCN circuits will continue to receive the sixth 10 Gb LCN Circuit without an additional MRC. The Exchange does not propose to change the fees associated with 1 Gb LCN and 1 Gb IP network access, 1 Gb bundled network access, or the Partial Cabinet Solution bundles.

Currently, the Price List uses both ''Gb'' and ''GB'' as an abbreviation for gigabits. To make the usage consistent, the Exchange proposes to make non-substantive changes to the Price List to replace ''GB'' with ''Gb.''

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [20] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its Affiliate SROs.[21]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(5) of the Act,[23] in particular, because 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 regulating, clearing, settling, processing information with respect to, and 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that revising the Price List to provide a more detailed description of the Access and Connectivity Users receive with their purchase of access to the LCN or IP network would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed changes would make the descriptions of access to the LCN and IP

[19] The 10 Gb LCN circuits and10 Gb bundled network access were first filed in 2010, and the 40 Gb LCN and 10 Gb LX LCN circuits were first filed in 2013. The 10 and 40 Gb IP network circuits were first filed in 2015. *See* Securities Exchange Act Release Nos. 62732, *supra* note 8; 65237 (Aug. 31, 2011), 76 FR 55432 (Sept. 7, 2011) (SR–NYSE–2011–46) (notice of filing and immediate effectiveness of proposed rule change adding MRC for 10 Gb circuit); 70287 (Aug. 29, 2013), 78 FR 54704 (Sept. 5, 2013) (SR–NYSE–2013–60) (notice of filing and immediate effectiveness of proposed rule change to offer LCN 40 Gb connection); 70979 (Dec. 4, 2013), 78 FR 74200 (Dec. 10, 2013) (SR–NYSE–2013–77) (notice of filing and immediate effectiveness of proposed rule change amending price list in order to provide fees for LCN 10 Gb LX); 74222 (Feb. 6, 2015), 80 FR 7888 (Feb. 12, 2015) (SR–NYSE–2015–05) (notice of filing and immediate effectiveness of proposed rule change to offer 1 Gb and 10 Gb IP network connections) and 76369 (Nov. 5, 2015), 80 FR 70027 (Nov. 12, 2015) (SR–NYSE–2015–54) (notice of filing and immediate effectiveness of proposed rule change to offer 40 Gb IP network connection).

[20] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies, as compared to Users that are not co-located, in sending orders to, and receiving market data from, the Exchange.

[21] *See* SR–NYSE–2013–59, *supra* note 5, at 51766. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEMKT–2016–126 and SR–NYSEArca–2016–172.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

network more accessible and transparent, thereby providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP network. Including the more detailed description of Access and Connectivity in the Price List is consistent with Nasdaq's Rule 7034, which includes similar information.[24]

Co-location was created to permit Users ''to rent space on premises controlled by the Exchange in order that they may locate their electronic servers in close physical proximity to the Exchange's trading and execution systems.'' [25] The expectation was that normally Users ''would expect reduced latencies in sending orders to the Exchange and in receiving market data from the Exchange.'' [26] Accordingly, the Exchange believes the Access and Connectivity is directly related to the purpose of co-location, and so revising the Price List to increase the description of such Access and Connectivity would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general protect investors and the public interest by increasing the transparency around Access and Connectivity.

Further, the Exchange believes that revising the Price List to provide a more detailed description of the Access and Connectivity Users receive with their purchase of access to the LCN or IP network would promote just and equitable principles of trade and remove impediments to, and perfect the mechanisms of, a free and open market and a national market system as it would make clear that all Users that voluntarily select to access the LCN or IP network would receive the same Access and Connectivity, and would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Users are not required to use any of their bandwidth to access Exchange Systems or connect to an Included Data Product unless they wish to do so. Rather, a User only receives the Access and Connectivity that it selects, and a User can change what Access or Connectivity it receives at any time, subject to authorization from the data provider or relevant Exchange or Affiliate SRO.

The Exchange believes that the proposed changes remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering Access and Connectivity, the Exchange gives each User additional options for addressing its access and connectivity needs, responding to User demand for access and connectivity options. Providing Access and Connectivity helps each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of access and connectivity that best suits its needs. The Exchange provides Access and Connectivity as conveniences to Users. Use of Access or Connectivity is completely voluntary, and each User has several other access and connectivity options available to it. As alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof.

Similarly, the Exchange believes that the proposed fee changes remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering the Network Access Services, the Exchange gives each User options for access to the LCN and IP network, responding to User demand for options. Users have the convenience of choosing among the array of different Network Access Services available, as well as the 1 Gb LCN and 1 Gb IP network access options, 1 Gb bundled network access and Partial Cabinet Solutions, helping them tailor their data center operations to the requirements of their business operations by allowing them to select the capacity, form and latency of connectivity that best suits their needs.

The Exchange believes that the proposed fee changes remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the Exchange provides Network Access Services as conveniences to Users. Use of Network Access Services is completely voluntary, and each User has several other options available to it. As alternatives to using the Network Access Services provided by the Exchange, a User may access or connect to the Exchange through another User, as well as through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof.

The Exchange believes that conforming the use of ''Gb'' would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed changes would make the Price List more transparent, thereby providing market participants with additional clarity.

The Exchange also believes that the proposed rule changes are consistent with Section 6(b)(4) of the Act,[27] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed changes are consistent with Section 6(b)(4) of the Act [28] for multiple reasons. The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have

[24] *See* Nasdaq Stock Market Rule 7034—Market Data Connectivity (''Pricing is for connectivity only and is similar to connectivity fees imposed by other vendors. The fees are generally based on the amount of bandwidth needed to accommodate a particular feed and Nasdaq is not the exclusive method to get market data connectivity. Market data fees are charged independently by the Nasdaq Stock Market and other exchanges.'')

[25] Original Co-Location Filing, *supra* note 4, at 59310.

[26] *Id.*

[27] 15 U.S.C. 78f(b)(4).

[28] 15 U.S.C. 78f(b)(4).

additional follow-on effects on the market share and revenue of the affected exchange.

The Exchange believes that the proposed changes to the Network Access Service MRCs would provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because the Network Access Services are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users). All Users that voluntarily purchase a Network Access Service would be charged the same amount for the same service. As is currently the case, the purchase of any colocation service (including Network Access Services) would be completely voluntary. Furthermore, each of the Network Access Services can be purchased independently of each other, and independently of any other colocation services or products that a User may choose.

The Exchange believes that the proposed changes to the Network Access Service MRCs are reasonable, equitably allocated and not unfairly discriminatory because the MRCs for the Network Access Services have been the same since they were first filed, with some MRCs dating to the inception of co-location in 2010.[29] During the time since the MRCs for the Network Access Services were filed, however, the Exchange has made numerous improvements to the network hardware and technology infrastructure. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users, including the increasing demand for bandwidth, and has established additional administrative controls. The Exchange offers the Network Access Services as conveniences to Users, but in order to do so must provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of the Network Access Services, including by responding to any production issues. The Exchange accordingly believes that the proposed changes to the Network Access Service MRCs will allow them to more accurately reflect the value of the services provided.

The Exchange believes the proposed fees are reasonable because they allow the Exchange to defray or cover the costs associated with offering the Network Access Services while providing Users the benefit of choosing among the array of different Network Access Services available, as well as the 1 Gb LCN and 1 Gb IP network access options, 1 Gb bundled network access and Partial Cabinet Solutions, helping them tailor their data center operations to the requirements of their business operations by allowing them to select the capacity, form and latency of connectivity that best suits their needs.

In addition, the Exchange believes the proposed increases in the MRCs for the Network Access Services are reasonable because they reflect the inclusion of additional data products in the list of Included Data Products. More specifically, the Exchange has opted to include connectivity to the three integrated feeds and the NYSE BQT as Included Data Products.

The Exchange believes that its proposed MRCs for the Network Access Services are comparable to the fees Nasdaq charges its co-location customers. For instance, the ongoing monthly fees for 40 Gb and 10 Gb fiber connections to Nasdaq are $20,000 and $10,000, respectively, compared to the proposed $22,000 and $14,000 for the 40 Gb and 10 Gb LCN circuits and $18,000 and $11,000 for the 40 Gb and 10 Gb IP network circuits, respectively.[30]

Excluding the Partial Cabinet Solutions with 10 Gb connections to the LCN and IP networks from the proposed changes to MRCs is a business decision that the Exchange believes is reasonable, equitably allocated and not unfairly discriminatory because the MRCs for the Partial Cabinet Solutions have been in place less than a year, and so the Exchange believes they more accurately reflect the value of the services provided than those in place for longer periods.[31] The Exchange believes that excluding the Partial Cabinet Solution MRCs from the present proposed changes would continue to make it more cost effective for smaller Users, including those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome, to utilize co-location.[32]

Excluding the 1 Gb LCN, 1 Gb IP network access and 1 Gb bundled network access options from the proposed changes to the MRC is a business decision that the Exchange believes is reasonable, equitably allocated and not unfairly discriminatory, because the Exchange believes that the current MRCs for the services reflect the value of the services provided to the smallest connections. In addition, Users with 1 Gb connections generally do not connect to the new Included Data Products, which generally require a larger connection than 1 Gb.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[33] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users). The Exchange believes that the proposed changes are reasonable and designed to be fair and equitable, and therefore, will not unduly burden any particular group of Users.

The Exchange believes that providing Users with Access and Connectivity does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such Access and Connectivity satisfies User demand for access and connectivity options, and each User has several other access and connectivity options available to it. As alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection

[29] *See* note 19, *supra.* The 10 LCN circuits and 1 Gb bundled network access were first filed in 2010, and the 40 Gb LCN and 10 Gb LX LCN circuits were first filed in 2013. The 10 and 40 Gb IP network circuits were first filed in 2015.

[30] *See* Nasdaq Stock Market Rule 7034—Connectivity to Nasdaq.

[31] The order approving the proposed rule change to provide that co-location services include the Partial Cabinet Solution Bundles was issued in February, 2016. *See* Securities Exchange Act Release No. 77072, *supra* note 8.

[32] *See id,* at 7396.

[33] 15 U.S.C. 78f(b)(8).

through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof. Users that opt to use Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contract with the relevant market or content provider may receive access or connectivity. In this way, the proposed changes would enhance competition by helping Users tailor their Access and Connectivity to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

The Exchange believes that revising the Price List to provide a more detailed description of the Access and Connectivity available to Users would make such descriptions more accessible and transparent, thereby providing market participants with clarity as to what Access and Connectivity is available to them and what the related costs are, thereby enhancing competition by ensuring that all Users have access to the same information regarding Access and Connectivity.

Similarly, the Exchange believes that the proposed changes to the Network Access Service MRCs would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, by offering the Network Access Services, the Exchange gives each User options for access to the LCN and IP network, responding to User demand for options. All Users that voluntarily purchase Network Access Services would be charged the same amount for the same services. As is currently the case, the purchase of any colocation service (including network and capacities) would be completely voluntary. Furthermore, each of the Network Access Services can be purchased independently of each other, and independently of any other colocation services or products that a User may choose.

The Exchange believes that the proposed changes to the Network Access Service MRCs would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the MRCs for the Network Access Services have been the same since they were first filed, with some MRCs dating to the inception of co-location in 2010.[34] During the time since the MRCs for the Network Access Services were filed, however, the Exchange has made numerous improvements to the network hardware and technology infrastructure. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users, including the increasing demand for bandwidth, and has established additional administrative controls. The Exchange offers the Network Access Services as conveniences to Users, but in order to do so must provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of the Network Access Services, including by responding to any production issues. The Exchange accordingly believes that the proposed changes to the Network Access Service MRCs will allow them to more accurately reflect the value of the services provided.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [35] of the Act and subparagraph (f)(2) of Rule 19b–4 [36] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [37] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSE–2016–92 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–NYSE–2016–92. 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 Web site (*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

[34] *See* note 19, *supra.*

[35] 15 U.S.C. 78s(b)(3)(A).

[36] 17 CFR 240.19b&4(f)(2).

[37] 15 U.S.C. 78s(b)(2)(B).

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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2016–92, and should be submitted on or before January 31, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–00214 Filed 1–9–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79737; File No. SR–NYSEMKT–2016–127]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Change Modifying the NYSE Amex Options Fee Schedule

January 4, 2017.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 28, 2016, NYSE MKT LLC (''Exchange'' or ''NYSE MKT'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Amex Options Fee Schedule. The proposed change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule to: (1) Adjust the qualification thresholds and transaction fees for electronic transactions by NYSE Amex Options Marker Makers (''Sliding Scale'');[4] and (2) modify the prepayment programs offered by the Exchange, including adding a new prepay option (the ''Prepayment Programs'').[5]

Market Maker Sliding Scale

Section I.C. of the Fee Schedule sets forth the Sliding Scale of transaction fees charged to NYSE Amex Options Marker Makers (referred to as Market Makers herein), which per contract fees decrease as Market Maker trades higher monthly volumes.[6] Currently, Market Makers that have monthly volume on the Exchange of 0.10% or less of total ICADV are charged a base rate of $0.25 per contract and, these same market participants, upon reaching certain volume thresholds, or Tiers, receive a reduction of this per contract rate.[7] In addition, the Exchange charges a lower per contract rate to Market Makers that participate in one of the Prepayment Programs or that post monthly volume greater than 0.85% of total ICADV.

Effective January 3, 2017, the Exchange proposes to modify the qualification thresholds and associated transaction fees for all Marker Makers as follows (with new rates/thresholds underlined and deleted rates/thresholds in brackets):

* * * * *

Tier	Market maker electronic monthly volume as a percentage of ICADV	Rate per contract	Rate per contract if monthly volume from posted volume is more than .85% of total ICADV or for any NYSE Amex Market Maker participating in a prepayment program pursuant to Section I.D.
1	0.00% to [0.10%]*0.15%*	$0.25	[$0.20]*$0.23*
2	[>0.10%]>*0.15%* to 0.60%	$0.22	[$0.17]*$0.18*
3	>0.60% to [1.25%]*1.10%*	[$0.12]*$0.14*	[$0.07]*$0.08*

[38] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Fee Schedule, Section I. C. (NYSE Amex Options Market Maker Sliding Scale—Electronic), *available here, https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf.*

[5] *See id.,* Section I. D. (Prepayment Program).

[6] *See* Fee Schedule, *supra* note 4. The volume thresholds are based on an NYSE Amex Options Market Maker's volume transacted Electronically as a percentage of total industry Customer equity and ETF options volumes (''ICADV'') as reported by the Options Clearing Corporation (the ''OCC''). Total ICADV is comprised of those equity and ETF contracts that clear in the Customer account type at OCC and does not include contracts that clear in either the Firm or Market Maker account type at OCC or contracts overlying security other than an equity or ETF security. *See* OCC Monthly Statistics Reports, *available here, http://www.theocc.com/webapps/monthly-volume-reports.*

[7] In calculating an NYSE Amex Options Market Maker Electronic volumes, the Exchange excludes any volumes attributable to Mini Options, QCC trades, CUBE Auctions, and Strategy Execution Fee Caps, as these transactions are subject to separate pricing described in Fee Schedule Sections I.B., I.F., I.G., and I.J, respectively. *See* Fee Schedule, Section I.C, *supra* note 4.

Tier	Market maker electronic monthly volume as a percentage of ICADV	Rate per contract	Rate per contract if monthly volume from posted volume is more than .85% of total ICADV or for any NYSE Amex Market Maker participating in a prepayment program pursuant to Section I.D.
4	[>1.25% to 1.40%]*>1.10% to 1.45%*	$0.10	$0.05
5	[>1.40% to 1.75%]*>1.45% to 1.80%*	$0.07	[$0.02]*$0.04*
6	[>1.75%]*>1.80%*	$0.05	[$0.00]*$0.02*

The proposed changes are designed to incent Market Makers to electronically trade a more meaningful percentage of ICADV by increasing the percentage of ICADV required for Tiers 2, 5 and 6, and to make Tier 4 more achievable by lowering the percentage of ICADV required.[8] In connection with the adjustment to the qualification thresholds for the various tiers, the Exchange proposes to increase the per contract rate for Tier 3, which is designed to both offset the lower threshold to Tier 4 and to encourage participants to achieve Tier 4. For those participants that achieve Tier 4, as modified, the per contract rate differential remains the same (*i.e.,* $0.05 per contract for those who achieve 0.85% of IADV from Posted Volume, or participate in a Prepayment Program; as compared to $0.10 per contract for anyone else that achieves Tier 4), which is designed to encourage Market Makers to qualify for the more easily achievable Tier 4 and to qualify for the enhanced rates by enrolling in a prepayment program or meeting the Posted Volume criterion. In addition, the Exchange proposes to increase the discounted per contract rates to Market Makers that participate in one of the Prepayment Programs or that trade more than 0.85% of total ICADV based on posted volume. The Exchange believes the proposed modifications would encourage Market Makers to execute more volume on the Exchange and provide additional incentive to enroll in one of the Prepayment Programs, including as modified herein.

Prepayment Program

In January 2015, the Exchange introduced a two Prepayment Programs—for a 1- or 3-year term—to allow Market Makers to prepay a portion of the charges incurred for transactions executed on the Exchange.[9] Although the 3-Year Prepayment Program, now in its final year, is closed to new entrants, the Exchange proposes to modify the terms of the 1 Year Prepayment Program, as well as to offer a new prepay option to be available throughout 2017.[10] The proposed modifications to the Prepayment Program are designed to encourage broader participation by Market Maker firms.

The Exchange proposes to reduce the prepayment amount for the 1 Year Prepayment Program from $4 million to $3 million, which would align with the final prepayment for participants in the 3 Year Prepayment Program. The Exchange does not propose to alter any other aspects of the 1 Year Prepayment Program.[11] Participants in the 1 Year Prepayment Program would continue to qualify its Affiliated (or Appointed) OFP to be eligible to receive the enhanced credit(s) under the Amex Customer Engagement Program.[12] To enroll in the modified 1 Year Prepayment Program, a Market Maker would have until December 30, 2016 to notify the Exchange, and until January 31, 2017 to remit the $3 million prepayment.[13]

The Exchange is also proposing to offer a new option, the ''Balance of the Year'' program, which would allow Market Makers to commit to prepay a portion of their transaction charges for some portion of the calendar year, for a maximum of three-quarters of the year. The prepayment amount and payment schedule for the proposed Balance of the Year Program would be based on the quarter in which the Market Maker joins, as set forth below:

	2nd Quarter	3rd Quarter	4th Quarter
Prepayment Amount and Payment Schedule.	$2,475,000, due by April 28	$1,800,000, due by July 31	$975,000, due by October 31.

Similar to the current 1- and 3-Year Prepayment Programs, a Market Maker that participates in the Balance of the Year Program would receive a credit equal to its prepayment amount (*i.e.,* $2,475,000; $1,800,000; or $975,000, respectively) toward fees it incurs under

[8] *See* proposed Fee Schedule, Section I.C.

[9] *See* Exchange Act Release No. 74086 (January 16, 2015) 80 FR 3701 (January 23, 2015) (SR–NYSEMKT–2015–4). *See also* Fee Schedule, Section I.D (Prepayment Programs), *supra* at note 4 (describing the 1- and 3-Year Prepayment Programs, including requisite timelines for committing and prepaying as well as various conditions to opt out of the 3-Year Prepayment Program).

[10] *See* proposed Fee Schedule, Section I.D (Prepayment Programs) (modifying the description of the 3 Year Prepayment Program to make clear that it is closed to new participants, that one year remains for any Market Maker that enrolled in 2015, that participants retain the ability to opt out by the specified date, including because there are fewer than 4 participants in the 1- or 3-Year programs as of January 3, 2017, as well as to update the description of the program to reflect the current and upcoming calendar year). The Exchange does not propose to modify the ($3 million) amount of, or deadline (of January 31, 2017) for, the final payment in connection with the 3 Year Prepayment Program.

[11] *See* proposed Fee Schedule, Section I.C. (providing that the Exchange will apply the prepayment as a credit against charges incurred under Section I.C., I.G., or III.A. of the Fee Schedule and, once the prepayment credit has been exhausted, the Exchange will invoice the NYSE Amex Options Market Maker at the appropriate rates, and noting that if the NYSE Amex Options Market Maker does not conduct sufficient activity to exhaust the entirety of their prepayment credit within the calendar year, there will be no refunds issued for any unused portion of their prepayment credit).

[12] *See* Fee Schedule, Section I.E. (Amex Customer Engagement (''ACE'') Program—Standard Options).

[13] *See* proposed Fee Schedule, Section I.D (Prepayment Programs) (modifying the description of the 1Year Prepayment Programs, including reducing the prepayment amount and updating the deadlines to reflect the current and upcoming calendar year). As is the case today, Market Makers would have until the last business day of 2016 to notify the Exchange of their commitment to the Program by sending an email the Exchange at *optionsbilling@nyse.com.*

Section I.C., I.G., and III.A.[14] As proposed, Marker Makers that enroll in the Balance of the Year Program would be required to notify the Exchange by the last business day before the start of the new (following) quarter.[15] Thus, to participate for the last three-quarters of 2017, notice would have to be given by March 31, 2017—the last business day of the first quarter.

The Exchange believes the proposed Balance of the Year Program would allow a Market Maker that had not committed to the 1- or 3-Year Prepayment Program the option to enroll at a later date, for a shorter duration, and to nonetheless receive the benefits of participating in the Prepayment Program for the duration of their commitment. Specifically, during the period of their participation, Market Makers enrolled in the Balance of the Year Program would be entitled to qualify for the reduced per contract Sliding Scale rates (*see supra* note 8), and a discount on Rights Fees.[16] The Exchange likewise proposes to offer participants in the Balance of the Year Program enhanced ACE credits in the same amount as those available to participants in the 1 Year Prepayment Program, and to modify the Fee Schedule accordingly.[17] Although the prepay commitment rates for partial Balance of the Year participation is not proportional to the time left in the year (*i.e.,* the later in the year a Market Maker joins, the higher his prepayment amount relative to the annual cost), the Exchange believes this cost structure would incentivize interested Market Makers to commit to the Program earlier in the year.

The Exchange is not proposing any other fee changes at this time.

[14] *See* proposed Fee Schedule, Section I.D (Prepayment Programs). Similarly, just as with the 1- and 3-Year Prepayment Programs, the Exchange would apply the prepayment as a credit against charges incurred under Section I.C., I.G., or III.A. of the Fee Schedule. Once the prepayment credit has been exhausted, the Exchange would invoice the NYSE Amex Options Market Maker at the appropriate rates. In the event that a NYSE Amex Options Market Maker does not conduct sufficient activity to exhaust the entirety of their prepayment credit within the calendar year, there would be no refunds issued for any unused portion of their prepayment credit. *See id.*

[15] *See id.* (providing that Market Makers would be required to notify the Exchange of their commitment to the Program by sending an email the Exchange at *optionsbilling@nyse.com*).

[16] *See* Fee Schedule, Section III.C (e-Specialist, DOMM and Specialist Monthly Rights Fees) (describing Rights Fee Discount based on ACE tier achieved). *See also infra,* note 17.

[17] *See* proposed Fee Schedule, Section I.E. (modifying ACE Program to provide for ''1 Year/Balance of the Year Program Enhanced Customer Volume Credits'' in the same amount).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[19] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed modifications to the Sliding Scale are reasonable, equitable and not unfairly discriminatory for a number of reasons. First, the Sliding Scale is available to all NYSE Amex Options Market Makers and is based on the amount of business transacted on—and is designed to attract greater volume to—the Exchange. The proposed adjustments are designed to encourage Market Makers to commit to directing their order flow to the Exchange, which would increase volume and liquidity, to the benefit of all market participants by providing more trading opportunities and tighter spreads. Further, the proposed Sliding Scale thresholds and rates are competitive with fees charged by other exchanges and are designed to attract (and compete for) order flow to the Exchange, which provides a greater opportunity for trading by all market participants.[20]

The Exchange proposal to modify the Prepayment Programs, including by reducing the prepay commitment for the 1 Year Prepayment Program and adding the Balance of the Year Program, are also reasonable, equitable and not unfairly discriminatory for the following reasons. First, all of the Prepayment Programs offered on the Exchange are optional and Market Makers can elect to participate (or elect not to participate). In addition, the Exchange believes that reducing the prepay commitment for all participants in the 1 Year Prepayment Program, as well as offering Market Makers the flexibility to join at various points in the year, may encourage broader participation in the Prepayment Programs, which anticipated greater capital commitment and resulting liquidity on the Exchange would benefit all market participants (including non-Market Makers). Moreover, the Exchange notes that other options exchanges likewise offer Prepayment Programs to market makers that may be joined after the start of the year. For example, under CBOE's Liquidity Provider Sliding Scale, a CBOE market maker may be eligible for the lower rates associated with certain tiers by prepaying $2.4 million in fees on an annual basis, or prepaying $200,000 in fees on a monthly basis.[21] The Exchange also notes that, similar to the Sliding Scale, the Prepayment Program is designed to incent Market Makers to commit to directing their order flow to the Exchange, which would benefit all market participants by expanding liquidity, providing more trading opportunities and tighter spreads, even to those market participants that are not eligible for the Programs. Thus, the Exchange believes the Prepayment Program, as modified, is reasonable, equitable and not unfairly discriminatory to others.

Finally, the Exchange is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[22] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes relating to the Sliding Scale and the Prepayment Program may increase both intermarket and intramarket competition by incenting participants to direct their orders to the Exchange, which would enhance the quality of quoting and may increase the volume of contracts traded on the Exchange. To the extent that there is an additional competitive burden on non-NYSE Amex Market Makers, the Exchange believes that this is appropriate because the proposal should incent market participants 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

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(4) and (5).

[20] *See e.g.*, CBOE fee schedule, *available here, http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf* (the ''Liquidity Provider Sliding Scale''); and MIAX fee schedule, *available here, http://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_11012016B.pdf* (''Market Maker Sliding Scale'').

[21] CBOE fee schedule, at fn 10 (providing that a market maker may be permitted to pay a pro-rated amount of the $2.4 million if, for example, they join the program mid-year), *supra* note 20.

[22] 15 U.S.C. 78f(b)(8).

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 programs to attract order flow similar to the ones being proposed in this filing, are consistent with the above-mentioned goals of the Act. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [23] of the Act and subparagraph (f)(2) of Rule 19b–4 [24] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–127 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–NYSEMKT–2016–127. 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 Web site (*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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–127 and should be submitted on or before January 31, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–00221 Filed 1–9–17; 8:45 am]

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[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(2).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79733; File No. SR–ISE–2016–26]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving a Proposed Rule Change To Modify the Response Times in the Block Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism

January 4, 2017.

I. Introduction

On November 8, 2016, the International Securities Exchange, LLC (the ''Exchange'' or ''ISE'') 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 amend ISE Rules 716 (Block Trades) and 723 (Price Improvement Mechanism for Crossing Transactions) to modify the response times in the Block Order Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism (''PIM'') from 500 milliseconds to a time period designated by the Exchange of no less than 100 milliseconds and no more than 1 second. The proposed rule change was published for comment in the **Federal Register** on November 25, 2016.[3] No comment letters were received on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

ISE Rule 716 (Block Trades) contains the requirements applicable to the execution of orders using the Block Order Mechanism, Facilitation Mechanism, and Solicited Order Mechanism. The Block Order Mechanism allows ISE members to obtain liquidity for the execution of a block-size order.[4] The Facilitation and Solicited Order Mechanisms allow ISE members to enter cross transactions seeking price improvement.[5] ISE Rule 723 (Price Improvement Mechanism for Crossing Transactions) contains the requirements applicable to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79352 (November 18, 2016), 81 FR 85277 (''Notice'').

[4] Block-size orders are orders for 50 contracts or more. *See* ISE Rule 716(a).

[5] Only block-size orders can be entered into the Facilitation Mechanism, whereas only orders for 500 contracts or more can be entered into the Solicited Order Mechanism. *See* ISE Rule 716(d) and (e).

execution of orders using the PIM. The PIM allows ISE members to enter cross transactions of any size. The Facilitation, Solicited Order Mechanisms, and PIM allow for ISE members to designate certain customer orders for price improvement and submit such orders into one of the mechanisms with a matching contra order. Once such an order is submitted, ISE commences an auction by broadcasting a message to all ISE members that includes the series, price, size, and side of the market.[6] Further, responses within the PIM (*i.e.,* Improvement Orders), are also broadcast to market participants during the auction.

Orders entered into the Block Order Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and PIM are currently exposed to all market participants for 500 milliseconds, giving them an opportunity to enter additional trading interest before the orders are automatically executed. Under the proposal, ISE would determine an exposure period for each of the four mechanisms that is no less than 100 milliseconds and no more than 1 second.[7]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,[10] which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that, given the electronic environment of ISE, reducing each of the exposure periods from 500 milliseconds to no less than 100 milliseconds could facilitate the prompt execution of orders, while continuing to provide market participants with an opportunity to compete for exposed bids and offers. To substantiate that its members could receive, process, and communicate a response back to ISE within 100 milliseconds, ISE stated that it surveyed all ISE members that responded to an auction in the period beginning July 1, 2015 and ending January 15, 2016. Each of the twenty-one members surveyed indicated that they can currently receive, process, and communicate a response back to ISE within 100 milliseconds. To implement the reduced exposure periods and help ensure that ISE's and its members' systems are working properly given the faster response times, ISE will reduce the auction time over a period of weeks, ending at 100 milliseconds. Upon effectiveness of the proposal, and at least six weeks prior to implementation of the proposed rule change, ISE will issue a circular to its members, informing them of the implementation date of the reduction of the auction from 500 milliseconds to the auction time designated by ISE (100 milliseconds) to allow members the opportunity to perform systems changes. ISE also represented that it will issue a circular at least four weeks prior to any future changes, as permitted by its rules, to the auction time.[11] In addition, ISE reviewed all executions occurring in the mechanisms by ISE members from March 28, 2016 to April 25, 2016. This review of executions in the mechanisms indicated that approximately 98% of responses that resulted in price improving executions at the conclusion of an auction were submitted within 500 milliseconds. Approximately 94% of responses that resulted in price improving executions at the conclusion of an auction were submitted within 100 milliseconds, and 83% were submitted within 50 milliseconds of the initial order.[12] Furthermore, with regard to the impact of the proposal on system capacity, ISE has analyzed its capacity and represented that it has the necessary systems capacity to handle the potential additional traffic associated with the additional transactions that may occur with the implementation of the reduction in the auction duration to no less than 100 milliseconds.[13]

Based on ISE's statements, the Commission believes that market participants should continue to have opportunities to compete for exposed bids and offers within an exposure period of no less than 100 milliseconds and no more than 1 second.[14] Accordingly, the Commission believes that it is consistent with the Act for the Exchange to modify the response times in the Block Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and PIM from 500 milliseconds to a time period designated by the Exchange of no less than 100 milliseconds and no more than 1 second.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–ISE–2016–26) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–00217 Filed 1–9–17; 8:45 am]

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[6] ISE members may choose to hide the size, side, and price when entering orders into the Block Order Mechanism.

[7] While the proposed rule change would allow ISE to increase the exposure period up to 1 second, ISE stated that it currently intends to decrease the time period allowed for responses to 100 milliseconds. *See* Notice, *supra* note 3, at 85278. ISE further noted that its proposal is consistent with exposure periods permitted in similar mechanisms on other options exchanges. *See id.* at 85278. *See also* Securities Exchange Act Release Nos. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR–BX–2015–032) and 77557 (April 7, 2016), 81 FR 21935 (April 13, 2016) (SR–Phlx–2016–40).

[8] 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).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(8).

[11] *See* Notice, *supra* note 3, at 85279.

[12] *See id.*

[13] *See id.*

[14] The Commission notes that the ability to designate such an exposure time period is consistent with the rules of other options exchanges. *See supra* note 7. *See also* NASDAQ Phlx Rule 1080(n)(ii)(A)(4) and NASDAQ BX Options Rules Chapter VI, Section 9(ii)(A)(3).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32413; 812–13828–01

Hartford Funds Exchange-Traded Trust, et al.; Notice of Application]

January 4, 2017.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the

Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (d) certain Funds (''Feeder Funds'') to operate and redeem Creation Units in kind in a master-feeder structure; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds.

APPLICANTS: Hartford Funds Exchange-Traded Trust (the ''Trust''), a Delaware statutory trust, which will register under the Act as an open-end management investment company with multiple series, Hartford Funds Management Company, LLC (the ''Initial Adviser''), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940, and Hartford Funds Distributors, LLC, a Delaware limited liability company and broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'').

FILING DATES: The application was filed on September 23, 2010 and amended on March 25, 2011, April 8, 2016, September 19, 2016 and December 16, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 26, 2017, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: c/o Alice A. Pellegrino, Esq., Hartford Funds, 5 Radnor Corporate Center, 100 Matsonford Road, Suite 300, Radnor, PA 19087.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–3038, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds (''ETFs'').[1] All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'', which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions (''Portfolio Instruments''). Each Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c-1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund

[1] Applicants request that the order apply to the initial Fund, as well as to future series of the Trust and any future open-end management investment companies or series thereof (each, included in the term ''Fund''), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application.

shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second-Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[2] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–00227 Filed 1–9–17; 8:45 am]

BILLING CODE 8011–01–P

[2] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79731; File No. SR–ISEMercury–2016–21]

Self-Regulatory Organizations; ISE Mercury, LLC; Order Approving a Proposed Rule Change To Modify the Response Times in the Block Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism

January 4, 2017.

I. Introduction

On November 8, 2016, ISE Mercury, LLC (the ''Exchange'' or ''ISE Mercury'') 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 amend ISE Mercury Rules 716 (Block Trades) and 723 (Price Improvement Mechanism for Crossing Transactions) to modify the response times in the Block Order Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism (''PIM'') from 500 milliseconds to a time period designated by the Exchange of no less than 100 milliseconds and no more than 1 second. The proposed rule change was published for comment in the **Federal Register** on November 25, 2016.[3] No comment letters were received on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

ISE Mercury Rule 716 (Block Trades) contains the requirements applicable to the execution of orders using the Block Order Mechanism, Facilitation Mechanism, and Solicited Order Mechanism. The Block Order Mechanism allows ISE Mercury members to obtain liquidity for the execution of a block-size order.[4] The Facilitation and Solicited Order Mechanisms allow ISE Mercury members to enter cross transactions seeking price improvement.[5] ISE Mercury Rule 723 (Price Improvement Mechanism for Crossing Transactions) contains the requirements applicable to the execution of orders using the PIM. The PIM allows ISE Mercury members to enter cross transactions of any size. The Facilitation, Solicited Order Mechanisms, and PIM allow for ISE Mercury members to designate certain customer orders for price improvement and submit such orders into one of the mechanisms with a matching contra order. Once such an order is submitted, ISE Mercury commences an auction by broadcasting a message to all ISE Mercury members that includes the series, price, size, and side of the market.[6] Further, responses within the PIM (*i.e.,* Improvement Orders), are also broadcast to market participants during the auction.

Orders entered into the Block Order Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and PIM are currently exposed to all market participants for 500 milliseconds, giving them an opportunity to enter additional trading interest before the orders are

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79354 (November 18, 2016), 81 FR 85295 (''Notice'').

[4] Block-size orders are orders for 50 contracts or more. *See* ISE Mercury Rule 716(a).

[5] Only block-size orders can be entered into the Facilitation Mechanism, whereas only orders for 500 contracts or more can be entered into the Solicited Order Mechanism. *See* ISE Mercury Rule 716(d) and (e).

[6] ISE Mercury members may choose to hide the size, side, and price when entering orders into the Block Order Mechanism.

automatically executed. Under the proposal, ISE Mercury would determine an exposure period for each of the four mechanisms that is no less than 100 milliseconds and no more than 1 second.[7]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,[10] which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that, given the electronic environment of ISE Mercury, reducing each of the exposure periods from 500 milliseconds to no less than 100 milliseconds could facilitate the prompt execution of orders, while continuing to provide market participants with an opportunity to compete for exposed bids and offers. To substantiate that its members could receive, process, and communicate a response back to ISE Mercury within 100 milliseconds, ISE Mercury stated that it surveyed all International Securities Exchange, LLC (''ISE'') and ISE Gemini, LLC (''ISE Gemini'') members that responded to an auction in the period beginning July 1, 2015 and ending January 15, 2016.[11] Each of the twenty-one members surveyed indicated that they can currently receive, process, and communicate a response back to the exchange within 100 milliseconds.[12] To implement the reduced exposure periods and help ensure that ISE Mercury's and its members' systems are working properly given the faster response times, ISE Mercury will reduce the auction time over a period of weeks, ending at 100 milliseconds. Upon effectiveness of the proposal, and at least six weeks prior to implementation of the proposed rule change, ISE Mercury will issue a circular to its members, informing them of the implementation date of the reduction of the auction from 500 milliseconds to the auction time designated by ISE Mercury (100 milliseconds) to allow members the opportunity to perform systems changes. ISE Mercury also represented that it will issue a circular at least four weeks prior to any future changes, as permitted by its rules, to the auction time.[13] In addition, ISE Mercury reviewed all executions occurring in the mechanisms by ISE Mercury members from March 28, 2016 to April 25, 2016. This review of executions in the mechanisms indicated that approximately 98% of responses that resulted in price improving executions at the conclusion of an auction were submitted within 500 milliseconds. Approximately 94% of responses that resulted in price improving executions at the conclusion of an auction were submitted within 100 milliseconds, and 83% were submitted within 50 milliseconds of the initial order.[14] Furthermore, with regard to the impact of the proposal on system capacity, ISE Mercury has analyzed its capacity and represented that it has the necessary systems capacity to handle the potential additional traffic associated with the additional transactions that may occur with the implementation of the reduction in the auction duration to no less than 100 milliseconds.[15]

Based on ISE Mercury's statements, the Commission believes that market participants should continue to have opportunities to compete for exposed bids and offers within an exposure period of no less than 100 milliseconds and no more than 1 second.[16] Accordingly, the Commission believes that it is consistent with the Act for the Exchange to modify the response times in the Block Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and PIM from 500 milliseconds to a time period designated by the Exchange of no less than 100 milliseconds and no more than 1 second.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–ISEMercury–2016–21) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–00215 Filed 1–9–17; 8:45 am]

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[7] While the proposed rule change would allow ISE Mercury to increase the exposure period up to 1 second, ISE Mercury stated that it currently intends to decrease the time period allowed for responses to 100 milliseconds. *See* Notice, *supra* note 3, at 85297. ISE Mercury further noted that its proposal is consistent with exposure periods permitted in similar mechanisms on other options exchanges. *See id.* at 85296. *See also* Securities Exchange Act Release Nos. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR–BX–2015–032) and 77557 (April 7, 2016), 81 FR 21935 (April 13, 2016) (SR–Phlx–2016–40).

[8] 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).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(8).

[11] ISE Mercury launched on February 16, 2016, after the survey had been completed. ISE and ISE Gemini are affiliates of ISE Mercury that also offer a Block Order Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and PIM. *See* Notice, *supra* note 3, at 85297 n.12.

[12] ISE Mercury believes the survey results apply equally to ISE Mercury as all current ISE Mercury members are also members of ISE or ISE Gemini, which are affiliates of ISE Mercury, and the same functionality for auction responses offered on ISE Mercury is also offered on these affiliated exchanges. *See* Notice, *supra* note 3, at 85297. ISE Mercury further represents that its trading system has comparable latency to both ISE and ISE Gemini. *See id.*

[13] *See id.* at 85298.

[14] *See id.* at 85297.

[15] *See id.*

[16] The Commission notes that the ability to designate such an exposure time period is consistent with the rules of other options exchanges. *See supra* note 7. *See also* NASDAQ Phlx Rule 1080(n)(ii)(A)(4) and NASDAQ BX Options Rules Chapter VI, Section 9(ii)(A)(3).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79740; File No. SR–ISEMercury–2016–26]

Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend its Rules to Extend a Pilot Program

January 4, 2017.

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 December 23, 2016, ISE Mercury, LLC (''ISE Mercury'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to extend a pilot program to quote and to trade certain options classes in penny increments.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.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

Under the Penny Pilot Program, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock (''QQQQ''), the SPDR S&P 500 Exchange Traded Fund (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot Program is currently scheduled to expire on December 31, 2016.[3] The Exchange proposes to extend the Penny Pilot Program through June 30, 2017, and to provide a revised date for adding replacement issues to the Penny Pilot Program. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following January 1, 2017. The replacement issues will be selected based on trading activity for the most recent six month period excluding the month immediately preceding the replacement (*i.e.,* beginning June 1, 2016, and ending November 30, 2016). This filing does not propose any substantive changes to the Penny Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh any increase in quote traffic.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[4] Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] because it is designed to promote just and equitable principles of trade, 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. In particular, the proposed rule change, which extends the Penny Pilot Program for an additional six months, will enable public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[6] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Penny Pilot Program, the proposed rule change will allow for further analysis of the Penny Pilot Program and a determination of how the Penny Pilot Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative prior to 30 days after the date of the filing.[10] However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program. Accordingly, the Commission designates the proposed

[3] *See* Exchange Act Release No. 78202 (June 30, 2016), 81 FR 81 FR 44377 (July 7, 2016) (SR–ISE Mercury–2016–12).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(8).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 pre-filing requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

rule change as operative upon filing with the Commission.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Statements

- 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–ISEMercury–2016–26 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–ISEMercury–2016–26. 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 Web site (*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 Web site viewing and printing in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of ISE Mercury. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISEMercury–2016–26 and should be submitted by January 31,2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–00224 Filed 1–9–17; 8:45 am]

BILLING CODE 8011–01–P

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79729; File No. SR–NYSEArca–2016–172]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule and the NYSE Arca Equities Schedule of Fees and Charges Related to Co-Location Services To Increase LCN and IP Network Fees and Add a Description of Access to Trading and Execution Services and Connectivity to Included Data Products

January 4, 2017.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 22, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule and the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services related to co-location services to provide a more detailed description of the access to trading and execution services and connectivity to data provided to Users with local area networks available in the data center; and (b) modify certain fees for access to the local area networks in the Exchange's data center. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedules related to co-location[4] services offered by the Exchange to (a) provide a more detailed description of the access to trading and execution services and connectivity to data provided to Users[5] with connections to the Liquidity Center Network (''LCN'') and internet protocol (''IP'') network,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100) (the ''Original Co-location Filing''). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (''NYSE LLC'') and NYSE MKT LLC (''NYSE MKT and, together with NYSE LLC, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80).

local area networks available in the data center; and (b) modify certain fees for access to the LCN and IP networks. The Exchange proposes to implement the fee changes effective January 1, 2017.

The Exchange offers LCN access of 1, 10 and 40 Gigabits (''Gb'') as well as a lower-latency 10 Gb LCN connection, referred to as the ''LCN 10 Gb LX.'' [6] The Exchange offers IP network access in 1, 10 and 40 Gb capacities.[7] A User also may purchase access to the LCN or IP network through purchase of 1 Gb or 10 Gb bundled network access or a Partial Cabinet Solution bundle, which include 1 and 10 Gb LCN and IP network connections.[8]

Access to Trading and Execution Services and Connectivity to Data

As the Exchange has previously stated, a User's connection to the LCN or IP network provides it access to the Exchange's trading and execution systems and Exchange market data products.[9] More specifically, when a User purchases access to the LCN or IP network, it will receive *access* to the trading and execution systems of the Exchange and its Affiliate SROs (the ''Exchange Systems''), provided the User has authorization from the Exchange or relevant Affiliate SRO. In addition, when a User purchases access to the LCN or IP network, it will receive *connectivity* to certain market data products (the ''Included Data Products''), provided the User has have entered into a contract with the provider of the data feed. The Exchange proposes to revise the Fee Schedules to provide a more detailed description of the *access* to the Exchange Systems (''Access'') and *connectivity* to Included Data Products (''Connectivity'') that comes with connections to the LCN or IP network when the User has authorization from the Exchange or Affiliate SRO for such access or has a contract from the market data provider for such connectivity.

Access to certification and testing feeds comes with the purchase of some Included Data Products from the provider of such data. Certification feeds are used to certify that a User conforms to any relevant technical requirements for receipt of data or access to Exchange Systems. Test feeds provide Users an environment in which to conduct tests with non-live data, including testing for upcoming Exchange releases and product enhancements or the User's own software development. Such feeds are solely used for certification and testing and do not carry live production data. When access to certification and testing feeds comes with the purchase of an Included Data Product from the provider of such data, the purchase of access to the IP network from the Exchange [10] will provide Connectivity to such certification and testing feeds.

The Exchange provides Access and Connectivity as conveniences to Users. Use of Access or Connectivity is completely voluntary, and several other access and connectivity options are available to a User. As alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the Secure Financial Transaction Infrastructure (''SFTI'') network, or a combination thereof.[11]

Access to Exchange Systems

As the Exchange has previously stated, Users' connections to the LCN or IP networks include access to Exchange Systems when the User has authorization from the Exchange or relevant Affiliate SRO.[12] The Exchange notes that including access to Exchange Systems with the purchase of access to the LCN or IP network is consistent with Nasdaq's colocation service, which does not charge its co-located customers a separate fee for access to Exchange Systems.[13]

Accordingly, the Exchange proposes to add a new note to the Fee Schedules stating the following:

When a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the NYSE, NYSE MKT and NYSE Arca (Exchange Systems), subject, in each case, to authorization by the NYSE, NYSE MKT or NYSE Arca, as applicable. Such access includes access to the customer gateways that provide for order entry, order receipt (*i.e.* confirmation that an order has been received), receipt of drop copies and trade reporting (*i.e.* whether a trade is executed or cancelled), as well as for sending information to shared data services for clearing and settlement. A User can change the access it receives at any time, subject to authorization by NYSE, NYSE MKT or NYSE Arca, as applicable. NYSE, NYSE MKT and NYSE Arca also offer access to Exchange Systems to their members, such that a User does not have to purchase access to the LCN or IP network to obtain access to Exchange Systems.

Connectivity to Included Data Products

The majority of the Included Data Products are proprietary feeds of the Exchange and the Affiliate SROs.[14] The Included Data Products also include the data feeds disseminated by the Consolidated Tape Association (''CTA'') (such data feeds, the ''NMS feeds''). CTA is responsible for disseminating

[6] *See* Original Co-location Filing, *supra* note 4, at 70050; and Securities Exchange Act Release Nos. 70173 (Aug. 13, 2013), 78 FR 50459 (Aug. 19, 2013) (SR–NYSEArca–2013–80) (notice of filing and immediate effectiveness of proposed rule change to offer LCN 40 Gb connection) and 70887 (Nov. 15, 2013), 78 FR 69897 (Nov. 21, 2013) (SR–NYSEArca–2013–123) (notice of filing and immediate effectiveness of proposed rule change to offer LCN 10 Gb LX connection).

[7] *See* Securities Exchange Act Release Nos. 74219 (February 6, 2015), 80 FR 7899 (February 12, 2015) (SR–NYSEArca–2015–03) (notice of filing and immediate effectiveness of proposed rule change to offer IP network connections as co-location services) (the ''IP Network Release'') and 76372 (Nov. 5, 2015), 80 FR 70039 (Nov. 12, 2015) (SR–NYSEArca–2015–105) (notice of filing and immediate effectiveness of proposed rule change to offer 40 Gb IP network connection).

[8] *See* Original Co-location Filing, *supra* note 4, at 70050; and Securities Exchange Act Release No. 77070 (February 5, 2016), 81 FR 7401 (February 11, 2016) (SR–NYSEArca–2015–102) (notice of filing and accelerated approval of proposed rule change to offer Partial Cabinet Bundle Options).

[9] *See* Original Co-location Filing, *supra* note 4, at 70049 (''SFTI and LCN both provide Users with access to the Exchange's trading and execution systems and to the Exchange's proprietary market data products.'') and IP Network Release, *supra* note 7, at 7899 (''Like the LCN, the IP network provides Users with access to the Exchange's trading and execution systems and to the Exchanges' proprietary market data products.''). The IP network was previously sometimes referred to as SFTI. *See id.*

[10] Access to certification and testing feeds is only available over the IP network. A User that does not have an IP network connection may obtain an IP network circuit for purposes of testing and certification for free for three months. *See* IP Network Release, *supra* note 7, at 7899.

[11] A User that opted to obtain connectivity to Included Data Products through another User, a telecommunication provider, third party wireless network, or the SFTI network would receive the corresponding testing and certification feeds.

[12] *See* note 9, *supra.*

[13] *See* Nasdaq Stock Market Rule 7034—Connectivity to Nasdaq.

[14] *See* Securities Exchange Act Release Nos. 44138 (December 7, 2001), 66 FR 64895 (December 14, 2001) (SR–NYSE–2001–42) (establishing fees for NYSE OpenBook); 50844 (December 13, 2004), 69 FR 76806 (December 22, 2004) (SR–NYSE–2004–53) (establishing fee for NYSE Alerts); 59290 (January 23, 2009) 74 FR 5707 (January 30, 2009) (SR–NYSE–2009–05) (establishing pilot program for NYSE Trades); 59543 (March 9, 2009), 74 FR 11159 (March 16, 2009) (establishing fee for NYSE Order Imbalances); 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR–NYSE–2010–30) (establishing NYSE BBO); 65669 (Nov. 2, 2011), 76 FR 69311 (Nov. 8, 2011) (SR–NYSEArca–2011–78) (establishing the NYSE Arca Integrated Feed); 73553 (Nov. 6, 2014), 79 FR 67491 (Nov. 13, 2014) (SR–NYSE–2014–40) (establishing the NYSE Best Quote & Trades Data Feed); 74128 (Jan. 23, 2015), 80 FR 4951 (Jan. 29, 2015) (SR–NYSE–2015–03) (establishing the NYSE Integrated Feed); 74127 (Jan. 23, 2015), 80 FR 4956 (Jan. 29, 2015) (SR–NYSEMKT–2015–06) (establishing the NYSE MKT Integrated Feed); and 76968 (January 22, 2016), 81 FR 4689 (January 27, 2016) (establishing NYSE Arca Order Imbalances).

consolidated, real-time trade and quote information in NYSE listed securities (Network A) and NYSE MKT, NYSE Arca and other regional exchanges' listed securities (Network B) pursuant to a national market system plan.[15] The NMS feeds include the Consolidated Tape System and Consolidated Quote System data streams, as well as Options Price Reporting Authority feeds.

In order to connect to an Included Data Product, a User enters into a contract with the provider of such data, pursuant to which the User is charged for the Included Data Product. After the User and data provider enter into the contract and the Exchange receives authorization from the provider of the data feed, the Exchange provides the User with connectivity to the Included Data Product over the User's LCN or IP network port. The Exchange does not charge the User separately for such connectivity to the Included Data Product, as it is included in the purchase of the access to the LCN or IP network.

The Included Data Products are available over both the LCN and IP network.[16] For a User that purchases access to the LCN and IP network, the Exchange works with such User to allocate its connectivity to Included Data Products between its LCN and IP network connections. Some Included Data Products require a network connection with a minimum Gb size in order to accommodate the feed.[17] The Included Data Products do not provide access or order entry to the Exchange's execution system.

The Exchange offers connectivity to Included Data Products in three forms: As a resilient feed, as ''Feed A'' or as ''Feed B.'' Resilient feeds include two copies of the same feed, for redundancy purposes. Feed A and Feed B are identical feeds.[18]

For some Included Data Products, connectivity to identical Feeds A and B is only available on the IP network.

The Included Data Products are as follows:

NMS Feeds
NYSE:
NYSE Alerts
NYSE BBO
NYSE Integrated Feed
NYSE OpenBook
NYSE Order Imbalances
NYSE Trades
NYSE Amex Options
NYSE Arca:
NYSE ArcaBook
NYSE Arca BBO
NYSE Arca Integrated Feed
NYSE Arca Order Imbalances
NYSE Arca Trades
NYSE Arca Options
NYSE Best Quote and Trades (BQT)
NYSE Bonds
NYSE MKT:
NYSE MKT Alerts
NYSE MKT BBO
NYSE MKT Integrated Feed
NYSE MKT OpenBook
NYSE MKT Order Imbalances
NYSE MKT Trades

In addition to the above list of Included Data Products, the Exchange proposes to add the following language to the Fee Schedules:

When a User purchases access to the LCN or IP network it receives connectivity to any of the Included Data Products that it selects, subject to any technical provisioning requirements and authorization from the provider of the data feed. Market data fees for the Included Data Products are charged by the provider of the data feed. A User can change the Included Data Products to which it receives connectivity at any time, subject to authorization from the provider of the data feed. The Exchange is not the exclusive method to connect to the Included Data Products.

Fees for Access to the LCN and IP Network

Users that connect to the LCN or IP network pay an initial non-recurring charge and a monthly recurring charge (''MRC''). A User that purchases five 10 GB LCN Circuits receives the sixth 10 GB LCN Circuit without being subject to an additional MRC.

The Exchange proposes to amend the MRCs for 10 and 40 Gb LCN circuits, 10 Gb LX LCN circuits, 10 and 40 Gb IP network circuits, and the 10 Gb bundled network access (together, the ''Network Access Services''). The Exchange has not increased the MRCs for the Network Access Services since they were first filed: The proposed change will be the first increase in such fees.[19]

The proposed changes to the Network Access Service MRCs are as follows:

Type of service	Description	Amount of current MRC	Amount of proposed MRC
LCN Access	10 Gb Circuit	$12,000	$14,000
LCN Access	10 Gb LX Circuit	20,000	22,000
LCN Access	40 Gb Circuit	20,000	22,000
Bundled Network Access (2 LCN connections, 2 IP network connections, and 2 optic connections to outside access center).	10 Gb Bundle	47,000	53,000
IP Network Access	10 Gb Circuit	10,000	11,000

[15] The Included Data Products do not include the data feeds disseminated pursuant to the ''Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis'' (the ''UTP Plan''). The UTP Plan is responsible for disseminating consolidated, real-time trade and quote information in Nasdaq Stock Exchange LLC listed securities (Network C).

[16] As noted above, certification and testing feeds included by a data provider with an Included Data Product are only available over the IP network.

[17] Because each Included Data Product uses part of a User's bandwidth, a User may wish to limit the number of Included Data Products that it receives to those that it requires.

[18] A User that wants redundancy would connect to both Feed A and Feed B or two resilient feeds, using two different ports. A User may opt to connect both Feed A and Feed B to the same port, the effect of which would be the same as if the User had connected to a resilient feed. The form of feed that a User selects may affect the connection it requires. For example, a User connecting to the NYSE Arca Integrated Feed, NYSE Integrated Feed or NYSE MKT Integrated Feed would need at least a 1 Gb IP network connection in order to connect to either Feed A or Feed B. To connect to a resilient feed, the User would require an LCN or IP network connection of at least 10 Gb.

[19] The 10 Gb LCN circuits and 10 Gb bundled network access were first filed in 2010, and the 40 Gb LCN and 10 Gb LX LCN circuits were first filed in 2013. The 10 and 40 Gb IP network circuits were first filed in 2015. *See* Original Co-location Filing, *supra* note 4, at 70050; Securities Exchange Act Release Nos. 65238 (Aug. 31, 2011), 76 FR 55431 (Sept. 7, 2011) (SR–NYSEArca–2011–64) (notice of filing and immediate effectiveness of proposed rule change adding MRC for 10 Gb circuit); 70286 (Aug. 29, 2013), 78 FR 54710 (Sept. 5, 2013) (SR–NYSEArca–2013–82) (notice of filing and immediate effectiveness of proposed rule change to offer LCN 40 Gb connection); 70981 (Dec. 4, 2013), 78 FR 74203 (Dec. 10, 2013) (SR–NYSEArca–2013–131) (notice of filing and immediate effectiveness of proposed rule change amending price list in order to provide fees for LCN 10 Gb LX); 74219 (Feb. 6, 2015), 80 FR 7899 (Feb. 12, 2015) (SR–NYSEArca–2015–03) (notice of filing and immediate effectiveness of proposed rule change to offer 1 Gb and 10 Gb IP network connections); and 76372 (Nov. 5, 2015), 80 FR 70039 (Nov. 12, 2015) (SR–NYSEArca–2015–105) (notice of filing and immediate effectiveness of proposed rule change to offer 40 Gb IP network connection).

Type of service	Description	Amount of current MRC	Amount of proposed MRC
IP Network Access	40 Gb Circuit	17,000	18,000

The initial non-recurring charge for the Network Access Services would not change, and Users that purchase five 10 Gb LCN circuits will continue to receive the sixth 10 Gb LCN Circuit without an additional MRC. The Exchange does not propose to change the fees associated with 1 Gb LCN and 1 Gb IP network access, 1 Gb bundled network access, or the Partial Cabinet Solution bundles.

Currently, the Fee Schedules use both ''Gb'' and ''GB'' as an abbreviation for gigabits. To make the usage consistent, the Exchange proposes to make non-substantive changes to the Fee Schedules to replace ''GB'' with ''Gb.''

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [20] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its Affiliate SROs.[21]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(5) of the Act,[23] in particular, because 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 regulating, clearing, settling, processing information with respect to, and 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that revising the Fee Schedules to provide a more detailed description of the Access and Connectivity Users receive with their purchase of access to the LCN or IP network would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed changes would make the descriptions of access to the LCN and IP network more accessible and transparent, thereby providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP network. Including the more detailed description of Access and Connectivity in the Fee Schedules is consistent with Nasdaq's Rule 7034, which includes similar information.[24]

Co-location was created to permit Users ''to rent space on premises controlled by the Exchange in order that they may locate their electronic servers in close physical proximity to the Exchange's trading and execution systems.'' [25] The expectation was that normally Users ''would expect reduced latencies in sending orders to the Exchange and in receiving market data from the Exchange.'' [26] Accordingly, the Exchange believes the Access and Connectivity is directly related to the purpose of co-location, and so revising the Fee Schedules to increase the description of such Access and Connectivity would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general protect investors and the public interest by increasing the transparency around Access and Connectivity.

Further, the Exchange believes that revising the Fee Schedules to provide a more detailed description of the Access and Connectivity Users receive with their purchase of access to the LCN or IP network would promote just and equitable principles of trade and remove impediments to, and perfect the mechanisms of, a free and open market and a national market system as it would make clear that all Users that voluntarily select to access the LCN or IP network would receive the same Access and Connectivity, and would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Users are not required to use any of their bandwidth to access Exchange Systems or connect to an Included Data Product unless they wish to do so. Rather, a User only receives the Access and Connectivity that it selects, and a User can change what Access or Connectivity it receives at any time, subject to authorization from the data provider or relevant Exchange or Affiliate SRO.

The Exchange believes that the proposed changes remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering Access and Connectivity, the Exchange gives each User additional options for addressing its access and connectivity needs, responding to User demand for access and connectivity options. Providing Access and Connectivity helps each User tailor its data center operations to the

[20] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies, as compared to Users that are not co-located, in sending orders to, and receiving market data from, the Exchange.

[21] *See* SR–NYSEArca–2013–80, *supra* note 5, at 50459. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2016–92 and SR–NYSEMKT–2016–126.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] *See* Nasdaq Stock Market Rule 7034—Market Data Connectivity (''Pricing is for connectivity only and is similar to connectivity fees imposed by other vendors. The fees are generally based on the amount of bandwidth needed to accommodate a particular feed and Nasdaq is not the exclusive method to get market data connectivity. Market data fees are charged independently by the Nasdaq Stock Market and other exchanges.'').

[25] Original Co-Location Filing, *supra* note 4, at 70049.

[26] *Id.*

requirements of its business operations by allowing it to select the form and latency of access and connectivity that best suits its needs. The Exchange provides Access and Connectivity as conveniences to Users. Use of Access or Connectivity is completely voluntary, and each User has several other access and connectivity options available to it. As alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof.

Similarly, the Exchange believes that the proposed fee changes remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering the Network Access Services, the Exchange gives each User options for access to the LCN and IP network, responding to User demand for options. Users have the convenience of choosing among the array of different Network Access Services available, as well as the 1 Gb LCN and 1 Gb IP network access options, 1 Gb bundled network access and Partial Cabinet Solutions, helping them tailor their data center operations to the requirements of their business operations by allowing them to select the capacity, form and latency of connectivity that best suits their needs.

The Exchange believes that the proposed fee changes remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the Exchange provides Network Access Services as conveniences to Users. Use of Network Access Services is completely voluntary, and each User has several other options available to it. As alternatives to using the Network Access Services provided by the Exchange, a User may access or connect to the Exchange through another User, as well as through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof.

The Exchange believes that conforming the use of ''Gb'' would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed changes would make the Fee Schedules more transparent, thereby providing market participants with additional clarity.

The Exchange also believes that the proposed rule changes are consistent with Section 6(b)(4) of the Act,[27] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed changes are consistent with Section 6(b)(4) of the Act [28] for multiple reasons. The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

The Exchange believes that the proposed changes to the Network Access Service MRCs would provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because the Network Access Services are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users). All Users that voluntarily purchase an Network Access Service would be charged the same amount for the same service. As is currently the case, the purchase of any colocation service (including Network Access Services) would be completely voluntary. Furthermore, each of the Network Access Services can be purchased independently of each other, and independently of any other colocation services or products that a User may choose.

The Exchange believes that the proposed changes to the Network Access Service MRCs are reasonable, equitably allocated and not unfairly discriminatory because the MRCs for the Network Access Services have been the same since they were first filed, with some MRCs dating to the inception of co-location in 2010.[29] During the time since the MRCs for the Network Access Services were filed, however, the Exchange has made numerous improvements to the network hardware and technology infrastructure. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users, including the increasing demand for bandwidth, and has established additional administrative controls. The Exchange offers the Network Access Services as conveniences to Users, but in order to do so must provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of the Network Access Services, including by responding to any production issues. The Exchange accordingly believes that the proposed changes to the Network Access Service MRCs will allow them to more accurately reflect the value of the services provided.

The Exchange believes the proposed fees are reasonable because they allow the Exchange to defray or cover the costs associated with offering the Network Access Services while providing Users the benefit of choosing among the array of different Network Access Services available, as well as the 1 Gb LCN and 1 Gb IP network access options, 1 Gb bundled network access and Partial Cabinet Solutions, helping them tailor their data center operations to the requirements of their business operations by allowing them to select

[27] 15 U.S.C. 78f(b)(4).

[28] 15 U.S.C. 78f(b)(4).

[29] *See* note 19, *supra.* The 10 LCN circuits and 1 Gb bundled network access were first filed in 2010, and the 40 Gb LCN and 10 Gb LX LCN circuits were first filed in 2013. The 10 and 40 Gb IP network circuits were first filed in 2015.

the capacity, form and latency of connectivity that best suits their needs.

In addition, the Exchange believes the proposed increases in the MRCs for the Network Access Services are reasonable because they reflect the inclusion of additional data products in the list of Included Data Products. More specifically, the Exchange has opted to include connectivity to the three integrated feeds and the NYSE BQT as Included Data Products.

The Exchange believes that its proposed MRCs for the Network Access Services are comparable to the fees Nasdaq charges its co-location customers. For instance, the ongoing monthly fees for 40 Gb and 10 Gb fiber connections to Nasdaq are $20,000 and $10,000, respectively, compared to the proposed $22,000 and $14,000 for the 40 Gb and 10 Gb LCN circuits and $18,000 and $11,000 for the 40 Gb and 10 Gb IP network circuits, respectively.[30]

Excluding the Partial Cabinet Solutions with 10 Gb connections to the LCN and IP networks from the proposed changes to MRCs is a business decision that the Exchange believes is reasonable, equitably allocated and not unfairly discriminatory because the MRCs for the Partial Cabinet Solutions have been in place less than a year, and so the Exchange believes they more accurately reflect the value of the services provided than those in place for longer periods.[31] The Exchange believes that excluding the Partial Cabinet Solution MRCs from the present proposed changes would continue to make it more cost effective for smaller Users, including those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome, to utilize co-location.[32]

Excluding the 1 Gb LCN, 1 Gb IP network access and 1 Gb bundled network access options from the proposed changes to the MRC is a business decision that the Exchange believes is reasonable, equitably allocated and not unfairly discriminatory, because the Exchange believes that the current MRCs for the services reflect the value of the services provided to the smallest connections. In addition, Users with 1 Gb connections generally do not connect to the new Included Data Products, which generally require a larger connection than 1 Gb.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[33] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users). The Exchange believes that the proposed changes are reasonable and designed to be fair and equitable, and therefore, will not unduly burden any particular group of Users.

The Exchange believes that providing Users with Access and Connectivity does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such Access and Connectivity satisfies User demand for access and connectivity options, and each User has several other access and connectivity options available to it. As alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof. Users that opt to use Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contract with the relevant market or content provider may receive access or connectivity. In this way, the proposed changes would enhance competition by helping Users tailor their Access and Connectivity to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

The Exchange believes that revising the Fee Schedules to provide a more detailed description of the Access and Connectivity available to Users would make such descriptions more accessible and transparent, thereby providing market participants with clarity as to what Access and Connectivity is available to them and what the related costs are, thereby enhancing competition by ensuring that all Users have access to the same information regarding Access and Connectivity.

Similarly, the Exchange believes that the proposed changes to the Network Access Service MRCs would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, by offering the Network Access Services, the Exchange gives each User options for access to the LCN and IP network, responding to User demand for options. All Users that voluntarily purchase Network Access Services would be charged the same amount for the same services. As is currently the case, the purchase of any colocation service (including network and capacities) would be completely voluntary. Furthermore, each of the Network Access Services can be purchased independently of each other, and independently of any other colocation services or products that a User may choose.

The Exchange believes that the proposed changes to the Network Access Service MRCs would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the MRCs for the Network Access Services have been the same since they were first filed, with some MRCs dating to the inception of co-location in 2010.[34] During the time since the MRCs for the Network Access Services were filed, however, the Exchange has made numerous improvements to the network hardware and technology infrastructure. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users, including the increasing demand for bandwidth, and has established additional administrative controls. The Exchange offers the Network Access Services as conveniences to Users, but in order to do so must provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and

[30] *See* Nasdaq Stock Market Rule 7034—Connectivity to Nasdaq.

[31] The order approving the proposed rule change to provide that co-location services include the Partial Cabinet Solution Bundles was issued in February, 2016. *See* Securities Exchange Act Release No. 77070, *supra* note 8.

[32] *See id,* at 7402.

[33] 15 U.S.C. 78f(b)(8).

[34] *See* note 19, *supra.*

maintenance of the Network Access Services, including by responding to any production issues. The Exchange accordingly believes that the proposed changes to the Network Access Service MRCs will allow them to more accurately reflect the value of the services provided.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [35] of the Act and subparagraph (f)(2) of Rule 19b–4 [36] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [37] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2016–172 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–NYSEArca–2016–172. 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 Web site (*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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2016–172, and should be submitted on or before January 31, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–00213 Filed 1–9–17; 8:45 am]

BILLING CODE 8011–01–P

[35] 15 U.S.C. 78s(b)(3)(A).

[36] 17 CFR 240.19b–4(f)(2).

[37] 15 U.S.C. 78s(b)(2)(B).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79736; File No. SR–NYSE–2016–44]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendments No. 1 and 2, Allowing the Exchange To Trade Pursuant to Unlisted Trading Privileges any NMS Stock Listed on Another National Securities Exchange; Establishing Listing and Trading Requirements for Exchange Traded Products; and Adopting New Equity Trading Rules Relating To Trading Halts of Securities Traded Pursuant to UTP on the Pillar Platform

January 4, 2017.

On June 30, 2016, New York Stock Exchange LLC (''Exchange'') 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 (1) allow the Exchange to trade pursuant to unlisted trading privileges (''UTP'') any NMS Stock listed on another national securities exchange; (2) establish listing and trading requirements for exchange-traded products (''ETPs''); and (3) adopt new equity trading rules relating to trading halts of securities traded pursuant to UTP on the Pillar platform. The proposed rule change was published for comment in the **Federal Register** on July 14, 2016.[3] On July 26, 2016, the Exchange filed Amendment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78263 (July 8, 2016), 81 FR 45580 (July 14, 2016).

No. 1 to the proposed rule change.[4] On August 23, 2016, pursuant to Section 19(b)(2) of the Act,[5] 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.[6] On August 26, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.[7] On October 12, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[8] to determine whether to approve or disapprove the proposed rule change.[9] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act[10] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on July 14, 2016. January 10, 2017 is 180 days from that date, and March 11, 2017 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[11] designates March 11, 2017 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSE–2016–44).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–00220 Filed 1–9–17; 8:45 am]

BILLING CODE 8011–01–P

[4] In Amendment No. 1, the Exchange: (1) Added a bullet point stating that ''[b]ecause the Exchange's rules regarding the production of books and records are described in Rule 440, the Exchange is proposing to refer to Rule 440 in its proposed rules wherever NYSE Arca Equities Rule 4.4 is referenced in the rules of NYSE Arca Equities proposed in this filing;'' (2) deleted the sentence stating, ''If an exchange has approved trading rules, procedures and listing standards in place that have been approved by the Commission for the product class that would include a new derivative securities product, the listing and trading of such 'new derivative securities product,' does not require a proposed rule change under Section 19b–4 of the Act'' and made conforming changes to the rest of that paragraph; (3) deleted the bullet point that stated, ''Correction of a typographical error in NYSE Arca Equities Rule 8.400(a) so that proposed Rule 8.400(a) reads 'as such terms are used in Rule 5.1(b)' in the last sentence, rather than 'as such terms are used in the Rule 5.1(b)' as is currently drafted in NYSE Arca Equities Rule 8.400(a)''; and (4) noted that ''for new ETPs to be traded pursuant to UTP, which are listed and traded on another exchange pursuant to Rule 19b–4(e), the Exchange would be required to file Form 19b–4(e) with the Commission in accordance with the requirements therein.'' Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-nyse-2016-44/nyse201644-1.pdf.* Because Amendment No. 1 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 78641, 81 FR 59259 (Aug. 29, 2016).

[7] In Amendment No. 2, the Exchange: (1) Added the clause ''pursuant to UTP'' at the end of the sentence that states, ''The Exchange would have to file a Form 19b–4(e) with the Commission to trade these ETPs;'' (2) in the first footnote that follows that sentence, deleted the clause ''pursuant to Rule 19b–4(e);'' and (3) at the end of that same footnote, added the reference, ''*See* proposed Rule 5.1(a)(2); supra note 19 and accompanying text.'' Amendment No. 2 is available at: *https://www.sec.gov/comments/sr-nyse-2016-44/nyse201644-2.pdf.* Because Amendment No. 2 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 2 is not subject to notice and comment.

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Securities Exchange Act Release No. 79085, 81 FR 71771 (Oct. 18, 2016). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' *See id.* at 71772.

[10] 15 U.S.C. 78s(b)(2).

[11] *Id.*

[12] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79738; File No. SR–NYSEMKT–2016–103]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Allowing the Exchange To Trade Pursuant to Unlisted Trading Privileges for Any NMS Stock Listed on Another National Securities Exchange; Establishing Rules for the Trading Pursuant to UTP of Exchange-Traded Products; and Adopting New Equity Trading Rules Relating to Trading Halts of Securities Traded Pursuant to UTP on the Pillar Platform

January 4, 2017.

On November 17, 2016, NYSE MKT LLC (''Exchange'') 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 (1) allow the Exchange to trade pursuant to unlisted trading privileges (''UTP'') for any NMS Stock listed on another national securities exchange; (2) establish rules for the trading pursuant to UTP of exchange-traded products; and (3) adopt new equity trading rules relating to trading halts of securities traded pursuant to UTP on the Pillar platform. The proposed rule change was published for comment in the **Federal Register** on December 1, 2016.[3] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 15, 2017. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79400 (Nov. 25, 2016), 81 FR 86750.

[4] 15 U.S.C. 78s(b)(2).

within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates March 1, 2017, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSEMKT–2016–103).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–00222 Filed 1–9–17; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9840]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: ''Seurat's Circus Sideshow'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Seurat's Circus Sideshow,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about February 17, 2017, until on or about May 29, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2017–00189 Filed 1–9–17; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 9845]

Notice of a Public Meeting and Request for Comments on Funding Initiatives To End Modern Slavery

SUMMARY: The Department of State is issuing this notice to announce a public meeting and request for comment on the most effective approaches for awarding funds for the purpose of reducing the prevalence of modern slavery globally. The award of these funds will respond to the requirements in section 7060(f) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (Div. K, Pub. L. 114–113) and section 1298 of the National Defense Authorization Act for Fiscal Year 2017 (S. 2943). Interested parties may offer oral and/or written comments at a public meeting to be held on January 25, 2017.

DATES AND LOCATION: A public meeting will be conducted on January 25, 2017, at 10:00 a.m. EST on the 10th floor in Room 10000 of the Department of State Annex located at 1800 G Street NW., Washington DC, 20520.

Pre-Registration: The public is asked to pre-register by January 18, due to security and seating limitations. To pre-register, please send an email to Adam Guarneri of the State Department at *TIPOutreach@state.gov.* The pre-registration request should include the first and last name of the attendee(s), and, if applicable, company or organization name. Registration check-in will begin at 9:00 a.m. eastern time and the meeting will start at 10:00 a.m. and conclude by 12:00 p.m. Attendees must be prepared to present a form of government-issued photo identification.

Oral Public Comments: Parties wishing to make formal oral presentations at the public meeting must contact Adam Guarneri by email at *TIPOutreach@state.gov* no later than January 18, 2017, to be placed on the public speaker list. Time allocations for oral presentations will be limited to five minutes. Note: Requests made after the deadline for formal oral presentations will be granted as time permits and assigned based on the order the requests are received. All formal oral public comments should also be submitted in writing to *TIPOutreach@state.gov* by February 1, 2017.

Written Comments/Statements: In lieu of, or in addition to, participating in the public meeting, interested parties may submit written comments to *TIPOutreach@state.gov* by February 1, 2017.

Meeting Accommodations: The public meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Adam Guarneri at *TIPOutreach@state.gov* by January 18, 2017.

FOR FURTHER INFORMATION CONTACT: Adam Guarneri, Office to Monitor and Combat Trafficking in Persons, U.S. Department of State, at *TIPOutreach@state.gov* for clarification of content, public meeting information, or submission of comment.

SUPPLEMENTARY INFORMATION: Section 7060(f) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (Div. K, Pub. L. 114–13) appropriated $25 million in funds to ''to be awarded on an open and competitive basis, to reduce the prevalence of modern slavery globally.'' The National Defense Authorization Act (NDAA) for Fiscal Year 2017 (S. 2943) authorized the Department to ''to provide support for transformational programs and projects that seek to achieve a measurable and substantial reduction of the prevalence of modern slavery in targeted populations within partner countries (or jurisdictions thereof).''

The State Department seeks public comment on the most effective approaches for awarding funds to reduce the prevalence of modern slavery. The input will be considered in the solicitation and selection of proposals for award of these funds and in the management of these funds in the future.

The Department especially welcomes public comment on the following issues:

1. *Focus of program.* What areas of program funding would have the greatest impact in reducing the prevalence of modern slavery globally?

2. *Assistance Coordination.* What steps could the Department take to ensure this funding complements existing efforts to combat human trafficking globally?

3. What other factors/issues should the Department consider in the development and management of this award/solicitation?

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

Dated: January 4, 2017.

Susan Coppedge,

Ambassador-at-Large to Monitor and Combat Trafficking in Persons, U.S. Department of State.

[FR Doc. 2017–00274 Filed 1–9–17; 8:45 am]

BILLING CODE 4710–17–P

DEPARTMENT OF STATE

[Public Notice 9843]

In the Matter of the Designation of Hamza bin Laden as a Specially Designated Global Terrorist Pursuant to Section 1(b) of E.O. 1 3224, as Amended

Acting under the authority of and in accordance with section I(b) of E.O. 13224 of September 23, 2001, as amended by E.O. 13268 of July 2, 2002, and E.O. 13284 of January 23, 2003, I hereby determine that the entity known as Hamza bin Laden committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of E.O. 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: December 8, 2016.

John F. Kerry,

Secretary of State.

[FR Doc. 2017–00272 Filed 1–9–17; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice 9844]

In the Matter of the Designation of Ibrahim al-Banna Also Known as Shaykh Ibrahim Muhammad Salih al-Banna Also Known as Ibrahim Muhammad Salih al-Banna Also Known as Ibrahim Muhamad Salih al-Banna Also Known as Abu Ayman al-Masri as a Specially Designated Global Terrorist Pursuant to Section I(b) of E.O. 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of E.O. 13224 of September 23, 2001, as amended by E.O. 13268 of July 2, 2002, and E.O. 13284 of January 23, 2003, I hereby determine that the entity known as Ibrahim al-Banna, also known as Shaykh Ibrahim Muhammad Salih al-Banna, also known as Ibrahim Muhammad Salih al- Banna, also known as Ibrahim Muhamad Salih al-Banna, also known as Abu Ayman al-Masri committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of E.O. 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: December 15, 2016.

John F. Kerry,

Secretary of State.

[FR Doc. 2017–00273 Filed 1–9–17; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 9839]

Notice of Determinations: Culturally Significant Objects Imported for Exhibition Determinations: ''Abstract Experiments: Latin American Art on Paper after 1950'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Abstract Experiments: Latin American Art on Paper after 1950,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Art Institute of Chicago, Chicago, Illinois, from on or about February 19, 2017, until on or about May 7, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2017–00188 Filed 1–9–17; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9842]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: ''Alfred Sisley (1839–1899): Impressionist Master'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No.

257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Alfred Sisley (1839–1899): Impressionist Master,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Bruce Museum, Greenwich, Connecticut, from on or about January 21, 2017, until on or about May 21, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2017–00190 Filed 1–9–17; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the South Texas Regional Airport at Hondo in Hondo, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the South Texas Regional Airport at Hondo under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before February 9, 2017.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Ben Guttery, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports District Office, ASW–650, 10101 Hillwood Parkway, Fort Worth, Texas 76177.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert Lee, Director of Aviation, at the following address: 700 Vanderberg Rd, Hondo, Texas 78232.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Mekhail, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 10101 Hillwood Parkway, Fort Worth, TX 76177, Telephone: (817) 222–5663, email: *Anthony.Mekhail@faa.gov*.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the South Texas Regional Airport at Hondo under the provisions of the AIR 21.

The following is a brief overview of the request:

City of Hondo requests the release of 63.033 acres of non-aeronautical airport property. The property is located on the west side of the airport, north of Zerr Road. The property to be released will be sold and revenues shall be used to enhance development, operations and maintenance of the airport. Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the South Texas Regional Airport at Hondo, telephone number (830) 426–6989.

Issued in Fort Worth, Texas on December 21, 2016.

Ignacio Flores,

Director, Airports Division.

[FR Doc. 2017–00185 Filed 1–9–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Drone Advisory Committee (DAC) Public Meeting

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

ACTION: RTCA Drone Advisory Committee Public Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Drone Advisory Committee Public Meeting.

DATES: The meeting will be held January 31, 2017 09:00 a.m.—04:00 p.m. PST.

ADDRESSES: The meeting will be held at: University of Nevada, 1664 N Virginia St., Reno, NV 89557.

FOR FURTHER INFORMATION CONTACT: Al Secen at *asecen@rtca.org* or 202–330–0647, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the RTCA Drone Advisory Committee Public Meeting. The agenda will include the following:

Tuesday, January 31, 2017

- Welcome and Introductions
- Review/Approval of Minutes from September Meeting
- Report out of DAC Subcommittee (SC) Task Group (TG) 1 (Roles and Responsibilities)
- Report out of DAC SC Task Group 2 (Access to Airspace)
- Discussion of Recommendations
  - Task Group 1
  - Task Group 2
- Discussion of DAC SC Task Group 3 Formation (Budget & Cost)
- DAC Develop/Refine Task Statements for Task Groups
- New Assignments/Agenda Topics
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 5, 2017.

Christopher W. Harm,

Unmanned Aircraft Systems Stakeholder and Committee Liaison, AUS–10, Unmanned Aircraft Systems Integration Office, Federal Aviation Administration.

[FR Doc. 2017–00291 Filed 1–9–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Thirty First RTCA 216 Aeronautical Systems Security Plenary

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

ACTION: Thirty First RTCA 216 Aeronautical Systems Security Plenary.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Thirty First RTCA 216 Aeronautical Systems Security Plenary.

DATES: The meeting will be held February 06–10, 2017 09:00 a.m.–05:00 p.m. PLEASE NOTE: All attendees must pre-register by contacting Karan Hofmann at *khofmann@rtca.org* or 202–330–0680.

ADDRESSES: The meeting will be held at: Honeywell, 21111 N. 19th Ave, Phoenix, AZ 85027.

FOR FURTHER INFORMATION CONTACT: Karan Hofmann at *khofmann@rtca.org* or 202–330–0680, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Thirty First RTCA 216 Aeronautical Systems Security Plenary. The agenda will include the following:

Monday, February 6, 2017—9:00 a.m.–5:00 p.m.

1. Welcome and Administrative Remarks
2. Introductions
3. Agenda Review
4. Meeting-Minutes Review
5. Review Joint Action List
6. Review White Papers (Status and intent of those planned and produced; Gain common understanding of intent; Resolve differences)
7. Schedule Update
8. Date, Place and Time of Next Meeting
9. New Business
10. Adjourn Plenary

Tuesday, February 7, 2017—9:00 a.m.–5:00 p.m.

Continuation of Plenary or Working Group Sessions

Wednesday, February 8, 2017—9:00 a.m.–5:00 p.m.

Continuation of Plenary or Working Group Sessions

Thursday, February 9, 2017—9:00 a.m.–5:00 p.m.

Continuation of Plenary or Working Group Sessions

Friday, February 10, 2017—9:00 a.m.–12:00 p.m.

Continuation of Plenary or Working Group Sessions

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on January 4, 2017.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2017–00180 Filed 1–9–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–111]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATE: Comments on this petition must identify the petition docket number and must be received on or before January 30, 2017.

ADDRESSES: You may send comments identified by Docket Number FAA–2016–9273 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nia Daniels, (202) 267–7626, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 4, 2017.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–9273.

Petitioner: Pinellas County Sherriff's Office.

Section of 14 CFR Affected: 91.146(c)(1) and (d).

Description of Relief Sought: Pinellas County Sherriff's Office (PCSO) is seeking an exemption from the limits of 14 CFR on charitable/non-profit/community events to implement a citizen observer program that would allow PCSO to exceed the four charitable flights per year limit.

[FR Doc. 2017–00290 Filed 1–9–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–121]

Petition for Exemption; Summary of Petition Received; AgrowSoft, LLC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before January 30, 2017.

ADDRESSES: You may send comments identified by Docket Number FAA–2016–9427 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on Decemebr 23, 2016.

Dale Bouffiou,

Deputy Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–9427.

Petitioner: AgrowSoft, LLC.

Section of 14 CFR Affected: 107.36; 137.19(c), (d), (e)(2)(ii), (iii), and (v); 137.31(b); 137.42.

Description of Relief Sought: AgrowSoft, LLC dba AgrowDrone (''AgrowDrone'') an operator of Small Unmanned Aircraft Systems (sUAS) seeks an exemption to operate its commercial remotely-piloted helicopter, the UAS–H, to provide agricultural related services in the United States. The UAS–H is capable of providing a wide array of essential agricultural spraying services, including: Watering, fertilizers, pesticides, and herbicides. For agricultural purposes, the UAS–H is only flown over uninhabited areas (*e.g.,* fields, groves, and orchards) and away from airports (*i.e.,* three nautical miles or more) or populated areas. All flights will occur over private or controlled access property with the property owner's prior consent and knowledge.

[FR Doc. 2017–00292 Filed 1–9–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitations on Claims for Judicial Review of Actions by FHWA, and Other Federal Agencies.

SUMMARY: This notice announces action taken by the FHWA and other federal agencies that is final within the meaning of 23 U.S.C. 139(l)(1). This final agency action relates to a proposed highway project, US 70 Bypass of the City of Havelock in Craven County, North Carolina. The FHWA's Record of Decision (ROD) identifies Alternative 3 for the US 70 Havelock Bypass project as the selected alternative.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139 (l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before June 9, 2017. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: *For FHWA:* Clarence W. Coleman, P. E., Director of Preconstruction and Environment, Federal Highway Administration, North Carolina Division, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina, 27601–1418; Telephone: (919) 747–7014; email: *clarence.coleman@dot.gov.* FHWA North Carolina Division Office's normal business hours are 8 a.m. to 5 p.m. (Eastern Time). For the North Carolina Department of Transportation (NCDOT): Rodger Rochelle, Director of Technical Services, North Carolina Department of Transportation (NCDOT), 1548 Mail Service Center, Raleigh, North Carolina 27699–1548; Telephone (919) 707–2900; email: *rdrochelle@ncdot.gov.* NCDOT Technical Services Division Office's normal business hours are 8 a.m. to 5 p.m. (Eastern Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency action by issuing a Record of Decision (ROD) for the following highway project in the State of North Carolina: US 70 Bypass, Havelock, North Carolina. The project is also known as State Transportation Improvement Program (STIP) Project R–1015.

Located in eastern North Carolina, the selected alternative consists of a freeway on new location, approximately 10.3 miles in length. The proposed freeway is located along the western edge of Havelock, primarily within the Croatan National Forest (CNF) boundaries. The project's purpose is to improve traffic operations for regional and statewide traffic along the US 70 corridor and enhance the ability of US 70 to serve a regional transportation function.

The FHWA's action, related actions by other Federal agencies and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on October 27, 2015; the FHWA Record of Decision (ROD), approved on December 16, 2016; and other documents in the project file. The above documents are available for review by contacting the FHWA or the NCDOT at the addresses provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–

4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Coastal Barrier Resources Act [16 U.S.C. 3501–3510].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544]; Marine Mammal Protection Act [16 U.S.C. 1361–1407]; Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(g)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712]; Magnuson-Stevenson Fishery Conservation and Management Act [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966 [16 U.S.C. 470(f)].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)].

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Coastal Barrier Resources Act [16 U.S.C. 3501–3510]; Coastal Zone Management Act [16 U.S.C. 1451–1465]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA; 42 U.S.C. 11011 *et seq.*); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species; and E.O. 13186—Responsibilities of Federal Agencies to Protect Migratory Birds.

This notice does not apply to those pending environmental permitting decisions. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: December 22, 2016.

Clarence W. Coleman,

Director of Preconstruction and Environment Raleigh, North Carolina.

[FR Doc. 2017–00124 Filed 1–9–17; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Interest Rate Paid on Cash Deposited To Secure U.S. Immigration and Customs Enforcement Immigration Bonds

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning January 1, 2017, and ending on March 31, 2017, the U.S. Immigration and Customs Enforcement Immigration Bond interest rate is 0.44 per centum per annum.

DATES: Effective January 1, 2017 to March 31, 2017.

ADDRESSES: Comments or inquiries may be mailed to Sam Doak, Reporting Team Leader, Federal Borrowings Branch, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia, 26106–1328. You can download this notice at the following Internet addresses: <*http://www.treasury.gov*> or <*http://www.federalregister.gov*>.

FOR FURTHER INFORMATION CONTACT: Adam Charlton, Manager, Federal Borrowings Branch, Office of Public Debt Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia 26106–1328, (304) 480–5248; Sam Doak, Reporting Team Leader, Federal Borrowings Branch, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia 26106–1328, (304) 480–5117.

SUPPLEMENTARY INFORMATION: Federal law requires that interest payments on cash deposited to secure immigration bonds shall be ''at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum.'' 8 U.S.C. 1363(a). Related Federal regulations state that ''Interest on cash deposited to secure immigration bonds will be at the rate as determined by the Secretary of the Treasury, but in no case will exceed 3 per centum per annum or be less than zero.'' 8 CFR 293.2. Treasury has determined that interest on the bonds will vary quarterly and will accrue during each calendar quarter at a rate equal to the lesser of the average of the bond equivalent rates on 91-day Treasury bills auctioned during the preceding calendar quarter, or 3 per centum per annum, but in no case less than zero. [FR Doc. 2015–18545] In addition to this Notice, Treasury posts the current quarterly rate in Table 2b—Interest Rates for Specific Legislation on the TreasuryDirect Web site.

Gary Grippo,

Deputy Assistant Secretary for Public Finance.

[FR Doc. 2017–00323 Filed 1–9–17; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C., App. 2, that the Advisory Committee on Former Prisoners of War (FPOW) will meet January 30–February 1, 2017, from 9:00 a.m.–4:00 p.m. CST at the Audie Murphy VA Medical Center, 7400 Merton Minter Street, San Antonio, TX. Sessions are open to the public, except when the Committee is conducting a tour of VA facilities. Tours of VA facilities are closed, to protect Veterans' privacy and personal information, in accordance with 5 U.S.C. 552b(c)(6).

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38 U.S.C., for Veterans who are FPOWs, and to make recommendations on the needs of such Veterans for compensation, health care, and rehabilitation.

On Monday, January 30, the Committee will convene an open session to recognize new members and hear briefings from 9:00 a.m. to 2:30 p.m. From 2:30 p.m. to 4:00 p.m., the Committee will convene a closed session in order to protect patient privacy as the Committee tours the Audie Murphy VA Medical Center. On Tuesday, January 31, the Committee will assemble in open session from 9:00 a.m. to 4:00 p.m. for discussion and

briefings from Veterans Benefits Administration (VBA) and Veterans Health Administration (VHA) officials. On Wednesday, February 1, 2017, the Committee will conduct an open session from 9:00 a.m. to 11:00 a.m. From 11:00 a.m. to 12:00 p.m., the Committee will convene a closed session for discussion of committee issues. At 12:00 p.m., the committee meeting will be formally adjourned.

Public participation will commence as follows:

Date	Time	Open session
January 30, 2017.	9:00 a.m.–2:30 p.m.	Yes.
	2:30 p.m.–4:00 p.m.	No*.
January 31, 2017.	9:00 a.m.–4:30 p.m.	Yes.
February 1, 2017.	9:00 a.m.–11:00 a.m.	Yes.
	No.	

* Public access will be restricted to protect patient privacy.

FPOWs who wish to speak at the public forum are invited to submit a 1–2 page commentary for inclusion in official meeting records. Members of the public may also submit a 1–2 page commentary for the Committee's review. Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Leslie N. Williams, Designated Federal Officer, Advisory Committee on Former Prisoners of War. Ms. Williams contact information is *Leslie.Williams@va.gov* or via phone at (202) 530–9219.

Because the meeting is being held in a government building, a photo I.D. must be presented at the security desk as a part of the clearance process. Due to an increase in security protocols, and in order to prevent delays in clearance processing, you should allow an additional 15 minutes before the meeting begins.

Dated: January 5, 2017.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2017–00235 Filed 1–9–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0789]

Agency Information Collection Activity: (Application Requirements To Receive VA Dental Insurance Plan Benefits under 38 CFR 17.169)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 9, 2017.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0789'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0789.''

SUPPLEMENTARY INFORMATION:

Titles: VA Dental Insurance Plan (VADIP) Fact Sheet.

OMB Control Number: 2900–0789.

Type of Review: Extension of a currently approved collection.

Abstract: Department of Veteran Affairs Dental Insurance Reauthorization Act of 2016 (Pub. L. 114–218) requires VA to establish and administer a dental insurance plan for Veterans enrolled in VA health care and survivors and dependents of Veterans eligible for VA's Civilian Health and Medical Program (CHAMPVA). Public Law 114–218 requires VA to contract with a private insurer (using the Federal contracting process) to offer dental insurance, and the private insurer will be responsible for virtually all aspects of the administration of the dental insurance program. VA's role will primarily be to form the contract with the private insurer and verify eligibility of veterans and certain survivors and dependents. Enrolled veterans and certain survivors and dependents of veterans will be required to complete an application to be enrolled in this dental insurance program, and will be required to submit certain documentation/information for certain types of disenrollment requests and for appeals of claims decisions. VA will not prescribe the form these collections are to take, but is prescribing regulations that nonetheless require these collections. These collections are required to fulfill VA's obligations under Public Law 114–218.

Affected Public: Individuals or households.

Estimated Annual Burden: 38,350.

Estimated Average Burden per Respondent: 76 minutes

Frequency of Response: Annually.

Estimated Annual Responses: 283,500.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2017–00208 Filed 1–9–17; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 82 Tuesday,
No. 6 January 10, 2017

Part II

Environmental Protection Agency

40 CFR Parts 51 and 52
Protection of Visibility: Amendments to Requirements for State Plans; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2015–0531; FRL–9957–05–OAR]

RIN 2060–AS55

Protection of Visibility: Amendments to Requirements for State Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing revisions to requirements under the Clean Air Act (CAA) for state plans for protection of visibility in mandatory Class I Federal areas in order to continue steady environmental progress while addressing administrative aspects of the program. In summary, the revisions clarify the relationship between long-term strategies and reasonable progress goals (RPGs) in state implementation plans (SIPs) and the long-term strategy obligation of all states; clarify and modify the requirements for periodic comprehensive revisions of SIPs; modify the set of days used to track progress towards natural visibility conditions to account for events such as wildfires; provide states with additional flexibility to address impacts on visibility from anthropogenic sources outside the United States (U.S.) and from certain types of prescribed fires; modify certain requirements related to the timing and form of progress reports; and update, simplify and extend to all states the provisions for reasonably attributable visibility impairment, while revoking most existing reasonably attributable visibility impairment federal implementation plans (FIPs). The EPA also is making a one-time adjustment to the due date for the next periodic comprehensive SIP revisions by extending the existing deadline of July 31, 2018, to July 31, 2021.

DATES: This final rule is effective on January 10, 2017.

ADDRESSES: The EPA established Docket ID No. EPA–HQ–OAR–2015–0531 for this action. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically in *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general information regarding this rule, contact Mr. Christopher Werner, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541–5133 or by email at *werner.christopher@epa.gov;* or Ms. Rhea Jones, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541–2940 or by email at *jones.rhea@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Preamble Glossary of Terms and Acronyms

The following are abbreviations of terms used in this document.

AQRV Air quality related value
BART Best available retrofit technology
b_{ext} Light extinction
CAA Clean Air Act
CFR Code of Federal Regulations
EGU Electric generating unit
EPA Environmental Protection Agency
FIP Federal implementation plan
FLM or FLMs Federal Land Manager or Managers
ICR Information collection request
IMPROVE Interagency monitoring of protected visual environments
NAAQS National Ambient Air Quality Standards
NSR New Source Review
NO_X Nitrogen oxides
OMB Office of Management and Budget
PM Particulate matter
$PM_{2.5}$ Particulate matter equal to or less than 2.5 microns in diameter (fine particulate matter)
PM_{10} Particulate matter equal to or less than 10 microns in diameter
PRA Paperwork Reduction Act
RHR Regional Haze Rule
RPG Reasonable progress goal
RPO Regional planning organization
SIP State implementation plan
SO_2 Sulfur dioxide
TAR Tribal Authority Rule
URP Uniform rate of progress

B. Entities Affected by This Rule

Entities potentially affected directly by this rule include state, local and tribal [1] governments, as well as FLMs responsible for protection of visibility in mandatory Class I federal areas.[2] Entities potentially affected indirectly by this rule include owners and operators of sources that emit particulate matter equal to or less than 10 microns in diameter (PM_{10}), particulate matter equal to or less than 2.5 microns in diameter ($PM_{2.5}$ or fine PM), sulfur dioxide (SO_2), oxides of nitrogen (NO_X), volatile organic compounds and other pollutants that may cause or contribute to visibility impairment. Others potentially affected indirectly by this rule include members of the general public who live, work or recreate in mandatory Class I areas affected by visibility impairment. Because emission sources that contribute to visibility impairment in Class I areas also may contribute to air pollution in other areas, members of the general public may also be affected by this rulemaking.

C. Obtaining a Copy of This Document and Other Related Information

In addition to being available in the docket, an electronic copy of this **Federal Register** document will be posted at *http://www.epa.gov/visibility.* A ''track changes'' version of the full regulatory text that incorporates and shows the full context of the changes in this final action is also available in the docket for this rulemaking. In addition to the final and regulatory text documents, other relevant documents are located in the docket, including technical support documents referenced in this preamble.

[1] The EPA's visibility protection regulations may apply, as appropriate under the Tribal Authority Rule (TAR) in 40 CFR part 49, to an Indian tribe that receives a determination of eligibility for treatment as a state for purposes of administering a tribal visibility protection program under section 169A of the CAA. No tribe has applied for such status, and so at present the EPA is responsible for implementation of the visibility protection regulations in areas of tribal authority. This responsibility includes, but is not limited to, implementation of the reasonable progress requirements of 40 CFR 51.308(f), as necessary or appropriate. These rule changes may impact the development and approvability of tribal implementation plans that tribes may wish to submit in the future. We encourage states to provide outreach and engage in discussions with tribes about their regional haze SIPs as they are being developed.

[2] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. CAA section 162(a). In accordance with section 169A of the CAA, the EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. CAA section 162(a). Although states and tribes may designate as Class I additional areas that they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' CAA section 302(i). When we use the term ''Class I area'' in this action, we mean any one of the 156 ''mandatory Class I Federal areas'' where visibility has been identified as an important value, unless the context makes it clear that additional non-mandatory Federal Class I areas are also meant to be included.

D. Judicial Review

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by March 13, 2017. Under CAA section 307(d)(7)(B), any such judicial review is limited to only those objections that were raised with reasonable specificity in timely comments. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for purposes of judicial review, extend the time in which a petition for judicial review may be filed, or postpone the effectiveness of the rule. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

E. Organization of This ***Federal Register*** *Document*

The information presented in this document is organized as follows:

I. General Information
A. Preamble Glossary of Terms and Acronyms
B. Entities Affected by This Rule
C. Obtaining a Copy of This Document and Other Related Information
D. Judicial Review
E. Organization of This **Federal Register** Document
F. Background on This Rulemaking
II. Executive Summary
III. Overview of Visibility Protection Statutory Authority, Regulation and Implementation
A. Visibility in Mandatory Class I Federal Areas
B. Reasonably Attributable Visibility Impairment
C. Regional Haze
D. Air Permitting
IV. Final Rule Revisions
A. Ongoing Litigation in *Texas* v. *EPA*
B. Cooperative Federalism
C. Clarifications To Reflect the EPA's Long-Standing Interpretation of the Relationship Between Long-Term Strategies and Reasonable Progress Goals
D. Other Clarifications and Changes to Requirements for Periodic Comprehensive Revisions of Implementation Plans
E. Changes to Definitions and Terminology Related to How Days Are Selected for Tracking Progress
F. Impacts on Visibility From Anthropogenic Sources Outside the U.S.
G. Impacts on Visibility From Wildland Fires
H. Clarification of and Changes to the Required Content of Progress Reports
I. Changes to Reasonably Attributable Visibility Impairment Provisions
J. Consistency Revisions Related to Permitting of New and Modified Major Sources
K. Changes to FLM Consultation Requirements
L. Extension of Next Regional Haze SIP Deadline From 2018 to 2021
M. Changes to Scheduling of Regional Haze Progress Reports
N. Changes to the Requirement That Regional Haze Progress Reports be SIP Revisions
O. Changes to Requirements Related to the Grand Canyon Visibility Transport Commission
V. Environmental Justice Considerations
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act (PRA)
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (UMRA)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act (CRA)
VII. Statutory Authority

F. Background on This Rulemaking

On May 4, 2016, the EPA proposed revisions to the 1999 Regional Haze Rule (RHR),[3] which include clarifications and modifications to the requirements that states (and, if applicable, tribes) have to meet as they implement programs for the protection of visibility in mandatory Class I Federal areas, under sections 169A and 169B of the CAA. The EPA held public hearings on May 19, 2016, in Washington, DC and on June 1, 2016, in Denver, Colorado. States, industry, private citizens and non-governmental organizations submitted over 180,000 comments. Based on EPA's review of the comments, we are finalizing most of the proposed revisions, but are also making some changes to respond to the concerns raised by commenters. These include: Changes to the proposed terminology used to refer to emissions inventories; changes to the proposed definitions and terminology related to how days are selected for tracking progress; changes to the proposed fire-related definitions and terminology; changes to the proposed required content of progress reports; changes to the proposed deadline for a state response to a reasonably attributable visibility impairment certification; the addition of a requirement for FLMs to consult with states prior to making a reasonably attributable visibility impairment certification; and minor changes to the requirements for FLM consultation on SIPs and progress reports. The EPA is issuing this final rule under section 307(d) of the CAA. Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. CAA section 307(d)(1) clarifies that: ''The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' Thus, section 553(d) of the APA does not apply to this rule. The EPA has nevertheless considered the purposes underlying APA section 553(d) in making this rule effective upon publication. The primary purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Notably, there are no specific obligations in the first thirty days of this regulatory action, and all obligations are established as of a date certain, rather than being tied to the effective date.

In addition, section 553(d) allows an effective date less than 30 days after publication for a rule that ''grants or recognizes an exemption or relieves a restriction.'' An important aspect of this rule is the 3-year extension for state planning obligations. This extension is comparable to the grant of an exemption or relief from a restriction because it provides more time for states to meet a regulatory requirement. It is thus reasonable to make this action effective upon publication because states do not require an additional 30 days to adjust their behavior and prepare for the rule going into effect, and in fact will gain additional time to meet their planning obligations.

II. Executive Summary

The CAA's visibility protection program, implemented through the rules at 40 CFR 51.300 through 51.309, helps to protect clear views in national parks, such as Grand Canyon National Park, and wilderness areas, such as the Okefenokee National Wildlife Refuge.

[3] Here and elsewhere in this document, the terms ''Regional Haze Rule,'' ''1999 Regional Haze Rule'' and ''1999 RHR'' refer to the 1999 final rule (64 FR 35714), as amended in 2005 (70 FR 39156, July 6, 2005), 2006 (71 FR 60631, October 13, 2006) and 2012 (77 FR 33656, June 7, 2012).

Vistas in these areas are often obscured by visibility-impairing pollutants caused by emissions from numerous sources located over a wide geographic area. States are required to submit periodic plans demonstrating how they have and will continue to make progress towards achieving their visibility improvement goals. The first state plans were due in 2007 and covered the 2008–2018 planning period.

The EPA is making changes to the requirements that states (and, if applicable, tribes) have to meet for the second and subsequent implementation periods as they develop programs for the protection of visibility in mandatory Class I areas, consistent with CAA requirements. Implementation of the EPA's RHR (during the first implementation period) resulted in significant reductions in emissions and associated improvements in visibility in many Class I areas (*see* Section III.B of this document). This final rule supports continued environmental progress by retaining much of the 1999 RHR, clarifying or revising certain provisions of the visibility protection rules in 40 CFR part 51, subpart P, and removing rule provisions that have been superseded by subsequent developments. An overview of the revisions is provided later, with additional details throughout this document.

The EPA is clarifying the relationship between long-term strategies and RPGs in state plans and the long-term strategy obligations of all states. We are re-iterating that the CAA requires states to consider the four statutory factors (costs of compliance, time necessary for compliance, energy and non-air quality environmental impacts and remaining useful life) in each implementation period to determine the rate of progress towards natural visibility conditions that is reasonable for each Class I area. The rate of progress in some Class I areas may be meeting or exceeding the uniform rate of progress (URP) that would lead to natural visibility conditions by 2064, but this does not excuse states from conducting the required analysis and determining whether additional progress would be reasonable based on the four factors. The EPA is revising the RHR to address a number of issues, as discussed in the proposal, including: The way in which a set of days during each year is to be selected for purposes of tracking progress towards natural visibility conditions; aspects of the requirements for the content of progress reports; updating, simplifying and extending to all states the provisions for reasonably attributable visibility impairment and revoking FIPs adopted in the 1980s that require the EPA to assess and address any existing reasonably attributable visibility impairment situations in some states; and revising the requirement for states to consult with FLMs. Other changes address administrative aspects of the program in order to reduce unnecessary burden. These include the following: The EPA is finalizing a one-time adjustment to the due date for the next SIPs (from 2018 to 2021); revising the due dates for progress reports; and changing the requirement that progress reports be submitted as formal SIP revisions to documents that need not comply with the procedural requirements of 40 CFR 51.102, 40 CFR 51.103 and Appendix V to Part 51—Criteria for Determining the Completeness of Plan Submissions. All of these changes apply to periodic comprehensive state implementation plans developed for the second and subsequent implementation periods and to progress reports submitted subsequent to those plans. These changes do not affect the development and review of state plans for the first implementation period or the first progress reports due under the 1999 RHR.

The rationale for these changes is described more fully in the descriptions of each change detailed later in this action as well as in the preamble to the proposed rule.[4] The revisions being finalized are informed by approximately 15 years of implementation of the CAA, numerous outreach sessions and stakeholder feedback regarding the regional haze program, and the many constructive comments we received on the proposal. The clarifications regarding the relationship between RPGs, long-term strategies and the long-term strategy obligation of all states are intended to ensure appropriate and consistent understanding of these requirements as states prepare their plans for the second implementation period. These clarifications reflect EPA's long-standing interpretation of the RHR, and are now being codified. The rule revisions related to how days are selected for visibility progress tracking will provide the public and state officials more meaningful information on how existing and potential new emission reduction measures are contributing or could contribute to reasonable progress in reducing man-made visibility impairment. Changes to FLM consultation requirements will help ensure that the expertise and perspective of these officials are brought into the state plan development process early enough that they can meaningfully contribute to the state's deliberations. Collectively, the changes being finalized now will ensure that the regional haze program is implemented consistent with CAA obligations, and ensure successful implementation during the second planning period and beyond.

With regard to the extension of the deadline of July 31, 2018, to July 31, 2021, for states' comprehensive SIP revisions for the second implementation period, this one-time change will benefit states by allowing them to obtain and take into account information on the effects of a number of other regulatory programs that will be impacting sources over the next several years. The change will also allow states to develop SIP revisions for the second implementation period that are more integrated with state planning for these other programs, an advantage that was widely confirmed in early discussions with states and in comments submitted to the docket for this rulemaking. We anticipate that this change will result in greater environmental progress than if planning for these multiple programs were not as well integrated. The end date for the second implementation period remains 2028, as was required by the 1999 RHR. Other than the one-time change to the next due date for periodic comprehensive SIP revisions, no change is being made for due dates for future periodic comprehensive SIP revisions.

The changes related to progress reports are intended to make the timing of progress reports more useful as mid-course reviews, to clarify the required content of progress reports for aspects on which there has been some confusion, and to allow states to conserve their administrative resources and make submission of progress reports more timely by removing the requirement that they be submitted as formal SIP revisions. We are retaining a requirement that states consult with FLMs on their progress reports, and that states offer the public an opportunity to comment on progress reports before they are finalized, which are two of the steps that applied to progress reports when they were required to be SIP revisions, and which will help ensure ongoing accountability for progress reports. Please note that while the proposed rule included identical FLM consultation periods for progress reports and periodic comprehensive SIP revisions, FLM consultation requirements for SIP revisions and progress reports will differ going forward. This issue is described more fully in Section IV.K of this document.

[4] 81 FR 26942 (May 4, 2016).

Finally, the 1999 RHR's provisions related to reasonably attributable visibility impairment required a recurring process of assessment and planning by the states. Experience since these provisions were promulgated suggests that situations involving reasonably attributable visibility impairment occur infrequently and therefore that an ''as needed'' approach for initiating a state planning obligation would be a more efficient use of resources. The EPA is finalizing its proposal to replace the recurring process of assessment of reasonably attributable visibility impairment with an as-needed approach. The change to an as-needed approach only applies to reasonably attributable visibility impairment—periodic planning for purposes of regional haze will continue. In addition, in light of our increased understanding of the interstate nature of visibility impairment, we are expanding the applicability of the requirement to address reasonably attributable visibility impairment from only states with Class I areas to all states. If a situation exists or arises in which a source or a small number of sources in a state without any Class I area causes reasonably attributable visibility impairment at a Class I area in another state, this mechanism will ensure adequate visibility protection.

III. Overview of Visibility Protection Statutory Authority, Regulation and Implementation

A. Visibility in Mandatory Class I Federal Areas

Reduction in visibility caused by emissions of PM_{10}, $PM_{2.5}$ (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon and soil dust) and their precursors (*e.g.,* SO_2, NO_X and, in some cases, ammonia and volatile organic compounds) can take the form of either visibly distinct layers or plumes of pollution or more uniform ''regional haze.'' Fine particle precursors react in the atmosphere to form $PM_{2.5}$, which along with directly emitted PM_{10} and $PM_{2.5}$ impairs visibility by scattering and absorbing light. This light scattering reduces the clarity, color and visible distance that one can see. Particulate matter can also cause serious health effects in humans (including premature death, heart attacks, irregular heartbeat, aggravated asthma, decreased lung function and increased respiratory symptoms) and contribute to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that at the time the RHR was finalized in 1999, visibility impairment caused by air pollution occurred virtually all the time at most national park and wilderness areas. The formally defined average visual range [5] in many Class I areas in the western U.S. was 62–93 miles. In some Class I areas, these visual ranges may have been impacted by natural wildfire and dust episodes in addition to anthropogenic impacts. In most of the eastern Class I areas of the U.S., the average visual range was less than 19 miles.[6]

Based on visibility data through 2014, the visual range has increased 10 to 20 miles (4 to 7 deciviews) [7] since the year 2000 in eastern Class I areas on the 20 percent haziest days. Some western Class I areas have also experienced visual range increases of 5 to 10 miles (1 to 4 deciviews) on the 20 percent haziest days. However, in some areas, such as Sawtooth Wilderness area in Idaho, improvements from reduced emissions from man-made sources have been overwhelmed by impacts from wildfire and/or dust events. There are also some western areas where visibility has improved only by a slight amount or made no progress.

B. Reasonably Attributable Visibility Impairment

In section 169A of the 1977 Amendments to the CAA, Congress enacted a program for protecting visibility in the nation's national parks, wilderness areas and other Class I areas due to their ''great scenic importance.'' [8] Section 169A(a) of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.''

In 1980, the EPA promulgated regulations to address visibility impairment in Class I areas, including but not limited to impairment that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* ''reasonably attributable visibility impairment.'' [9] These regulations, codified at 40 CFR 51.300 through 51.307, represented the first phase in addressing visibility impairment from existing sources. They also addressed potential visibility impacts from new and modified major sources already subject to permitting requirements for purposes of protection of the National Ambient Air Quality Standards (NAAQS) and preventing significant deterioration of air quality.

Notably, not all states were subject to the 1980 reasonably attributable visibility impairment requirements. Under the 1980 rules, the 35 states and one territory (Virgin Islands) containing Class I areas were required to submit SIPs addressing reasonably attributable visibility impairment. The 1980 rules required states to (1) develop, adopt, implement and evaluate long-term strategies for making reasonable progress toward remedying existing and preventing future impairment in the mandatory Class I areas through their SIP revisions; (2) adopt certain measures to assess potential visibility impacts due to new or modified major stationary sources, including measures to notify FLMs of proposed new source permit applications, and to consider visibility analyses conducted by FLMs in their new source permitting decisions; (3) conduct visibility monitoring in mandatory Class I areas, and (4) revise their SIPs at 3-year intervals to assure reasonable progress toward the national visibility goal. In addition, the 1980 regulations provided that an FLM may certify to a state at any time that visibility impairment at a Class I area is reasonably attributable to a single source or a small number of sources. Following such a certification by an FLM, a state was required to address the requirements for best available retrofit technology (BART) for BART-eligible sources considered to be contributing to reasonably attributable visibility impairment. Also, the appropriate control of any source certified by an FLM, whether BART-eligible or not, would be specifically addressed in the long-term strategy for making reasonable progress toward the national goal of natural visibility conditions. *See* the

[5] Visual range is the greatest distance, in kilometers or miles, at which a certain dark object can be discerned against the sky by a typical observer under certain defined conditions. Visual range defined in this highly controlled manner is inversely proportional to light extinction (b_{ext}) by particles and gases and is calculated as: Visual Range = $3.91/b_{ext}$ (Bennett, M.G., The physical conditions controlling visibility through the atmosphere; Quarterly Journal of the Royal Meteorological Society, 1930, 56, 1–29). Light extinction has units of inverse distance (*i.e.,* Mm^{-1} or inverse Megameters (mega = 10^6)). Under conditions other than those defined in this reference, people's ability to discern landscape features may vary and be different than implied by the value of the visual range as calculated from light extinction using this formula.

[6] 64 FR 35715 (July 1, 1999).

[7] The deciview haze index (discussed in more detail in Section III.B.3 of this document) is logarithmically related to light extinction and is used by the regional haze program because it describes uniform differences in visibility across a range of visibility conditions.

[8] H.R. Rep. No. 294, 95th Cong. 1st Sess. at 205 (1977).

[9] 45 FR 80084 (December 2, 1980).

1980 rule's version of 40 CFR 51.302(c)(2)(i).

In practice, the 1980 rules resulted in few SIPs being submitted by states and approved by the EPA, requiring the EPA to develop and apply FIPs to those states that failed to submit an approvable reasonably attributable visibility impairment SIP.[10] Most of these FIPs contained planning requirements only. That is, most of the FIPs merely committed the EPA to assessing on a 3-year cycle whether reasonably attributable visibility impairment was occurring, and if so, to adopting an appropriate strategy of required emission controls.

C. Regional Haze

1. Requirements of the 1990 CAA Amendments and the EPA's Regional Haze Rule

In 1990, Congress added section 169B to the CAA to further address regional haze issues. Among other things, this section included provisions for the EPA to conduct visibility research on regional regulatory tools with the National Park Service and other federal agencies, and to provide periodic reports to Congress on visibility improvements due to implementation of other air pollution protection programs. CAA section 169B also generally allowed the Administrator to establish visibility transport commissions and specifically required the Administrator to establish a commission for the Grand Canyon area. The EPA promulgated a rule to address regional haze in 1999.[11] The 1999 RHR established a more comprehensive visibility protection program for Class I areas. The requirements for regional haze are found at 40 CFR 51.308 and 51.309.

The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia and the Virgin Islands.[12] Congress subsequently amended the deadlines for regional haze SIPs, and the EPA adopted regulations requiring states to submit the first implementation plans addressing regional haze visibility impairment no later than December 17, 2007.[13] These initial SIPs were to address emissions from certain large stationary sources and other requirements, which we discuss in greater detail later. Few states submitted a regional haze SIP by the December 17, 2007, deadline, and on January 15, 2009, the EPA found that 37 states, the District of Columbia and the Virgin Islands had failed to submit SIPs addressing the regional haze requirements.[14] These findings triggered a requirement for the EPA to promulgate FIPs within 2 years unless a state submitted a SIP and the EPA approved that SIP within the 2-year period.[15] Most states eventually submitted SIPs.

The 1999 RHR also required states to submit periodic comprehensive revisions of their regional haze SIPs. Under 40 CFR 51.308(f) of the 1999 RHR, states were required to submit the first such revision by no later than July 31, 2018, and every 10 years thereafter. These periodic comprehensive SIP revisions were required to address a number of elements, including current visibility conditions and actual progress made toward natural conditions during the previous implementation period; a reassessment of the effectiveness of the long-term strategy in achieving the RPGs over the prior implementation period; and affirmation of or revision to the RPGs. Further information on these periodic comprehensive SIP revisions can be found in Section III.B.3 of this document. In addition, the 1999 RHR's 40 CFR 51.308(g) required each state to submit progress reports, in the form of SIP revisions, every 5 years after the date of the state's initial SIP submission. In the progress reports, states were required to evaluate the progress made towards the RPGs for mandatory Class I areas located within the state, as well as those mandatory Class I areas located outside the state that may be affected by emissions from within the state. Further information on progress reports can be found in Section III.B.4 of this document.

The 1999 RHR sought to improve efficiency and transparency by requiring states to coordinate planning under the 1980 reasonably attributable visibility impairment provisions with planning under the provisions added by the 1999 RHR. The states were directed to submit reasonably attributable visibility impairment SIPs every 10 years rather than every 3 years, and to do so as part of the newly required regional haze SIPs. Many, but not all, states submitted initial regional haze SIPs that committed to this coordinated planning process. Coordination of reasonably attributable visibility impairment and regional haze planning is described in more detail later.

2. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program requires long-term regional coordination among states, tribal governments and various federal agencies. As noted earlier, pollution affecting the air quality in Class I areas is emitted from many individual sources and can be transported over long distances, even hundreds of miles. Therefore, to effectively address the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, and because these sources may be numerous and emit amounts of pollutants that, even though small, contribute to the collective whole, the EPA encourages states to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were formed after the promulgation of the RHR in 1999 to address regional haze and related issues: The Central Regional Air Planning Association, the Mid-Atlantic/Northeast Visibility Union, the Midwest Regional Planning Organization, the Western Regional Air Partnership and the Visibility Improvement State and Tribal Association of the Southeast.[16] The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then supported the development (by states) of regional strategies to reduce emissions of pollutants that lead to regional haze.

3. Requirements for the Regional Haze SIPs

As mentioned earlier, states were required to submit SIPs addressing regional haze visibility impairment in 2007, which covered what we refer to as the first implementation period (2008–2018). A focus of the 2007 SIP obligation was to give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, by requiring these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. These SIPs included a number of components and/

[10] 52 FR 45132 (November 24, 1987).

[11] 64 FR 35714 (July 1, 1999).

[12] This requirement does not apply to other U.S. territories defined as ''states'' under the CAA because they do not have mandatory Class I Federal areas and are too distant from any such areas to affect them.

[13] 70 FR 39104 (July 6, 2005).

[14] 74 FR 2392 (January 15, 2009).

[15] CAA section 110(c).

[16] *See* ''Visibility—Regional Planning Organizations,'' *available at https://www.epa.gov/visibility/visibility-regional-planning-organizations.*

or analyses, which are described later along with information regarding whether or not this final rule impacts that particular SIP element.

BART Requirement. Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to include such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources [17] procure, install and operate BART. Under the RHR, the EPA directed states to conduct BART determinations for any ''BART-eligible'' sources [18] that may be anticipated to cause or contribute to any visibility impairment in a Class I area. The EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source.[19] The 1999 RHR also gave states the flexibility to adopt an emissions trading program or other alternative program in lieu of source-specific BART as long as the alternative provided greater reasonable progress towards improving visibility than BART and met certain other requirements set out in the 1999 RHR's 40 CFR 51.308(e)(2).

States were required to undertake the BART determination process during the first implementation period. The BART requirement was a one-time requirement, but a BART-eligible source may need to be re-assessed for additional controls in future implementation periods under the CAA's reasonable progress provisions. Specifically, we anticipate that a number of BART-eligible sources that installed only moderately effective controls (or no controls at all) will need to be reassessed. Under the 1999 RHR's 40 CFR 51.308(e)(5), BART-eligible sources are subject to the requirements of 40 CFR 51.308(d), which addresses regional haze SIP requirements for the first implementation period, in the same manner as other sources going forward.[20]

Visibility Metric. The RHR established the 24-hour deciview haze index as the principal metric or unit for expressing visibility on any particular day.[21] The deciview haze index is calculated from light extinction values and expresses uniform changes in the degree of haze in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy. Deciview values are calculated by using air quality measurements to estimate light extinction, most recently using the revised IMPROVE algorithm, and then transforming the value of light extinction using a logarithmic function.[22] The deciview is a more useful measure for comparing days and tracking progress in improving visibility than light extinction itself because each deciview change is an equal incremental change in visibility typically perceived by a human observer. Most people can detect a change in visibility of one deciview. The preamble to the 1999 RHR provided additional details about the deciview haze index.

Baseline, Current and Natural Conditions and Tracking Changes in Visibility. To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states were required to calculate visibility conditions at each Class I area for a 5-year period just preceding each periodic comprehensive SIP revision.[23] To do this, the 1999 RHR required states to determine average visibility conditions (in deciviews) for the 20 percent least impaired days and the 20 percent most impaired days over the 5-year period at each of their Class I areas.

States were also required to develop an estimate of natural visibility conditions for the purpose of estimating progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. The EPA has provided guidance to states regarding how to calculate baseline, natural and current visibility conditions at each Class I area.[24] After the EPA issued this guidance, a number of interested parties together developed a set of alternative estimates of natural conditions using a more refined approach (known as ''NC–II''), which were used by most states in their first regional haze SIPs with EPA approval.[25]

Baseline visibility conditions reflect the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values of these two metrics over the 5-year period. The comparison of baseline visibility conditions to natural visibility conditions indicates the amount of improvement that would be necessary to attain natural visibility. Over time, the comparison of current visibility conditions [26] to the baseline visibility conditions will indicate the amount of progress that has been made.

The 1999 RHR defined ''visibility impairment'' as a humanly perceptible change (*i.e.,* difference) in visibility from that which would have existed under natural conditions. The rule directed the tracking of visibility

[17] The set of ''major stationary sources'' potentially subject-to-BART is listed in CAA section 169A(g)(7).

[18] BART-eligible sources are those sources that have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were not in operation prior to August 7, 1962, but were in existence on August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories. 40 CFR 51.301.

[19] 70 FR 39104 (July 6, 2005).

[20] Under the 1999 RHR's 40 CFR 51.308(e)(5), BART-eligible sources were subject to the requirements of 40 CFR 51.308(d), which addresses regional haze SIP requirements for the first implementation period, in the same manner as other sources going forward.

[21] *See* 70 FR 39104, 39118.

[22] Pitchford, M.; Malm, W.; Schichtel, B.; Kumar, N.; Lowenthal, D.; Hand, J. Revised algorithm for estimating light extinction from IMPROVE particle speciation data; J. Air & Waste Manage. Assoc. 2007, 57, 1326–1336; doi: 3155/1047–3289.57.11.1326.

[23] Under the 1999 RHR, states were also required to periodically review progress in reducing impairment every 5 years.

[24] Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule, September 2003, EPA–454/B–03–005, available at *http://www3.epa.gov/ttn/caaa/t1/memoranda/rh_envcurhr_gd.pdf;* and Guidance for Tracking Progress Under the Regional Haze Rule, September 2003, EPA–454/B–03–004, available at *http://www3.epa.gov/ttn/oarpg/t1/memoranda/rh_tpurhr_gd.pdf.*

[25] Regional Haze Rule Natural Level Estimates Using the Revised IMPROVE Aerosol Reconstructed Light Extinction Algorithm, available at *http://vista.cira.colostate.edu/improve/Publications/GrayLit/032_NaturalCondIIpaper/Copeland_etal_NaturalConditionsII_Description.pdf;* Revised IMPROVE Algorithm for Estimating Light Extinction from Particle Speciation Data, available at *http://vista.cira.colostate.edu/improve/Publications/GrayLit/019_RevisedIMPROVEeq/RevisedIMPROVEAlgorithm3.doc;* and Regional Haze Data Analysis Workshop, June 8, 2005, Denver, CO, agenda and documents available at *http://www.wrapair.org/forums/aamrf/meetings/050608den/index.html.*

[26] Given the required timing of the first regional haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were also the ''current'' visibility conditions. For future SIPs, ''current conditions'' will be updated to the 5-year period just preceding the SIP revision.

impairment on the 20 percent ''most impaired days'' and 20 percent ''least impaired days'' in order to determine progress towards natural visibility conditions. 40 CFR 51.308(d)(2)(i–iv). In light of the 1999 RHR's definition of ''impairment,'' the term ''impaired'' in the phrases ''most impaired days'' and ''least impaired days'' could be taken to mean anthropogenic impairment only and to exclude reductions in visibility attributable to natural emission sources. However, the preamble to the 1999 RHR stated that the least and most impaired days were to be selected as the monitored days with the lowest and highest actual deciview levels caused by all sources, respectively. In 2003, the EPA issued guidance describing in detail the steps necessary for selecting and calculating light extinction on the ''worst'' and ''best'' visibility days, and this guidance also indicated that the monitored days with the lowest and highest actual deciview levels were to be selected as the least and most impaired days.[27] This approach worked well in many Class I areas but caused some concerns in other areas.

Specifically, the ''worst'' visibility days in some Class I areas can be impacted by irregularly occurring natural emissions (*e.g.,* wildland wildfires and dust storms). These natural contributions to haze vary in magnitude and timing. Anticipating this variability, in the 1999 RHR the EPA decided to use 5-year averages of visibility data to minimize the impacts of the interannual variability in natural events. However, additional data available through the IMPROVE monitoring network indicate that in many Class I areas 5-year averages are not sufficient for minimizing these erratic impacts. As a result, visibility improvements resulting from decreases in anthropogenic emissions can be hidden by this natural variability. Further, because of the logarithmic deciview scale, changes in PM concentrations and light extinction due to reductions in anthropogenic emissions have little effect on the deciview value on days with high PM concentrations and light extinction due to natural sources. The use of the days with the highest deciview index values, without consideration of the source of the visibility impacts, thus created difficulties when attempting to track visibility improvements resulting from controls on anthropogenic sources. States identified this difficulty prior to the start of this rulemaking and asked that the EPA explore options for focusing the visibility tracking metric on the effect of controlling anthropogenic emissions. To help states minimize the impacts of emissions from natural sources on visibility tracking via an approach that is also consistent with the CAA's goal to reduce visibility impairment resulting from man-made air pollution, the EPA proposed to more explicitly (and consistently) address this issue for future implementation periods.

Reasonable Progress Goals and Long-Term Strategy. To ensure continuing progress towards achieving the natural visibility goal, the 1999 RHR required that each SIP submission in the series of periodic comprehensive regional haze SIPs establish two distinct RPGs (one for the most impaired and one for the least impaired days) for every Class I area. *See* 40 CFR 51.308(d)(1). The 1999 RHR did not mandate specific milestones or rates of progress, but instead called for states to establish goals that provide for ''reasonable progress'' toward achieving natural visibility conditions. Specifically, states were required to provide for an improvement in visibility for the most impaired days over the period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

To set their RPGs, states were required to consider the four statutory reasonable progress factors: (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States were required to demonstrate in their SIPs how these factors were considered when selecting the RPGs for the least impaired and most impaired days for each applicable Class I area. The RPGs are not enforceable.[28]

Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIPs a 10- to 15-year strategy for making reasonable progress, 40 CFR 51.308(d)(3) of the 1999 RHR required states to include a long-term strategy in their regional haze SIPs. Under the 1999 RHR, a state's long-term strategy is inextricably linked to the RPGs because the long-term strategy ''must include enforceable emission limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals established by states having mandatory Class I Federal areas.'' 40 CFR 51.308(d)(3).

When setting their RPGs, states were also required to consider the rate of progress for the most impaired days that would be needed to reach natural visibility conditions by 2064 and the emission reduction measures that would be needed to achieve that rate of progress over the approximately 10-year period of the SIP. The purpose of this requirement was to allow for analytical comparisons between the rate of progress that would be achieved by the state's chosen set of control measures and the URP. If a state's RPG for the most impaired days achieved progress that was equal to the URP, the RPG would be ''on the URP line'' [29] or ''on the glidepath.'' If a state's RPG for the most impaired days was not on the glidepath, 40 CFR 51.308(d)(1)(ii) required the state to demonstrate that it would not be reasonable to require additional control measures and adopt an RPG that would be on the glidepath. The 1999 RHR did not establish an enforceable requirement that natural conditions be reached by 2064. The EPA approved a number of SIPs for the first implementation period that projected that continued progress at the rate expected to be achieved during the first period would not result in natural conditions until after 2064. However, the EPA also disapproved some SIPs during the first implementation period where states argued that no analysis of the four factors was necessary because visibility was projected to be ''below the glidepath'' at the end of the implementation period even without additional measures.[30]

In setting their RPGs, each state with one or more Class I areas was also required to consult with potentially ''contributing states,'' *i.e.,* other nearby states with emission sources that may be affecting visibility impairment in the state's Class I areas. In such cases, the contributing state was required to demonstrate that it included in its long-term strategy all measures necessary to obtain its share of the emission reductions needed to make reasonable progress at the Class I area.[31] In

[27] Guidance for Tracking Progress Under the Regional Haze Rule, September 2003, *http://www3.epa.gov/ttnamti1/files/ambient/visible/tracking.pdf*

[28] 64 FR 35754.

[29] The URP for the most impaired days can be represented in a graphical manner by drawing the ''URP line'' on a chart with calendar year on the horizontal axis and deciviews for the 20 percent most impaired day on the vertical axis.

[30] 76 FR 64186 at 64195 (October 17, 2011) (proposed action on Arkansas's RPGs), 77 FR 14604 at 14612 (March 12, 2012) (final action on Arkansas's RPGs).

[31] This consultation obligation is a key element of the regional haze program. Congress, the states, the courts and the EPA have long recognized that regional haze is a regional problem that requires regional solutions. *Vermont* v. *Thomas,* 850 F.2d 99, 101 (2d Cir. 1988). Ultimately, early actions by states such as Vermont were influential in Congressional enactment of section 169B of the

determining whether the upwind and downwind states' long-term strategies and RPGs provided for reasonable progress toward natural visibility conditions, the EPA was required to evaluate the demonstrations developed by the state. 40 CFR 51.308(d)(1).

The 1999 RHR required states to consider all types of anthropogenic sources of visibility impairment when developing their long-term strategies, including major and minor stationary sources, mobile sources and area sources. States had to consider a number of factors when developing their long-term strategies, including: (1) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes; (6) the enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area and mobile source emissions over the period addressed by the long-term strategy. 40 CFR 51.308(d)(3)(v).

Coordinating Regional Haze and Reasonably Attributable Visibility Impairment. The 1999 RHR fulfilled the EPA's responsibility to put in place a national regulatory program that addresses both reasonably attributable visibility impairment and regional haze. As part of the 1999 RHR, the EPA revised the schedule in 40 CFR 51.306(c) for the periodic review of reasonably attributable visibility impairment SIPs. The revised version of this subsection required that the reasonably attributable visibility impairment plan must continue to provide for a periodic review and SIP revision not less frequently than every 3 years until the date of submission of the state's first plan addressing regional haze visibility impairment. On or before this date, the state must have revised its plan to provide for periodic review and revision of a coordinated long-term strategy for addressing reasonably attributable visibility impairment and regional haze, and the state must have submitted the first such coordinated long-term strategy with its first regional haze SIP. Under the 1999 RHR, states were required to submit future coordinated long-term strategies, and periodic progress reports evaluating progress towards RPGs. The state's periodic review of its long-term strategy was required to report on both regional haze visibility impairment and reasonably attributable visibility impairment and was required to be submitted to the EPA in the form of a periodic comprehensive SIP revision. Under our proposed changes to the reasonably attributable visibility impairment provisions, this coordinated approach to a state's long-term strategies for regional haze and reasonably attributable visibility impairment would continue, but will apply in the infrequent case that a state receives a certification of reasonably attributable visibility impairment.

Monitoring Strategy and Other Implementation Plan Requirements. 40 CFR 51.308(d)(4) of the 1999 RHR included the requirement for a monitoring strategy for measuring, characterizing and reporting of regional haze visibility impairment that is representative of all mandatory Class I areas within the state. The strategy was required to be coordinated with the monitoring strategy required in the 1999 RHR version of 40 CFR 51.305 for reasonably attributable visibility impairment. Compliance with this requirement could be met through ''participation'' in the IMPROVE network.[32] A state's participation in the IMPROVE network includes state support for the use of CAA state and tribal assistance grants funds to partially support the operation of the IMPROVE network as well as the state's review and use of monitoring data from the network. The monitoring strategy was due with the first regional haze SIP, and under the 1999 RHR it must be reviewed every 5 years as part of the progress reports. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met. To date, neither the EPA nor any state has concluded that the IMPROVE network is not sufficient in this way. The evolution of the IMPROVE network will be guided by a Steering Committee that has FLM, EPA and state participation, within the evolving context of available resources. It is the EPA's objective that individual states will not be required to commit to providing monitoring sites beyond those planned to be operated by the IMPROVE program during the period covered by a SIP revision. Further, if the IMPROVE program must discontinue a monitoring site, this would not be a basis for an approved regional haze SIP to be found inadequate; but rather, the state, the federal agencies and the IMPROVE Steering Committee should work together to address the RHR requirements when the next SIP revision is developed. As described in Section IV.H of this document, we proposed that progress reports from individual states no longer be required to review and modify as necessary the state's monitoring strategy. The IMPROVE Steering Committee structure, the requirement to review the monitoring strategy as part of the periodic comprehensive SIP revision, and the requirement for a state to consider any recommendations from the EPA or a FLM for additional monitoring for purposes of reasonably attributable visibility impairment will be sufficient to achieve the objective of the current progress report requirement to review the monitoring strategy.

Consultation Between States and FLMs. The 1999 RHR required that states consult with FLMs before adopting and submitting their SIPs. 40 CFR 51.308(i). There are two parts to this requirement. First, states must provide FLMs an opportunity for an in-person consultation meeting at least 60 days prior to holding any public hearing on the SIP. This consultation meeting was required to include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a state was required to include in its SIP a description of how it addressed any comments provided by the FLMs. We proposed to require that states offer the opportunity for this already-required in-person consultation meeting early enough that information and recommendations provided by the FLMs can meaningfully inform the state's decisions on the long-term strategy. The second part of the consultation requirement is that a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

CAA in 1990. Congress intended this provision of the CAA to ''equalize the positions of the States with respect to interstate pollution,'' (S. Rep. No. 95–127, at 41 (1977)) and our interpretation accomplishes this goal by ensuring that downwind states can seek recourse from us if upwind states are not doing enough to address visibility transport.

[32] While compliance with 40 CFR 51.308(d)(4) for regional haze may be met through participation in the IMPROVE network, additional analysis or techniques beyond participation in IMPROVE may be required for compliance with 40 CFR 51.305 for reasonably attributable visibility impairment.

We did not propose any change to this requirement for procedures for continuing consultation. This continuing consultation should provide opportunities for FLM input on the scope and methods for the state's technical analyses as they are being planned, while the in-person consultation meeting required by the first part of the consultation requirement will occur as a state is making decisions based on the conclusions of its technical analyses. FLMs often participate in multi-state workgroups on regional haze and related issues and attend multi-state meetings on these topics, which further facilitates collaboration with individual states during SIP development.

4. Requirements for the Regional Haze Progress Reports

The 1999 RHR included provisions for progress reports to be submitted at 5-year intervals, counting from the submission of the first required SIP revision by the particular state. The requirements for these reports were included for most states in 40 CFR 51.308(g) and (h). Three western states (New Mexico, Utah and Wyoming) exercised an option provided in the RHR to meet alternative requirements contained in 40 CFR 51.309 for their SIPs. For these three states, the requirements for the content of the 5-year progress reports are identical to those for the other states, but for these states the requirements for the reports were contained in 40 CFR 51.309(d)(10). This section specifies fixed due dates in 2013 and 2018 for these progress reports. The 1999 RHR then provided that these three states will revert to the progress report requirements in 40 CFR 51.308 after the report currently due in 2018. We did not propose this aspect of the RHR.

An explanation of the 5-year progress reports is provided in the preamble to the 1999 RHR.[33] This 5-year review was intended to provide an interim report on the implementation of, and if necessary mid-course corrections to, the regional haze SIP, which is generally prepared in 10-year increments. The progress report provides an opportunity for public input on the state's (and the EPA's) assessment of whether the approved regional haze SIP is being implemented appropriately and whether reasonable visibility progress is being achieved consistent with the projected visibility improvement in the SIP.

Required elements of the progress report under the 1999 RHR included: The status of implementation of all measures included in the regional haze SIP; a summary of the emissions reductions achieved throughout the state; an assessment of current visibility conditions and the change in visibility impairment over the past 5 years; an analysis tracking the change over the past 5 years in emissions of pollutants contributing to visibility impairment from all sources and activities within the state; an assessment of any significant changes in anthropogenic emissions within or outside the state that have occurred over the past 5 years that have limited or impeded progress in reducing pollutant emissions and improving visibility; an assessment of whether the current SIP elements and strategies are sufficient to enable the state (or other states with mandatory Class I areas affected by emissions from the state) to meet all established RPGs; a review of the state's visibility monitoring strategy and any modifications to the strategy as necessary; and a determination of the adequacy of the existing SIP (including taking one of four possible actions).[34] We proposed to include a number of clarifications and changes to the requirements for the content of progress reports.

Under the 1999 RHR's 40 CFR 51.308(g) and 40 CFR 51.309(d)(10), progress reports must take the form of SIP revisions, so states must follow formal administrative procedures (including public review and opportunity for a public hearing) before formally submitting the 5-year progress report to the EPA. *See* 40 CFR 51.102, 40 CFR 51.103, and Appendix V to Part 51—Criteria for Determining the Completeness of Plan Submissions. We proposed to remove the requirement that progress reports be submitted as SIP revisions.

In addition, because progress reports were SIP revisions under the 1999 RHR, states were required to provide FLMs with an opportunity for in-person consultation at least 60 days prior to any public hearing on progress report. *See* 1999 RHR version of 40 CFR 51.308(i)(2) and (3). Procedures must also be provided for continuing consultation between the state and FLM regarding development and review of progress reports. *See* 40 CFR 51.308(i)(4).

Under the 1999 RHR, the first progress reports were due 5 years from the initial SIP submittal (with the next progress reports for New Mexico, Utah, and Wyoming due in 2018). Most of these deadlines have already passed although some are due in 2016 and in 2017.[35]

5. Tribes and Regional Haze

Tribes have a distinct interest in regional haze due to the effects of visibility impairment on tribal lands as well as on other lands of high value to tribal members, such as landmarks considered sacred. Tribes, therefore, have a strong interest in emission control measures that states and the EPA incorporate into SIPs and FIPs with regard to regional haze, and also have an interest in the state response to any certification of reasonably attributable visibility impairment made by an FLM.[36] The agency has a tribal consultation policy that covers any plan that the EPA would promulgate that may affect tribal interests. This consultation policy applies to situations where a potentially affected source is located on tribal land, as well as situations where a SIP or FIP concerns a source that is located on state land and may affect tribal land or other lands that involve tribal interests. In addition, the EPA has and will continue to consider any tribal comments on any proposed action on a SIP or FIP.

In the first implementation period for regional haze SIPs, the partnerships within the RPOs included strong relationships between the states and the tribes, and the EPA encourages states to continue to invest in those relationships (including consulting with tribes), particularly with respect to tribes located near Class I areas. States should continue working directly with tribes on their SIPs and their response to any certification of reasonably attributable visibility impairment made by an FLM. It is preferable for states to address tribal concerns during their planning process rather than the EPA addressing such concerns in its subsequent rulemaking process. During the development of this rulemaking, the EPA was asked by the

[33] 64 FR 35747 (July 1, 1999).

[34] 40 CFR 51.308(g). *See* also General Principles for the 5-Year Regional Haze Progress Reports for the Initial Regional Haze State Implementation Plans (Intended to Assist States and EPA Regional Offices in Development and Review of the Progress Reports), April 2013, EPA–454/B–03–005, available at *https://www.epa.gov/sites/production/files/2016-03/documents/haze_5year_4-10-13.pdf,* (hereinafter referred to as ''our 2013 Progress Report Guidance'').

[35] A number of first progress reports have been submitted by states. Several of these progress reports have been approved, action on several others has been proposed, and EPA is still reviewing the other submitted reports. There are also states for which progress reports are overdue, and a few states for which progress reports are not yet due and have not been submitted.

[36] Like the EPA, the Department of the Interior and the U.S. Forest Service in the U.S. Department of Agriculture have strong tribal consultation policies. *See: http://www.epa.gov/tribal/consultation/index.htm; http://www.fs.fed.us/spf/tribalrelations/authorities.shtml,* and *https://www.doi.gov/tribes/Tribal-Consultation-Policy.*

National Tribal Air Association to adopt a requirement that states formally consult with tribes during the development of their regional haze SIPs. The CAA does not explicitly authorize the EPA to impose such a requirement on the states. While we recognize the value of dialogue between state and tribal representatives, we did not propose to require it.

D. Air Permitting

One part of the visibility protection program, 40 CFR 51.307, New Source Review (NSR), was established in 1980 with the rationale that while most new sources that may impair visibility were already subject to review under the Prevention of Significant Deterioration provisions (part C of Title I of the CAA), additional regulations would ''ensure that certain sources exempt from the PSD regulations because of geographic criteria will be adequately reviewed for their potential impact on visibility in the mandatory Class I Federal area.'' [37] The EPA explained at proposal that this was necessary because the PSD regulations did not call for the review of major emitting facilities (or major modifications) located in nonattainment areas,[38] and that it was appropriate to ''clarify certain procedural relationships between the FLM and the state in the review of new source impacts on visibility in Federal class I areas.'' [39] The EPA envisioned that state and FLM consultation would commence with the state notifying the FLM of a potential new source, and that consultation would continue throughout the permitting process. We proposed to revise 40 CFR 51.307 only as needed to maintain consistency with revisions to other sections of 40 CFR part 50 subpart P.

[37] 45 FR 80084 (December 2, 1980).

[38] In 1978, PSD rules were put in place that required permitting agencies to interact with FLMs and for air quality related values (AQRVs) to be taken into consideration in the PSD permitting process. 43 FR 26380 (June 19, 1978). Those PSD rules did not cover sources in nonattainment areas, and while there were EPA rules for nonattainment NSR in existence, they did not require consideration of Class I areas. In 1979, 40 CFR part 51, appendix S established rules for nonattainment permitting, but they did not (and still do not) require consideration of visibility or FLM notification. (The same is also true of a more recent addition, 40 CFR 51.165. Where applicable to nonattainment areas, this rule does not require Class I reviews. While 40 CFR 51.165(b) requires that sources located in attainment areas cannot cause or contribute to a NAAQS violation anywhere, this does not cover AQRVs in Class I areas.) As a result, in 1980, the EPA added requirements to 40 CFR 51.307 for notification of FLMs of pending permits for new sources in nonattainment areas.

[39] 45 FR 34765 (May 22, 1980).

IV. Final Rule Revisions

The EPA is finalizing revisions to the agency's visibility regulations that are intended to build upon the progress achieved by the visibility program over the last decade while streamlining certain administrative requirements that are unnecessarily burdensome. The EPA gained a substantial amount of knowledge during the first regional haze implementation period and learned what aspects of the program work well and what aspects could benefit from modification. The EPA received information and perspectives from air agencies and FLMs during this period that were invaluable in developing the proposal. We also received comments from a wide variety of other stakeholders during the public comment process, including groups of states, FLMs, industry and industry representatives, nongovernmental organizations, and others. We considered all timely comments submitted on the proposal and address many of the most significant comments in this section. We are also providing a separate response-to-comments (RTC) document in the docket for this rulemaking. Between this preamble and the RTC document, we have responded to all significant comments received on this rulemaking.

A. Ongoing Litigation in Texas v. *EPA*

A number of state and industry stakeholders submitted comments regarding the ongoing litigation in the Fifth Circuit Court of Appeals over the EPA's January 2016 final action that partially approved and partially disapproved the Oklahoma and Texas regional haze SIPs for the first implementation period and promulgated partial FIPs for each state.[40] These commenters asserted that the Fifth Circuit's decision granting a stay [41] of the Texas FIP's reasonable progress emission limits undermined our proposed revisions to the visibility regulations. Some commenters also suggested that we must suspend our rulemaking revising the visibility regulations until after the Fifth Circuit has issued a decision on the merits.

We disagree that the Fifth Circuit's recent stay decision in *Texas* v. *EPA* dictates the lawfulness or timeliness of this rulemaking. First, as the commenters have noted, the Fifth Circuit decision was not a final decision on the merits of our action on the Oklahoma and Texas regional haze SIPs; instead, it was a preliminary decision issued by a panel of Fifth Circuit judges reviewing motions to stay the EPA's FIP, otherwise referred to as a ''motions panel.'' That panel expressly noted that its ''determination of Petitioners' likelihood of success on the merits is for the purposes of the stay only and does not bind the merits panel.'' [42] Second, and more importantly, the Fifth Circuit's evaluation of the EPA's FIP was based on the existing visibility regulations at 40 CFR 51.308(d). In this rulemaking, we are promulgating new regulations at 40 CFR 51.308(f) that will govern the second and future implementation periods. Under CAA section 307(b), the D.C. Circuit Court of Appeals is the exclusive venue for judicial review of these regulations. Consequently, the preliminary views of another circuit on the lawfulness of a FIP issued in the first implementation period under our existing regulations at 40 CFR 51.308(d) are not germane to this rulemaking. Third, portions of the stay decision indicate a fundamental misunderstanding of aspects of the visibility program and the EPA's action on the Oklahoma and Texas regional haze SIPs. For example, the decision on several occasions conflated the BART and reasonable progress requirements of the RHR, even though the FIP solely concerned the latter.[43] Indeed, we explicitly delayed final action in promulgating a FIP to address the BART requirements for EGUs in Texas in light of the D.C. Circuit's decision to remand several of the Cross-State Air Pollution Rule's (CSAPR) emissions budgets.[44]

While the decision in *Texas* v. *EPA* does not dictate the outcome of this rulemaking, the decision has created some confusion regarding certain aspects of the visibility program, including (1) whether states can or must consider the four reasonable progress factors on a source-specific basis; (2) the scope of the consultation requirements; and (3) whether a state's long-term strategy can contain measures that cannot be fully implemented by the end of an implementation period. Consequently, we believe that it is appropriate to address each of these issues at this time to explain how it was treated under the existing regulations during the first implementation period and whether it will be treated any

[40] 81 FR 295 (January 5, 2016).

[41] *Texas* v. *EPA,* 2016 U.S. App. LEXIS 13058 (5th Cir. July 15, 2016).

[42] *Id.* at *42 n.29.

[43] *See, e.g., id.* at *8 (SIPs must ''list the best available retrofit technology ('BART') that emission sources in the state will have to adopt to achieve the visibility goals''); *id.* at *9 (''BART is the only portion of the implementation plan that is enforced against emission sources in a state.''); *id.* at *42 (asserting that ''the BART requirements'' are ''the portion of the Final Rule imposing injury on Petitioners'').

[44] 81 FR 301–02.

differently (and if so how) under the new regulations governing future implementation periods.

1. Source-Specific Analysis

In *Texas* v. *EPA,* the Fifth Circuit explained that neither the RHR nor the CAA requires a state to conduct a source-specific four-factor analysis.[45] Several commenters cited this aspect of the Fifth Circuit's decision to argue that the EPA's proposal could not require states to conduct source-specific four-factor analyses and that, while states could conduct such analyses at their discretion, a state's decision not to do so could not form the basis of the EPA's disapproval of a SIP. Other commenters argued that proposed 40 CFR 51.308(f)(3)(ii) would unlawfully force states to conduct source-specific four-factor analyses if a state's RPGs provide for a slower rate of improvement in visibility than the URP. Several commenters asked us to clarify our position on these issues.

Neither the 1999 RHR nor the revised regulations in this rulemaking require states to conduct four-factor analyses on a source-specific basis. CAA section 169A(b)(2) requires states to include in their SIPs ''emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress.'' While these emission limits must apply to individual sources or units, section 169A(g)(1) does not explicitly require states to consider the four factors on a source-specific basis when determining what amount of emission reductions (and corresponding visibility improvement) constitutes ''reasonable progress.'' Unlike section 169A(g)(2), which requires states to consider ''any existing control technology in use at *the source*'' and ''the remaining useful life of *the source*'' when determining BART, section 169A(g)(1) refers to the four factors more generally. For example, with respect to remaining useful life, section 169A(g)(1) refers not to ''the source,'' but rather ''any existing source subject to such requirements.'' Thus, the EPA has consistently interpreted the CAA to provide states with the flexibility to conduct four-factor analyses for specific sources, groups of sources or even entire source categories, depending on state policy preferences and the specific circumstances of each state. This is the case under the 1999 RHR and continues to be the case under these final revisions. Contrary to the arguments in some comments, 40 CFR 51.308(f)(3)(ii) explicitly refers to ''sources *or groups of sources.*'' Similarly, 40 CFR 51.308(f)(2)(i) also refers to ''major or minor stationary sources *or group of sources,* mobile sources, and area sources.''

We also note that the stay decision in *Texas* v. *EPA* mistakenly indicated that the EPA disapproved the Texas SIP for failing to evaluate the four factors on a source-specific basis. As we explained in the January 2016 final rule, we disapproved Texas's four-factor analysis because the set of sources and controls that Texas analyzed was both over-inclusive and under-inclusive, not because the state failed to conduct a source-specific analysis.[46] Texas's analysis was over-inclusive because it included controls on sources that served only to increase total costs with little corresponding visibility benefit, and under-inclusive because it did not include scrubber upgrades that would achieve highly cost-effective emission reductions that would lead to significant visibility improvements. While these final revisions to the RHR continue to provide states with considerable flexibility in evaluating the four reasonable-progress factors, we expect states to exercise reasoned judgment when choosing which sources, groups of sources or source categories to analyze. Consistent with CAA section 169A(g)(1) and our action on the Texas SIP, a state's reasonable progress analysis must consider a meaningful set of sources and controls that impact visibility. If a state's analysis fails to do so, for example, by arbitrarily including costly controls at sources that do not meaningfully impact visibility or failing to include cost-effective controls at sources with significant visibility impacts, then the EPA has the authority to disapprove the state's unreasoned analysis and promulgate a FIP.

2. Interstate Consultation

In the *Texas* v. *EPA* stay decision, the Fifth Circuit explained that neither the RHR nor the CAA explicitly require upwind states to provide downwind states with source-specific emission control analyses.[47] Consistent with Congress's focus on interstate cooperation under section 169B, the 1999 RHR required states to consult with one another when developing their RPGs and long-term strategies, develop ''coordinated emission management strategies'' and document any disagreements regarding their goals and strategies.[48] We agree with the Fifth Circuit that the 1999 RHR did not require upwind states to provide downwind states with a specific type of four-factor analysis during the consultation process; the four-factor analysis that the upwind state did could be based on a source-specific or aggregate approach, for example. The consultation provisions were intended to foster and facilitate regional solutions to what is, by definition, a regional problem, not to mandate specific outcomes. The final revisions largely preserve the existing consultation provisions and similarly do not require upwind states to provide downwind states with any specific type of analysis, or vice versa. Nevertheless, to develop coordinated emission management strategies, each state must make decisions with respect to its own long-term strategy with knowledge of what other states are including in their strategies and why. In other words, states must exchange their four-factor analyses and the associated technical information that was developed in the course of devising their long-term strategies. This information includes modeling, monitoring and emissions data and cost and feasibility studies. To the extent that one state does not provide another other state with these analyses and information, or to the extent that the analyses or information are materially deficient, the latter state should document this fact so that the EPA can assess whether the former state has failed to meaningfully comply with the consultation requirements.

3. Timing of Control Requirements

Lastly, in *Texas* v. *EPA,* the Fifth Circuit's stay decision suggested that it was likely that the EPA had exceeded its statutory authority by imposing emission controls that go into effect after the end of the implementation period.[49] This preliminary assessment is incorrect for several reasons.

First, we note that the decision did not cite to a provision of the CAA to support the proposition that the EPA exceeded its statutory authority. Indeed, the CAA includes no such constraint. Two provisions are of particular relevance. Section 169A(b)(2)(B) requires SIPs to include ''a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal.'' The phrase ''ten to fifteen years'' is ambiguous. It could mean that the long-term strategy must be updated every 10 to 15 years or that the strategy must be fully implemented within 10 to 15 years. Even under the latter interpretation, courts have held that an agency does not lose authority to regulate when a mandatory deadline

[45] *Id.* at *45–51.

[46] 81 FR 313–14.

[47] *Id.* at *51–53.

[48] 40 CFR 51.308(d)(1)(iv); (d)(3)(i).

[49] *Texas,* 2016 U.S. App. LEXIS 13058 at *53–57.

has passed; rather, the appropriate remedy is an order compelling agency action.[50] We therefore do not interpret this provision as restricting the authority of states or the EPA to include control measures in a SIP or FIP that cannot be fully implemented by the end of a regulatory implementation period or as relaxing their obligation to include such controls if they are otherwise necessary to make reasonable progress. To do so would create an inappropriate incentive for states to delay their SIP submittals in an effort to ''run out the clock'' on the EPA's authority to issue a corrective FIP.

Also, section 169A(g)(1) requires states to consider ''the time necessary for compliance'' when determining what control measures are necessary to make reasonable progress. This phrase is also ambiguous. One possible interpretation of the phrase is that states need only consider control measures that can be implemented within a certain period of time. This interpretation is unreasonable, however, because it would allow states to forever forgo cost-effective but time-intensive emission reduction measures that could otherwise improve visibility, which would thwart Congress's national goal. A more reasonable interpretation of the phrase is that states must consider the feasibility of the ''schedules of compliance'' referred to in section 169A(b)(2) when determining when the emission reductions necessary to make reasonable progress must be implemented. The structure of section 169A also lends support to this interpretation. When determining reasonable progress, states must consider three of the same factors that they consider when determining BART. The only unique reasonable progress factor relates to timing: ''the time necessary for compliance.'' Congress had no reason to include a timing factor for BART, however, because section 169A(b)(2)(A) already includes a requirement that BART must be installed and operated ''as expeditiously as practicable,'' which section 169A(g)(4) defines as no later than 5 years from the date of plan approval. With no similar requirement in section 169(b)(2), it is reasonable to interpret that Congress intended ''the time necessary for compliance'' factor to serve an analogous function to the ''expeditiously as practicable'' language, albeit with more discretion left to the states.

Second, we note that the Fifth Circuit appeared to misunderstand a provision in the 1999 RHR that it used to support its decision. Specifically, the stay decision stated:

> The Regional Haze Rule requires states to ''consider . . . the emission reduction measures needed to achieve [the reasonable progress goal] *for the period covered by the implementation plan,*'' and to impose ''enforceable emissions limitations, compliance schedules, and other measures, as necessary to achieve the reasonable progress goals.'' 40 CFR 51.308(d)(1)(i)(B), (d)(3) (emphasis added). The Regional Haze Rule provides that each implementation plan will cover a ten-year period; before the close of each ten-year period, the state must submit a comprehensive revision to cover the next ten-year period. 40 CFR 51.308(b), (f) (first implementation plan due December 2007; first ''comprehensive periodic revision'' due July 31, 2018, and every ten years thereafter). The emissions controls included in a state implementation plan, therefore, must be those designed to achieve the reasonable progress goal for the period covered by the plan. 40 CFR 51.308(d)(1)(i)(B).[51]

However, 40 CFR 51.308(d)(1)(i)(B) does not actually say that states must consider the emission reductions measures needed to achieve ''the reasonable progress goal'' for the period covered by the implementation plan. Instead, it requires states to ''consider *the uniform rate of improvement in visibility* and the emission reduction measures needed to achieve *it* for the period covered by the implementation plan.'' [52] In essence, the provision requires a state to make a comparison between its chosen control set and the specific set of control measures that would be needed to achieve the URP by the end of the implementation period. The provision does not dictate the date by which all of the measures in a state's chosen control set must be implemented.

Third, the stay decision did not discuss the EPA's 2007 reasonable progress guidance, which specifically recognized that the time needed for full implementation of a control measure might extend beyond the end of the implementation period. In such situations, the EPA stated that it may be appropriate for states to use the time necessary for compliance factor ''to adjust the [RPG] to reflect the degree of improvement in visibility achievable within the period of the first SIP,'' [53] which would prevent the state from falling short of its goal. The 2007 guidance did not state that the CAA or the 1999 RHR prohibited states from requiring the control measure.

In the proposal for this rulemaking, which was promulgated before the Fifth Circuit's stay decision, we did not address this issue. At that time, we thought that it was clear that neither states nor the EPA lose the authority to require emissions limits or other measures that are necessary to make reasonable progress if those limits or measures cannot be fully implemented by the end of the implementation period and incorporated into the RPGs. For the reasons provided previously, we continue to believe that this is the case.

Therefore, we are modifying 40 CFR 51.308(f)(2)(i) to explicitly provide that, when considering the time necessary for compliance, a state may not reject a control measure because it cannot be installed and become operational until after the end of the implementation period. As discussed previously, the state should instead consider that fact in determining the appropriate compliance deadline for the measure. Of course, any emission reductions that will not occur until after the end of the implementation period should not be reflected in the RPGs.

In addition, to avoid any future confusion with respect to this issue, we are making a small modification to 40 CFR 51.308(f)(3)(i) in these final revisions. This final provision now reads:

> A State in which a mandatory Class I Federal area is located must establish reasonable progress goals (expressed in deciviews) that reflect the visibility conditions that are projected to be achieved by the end of the applicable implementation period as a result of *those* enforceable emissions limitations, compliance schedules, and other measures required under paragraph (f)(2) *that can be fully implemented by the end of the applicable implementation period,* as well as the implementation of other requirements of the CAA.

This modification makes it clear that a state's long-term strategy can include emission limits and measures beyond those reflected in the state's RPGs. The RPGs are unenforceable tracking metrics. They are not meant to dictate or limit the content of a state's long-term strategy for making reasonable progress towards Congress's national goal. This change is also consistent with our actions promulgating FIPs near the end of the first implementation period, which by necessity included reasonable progress emission limits with compliance deadlines after 2018.[54]

[50] *Oklahoma* v. *EPA,* 723 F.3d 1201, 1223–24 (10th Cir. 2013) (citing *Brock* v. *Pierce Cty.,* 476 U.S. 253, 260 (1986).

[51] *Texas,* 2016 U.S. APP. LEXIS 13058 at *53–54.

[52] 40 CFR 51.308(d)(1)(i)(B) (emphases added).

[53] Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program, revised, at 5–2 (June 1, 2007).

[54] 81 FR 296 (January 5, 2016) (Texas); 81 FR 68319 (October 4, 2016) (Arkansas).

B. Cooperative Federalism

Some commenters invoked principles of cooperative federalism to argue that the proposed revisions were too prescriptive and thus undermined the discretion afforded to states by the CAA. As support for this argument, the commenters pointed almost exclusively to the Fifth Circuit's stay decision in *Texas* v. *EPA,* discussed previously, in which a motions panel of the Fifth Circuit described EPA's role in reviewing SIPs as ''ministerial.'' [55] Commenters also suggest the proposed revisions are inconsistent with the principles announced in *American Corn Growers Association* v. *EPA,* 291 F.3d 1 (D.C. Cir. 2002) (''Corn Growers'').

As a preliminary matter, the commenters' reliance on *Texas* v. *EPA* is misplaced. The view expressed in the stay decision, that the EPA has only a ''ministerial function'' in reviewing SIPs, is at odds with the great majority of courts that have considered this issue in the context of the regional haze program. Under the principles of cooperative federalism, the CAA vests state air agencies with substantial discretion as to how to achieve Congress's air-quality goals and standards, but states exercise this authority with federal oversight. As the Tenth Circuit explained in *Oklahoma* v. *EPA,* ''the EPA reviews all SIPs to ensure that they comply with the [CAA],'' and ''[t]he EPA may not approve any plan that 'would interfere with any applicable requirement' of [the Act].'' [56] Relying on *Oklahoma,* the Eighth Circuit in *North Dakota* v. *EPA* held that the ''EPA is left with more than the ministerial task of routinely approving SIP submissions,'' [57] and that the ''EPA's review of a SIP extends not only to whether the state considered the necessary factors in its determination, but also to whether the determination is one that is reasonably moored to the CAA's provisions.'' [58] Similarly, in *Arizona* v. *EPA,* the Ninth Circuit held that the ''EPA is not limited to the 'ministerial' role of verifying whether a determination was made; it must 'review the substantive content of the . . . determination,' '' [59] and that the ''EPA has a *substantive* role in deciding whether state SIPs are compliant with the Act and its implementing regulations.'' [60] In accord with these principles, the Third Circuit recently remanded the EPA's approval of a state's regional haze SIP where the EPA deferred too readily to state conclusions without providing a sufficient explanation for overlooking problems in the SIP.[61] Thus, the view expressed by the Fifth Circuit motions panel in the stay decision is an outlier.

More importantly, however, the situation in *Texas* v. *EPA* is inapposite to the situation here. In *Texas,* we partially disapproved an individual state's implementation plan and promulgated a FIP to fill the gap. In this rulemaking, we are not expressing views on any state's implementation plan, so it is simply premature to suggest that we are affording insufficient deference to state choices. Rather, we are promulgating revisions to the existing visibility regulations that will guide future SIP development. In 1977, Congress expressly required the EPA to promulgate regulations ''to assure (A) reasonable progress toward meeting the national goal . . . and (B) compliance with the requirements of [section 169A].'' [62] Congress also required the EPA's regulations to ''provide guidelines to the States'' [63] regarding ''methods for identifying, characterizing, determining, quantifying, and measuring visibility impairment;'' [64] ''modeling techniques for determining the extent to which manmade air pollution may reasonably be anticipated to cause or contribute to such impairment;'' [65] and ''methods for preventing and remedying such manmade air pollution and resulting visibility impairment.'' [66] In 1990, Congress reiterated this statutory obligation, tasking the EPA again with carrying out its ''regulatory responsibilities under [section 169A], including criteria for measuring 'reasonable progress' toward the national goal.'' [67]

These final revisions to the 1999 RHR and 1980 reasonably attributable visibility impairment regulations are fully consistent with this extensive grant of rulemaking authority. The revisions will ensure that the steady environmental progress achieved during the first implementation period continues, while streamlining several administrative aspects of the program to reduce burdens on states. The revisions require states to consider certain factors and provide certain information as they develop their regional haze SIPs, but they do not mandate specific outcomes. Where applicable, the revisions also provide states with significant flexibility to take state-specific facts and circumstances into account when developing their long-term strategies.[68] Thus, contrary to the commenters' assertions, the final revisions are fully consistent with the CAA's cooperative-federalism framework and the decision in *Corn Growers,* which addressed EPA's authority to require states to consider the visibility benefits of BART controls in a specific fashion, a set of facts not present in this rulemaking, is not on point.

C. Clarifications To Reflect the EPA's Long-Standing Interpretation of the Relationship Between Long-Term Strategies and Reasonable Progress Goals

1. Summary of Proposal

Under the 1999 RHR, states were required to revise their regional haze SIPs every 10 years by evaluating and reassessing all of the elements required under 40 CFR 51.308(d).[69] Over the course of the first implementation period, however, we realized that some of the requirements in 40 CFR 51.308(d) were creating confusion regarding the relationship between RPGs and the long-term strategy and the respective obligations of upwind and downwind states. We discussed this issue at length in our December 14, 2014, proposed action on the Texas and Oklahoma regional haze SIPs,[70] and incorporated that discussion by reference in the proposal for this rulemaking.[71]

For example, under 40 CFR 51.308(d), states were required to (1) develop RPGs, (2) calculate baseline and natural visibility conditions, (3) establish long-term strategies and (4) adopt monitoring strategies and other measures to track future progress and ensure compliance. The sequencing of these requirements in the rule text was problematic because it did not accord with the way the planning process works in practice. For example, states must calculate baseline and natural visibility conditions before they can compare their RPGs to the URP. Similarly, states must evaluate the control measures that are necessary to

[55] *Texas,* 206 U.S. App. LEXIS 13058 at *5.

[56] *Oklahoma* v. *EPA,* 723 F.3d 1201, 1204 (10th Cir. 2013).

[57] *North Dakota* v. *EPA,* 730 F.3d 750, 761 (8th Cir. 2013).

[58] *Id.* at 766.

[59] *Ariz. el rel. Darwin* v. *EPA,* 815 F.3d 519, 531 (9th Cir. 2016).

[60] *Id.* at 532 (emphasis in original).

[61] *Nat'l Parks Conservation Ass'n* v. *EPA,* 803 F.3d 151, 167 (3d Cir. 2015).

[62] CAA section 169A(b).

[63] CAA section 169A(b)(1).

[64] CAA section 169A(a)(3)(A).

[65] CAA section 169A(a)(3)(B).

[66] CAA section 169A(a)(3)(C).

[67] CAA section 169B(e)(1).

[68] *See, e.g.,* 81 FR at 26954/1 (explaining that states have the flexibility to justify and use values for natural visibility conditions that include anthropogenic international emissions).

[69] 40 CFR 51.308(f).

[70] 79 FR 74823–30 (December 14, 2014).

[71] 81 FR 26949, 26952.

make reasonable progress using the four factors and develop their long-term strategies before they can predict future emission reductions and conduct the regional-scale modeling used to establish RPGs.

Similarly, problematic was the confusing way in which 40 CFR 51.308(d) addressed the obligations of upwind and downwind states. Under 40 CFR 51.308(d)(1)(i)(A), downwind states were explicitly required to consider the four factors when developing their RPGs. Upwind states, on the other hand, were implicitly required to consider the four factors only when developing their long-term strategies. Section 40 CFR 51.308(d)(3)(iii) required states to ''document the technical basis, including modeling, monitoring and emissions information, on which the State is relying *to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I Federal area it affects*.'' As we explained in our December 14, 2014, proposed action on the Texas and Oklahoma regional haze SIPs, the CAA requires states to determine reasonable progress by considering the four factors, so the determination of the proper apportionment of emission reductions necessarily required a state to evaluate the four factors in reaching its decision. This structure made little sense because both upwind and downwind states need to conduct their four-factor analyses, determine the proper apportionment of emission reduction obligations, and develop their long-term strategies before the downwind state will have sufficient information to establish RPGs.

Recognizing that the sequence and structure of the existing regulations was confusing, we proposed to amend 40 CFR 51.308(f), which governs periodic SIP revisions for future implementation periods, to codify our long-standing interpretation of the way in which the existing regulations were intended to operate. Specifically, we proposed to eliminate the cross-reference in 40 CFR 51.308(f) to 40 CFR 51.308(d) and to adopt new regulatory language that tracked the actual planning sequence, while clarifying the obligations of upwind and downwind states.[72] Under the proposal, states would (1) calculate baseline, current and natural visibility conditions, progress to date and the URP; (2) develop a long-term strategy for addressing regional haze by evaluating the four factors to determine what emission limits and other measures are necessary to make reasonable progress; (3) conduct regional-scale modeling of projected future emissions under the long-term strategies to establish RPGs and then compare those goals to the URP line;[73] and (4) adopt a monitoring strategy and other measures to track future progress and ensure compliance.

2. Comments and Responses

In response to our proposed structural revisions to 40 CFR 51.308(f), we received a number of significant comments. Some commenters contended that the proposed revisions were contrary to the structure and plain language of the CAA. They explained the position that states must first make a ''determination'' as to what constitutes ''reasonable progress'' by analyzing the four statutory factors on a source-category basis. Then, only after ''reasonable progress'' is quantified as a benchmark or goal do states have to consider what emission limits, schedules of compliance and other measures at individual sources are actually necessary to make reasonable progress. The commenters further explained that this reading of the statute was supported by the current regulations, the preamble to the 1999 RHR and the EPA's prior guidance. Based on their reading, these commenters concluded that proposed 40 CFR 51.308(f)(2), which would govern long-term strategies, and proposed 40 CFR 51.308(f)(3), which would govern RPGs, were contrary to the CAA because states must first determine reasonable progress independently from the development of the long-term strategy, not the other way around.

We disagree. Our proposed structural revisions to 40 CFR 51.308(f) are consistent with the CAA. Section 169A(b)(2) requires states to submit SIP revisions that contain ''emission limits, schedules of compliance and other measures as necessary to make reasonable progress toward meeting the national goal'' and ''a long-term (ten to fifteen years) strategy for making reasonable progress.'' Section 169A(g)(1) states that, in determining reasonable progress, states must consider four factors: ''the costs of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements.'' Under 40 CFR 51.308(f)(2), both as proposed and as we are finalizing it, states must similarly submit a ''long-term strategy'' that includes ''enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress,'' and determine those limits, schedules, and measures by considering the four statutory factors.

We disagree that the CAA requires EPA's regulations to allow states to calculate the visibility improvement that represents ''reasonable progress'' prior to or independently from the analysis of control measures. The commenters do not explain how states could consider costs, time schedules, energy and environmental impacts or the remaining useful lives of sources other than by assessing the potential impacts of control measures on those sources. Indeed, use of the terms ''compliance'' and ''subject to such requirements'' in section 169A(g)(1) strongly indicates that Congress intended the relevant determination to be the requirements with which sources would have to comply in order to satisfy the CAA's reasonable progress mandate. Moreover, the reasonable progress factors share obvious similarities with the BART factors, which are indisputably used to determine appropriate control measures for sources.[74]

Finally, we note that RPGs are not a concept that is included in the CAA itself. Rather, they are a regulatory construct that we developed to satisfy a separate statutory mandate in section 169B(e)(1), which required our regulations to include ''criteria for measuring 'reasonable progress' toward the national goal.'' [75] Under 40 CFR 51.308(f)(3)(ii), RPGs continue to serve this important analytical function. They measure the progress that is projected to be achieved by the control measures states have determined are necessary to make reasonable progress based on a four-factor analysis. Consistent with the 1999 RHR, the RPGs are unenforceable,[76] but they create a benchmark that allows for analytical

[72] 81 FR 26952.

[73] This step applies only to downwind states that have mandatory Class I Federal areas.

[74] *Compare* CAA section 169A(g)(1) *with* CAA section 169A(g)(2).

[75] *See* 64 FR 35731 (''The final rule calls for States to establish 'reasonable progress goals,' expressed in deciviews, for each Class I area for the purpose of improving visibility on the haziest days and not allowing degradation on the clearest days over the period of each implementation plan or revision. The EPA believes that requiring States to establish such goals is consistent with section 169A of the CAA, which gives EPA broad authority to establish regulations to 'ensure reasonable progress,' and with section 169B of the CAA, which calls for EPA to establish 'criteria for measuring reasonable progress' toward the national goal.'').

[76] *Compare* 40 CFR 51.308(f)(3)(iii) *with* 40 CFR 51.308(d)(v).

comparisons to the URP [77] and mid-implementation-period course corrections if necessary.[78]

Other commenters stated that the proposed revisions to 40 CFR 51.308(f) were significant and unexplained departures from the EPA's prevailing interpretation of the reasonable progress factors and long-term strategy during the first implementation period. Several commenters contended that the revisions constituted an arbitrary and capricious change of position under the Supreme Court's recent decision in *Encino Motorcars, LLC* v. *Navarro,* 136 S. Ct. 2117 (2016). For example, one commenter contended that it was paradoxical for the long-term strategy to include the measures necessary to achieve the RPGs, while the RPGs were the predicted visibility outcome of implementing the emission controls in the long-term strategy. The commenter explained that this was inconsistent with the 1999 RHR, which made no mention of RPGs being set based on the predicted visibility improvement resulting from emission controls.

Another commenter contended that the EPA's proposed approach puts the cart before the horse because it does not allow states and RPOs to set visibility targets and then select the appropriate emission reduction measures to reach those targets. This would result in inefficiencies, according to the commenter, because states may have to secure additional emission reductions if their chosen strategies result in RPGs that fall short of the URP. The commenter explained that states would need more guidance regarding what types of sources and source categories to consider when seeking emission reductions. The commenter requested that the EPA develop a more logical process whereby states and RPOs would first develop visibility goals, allocate those goals among the states and then give states latitude to identify and assure emission reductions to achieve those visibility goals by using the four factors.

We disagree with these comments. They reflect a misunderstanding of the regional haze planning process generally followed by states. During the first implementation period, the RPOs conducted the regional-scale modeling used to establish their member states' RPGs. To conduct this modeling, the RPOs relied on 2018 emissions projections that reflected future application of reasonable controls for sources, including existing federal and state measures (the Clean Air Interstate Rule (CAIR), mobile source measures, etc.), anticipated BART controls and anticipated reasonable progress measures. The proposed and final revisions to 40 CFR 51.308(f) are fully consistent with this process. Under 40 CFR 51.308(f)(ii), states must develop their long-term strategies by identifying reasonable progress measures using the four factors and engaging in interstate consultation. Once their strategies have been developed, states with Class I areas must establish RPGs that reflect existing federal and state measures (the CSAPR, the Mercury and Air Toxics Standards, BART, mobile source measures, etc.) and the reasonable progress measures in the long-term strategy.

In contrast, the commenters have proposed a process in which states would either model their RPGs without fully developed emissions information or select their goals arbitrarily without any modeling at all. We rejected a similar approach in the 1999 RHR. In the 1997 proposal for the RHR, we proposed to establish presumptive reasonable progress targets of 1.0 deciview of improvement for the most impaired days and no degradation for the least impaired days and to require states to develop emission reduction strategies to achieve the reasonable progress targets.[79] In the 1999 RHR, we revised the proposal to eliminate the presumptive targets and instead required states ''to determine the rate of progress for remedying existing impairment that is reasonable, taking into consideration the statutory factors.'' [80] Importantly, we explained that, ''[i]n considering whether reasonable progress will continue to be maintained, States will need to consider during each new SIP revision cycle whether additional control measures for improving visibility may be needed to make reasonable progress based on the statutory factors.'' [81] Thus, the 1999 RHR was clear that states must determine what control measures are necessary to make reasonable progress by considering the four factors and then use this information to determine the rate of progress that is reasonable for each mandatory Class I Federal area.

In 2007, we provided guidance to the states on setting RPGs. There, we explained that the guidance's discussion of the four factors was ''largely aimed at helping States apply these factors *in considering measures for point sources,*'' [82] but that the factors could potentially be applied to sources other than point sources as well. We also described the intricate relationship between RPGs, BART, and the long-term strategy:

> The RPGs, the long-term strategy, and BART (or alternative measures in lieu of BART) are the three main elements of the regional haze SIPs that States are required to submit by December 17, 2007. The long-term strategy and BART emissions limitations or other alternative measures, including cap-and-trade programs or other economic incentive approaches, are inherently related to the RPG. The long-term strategy is the compilation of ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the [RPGs],'' and is the means through which the State ensures that its RPG will be met. BART emissions limits (or alternative measures in lieu of BART, such as the Clean Air Interstate Rule (CAIR)) are one set of measures that must be included in the SIP to ensure that an area makes reasonable progress toward the national goal, and the visibility improvement resulting from BART (or a BART alternative) is included in the development of the RPG.[83]

We note that the discussion previously refers to the long-term strategy as including the measures ''necessary to achieve the RPG,'' and that several provisions in the 1999 RHR were worded similarly.[84] We believe this type of language may have caused confusion among some of the commenters. This language does not mean that we intended states to develop their RPGs first and later adopt measures in the long-term strategy to achieve those RPGs. Rather, it merely acknowledges the fact that, because we intended states to develop their RPGs by modeling, among other things, the measures in the long-term strategy, the measures in the strategy are necessary to achieve the RPGs. For example, BART is one of the measures in the long-term strategy, and the discussion previously clearly states that ''the visibility improvement resulting from BART (or a BART alternative) *is included in the development of the RPG.*'' We proposed the structural revisions to 40 CFR 51.308(f) in part to eliminate this cart-before-the-horse ambiguity.

Later, the 2007 guidance clearly describes the goal-setting process as starting with the evaluation of control measures. First, we recommended that states ''[i]dentify the key pollutants and sources and/or source categories that are contributing to visibility impairment at

[77] *Compare* 40 CFR 51.308(f)(3)(ii) *with* 40 CFR 51.308(d)(1)(ii).

[78] 40 CFR 51.308(g)(7), (h).

[79] 62 FR 41146–47 (July 31, 1997).

[80] 64 FR 35731 (July 1, 1999).

[81] *Id.* at 35733.

[82] Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program, at 1–3 (2007) (emphasis added).

[83] *Id.* at 1–4.

[84] *See, e.g.,* 40 CFR 51.308(d)(3), (d)(3)(ii), (d)(3)(v)(C).

each Class I area.'' [85] Second, we recommended that states ''[i]dentify the control measures and associated emission reductions that are expected to result from compliance with existing rules *and* other available measures for the sources and source categories that contribute significantly to visibility impairment.'' [86] Third, and most importantly, we recommended that states ''[d]etermine what additional control measures would be reasonable based on the statutory factors and other relevant factors for the sources and/or source categories you have identified.'' [87] Finally, we recommended that states ''[e]stimate through the use of air quality models the improvement in visibility that would result from implementation of the control measures you have found to be reasonable and compare this to the uniform rate of progress.'' [88] In sum, ''[t]he improvement in visibility resulting from implementation of the measures you have found to be reasonable . . . is the amount of progress that represents your RPG.'' [89] This is the process that states used during the first implementation period, *see* the RTC at 2.2.1.2.6 for examples, and it is the same process that the states must follow under the final revisions to 40 CFR 51.308(f).

While the guidance went on to note that states could attempt to ''back out'' the measures necessary to achieve the URP by modeling first and then considering the four factors to select appropriate measures,[90] few if any states chose this approach, likely because it was a more complicated way to achieve the same result as the recommended approach. Under either approach, states still had to use the four factors to justify whether the control measures necessary to achieve the URP were reasonable, whether achieving the URP was unreasonable and some of lesser set of measures was reasonable, or whether additional measures were reasonable. Moreover, the ''back out'' approach specified a concrete visibility target as its basis: The visibility that would be achieved by the URP at the end of the implementation period. The approach would be arbitrary and unworkable as a step in making the justifications just mentioned if the visibility target were chosen at random, as some commenters have requested. In sum, the EPA's proposed structural revisions are completely consistent with the 1999 RHR, our 2007 guidance and the planning process actually used by states during the first implementation period. For this reason, the Supreme Court's decision in *Encino Motorcars* is inapplicable.

Another commenter contended that the EPA's proposed revisions failed to include a necessary step where states evaluate the control measures identified as necessary to make reasonable progress in light of the RPGs themselves. This commenter requested a mechanism whereby a state could determine that some of the initially evaluated control measures were unnecessary in light of the RPGs themselves. In particular, this commenter suggested that a state should be able to reject ''costly'' control measures if (1) the RPG for the most impaired days is on or below the URP line or (2) the RPGs are not ''meaningfully'' different than current visibility conditions.

We disagree that the states should be able to reevaluate whether a control measure is necessary to make reasonable progress based on the RPGs. The CAA requires states to determine what emission limitations, compliance schedules and other measures are necessary to make reasonable progress by considering the four factors. The CAA does not provide that states may then reject some control measures already determined to be reasonable if, in the aggregate, the controls are projected to result in too much or too little progress. Rather, the rate of progress that will be achieved by the emission reductions resulting from all reasonable control measures is, by definition, a reasonable rate of progress.

In regards to the commenter's first suggestion, if a state has reasonably selected a set of sources for analysis and has reasonably considered the four factors in determining what additional control measures are necessary to make reasonable progress, then the state's analytical obligations are complete if the resulting RPG for the most impaired days is below the URP line. The URP is not a safe harbor, however, and states may not subsequently reject control measures that they have already determined are reasonable. If a state's RPG for the most impaired days is above the URP line, then the state has an additional analytical obligation to ensure that no reasonable controls were left off the table.

The commenter's second suggestion, that states should be able to reject ''costly'' control measures if the RPG for the most impaired days is not ''meaningfully'' different than current visibility conditions, is counterintuitive and at odds with the purpose of the visibility program. In this situation, the state should take a second look to see whether more effective controls or additional measures are available and reasonable. Whether the state takes this second look or not, it may not abandon the controls it has already determined are reasonable based on the four factors. Regional haze is visibility impairment that is caused by the emission of air pollutants from numerous sources located over a wide geographic area. At any given Class I area, hundreds or even thousands of individual sources may contribute to regional haze. Thus, it would not be appropriate for a state to reject a control measure (or measures) because its effect on the RPG is subjectively assessed as not ''meaningful.'' Also, for Class I areas where visibility conditions are considerably worse than natural conditions because of continuing anthropogenic impairment from numerous sources, the logarithmic nature of the deciview index makes the effect of a control measure on the value of the RPG less than its effect would be if visibility conditions at the Class I area were better. Thus, if a state could reject a control measure based on its individual effect on the RPG, the state would be more likely to reject those measures that are necessary to make reasonable progress at the dirtiest Class I areas, which would thwart Congress' national goal.

One commenter contended that the proposed revisions would lead to disagreements among states because states might set different RPGs instead of working jointly toward the downwind state's goals. We disagree. Only downwind states set RPGs for their mandatory Class I Federal areas, so there is no situation in which there would be different goals for the same area.

Another commenter contended that the proposed revisions would force states to require controls even where visibility at a Class I area is already equivalent to or better than the visibility that represents the URP at the end of the implementation period. We agree that some states may end up establishing RPGs that exceed the URP, but as we explained previously in this document, the URP was never intended to be a safe harbor. In the 1999 RHR, we explained that ''[i]f the State determines that the amount of progress identified through the analysis is reasonable based upon the statutory factors, the State should identify this amount of progress as its reasonable progress goal for the first long-term strategy, unless it determines that additional progress beyond this

[85] *Id.* at 203.

[86] *Id.* (emphasis in the original).

[87] *Id.*

[88] *Id.*

[89] *Id.* at 2–4 (emphasis added).

[90] *Id.* at 2–3 to 2–4.

amount is also reasonable. If the State determines that additional progress is reasonable based on the statutory factors, the State should adopt that amount of progress as its goal for the first long-term strategy.'' [91] This approach is consistent with and advances the ultimate goal of section 169A: Remedying existing and preventing future visibility impairment. Congress required the EPA to promulgate regulations requiring reasonable progress toward that goal, and it would be antithetical to allow states to avoid implementing reasonable measures until and unless that goal is achieved.

Other commenters were supportive of the proposed structural revisions intended to clarify the relationship between RPGs and long-term strategies. They explained that by reorienting these provisions to reflect the EPA's long-standing interpretation, the EPA was providing a clearer blueprint for states to follow in future implementation periods. These commenters also provided specific suggestions for how the EPA could further revise the proposed regulatory text for 40 CFR 51.308(f). Among other things, these commenters requested that the EPA include language in the regulations that would make it clear that a state's long-term strategy can include emission limits and other measures that cannot be installed by the end of an implementation period. As discussed earlier in Section IV.A of this document, we are modifying the language in 40 CFR 51.308(f)(2(i) and 51.308(f)(3)(i) to make this point clear. We have reviewed the other suggestions made by these commenters and do not believe that they are necessary, as discussed more fully in the RTC document available in the docket for this rulemaking.

We also received several comments regarding the obligations of upwind and downwind states. Some commenters supported the revisions that were intended to clarify that all states must conduct a four-factor analysis to determine what control measures are necessary to make reasonable progress at each mandatory Class I Federal area affected by emissions from the state. They explained that any other interpretation of the CAA's requirements would allow an upwind state to continue impairing downwind visibility without consequence, regardless of whether there were reasonable, cost-effective measures that would improve downwind visibility. Other commenters argued that upwind states should not have the same obligations as downwind states. One commenter asserted that, under the proposal, all states would be subject to the RHR for the very first time, regardless of whether they have a mandatory Class I Federal area or not. Another commenter contended that requiring upwind states to conduct four-factor analyses for downwind Class I areas was a new requirement that was not part of the 1999 RHR. This commenter acknowledged that upwind states must address downwind Class I areas where their emissions ''may reasonably be anticipated to cause or contribute to any impairment of visibility'' at the downwind area, but suggested that the proposed revisions use the language ''may affect'' instead. This commenter stated that the EPA's proposal did not define or quantify what the term ''may affect'' means.

> Section 169A(b)(2) states that the EPA's regulations must: Require each applicable implementation plan for a State in which any [mandatory Class I Federal] area . . . is located (or a for a State the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area) to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal.

Section 169A(g)(1) thus requires states to determine the measures necessary to make reasonable progress by considering the four factors, while section 169A(a)(1) defines Congress's national goal as preventing future and remedying existing anthropogenic visibility impairment in all Class I areas. Thus, Congress was clear that both downwind states (*i.e.,* ''a State in which any [mandatory Class I Federal] area . . . is located) and upwind states (*i.e.,* ''a State the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area'') must revise their SIPs to include measures that will make reasonable progress at all affected Class I areas. Congress was also clear that states must determine the necessary measures and rate of progress that are reasonable by considering the four factors. Our proposed revisions to 40 CFR 51.308(f)(2) are in accord with this congressional mandate.

The commenter who suggested that our proposed revisions are expanding the scope of the RHR to all states for the first time is incorrect. The 1999 RHR applies to all states,[92] and all states submitted regional haze SIPs (or asked the EPA to promulgate a regional haze FIP on its behalf) during the first implementation period. As discussed later in this preamble, we are expanding the scope of the 1980 reasonably attributable visibility impairment regulations to all states for the first time, but the new reasonably attributable visibility impairment provisions only require state action upon receipt of a certification by a FLM. Historically, there have been very few FLM certifications requesting states to assess controls for a particular source or small group of sources.

Finally, we note that the language ''may affect'' in 40 CFR 51.308(f)(2) was adapted from the 1999 RHR, which used the same term.[93] On July 8, 2016, we released draft guidance that discusses how states can determine which Class I areas they ''may affect'' and therefore must consider when selecting sources for inclusion in a four-factor analysis.[94] The draft guidance discusses various approaches that states used during the first implementation period, provides states with the flexibility to choose from among these approaches in the second implementation period, and recommends that states adopt ''a conservative . . . approach to determining whether their sources may affect visibility at out-of-state Class I areas.'' [95] We plan to finalize the draft guidance in the near future.

We also received comments on the proposed interstate consultation provisions in 40 CFR 51.308(f). A few commenters inquired whether proposed 40 CFR 51.308(f)(2)(iii) [96] would affect a substantive change from the existing consultation provisions in 40 CFR 51.308(d). One commenter stated that proposed 40 CFR 51.308(f)(2)(ii) would apparently require states to consider how other states calculated the URP, adopted emission reduction measures for sources and adopted any additional measures that may be needed to address state contributions. This commenter also argued that proposed 40 CFR 51.308(f)(2)(iii) would incentivize states not to agree with other states on coordinated emission management strategies because an agreement would create an enforceable obligation against the state. Another commenter stated that the EPA would need to coordinate and

[91] 64 FR 35732.

[92] 40 CFR 51.300(b)(1)(i).

[93] *See* 40 CFR 51.308(d)(3).

[94] 81 FR 44608 (July 8, 2016).

[95] Draft Guidance on Progress Tracking Metrics, Long-term Strategies, Reasonable Progress Goals and Other Requirements for Regional Haze State Implementation Plans for the Second Implementation Period, at 57–58 (2016).

[96] As explained later in this document, the final rule includes a consolidation and resulting renumbering of some of the proposed provisions of 40 CFR 51.308(f)(2). This discussion refers specifically to either proposed or final section numbers to avoid confusion.

mediate interstate consultations in order for them to prove successful.

With one exception, we did not intend the proposed interstate consultation provisions to affect a substantive change from the existing provisions in the 1999 RHR. Under the proposed provisions, as under the 1999 RHR, states must consult to develop coordinated emission management strategies, demonstrate that their SIPs contain all agreed-upon emission reduction measures, and document disagreements so that the EPA can properly evaluate whether each state's implementation plan provides for reasonable progress toward the national goal. We also proposed a new requirement, in 40 CFR 51.308(f)(2)(ii), that states must consider the control strategies being adopted by other states when conducting their own four-factor analyses. The purpose of this provision was to ensure that if one state had identified a control measure as being reasonable for a source or group of sources to improve visibility at a Class I area, then other states that affect that Class I area would be required to consider that control measure for their own sources, to the extent that the sources share similar characteristics. However, in reviewing proposed 40 CFR 51.308(f)(2)(ii), we realized that it contains extraneous language that has led to confusion among some of the commenters. We discuss this issue in more depth, and other changes being made to the consultation provisions, in the following section.

In regard to the commenter's concern that the consultation provisions will incentivize states to avoid entering into agreements with each other to avoid enforceable obligations, we disagree. States largely worked cooperatively to develop coordinated emission management strategies during the first implementation period, and we expect that they will do so again. If a state believes that additional controls from sources in another state or states are necessary to make reasonable progress at a Class I area, then the state should document the disagreement to assist the EPA in determining whether the other state's SIP is inadequate. Moreover, even if states were to avoid entering into agreements for the purpose of avoiding enforceable obligations under 40 CFR 51.308(f)(iii), this would not absolve the states of their independent obligation to include in their SIPs enforceable emission limits and other measures that are necessary to make reasonable progress at all affected Class I areas, as determined by considering the four factors. Finally, we do not believe that the EPA needs to coordinate or mediate interstate consultations. During the first implementation period, states consulted one-on-one and through the RPO process without EPA oversight, and we expect this process to work going forward as well.

3. Final Rule

We are finalizing the revisions to 40 CFR 51.308(f) that were intended to clarify the relationship between RPGs and long-term strategies and the obligations of upwind and downwind states largely as proposed. However, we are making several changes to the provisions in 40 CFR 51.308(f)(2) governing long-term strategies to simplify these provisions, enhance clarity and eliminate superfluous regulatory text.

In 40 CFR 51.308(f)(2), we are revising the requirement that states must include in their long-term strategies ''the enforceable emissions limitations, compliance schedules, and other measures that are necessary to achieve reasonable progress'' to read ''make reasonable progress'' instead. This change is to maintain consistency with the language in CAA section 169A(b)(2).

In 40 CFR 51.308(f)(2)(i), we are making two minor changes. First, we are revising the beginning of the first sentence to read, ''[t]he State must evaluate and determine the emission reduction measures that are necessary to make reasonable progress by considering'' the four factors. We believe that this formulation is clearer than the language in the proposal and more consistent with the language of the CAA. Second, we are revising the second sentence, and splitting it into two separate sentences, to make it clear that states must consider anthropogenic sources of visibility impairment when conducting their four-factor analyses, not natural sources, and that anthropogenic sources can include mobile and area sources in addition to major and minor stationary sources. As mentioned earlier, we are also adding a sentence to 40 CFR 51.308(f)(2)(i) regarding the consideration of emission controls that cannot reasonably be installed prior to the end of the implementation period.

We are removing proposed 40 CFR 51.308(f)(2)(ii) in these final revisions, which required states to consider the URP, the emission reduction measures identified under 40 CFR 51.308(f)(2)(i), and measures being adopted by contributing states under 40 CFR 51.308(f)(2)(iii) when developing their long-term strategies. States are already required to consider the URP under 40 CFR 51.308(f)(3)(ii) when establishing their RPGs. Moreover, it is duplicative to require states to consider the emission reduction measures identified under 40 CFR 51.308(f)(2)(i) a second time. As discussed in the following paragraph, we are moving the third requirement in proposed 40 CFR 51.308(f)(2)(ii) to the interstate consultation provisions.

We are changing proposed 40 CFR 51.308(f)(2)(iii), regarding interstate consultations, to be 40 CFR 51.308(f)(2)(ii) and making several changes. First, we are removing the distinction between contributing states and states affected by contributing states because the substance of the two provisions was essentially the same. The final revisions include a single provision requiring each state to consult with the other states that are reasonably anticipated to contribute to visibility impairment in a mandatory Class I Federal area to develop coordinated emission management strategies. Identification of the other states should occur as part of a regional planning process. Second, we are revising the language that required states to obtain either their ''share of the emission reductions needed to provide for reasonable progress'' or ''all measures needed to achieve its apportionment of emission reduction obligations'' depending on whether the state was a contributing state or a state affected by contributing states. Most states are both contributing states and states affected by contributing states, so these variations in wording could be viewed as creating two distinct obligations. Now, each state must demonstrate that it has included in its long-term strategy ''all measures agreed to during state-to-state consultations or a regional planning process, or measures that will provide equivalent visibility improvement.'' Third, as discussed previously, we have moved the requirement that states consider the emission reduction measures other states have identified as being necessary to make reasonable progress from proposed 40 CFR 51.308(f)(2)(ii), which accordingly has been eliminated, to the interstate consultation provisions (now numbered as 40 CFR 51.308(f)(2)(ii)) because it is a more logical place for it. We have also revised the wording of this provision to eliminate the ambiguity in the proposed language noted by commenters regarding ''additional measures being adopted'' by other states. Under this provision, states must consider whether the emission reduction measures other states have identified by other States for their sources as being necessary to make reasonable progress in the mandatory Class I Federal area. This consideration

is appropriate especially when the sources are of a similar type and have similar emissions profiles and visibility impacts.

We are changing proposed 40 CFR 51.308(f)(2)(iv), regarding documentation requirements, to be 40 CFR 51.308(f)(2)(iii) and making a few minor changes. First, we are revising the first sentence to require the states to ''document the technical basis, including modeling, monitoring, cost, engineering, and emissions information, on which the State is relying to determine the emission reduction measures that are necessary to make reasonable progress in each mandatory Class I area it affects.'' The proposed language referred to ''information on the factors listed in (f)(2)(i) and modeling, monitoring, and emissions information,'' but we believe this language was confusing because it suggested that information on the four factors was something distinct from modeling, monitoring and emissions information. The purpose of this provision is to require states to document all of the information on which they rely to develop their long-term strategies, which will primarily be information used to conduct the four-factor analysis. Therefore, in addition to modeling, monitoring and emissions information, we are making it explicit that states must also submit the cost and engineering information on which they are relying to evaluate the costs of compliance, the time necessary for compliance, the energy and non-air quality impacts of compliance and the remaining useful lives of sources.

We are removing proposed 40 CFR 51.308(f)(2)(v), which required states to identify the anthropogenic sources of visibility impairment analyzed using the four factors and the criteria used to select sources for analysis, because 40 CFR 51.308(f)(2)(i) as finalized already includes these requirements.

Finally, we are changing proposed 40 CFR 51.308(f)(2)(vi) to be 40 CFR 51.308(f)(2)(iv) and making a few changes. We are revising the first sentence of this provision to clarify that the enumerated factors are additional to the factors states must consider in 40 CFR 51.308(f)(2)(i). We are also removing proposed 40 CFR 51.308(f)(2)(vi)(C) and (F) because they are duplicative requirements. These provisions required states to consider the emission limitations and schedules for compliance to achieve the RPG and the enforceability of emission limitations and control measures. Section 40 CFR 51.308(f)(2) already requires states to include enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress in their long-term strategies. Section IV.G of this document discusses revisions we are making to the additional factor regarding basic smoke management practices and smoke management programs.

D. Other Clarifications and Changes to Requirements for Periodic Comprehensive Revisions of Implementation Plans

The following clarifications and changes were also proposed to be included in the revised 40 CFR 51.308(f). A summary of each proposed clarifying change, a synopsis of the final rule, and a discussion of comments received and EPA's responses are given later.

The URP line starts at 2000–2004, for every implementation period.

1. Summary of Proposal

The 1999 RHR's text of 40 CFR 51.308(d)(1)(i)(B) contains a discussion of how states must analyze and determine ''the rate of progress needed to attain natural visibility conditions by the year 2064.'' This rate has commonly been called the ''uniform rate of progress'' or URP as well as ''the glidepath.'' The 1999 RHR's text of 40 CFR 51.308(f), which indicates that states must evaluate and reassess all elements required by 40 CFR 51.308(d), requires states to evaluate and reassess the URP in the second and subsequent implementation periods. We explained in the proposal that 40 CFR 51.308(d) is not perfectly clear as to whether the URP line for the second or later implementation periods must always start in the baseline period of 2000–2004, or whether the state must (or may) recalculate the starting point of the URP line based on data from the most recent 5-year period during each successive regional haze SIP revision.[97] We also explained that although the regulations make clear that the endpoint of the URP line should be set based on attainment of the natural visibility condition for the 20 percent most impaired days in 2064, the 1999 RHR does not specify an exact date in 2064 for this element.

To ensure consistent understanding of how the URP analysis must be done, the EPA proposed rule revisions in 40 CFR 51.308(f)(1)(i) and (vi) that would make it explicit that in every implementation period, the URP line for each Class I area is to be drawn starting on December 31, 2004, at the value of the 2000–2004 baseline visibility conditions for the 20 percent most impaired days, and ending at the value of natural visibility conditions on December 31, 2064. Specifying that the 5-year average baseline visibility conditions are associated with the date of December 31, 2004, and that natural visibility conditions are associated with the date of December 31, 2064, also clarifies that the period of time between the baseline period and natural visibility conditions, which is needed for determining the URP (deciviews/year) is 60 years.

Along with the clarification that the baseline period remains 2000–2004 for subsequent implementation periods, the EPA also proposed clarifications in 40 CFR 51.308(f)(1)(i) regarding how states treat Class I areas without available monitoring data or Class I areas with incomplete monitoring data, as follows: If Class I areas do not have monitoring data for the baseline period, data from representative sites should be used; if baseline monitoring data are incomplete, states should use the 5 complete years closest to the baseline period. We proposed to add this provision to remove any uncertainty about how an issue of data incompleteness should be addressed in a SIP.

Finally, we proposed language in 40 CFR 51.308(f)(3)(i) and an accompanying definition of ''end of the applicable implementation period'' in 40 CFR 51.301 to make clear that RPGs are to address the period extending to the end of the year of the due date of the next periodic comprehensive SIP revision.

2. Comments and Responses

Some commenters were supportive of EPA's proposal to have the URP line start at 2000–2004 for every implementation period, although some asked for the option of recalculating the URP for the start of each implementation period based on how much further progress is needed to reach natural conditions given the progress already achieved. Other commenters did not agree with EPA's proposal and instead supported a revision to the regulations that would require states to reset the URP at current visibility conditions during each periodic review, provided those visibility conditions are better than during the baseline. Taking into account past improvements in visibility that were in excess of the URP in this way would result in a lower-lying URP line for successive planning periods. This could change the comparison of the RPG to the URP line, and trigger the

[97] The preamble to the 1999 RHR provides an example explaining how a state would determine the 2028 point on the URP line. 64 FR at 35746, n. 113. In this example, the URP line for the second implementation period starts at 2000–2004.

requirement of 40 CFR 51.308(f)(3)(ii) to show that there are no additional measures that would be reasonable to include in the long-term strategy, when it would not be triggered if the start of the URP line had been kept at the 2000–2004 period.

As explained in the 1999 RHR, the consideration of the improvement in visibility represented by the URP and the measures necessary to attain that level of improvement is an analytical requirement. In the 1999 RHR, EPA adopted this required analysis in lieu of establishing presumptive reasonable progress targets, in part to provide equity between the goals set for the Class I areas in the more impaired eastern portion of the country as compared to the areas in the western portion. The URP analysis also helps to provide transparency to the overall regional haze SIP planning process, in part by requiring states to compare their RPGs to the rate of progress represented by the URP at each Class I areas. Neither of these goals would be served by allowing states to adopt differing approaches to the calculation of the URP.

We have considered the comments suggesting that the URP be redrawn during each successive planning period. Although such an approach is apparently intended by commenters to maintain pressure on the states to adopt more comprehensive and effective reasonable progress strategies, it is not clear that this approach would in fact achieve that outcome because it may create disincentives for states to take aggressive action during the first few planning periods. This is because resetting the URP would make it more likely that a state that has taken early and aggressive action to improve visibility would become subject to the enhanced analytical requirement of 40 CFR 51.308(f)(3)(ii), thus generating a possible disincentive for continued progress.

Because we have concluded that our proposed approach of starting the URP for every implementation period at 2000–2004 will result in the most equitable and transparent process and provide the strongest incentive for continued progress toward achieving natural visibility conditions, we are finalizing that approach with no changes to 40 CFR 51.308(f)(1)(i) or (vi).

3. Final Rule

The EPA is finalizing all of the previously described rule text without any changes from the proposal.

The long-term strategy and the RPGs must provide for an improvement in visibility for the most impaired days and ensure no degradation for the clearest days.

1. Summary of Proposal

Section 169A of the CAA requires a SIP to not only reduce existing visibility impairment but also to prevent future impairment. As part of meeting the goal of preventing future visibility impairment, 40 CFR 51.308(d)(1) of the 1999 RHR requires a state to establish RPGs that ensure no degradation in visibility for the least impaired days over the period of the implementation plan. This text is ambiguous, however, as to whether ''the period of the implementation plan'' refers to the entire period since the baseline period of 2000–2004 or to the specific implementation period addressed by the periodic SIP revision. The proposal noted that a table in the preamble to the 1999 RHR summarizing certain requirements indicated that the 2000–2004 period would be used for ''tracking visibility improvement.'' [98] To provide further clarity on this issue, we proposed new rule text in revised 40 CFR 51.308(f)(3)(i) that would make clear that the requirement is for a state to establish an RPG for the 20 percent clearest days in each periodic review that ensures that there is no deterioration in visibility on the 20 percent clearest days as compared to the baseline period of 2000–2004. We note that while 40 CFR 308(d)(1) of the 1999 RHR expresses the requirement of no degradation in visibility in terms of the RPG for the 20 percent clearest days, this requirement comes into play as a factor in what emission sources are subject to additional control measures in the long-term strategy, because this RPG is the projected result of implementing the long-term strategy. In other words, a state must adopt a long-term strategy that includes the necessary measures to ensure that the expected visibility on the 20 percent clearest days at the end of the planning period, as represented by the RPG for these days, will not deteriorate as compared to the visibility condition for these days in 2000–2004.The rule text we proposed for 40 CFR 308(f)(3)(i) made this connection explicit by saying that the long-term strategy and the RPG must provide for no degradation.

2. Comments and Responses

The EPA received comments both in support of, and raising concerns with, the proposed changes. The commenters opposed to our proposal preferred that when a state documents that the RPG for the 20 percent clearest days (*i.e.,* the projected visibility condition on the clearest days as of the end of the given implementation period) shows no degradation, the benchmark for that comparison should be the lowest measured impairment of either the baseline period or current conditions reported in any progress report or comprehensive periodic revision for the clearest days. The approach recommended by the commenter would mean that the benchmark for the no degradation comparison would ratchet down over time.

One commenter pointed out that as proposed, 40 CFR 308(f)(3)(i) addressed not just the requirement for no degradation for the clearest days but also the requirement that there be an improvement for the most impaired days. This commenter noted that the relevant sentence of 40 CFR 308(f)(3)(i) could be interpreted to mean that the baseline period of 2000–2004 is the benchmark for determining if the long-term strategy and RPG for the most impaired days provides for an improvement.[99] The commenter said that the final rule should provide that the benchmark for the improvement requirement should be the lowest measured impairment of either the baseline period or current conditions reported in any progress report or comprehensive periodic revision for the most impaired days. The approach recommended by the commenter would mean that the benchmark for the improvement comparison would ratchet down over time.

We are finalizing our proposal to clarify that the benchmark for the requirement for no degradation on the 20 percent clearest days is the 2000–2004 baseline visibility condition. Further, we are clarifying that the baseline visibility condition for the 20 percent most impaired days is also the benchmark for the requirement that the long-term strategy and RPGs provide for an improvement for the most impaired days. We are taking this approach in the final rule for several reasons.

Visibility on the clearest days has been improving since the 2000–2004 period in most Class I areas, generally tracking the improvements seen on the 20 percent haziest and 20 percent most

[98] 64 FR 35730.

[99] The relevant sentence in the rule reads, ''The long-term strategy and reasonable progress goals must provide for an improvement in visibility for the most impaired days and ensure no degradation in visibility for the clearest days since the baseline period.'' The concluding phrase ''since the baseline period'' can be taken to apply to only the clearest days, or to both the most impaired days and the clearest days.

impaired days.[100] We expect that it will continue to be the case that emission reduction measures that provide for reasonable progress on the 20 percent most impaired days will also have benefits on the clearest days. Thus, we expect that there will be a continuing improvement on the clearest days regardless of the benchmark selected, even if the rule did not contain any requirement for no degradation on the clearest days. Even so, we believe that the no degradation requirement with the 2000–2004 visibility condition as the benchmark is an appropriate backstop in the rule that will continue to require states to consider additional measures in the event that measures adopted to improve visibility on the most impaired days are insufficient to protect visibility on the clearest days.

We are not adopting the approach of ratcheting down the benchmark for the no degradation requirement. If we were to do this, it might lead to unreasonable outcomes in some cases. Available air quality modeling approaches for forecasting visibility conditions are at present more uncertain when predicting low concentrations of visibility-impairing pollution than when predicting higher concentrations, making comparisons of two ''clean'' scenarios more uncertain. Such comparisons could become required for many areas and have critical implications for SIP approvals. Errors in such comparisons due to modeling system errors might lead to inappropriate SIP disapprovals if the benchmark for the no degradation requirement continually ratcheted down as progress is made. Another consideration is that even with a 5-year averaging approach, transient natural phenomena might cause a temporary improvement in visibility on the clearest days entirely unrelated to the content and implementation of states' long term strategies, which would permanently reduce the benchmark if the ratcheting approach were followed. It might then be very difficult or unreasonable for a state in subsequent periods to show no degradation relative to this lower benchmark given that on the clearest days influences from anthropogenic sources will be relatively small. Finally, we believe that consistency between the benchmark for the no degradation test and the starting point for the URP, across Class I areas in a given implementation period and across implementation periods, will aid public understanding and participation in SIP development. For these reasons, we are finalizing our proposal on this aspect of the RHR.

In addition, we are finalizing wording in 40 CFR 308(f)(3)(i) that makes it clear that the baseline condition in 2000–2004 is also the benchmark for determining whether the long-term strategy and RPGs provide for an improvement in visibility for the most impaired days, but repeating the reference to this baseline so that it links unambiguously to that requirement as well as to the no degradation requirement. We recognize that since 2000–2004 there have been widespread improvements in visibility on the most impaired days and that this already accomplished improvement has created a ''cushion'' for a comparison to check that the RPG for the end of a future implementation period shows improvement. However, we disagree with the commenter's suggestion that the benchmark for the improvement requirement should ratchet down over time, for similar but not entirely identical reasons that we disagree regarding the no degradation requirement. The advantage of consistency to public understanding applies to the improvement requirement as well as to the no degradation requirement. While the problem of modeling uncertainty applies less to the most impaired days at this stage of the regional haze program, in later periods the most impaired days will be clearer than they are now and the difficulty of distinguishing differences may apply more strongly. Also, we are mindful of the potential for reducing incentives for states to take action during the first few planning periods. With the 2000–2004 period as the benchmark for the no degradation requirement, a state has an incentive to take early action to improve the clearest days because this will create a safety margin in case later developments outside the state's control cause an increase in impairment on these days. Ratcheting down the baseline for the no degradation requirement would remove this incentive for continued progress because it would never be possible for a state to create a safety margin.

However, the use of the baseline period as the benchmark for the no degradation and improvement requirements does not mean that states are free to simply allow visibility levels to return to what they were in the baseline period, or to allow for degradation in visibility as compared to current conditions. If a state were to set an RPG that reflects a forecast of degradation during a particular period, the adequacy of the SIP would need to be carefully assessed. In this situation, additional measures may be necessary to ensure reasonable progress, depending on the underlying explanation for the forecasted degradation. It may be that a state would be able to show that any forecasted degradation is attributable to causes other than deficiencies in its long-term strategy, but such a demonstration would need to be carefully assessed. We note that for at least the next planning period or two, the requirement to consider the four statutory factors for a reasonably selected set of sources should result in the adoption of additional control measures that provide an improvement, especially for a state with sources that contribute to impairment at a Class I area with an RPG above the URP line.

3. Final Rule

Upon careful consideration of public comments received on this issue, the EPA is finalizing the proposed rule with a clarifying edit to the proposed language to make it clear that the baseline visibility condition is also the benchmark for determining whether the long-term strategy and RPGs provide for an improvement in visibility on the most impaired days.

The sentences of the final version of 40 CFR 51.308(f)(1)(i), regarding the calculation of the baseline visibility conditions, have been slightly reordered and reworded from the proposed version for clarity. In addition, the final sentence of this paragraph, regarding Class I areas that did not have IMPROVE monitoring stations installed in time to provide complete monitoring data for 2000–2004, has been re-worded to clarify that ''closest'' means closest in time to 2000–2004 and does not refer to another Class I area that is nearest in distance. In the final version of 40 CFR 51.308(f)(1)(ii), an occurrence of ''or'' has been corrected to ''and'' to indicate that natural visibility conditions for both the most impaired days and the clearest days must be based on available monitoring information. Minor edits for clarity have also been included in the final versions of 40 CFR 51.308(f)(1)(iii) and (iv).

Analytical Obligation When the Reasonable Progress Goal for the 20 Percent Most Impaired Days Is Not On or Below the URP Line.

1. Summary of Proposal

The EPA proposed 40 CFR 51.308(f)(3)(ii) in order to clarify the

[100] The RTC contains graphics illustrating these improvement trends. The only situations in which there has been degradation since 2000–2004 are at a few Class I areas in the Virgin Islands and Alaska where sea salt particles significantly contribute to light extinction on the clearest days and concentrations of such particles on those days have increased over this period.

relationship between the RPG for the 20 percent most impaired days and the URP line. This relationship determines the content of the demonstration a state must submit to show that its long-term strategy provides for reasonable progress. This clarification was based upon the 1999 RHR's text of 40 CFR 51.308(d)(1)(ii). That provision addresses required actions of a state containing a Class I area that has adopted an RPG for the area that provides for a slower rate of visibility improvement than that needed to attain natural conditions by 2064 (*i.e.,* an RPG for the 20 percent most impaired days that is above the URP line). The proposed text of 40 CFR 51.308(f)(3)(ii)(A) stated that if the RPG for a Class I area is above the URP line, the state containing the Class I area must demonstrate, based on the four reasonable progress factors, that there are no additional emission reduction measures for anthropogenic sources or groups of sources in the state that may be reasonably anticipated to contribute to visibility impairment that would be reasonable to include in the long-term strategy, and that such a demonstration is required to be ''robust.'' Specifically, this demonstration must include documentation of the criteria used to determine which sources or groups of sources were evaluated and of how the four factors were taken into consideration in selecting the measures for inclusion in its long-term strategy.

In addition, in comparison with the 1999 RHR's 40 CFR 51.308(d)(2)(iv) and 40 CFR 51.308(d)(3)(i) and (ii), the proposed 40 CFR 51.308(f)(2)(iii) more clearly spelled out the respective consultation responsibilities of states containing Class I areas as well as states with sources that may reasonably be anticipated to cause or contribute to visibility impairment in those areas. To further clarify the obligations of what we are referring to as contributing states, we proposed 40 CFR 51.308(f)(3)(ii)(B) to specify that in a situation where the RPG for the most impaired days is set above the glidepath, a contributing state must make the same demonstration with respect to its own long-term strategy that is required of the state containing the Class I area, namely that there are no other measures needed to provide for reasonable progress. The intent of this proposal was to ensure that states perform rigorous analyses, and adopt measures necessary for reasonable progress, with respect to Class I areas that their sources contribute to, regardless of whether such areas are located within their borders. This proposed change clarifies that the RPG for the most impaired days in the SIP of the state containing the Class I area does not ''set the bar'' for the contributing state's long-term strategy.

2. Comments and Responses

The EPA received comments both in support of, and opposed to, the proposed changes. Comments opposing these provisions stated that this additional requirement goes beyond the CAA's requirement to consider the four statutory factors. The EPA disagrees with this assertion. Congress declared a national goal of preventing any future and remedying any existing visibility impairment in Class I areas resulting from manmade air pollution and delegated to EPA the authority to promulgate regulations assuring reasonable progress toward meeting that goal. CAA section 169A(a)(1), (a)(4). The analytical obligations contained in 40 CFR 51.308(f)(3)(ii) are a mechanism to ensure that states are, in fact, making reasonable progress by requiring states in certain circumstances to demonstrate the reasonableness of their four-factor analyses. In addition, some commenters suggested that the term ''robust demonstration'' is overly vague and expressed concern that, essentially, the EPA could take advantage of this vagueness in order to form its own criteria for disapproval of a SIP. Most commenters did not supply any specific suggestions, simply stating either that the term should be clarified or that this provision should not be finalized, although one commenter suggested states be allowed to refer to information already submitted or contained in an applicable docket for purposes of such a demonstration. We disagree that the requirement of a ''robust demonstration'' is vague. The provision requires the demonstration to be based on the analysis in 40 CFR 51.308(f)(2)(i), and further clarifies that the demonstration must document the criteria used to determine which sources or groups of sources were evaluated and how the four reasonable progress factors were considered. The purpose of this demonstration is to show that a state conducted its analysis in a reasonable manner and that there are no additional measures that would be reasonable to implement in a particular planning period. A state may refer to its own experience, past EPA actions, the preamble to this rule as proposed and this final rule preamble, and existing guidance documents for direction on what constitutes a reasoned determination. Additionally, the EPA recently issued a draft guidance document that addresses, among other things, the reasonable progress analysis, which we expect to finalize in the near future. This guidance can provide further direction regarding the types of information and analyses a state may provide in its demonstration under 40 CFR 51.308(f)(3)(ii). The EPA is therefore finalizing this provision as proposed. In addition, one commenter stated that the ''robust demonstration'' language of the proposed 40 CFR 51.308(f)(3)(ii)(A) was missing from the proposed 40 CFR 51.308(f)(3)(ii)(B). The EPA agrees the necessary text was missing from proposal, as states with Class I areas should be subject to the same type of demonstration as those contributing states without Class I areas. Therefore, the final rule includes in the requirements for a contributing state in 40 CFR 51.308(f)(3)(ii)(B) the same requirement for a robust demonstration that appeared only in 40 CFR 51.308(f)(3)(ii)(A) at proposal.

Some commenters stated a desire for corresponding rule text dealing with situations where RPGs are equal to (''on'') or better than (''below'') the URP or glidepath. Several commenters stated that the URP or glidepath should be a ''safe harbor,'' opining that states should be permitted to analyze whether projected visibility conditions for the end of the implementation period will be on or below the glidepath based on on-the-books or on-the-way control measures, and that in such cases a four-factor analysis should not be required. Other commenters suggested a somewhat narrower entrance to a ''safe harbor,'' by suggesting that if current visibility conditions are already below the end-of-planning-period point on the URP line, a four-factor analysis should not be required. We do not agree with either of these recommendations. The CAA requires that each SIP revision contain long-term strategies for making reasonable progress, and that in determining reasonable progress states must consider the four statutory factors.[101] Treating the URP as a safe harbor would be inconsistent with the statutory requirement that states assess the potential to make further reasonable progress towards natural visibility goal in every implementation period. Even if a state is currently on or below the URP, there may be sources contributing to visibility impairment for which it would be reasonable to apply additional control measures in light of the four factors. Although it may conversely be the case that no such sources or control measures exist in a particular state with respect to a particular Class I area and implementation period, this should be determined based on a four-factor

[101] CAA section 169A(b)(2)(B), (g)(1).

analysis for a reasonable set of in-state sources that are contributing the most to the visibility impairment that is still occurring at the Class I area.[102] It would bypass the four statutory factors and undermine the fundamental structure and purpose of the reasonable progress analysis to treat the URP as a safe harbor, or as a rigid requirement.

3. Final Rule

The EPA is finalizing all of the previously described rule text without any changes from the proposal, with the exception of including in 40 CFR 51.308(f)(3)(ii)(B) the same requirement for a robust demonstration that appeared only in 40 CFR 51.308(f)(3)(ii)(A) at proposal.

Emission inventories.

1. Summary of Proposal

The EPA proposed language in 40 CFR 51.308(f)(2)(iv) regarding the ''baseline emissions inventory'' to be used by a state in developing the technical basis for the state's long-term strategy. This was done in order to reconcile this section with changes that have occurred to 40 CFR part 51, subpart A, Air Emissions Reporting Requirements, since the RHR was originally promulgated in 1999. The proposed changes were also intended to provide flexibility in the base inventory year the state chooses to use, as the EPA has always intended if there is good reason to use another inventory year.

2. Comments and Responses

Commenters were split on whether to support the flexibility afforded by the proposed rule text for selecting a year other than the most recent NEI year as the year of the inventory to be used as the basis for developing the long-term strategy. Some commenters supported the proposal, while others preferred that EPA require or definitively endorse that the 2011 NEI can be used as the base year for modeling for the next periodic comprehensive SIP revisions. The latter view generally resulted from concerns that while additional NEI versions, such as the 2014 and 2017 NEI versions, should be available by the time periodic comprehensive SIP revisions are due in 2021, there would not be adequate time after release of these inventories to complete all the modeling and analysis work required.

Consideration of these comments uncovered significant ambiguity in the text of 40 CFR 51.308(d)(3)(iii) of the 1999 RHR and ambiguity in the proposed new 40 CFR 51.308(f)(2)(iv) that would reflect 40 CFR 51.308(d)(3)(iii). Specifically, the term ''the baseline inventory on which [the state's] strategies are based'' in the 1999 RHR can be taken to refer to the inventory that is used to assess the contribution that sources make to visibility impairment (and the visibility benefits of additional control measures, when such benefits are considered) for individual sources or groups of sources. That information is critical to the development of the long-term strategy and, in that sense, is the information on which a state's strategies are to be based. However, we believe that some commenters have taken the term to refer to the inventory that is used as the expected starting point for the photochemical modeling that they (and we) expect will be used to project the RPG that quantifies the projected effect of all the measures in the long-term strategy and other influences on visibility at the end of the implementation period. The two bodies of information are not necessarily the same, and they do not necessarily even need to be for the same year in order to develop a SIP that provides for reasonable progress. In fact, the modeled RPGs that are eventually included in a SIP revision do not directly affect the development of the long-term strategy, but rather they reflect that strategy. We are revising the proposed regulatory text to make this clear. The final regulations use the ''emissions information on which the State's strategies are based'' to refer to the inventory that is used to assess the contribution that sources make to visibility impairment and not to the base year inventory used to model the RPGs.

The requirement in the final version of 40 CFR 51.308(f)(2)(iv) is that the emissions information on which the state is relying to determine the emission reduction measures that are necessary to make reasonable progress must include, but need not be limited to, information on emissions in a year at least as recent as the most recent year for which the State has submitted emission inventory information to the Administrator under the Air Emissions Reporting Requirements. To allow time for this information to be used in SIP development, the rule provides for a 12-month ''grace period'' such that a submission to the NEI in the period 12 months prior to the due date of the SIP does not trigger this requirement. We agree with the comments to the effect that there is no reason why a state should not make at least some information for the year of its most recent submission to the NEI part of the basis for its determination of the emission reduction measures that are necessary to make reasonable progress. The state is not required to use the same information as was submitted to the NEI, and it should not if it has developed or received better information for that year since its NEI submission. A state may also consider information for a more recent year if it is available and is of sufficient quality. Therefore, we do not believe it is necessary or appropriate for the RHR to provide for an exception to the requirement as it is stated in this section of the rule text and interpreted here. A state that plans to use information other than what is in the most recent NEI version released by the EPA to develop its long-term strategy should consult with its EPA regional office to obtain the EPA's preliminary perspective on whether there is a reasonable basis for its planned approach. This should also be a topic of the ongoing consultation with affected FLMs.

The final version of 40 CFR 51.308(f)(2)(iv) does not address the question of the year to be used as the base year for emissions modeling of the RPGs. The EPA generally recommends that this be the year of the most recent NEI version that has been developed and validated enough to be appropriate for air quality modeling to support policy development. The final rule provides the EPA flexibility to approve a SIP based on another year if there are good reasons. States that believe that another year is more suitable should consult with the EPA Regional office about their reasons.

3. Final Rule

For the reasons described previously, and also here, the final language for 40 CFR 51.308(f)(2)(iv) differs somewhat from the wording we proposed with respect to the terminology used to refer to emissions inventories. The final version of this subsection of the rule refers to the ''emissions information on which the state's strategies are based,'' rather than to a ''baseline'' emissions inventory. The final version also does not include a provision for EPA approval for selecting a year other than the year of the most recent submission under the Air Emissions Reporting Requirements as the year of the

[102] The point that having a RPG that is on or below the URP line is not a safe harbor has been articulated in past actions such as the disapproval of the reasonable progress element of Arkansas' SIP (*see* fn *32*). Our approval of the reasonable progress element of South Dakota's SIP is an example in which we approved the state's RPGs even though the RPG for the most impaired days for two Class I areas were above the respective URP lines, based on the state having adequately considered the four statutory factors for important contributing sources. 76 FR 76646 (December 8, 2011) (proposed action) and 77 FR 24845 (April 26, 2012) (final action).

inventory to be used as the basis for developing the long-term strategy. However, the final rule provides a 12-month grace period for the use of the year of the most recent submission under the Air Emissions Reporting Requirements. The rule does not address the selection of a year as the base year for emissions modeling of the RPGs for the end of the implementation period.

EPA action on RPGs.

1. Summary of Proposal

The proposed language of 40 CFR 51.308(f)(3)(iv) was intended to make clear that in approving a state's RPGs, the EPA will consider the controls and technical demonstration provided by a contributing state with respect to its long-term strategy, in addition to those developed by the state containing the Class I area with respect to its long-term strategy. This clarification was proposed in light of the 1999 RHR's 40 CFR 51.308(d)(1)(iii), which only explicitly mentions the demonstration provided by the state containing the Class I area.

2. Comments and Responses

No comments were received that specifically addressed this proposed rule text.

3. Final Rule

The EPA is finalizing this rule text as proposed.

Progress report elements of periodic comprehensive SIP revisions.

1. Summary of Proposal

The proposed language in 40 CFR 51.308(f)(5) complemented proposed changes regarding progress reports and the proposal to eliminate separate progress reports being due simultaneously with periodic comprehensive SIP revisions by requiring periodic comprehensive SIP revisions to include certain information that would have been addressed in the progress reports. While the proposed language would expand the scope of periodic comprehensive SIP revisions, the same information would still be covered and states would no longer need to prepare and submit two separate documents (potentially containing overlapping content) at the same time.

2. Comments and Responses

Few comments were received that specifically addressed this proposed rule text. Those that did address these provisions supported the proposed changes, with one comment additionally suggesting use of the terminology ''the most recent progress report'' instead of ''the past progress report,'' which EPA is incorporating into the final text (this is discussed later). In addition, one commenter noted that states should also be required to address the requirements of proposed 40 CFR 51.308(g)(8) in periodic comprehensive SIP revisions. Proposed 40 CFR 51.308(g)(6), renumbered in the final rule as 40 CFR 51.308(g)(8), requires progress reports to include a summary of the most recent assessment of smoke management programs operating within the state if such assessments are an element of the program. (As background, this is not a requirement of the 1999 RHR for either progress reports or periodic SIP revisions.) We agree that the provisions of 40 CFR 51.308(f)(5) do not contain a requirement similar to the requirement in proposed 40 CFR 51.308(g)(6) or final 40 CFR 51.308(g)(8). However, for any state where smoke from prescribed fires is a significant contributor to visibility impairment, the analysis that it will perform under 40 CFR 51.308(f)(3)(iv)(D) as finalized (the requirement for a state to consider basic smoke management practices and smoke management programs) will serve the same purpose as would requiring periodic SIP revisions to summarize the conclusions of the most recent assessment of an existing smoke management program.

3. Final Rule

The EPA is finalizing this rule text as proposed with only minor wording changes for clarity including a small change in wording in response to a public comment indicating confusion with the terminology ''past progress report.'' The EPA agrees that this should instead refer to the ''most recent progress report'' and is finalizing revised text accordingly.

E. Changes to Definitions and Terminology Related to How Days Are Selected for Tracking Progress

1. Summary of Proposal

The 1999 RHR's 40 CFR 51.308(d) required states to determine the visibility conditions (in deciviews) for the average of the 20 percent least impaired and 20 percent most impaired visibility days over a specified time period at each of their Class I areas. As discussed in detail in the preamble of the proposed rule, the definition of visibility impairment included in 40 CFR 51.301 of the 1999 RHR suggests that only visibility impacts from anthropogenic sources should be included when considering the degree of visibility impairment. However, the approach followed for the first implementation period involved selecting the least and most impaired days as the monitored days with the lowest and highest actual deciview levels regardless of the source of the particulate matter causing the visibility impairment. While the EPA approved SIPs using this approach for the first implementation period, experience now indicates that for the most impaired days an approach focusing on anthropogenic impairment is more appropriate because it will more effectively track whether states are making progress in controlling anthropogenic sources. Our proposed approach is also more consistent with the definition of visibility impairment in 40 CFR 51.301. Because the 1999 RHR rule text already refers to the 20 percent most impaired days, we did not propose to change that wording. In the preamble to the proposal, we made clear that going forward, we would interpret ''most impaired days'' to mean those with the greatest anthropogenic visibility impairment, as opposed to the 20 percent haziest days. We did not propose to change the approach of using the 20 percent of days with the best visibility to represent good visibility conditions for RPG and tracking purposes, but we did propose a rule text change to refer to them as the 20 percent clearest days rather than the 20 percent least impaired days.

The proposal included changes to a number of the definitions in 40 CFR 51.301 as well as added definitions for some previously undefined terms, including *clearest days, the deciview index, natural visibility conditions* and *visibility.*

The EPA solicited comment on requiring all states to use the new meaning of ''most impaired days'' as referring to the days with the most anthropogenic impairment, as well as on a second proposed approach. In the second proposed rule alternative, states would be allowed to choose between selecting the 20 percent of days with the highest overall haze (*i.e.,* the approach used in the first implementation period) and selecting the 20 percent of days with the most impairment from anthropogenic sources (the proposed new meaning). The EPA also solicited comment on any additional approaches.

2. Comments and Responses

We received some comments favoring the first proposed rule alternative that expressed support for a single, consistent approach to selecting the 20 percent most impaired days for all states. However, the majority of comments from states favored the second proposed rule alternative due to

the flexibility it offered. Some comments on the second proposed rule alternative expressed concerns about, and requested guidance for, consultation between states in situations where two states use different approaches. Some comments favoring the second proposed rule alternative said that they anticipated that using the 20 percent most anthropogenically impaired days would mean an additional workload that would consume state resources during the planning process, and cited this as the reason they did not support the first proposed rule alternative. One commenter suggested that the final rule could allow states submitting their SIPs for the second implementation period by the 1999 RHR's deadline of July 31, 2018, to choose between using the 20 percent most anthropogenically impaired days or the 20 percent haziest days, with states submitting later required to use the latter approach.

After considering these comments and other considerations as described here, we are finalizing the first proposed alternative for the final rule (*i.e.,* that ''most impaired days'' means those with the most anthropogenic impairment). The EPA often provides states flexibility when it may help achieve the objectives of SIP development and does not negatively implicate a program's objectives. In this particular situation, however, the flexibility of the second proposed rule approach would not significantly assist in developing efficient and effective SIPs and would likely result in confusion among stakeholders. For example, if two states with Class I areas in close proximity choose different approaches to the selection of days, the public might misunderstand how past and projected progress in improving visibility compares between the two areas. Also, allowing the state with a Class I area to unilaterally choose the selection approach for that area would raise the prospect that a contributing state might disagree with that choice, because the choice could make a difference in whether both states are subject to the enhanced analysis requirement of 40 CFR 51.308(f)(3)(ii), therefore complicating consultation among states. It would be possible for a state to choose a given approach simply because it would result in the best comparison of RPGs to the glidepath or URP for the implementation period being addressed by a SIP revision, and a state could conceivably switch back and forth between the two approaches from one period to another to get the best comparison for each period, causing additional confusion. In addition, we believe the approach of using anthropogenic impairment to select the 20 percent worst days is more consistent with the intent of the original RHR, namely to reduce the aggregate effect that anthropogenic sources have on the visual experience of visitors to Class I areas.

The EPA disagrees that concerns regarding additional workload and lack of resources preclude adopting the first proposed alternative. The EPA and IMPROVE program will work together to provide datasets that identify the most anthropogenically impaired days in each year of IMPROVE data and that contain the statistical summaries of these days need as part of a SIP revision or progress report. These datasets will be based on a specific method the EPA intends to recommend in a future guidance document. We expect that these datasets will avoid any increase in the workload and resources required of states relative to continued use of the haziest days. We will also work with any state or states interested in a different specific method for identifying the most impaired days than the one we will recommend, to avoid an increase in workload that would interfere with other aspects of SIP development.

The final rule revisions requiring states to use the 20 percent of days with the greatest anthropogenic impairment do not have any direct implications for how states develop their long-term strategies. While these revisions may affect whether a state has to demonstrate that there are no additional measures that would be reasonable to include in the long-term strategy under the requirement of 40 CFR 51.308(f)(3)(ii), these revisions do not prescribe how a state may make this demonstration. Thus, we believe that this requirement will not impair states' flexibility to appropriately analyze and address the sources of visibility impairment at Class I areas in and near their states.

We are not making any changes in response to the comment suggesting that the final rule provide flexibility in the approach to the selection of the worst days only for areas that submit their SIP revisions by July 31, 2018. It is our understanding that only some eastern states may be submitting SIP revisions this early and that the states involved have not been experiencing erratic impacts from wildfires and dust storms. Therefore, we do not believe the special flexibility the commenter suggests is needed. As mentioned, any state may choose to include in its SIP a second summary of visibility data using the 20 percent haziest days approach, for public information purposes.

Regarding the proposed changes to definitions, commenters recommended adding language to the definitions of *most impaired days, regional haze,* and *visibility impairment* to further clarify that these terms refer to impairment due to anthropogenic sources. The EPA agrees that some of the suggestions provided by commenters further clarify that visibility impairment is due to anthropogenic sources and does not include emissions from natural sources. Therefore, in response to these comments, we have finalized additional changes to the definitions of *most impaired days, regional haze,* and *visibility impairment* to also include the concept that impairment is anthropogenic.

We also received comments on the proposed change to the definition of *natural conditions* and the proposed definition of *natural visibility conditions.* The commenters asked the EPA to further revise these definitions to reflect the reality that natural conditions have changed over time and will continue to change in the future; to make clear the timeframe of natural visibility conditions we intend to be captured by the definition; that natural visibility conditions may reflect poor visibility conditions; and to more explicitly include the factors contributing to natural visibility conditions (*e.g.,* fire and dust events, volcanic activity, etc.). As a result of these comments, we are finalizing additional changes to these two definitions and adding definitions for two additional terms used in the rule. We are also providing further explanation of the role of natural visibility conditions in the SIP development process as follows.

The EPA is finalizing the definition of *natural conditions* to include a list of example phenomena considered to be a part of natural conditions. The list provided is not intended to be exhaustive, but provides examples of some of the types of natural impacts that may affect Class I areas. We are also finalizing the definition of *natural conditions* to reflect the EPA's understanding that natural conditions not only will vary with time, but that they also may have long-term trends due to changes in the Earth's climate system. We have also clarified in this definition that natural phenomena both near to and far from a Class I area may impact visibility in the Class I area.

To reduce confusion between the natural visibility that would exist on a single day and the average of a set of natural visibility values for a set of days, we are finalizing separate definitions of *natural visibility* and *natural visibility*

condition. Natural visibility will refer to visibility on a single day. The *natural visibility* definition includes language that recognizes natural visibility does vary daily and may contain long-term trends. *Natural visibility condition* will refer to the average of a set of values on an indicated set of days.

In practice, the natural visibility condition for the 20 percent most impaired days is used by a state when developing the most appropriate 2064 endpoint for the URP line. Then the RPG for the 20 percent most impaired days is to be compared with the point on the URP line corresponding to the end date of the implementation period, which will in effect be adjusted by a portion of the adjustment made to the 2064 endpoint. The EPA invited comment on draft guidance [103] to the states on how to determine the value of the 2064 natural visibility condition for the 20 percent most impaired days for each Class I area for purposes of calculating the URP, and we intend to provide final guidance on this topic separately from this action on revisions to the RHR.

The need for clarity about the distinction between visibility on one day and the average of the visibility values for a set of days also applies to baseline visibility conditions and to current visibility conditions. To achieve this clarity, the final rule text includes new definitions of the terms *baseline visibility condition* and *current visibility condition.* These definitions are consistent with the way these terms are used in 40 CFR 51.308, but having these explicit definitions will improve understanding by participants in the regional haze program.

3. Final Rule

The EPA is finalizing the requirement that all states select the 20 percent most impaired days, *i.e.,* the days with the most impairment from anthropogenic sources, as the ''worst'' days for purposes of calculating baseline visibility conditions, current visibility conditions, natural visibility conditions and the URP in SIPs and, as applicable, in progress reports. Under the final rule revisions, states retain the option to also present visibility data using the days with the highest overall deciview index values (*i.e.,* the 20 percent haziest days), for public information purposes. Including this information in the SIP may help communicate to the public the magnitude of impacts from natural sources including wildland wildfires and dust storms. The RPGs and URP line that are calculated using anthropogenic impairment to select the most impaired days constitute the glidepath representing the state's determination of reasonable progress and, if appropriate, may trigger the requirement for a state to show that there are no additional emission reductions measures that would be reasonable to include in the long-term strategy (*see* Section IV.D of this document). Since the 20 percent most anthropogenically impaired days will, going forward, be used to estimate natural visibility conditions, current visibility conditions and the URP, they must also be used in setting RPGs and in progress reports. Conforming edits that were proposed to the provisions related to each of these calculations are likewise being finalized. As described at proposal, the revised approach will apply starting with the second and subsequent periodic comprehensive SIP revisions and will apply to progress reports starting with those submitted after the second SIP revision. EPA will continue to use the previous approach of considering the 20 percent haziest days with respect to SIP revisions submitted to satisfy the requirements of the first implementation period or initial progress reports.

The EPA did not propose to require any particular method for determining the natural versus anthropogenic contributions to daily haze and thus the degree of visibility impairment for each monitored day. The EPA issued draft guidance [104] describing a recommended approach along with a process for routinely providing relevant datasets for use by states when they develop their SIPs and progress reports. No particular method is being prescribed by the final rule nor will the final version of the guidance contain any binding requirements; states can therefore develop, justify and use another method of discerning natural and anthropogenic contributions to visibility impairment in their SIPs. The EPA intends to include more information on this subject in the final guidance.

As described in the summary of comments on this topic, the EPA is finalizing the proposed changes to the definitions of *clearest days, deciview, deciview index, least impaired days,* and *visibility* along with additional changes we have determined are needed to further clarify the definitions of *most impaired days, visibility impairment, regional haze, natural conditions,* and *natural visibility condition.* The additional changes to these proposed definitions are intended to more clearly explain that impairment is from anthropogenic sources and that natural sources and their contributions to visibility vary over time. Additionally, the EPA is finalizing definitions for *natural visibility, baseline visibility condition,* and *current visibility condition* that we determined are needed to fully clarify the meanings of these terms.

We are not finalizing the proposed change to the definition of a Federal Class I area that would have stated that non-mandatory Federal Class I areas are identified in 40 CFR part 52. There currently are no non-mandatory Federal Class I areas and the reference to 40 CFR part 52 could have created confusion. The final definition of a mandatory Class I Federal area correctly indicates that the mandatory areas are identified in 40 CFR part 81 subpart D.

F. Impacts on Visibility From Anthropogenic Sources Outside the U.S.

1. Summary of Proposal

In the proposal, the EPA acknowledged that emissions (natural and anthropogenic) from other countries and marine vessel activity in waters outside the U.S. may impact Class I areas, especially those areas near borders and coastlines. Prior to our proposal, several states with such Class I areas requested that they be allowed to adjust their URP line, visibility tracking metrics and RPGs to account for international anthropogenic impacts when preparing SIPs and progress reports.[105] We therefore solicited comment on a proposed provision that would allow states with Class I areas significantly impacted by international anthropogenic emissions to adjust their URPs with approval from the Administrator.[106] The proposed

[103] Draft Guidance on Progress Tracking Metrics, Long-Term Strategies, Reasonable Progress Goals and Other Requirements for Regional Haze State Implementation Plans for the Second Implementation Period. 81 FR 44608 (July 8, 2016).

[104] 81 FR 44608 (July 8, 2016).

[105] The impacts from natural sources located outside the U.S. can be large in certain Class I areas, but because the RHR treats impacts from all natural sources equally, those impacts are inherently properly included in the 2000–2004 baseline condition used as the starting point for the URP line and the natural visibility condition used as the 2064 endpoint of the URP line. Thus, the logical interest of these states was in a special adjustment for the impacts of anthropogenic sources outside the U.S. We note for clarity that under the final rule, prescribed fires outside of the U.S. are considered anthropogenic sources and thus the discussion in this section is relevant to such prescribed fires. Prescribed fires in wildland are also addressed in Section IV.G of this document.

[106] The 1999 RHR provided that if a state found that international emissions sources were affecting visibility conditions in a Class I area or interfering with plan implementation, that state could submit a technical demonstration in support of its finding. If EPA agreed with the finding, it would ''take appropriate action to address the international

Continued

adjustment would consist of adding to the value of the natural visibility condition for the 20 percent most impaired days in 2064 an estimate of the average impact from international anthropogenic sources on such days,[107] for the sole purpose of calculating the URP.[108] We also solicited comment on another possible approach to accounting for international anthropogenic impacts, in which the influence of emissions from anthropogenic sources outside the U.S. would be removed from estimates of 2000–2004 baseline visibility conditions, current visibility conditions and the RPG for the end of an implementation period.

The proposal reflected the EPA's position that it may be appropriate to allow a state to adjust the RPG framework, including in its progress reports, to avoid any perception that a state should be aiming to compensate for impacts from international anthropogenic sources and to avoid requiring a state to undertake the additional analytical requirement under 40 CFR 51.308(f)(3)(ii) based solely on visibility impairment due to international anthropogenic sources. However, we proposed that an adjustment to compensate for such impacts would be available only when and if these impacts can be estimated with sufficient accuracy. In the proposal we stated that we do not expect that explicit consideration of impacts from anthropogenic sources outside the U.S. should or would actually affect the conclusions that states make about what emission controls for their own sources are necessary for reasonable progress. However, we explained that explicit quantification of international anthropogenic impacts, if accurate, could improve public understanding and effective participation in the development of regional haze SIPs. We also indicated that while we had not yet, at the time of the proposal, seen an approach that would allow states to adjust their visibility tracking metrics with sufficient accuracy, we expected that by the time some future periodic comprehensive SIP revisions are to be prepared, methods and data for estimating international anthropogenic impacts will be substantially more robust. Our proposal did not include any statement about whether EPA would provide estimates on international impacts or guidance on how states can estimate such impacts.

2. Comments and Responses

Some commenters opposed allowing any adjustment to the URP, while others supported some sort of adjustment based on the impacts of international anthropogenic sources. Several commenters stated that the EPA or other federal entities should provide an approach to estimating international anthropogenic impacts, or actual estimates of such impacts, that are presumptively approvable, or that the EPA should give deference to any estimate a state develops. Some commenters inferred that the EPA's statements in the proposal regarding the current state of the art for estimating international anthropogenic impacts meant that no state would be able to obtain EPA approval for an adjustment in the SIP due in 2021. Several commenters objected to their understanding that the proposed rule would require a state to obtain EPA approval for a particular adjustment approach before including such an approach in its SIP submission. Finally, at least one commenter requested that EPA also provide rule language allowing for adjustment of the 20 percent clearest days framework to reflect the impacts of international anthropogenic sources.

The EPA does not have a near-term plan to develop guidance on estimating international anthropogenic impacts or to provide such estimates specifically for the purpose of regional haze SIPs. However, the EPA is an active participant in research in this area and will continue to share its work with interested states and with others.[109] To clarify, the statements in the preamble regarding the state of the art method refer to our assessment of the estimates and models for estimating international impacts available in the scientific literature at the time of this rulemaking. We did not intend to preclude or prejudge consideration of estimates that states may include in SIPs for the second implementation period or subsequent periods based on newer and more refined methodologies and/or information. Although we do not believe such estimates and models are currently able to adequately represent the impacts of international anthropogenic sources on visibility, we acknowledge that this is an area of active research and development that may lead to adequate estimates in time for the development of SIPs for the second implementation period. Additionally, the final rule text includes a small change to clarify that the Administrator's approval for an adjustment will be part of the Administrator's review of the full SIP submission for an implementation period, and not a separate action in advance of SIP submission. In this way, the Administrator's decision to approve or not approve the adjustment will be made in the context of the complete SIP submission, with public notice and an opportunity to comment. As with any SIP element, states are encouraged to consult with EPA Regional offices during the development of any proposed adjustment approach.

Because the EPA is not providing estimates of international anthropogenic impacts or guidance for calculating those impacts at this time, we are not specifying that any such estimates or methodologies are presumptively approvable. We further disagree with comments that states have inherent discretion to adjust their URP and RPG frameworks to account for impacts of international anthropogenic sources and that the EPA lacks the authority to review such adjustments. As explained in Section IV.B of this notice, the CAA mandates that the EPA promulgate regulations requiring that states' SIP submittals contain, among other things, ''measures as may be necessary to make reasonable progress toward meeting the national goal.'' [110] Furthermore, the EPA is required to ensure that states' submittals meet the basic legal requirements and objectives of the CAA, including any regulations the agency promulgates for the purpose of ensuring that states make reasonable progress towards achieving natural visibility. A proposed adjustment to a state's RPG framework to address the impacts of international anthropogenic sources has the potential to affect that state's assessment of what constitutes reasonable progress. Thus, the EPA not only has the authority to review a state's

emissions through available mechanisms.'' 64 FR 35714, 35747 (July 1, 1999).

[107] The URP line is expressed in deciview units, so the value added to the natural visibility condition would also be in deciviews. However, that added deciview value would be based on the light extinction increments caused by the indicated sources.

[108] This proposed extra step in determining the URP was not intended to have the effect of defining international anthropogenic sources as natural, or to change any other aspect of SIP development.

[109] For example, the EPA held a 2-day workshop in February 2016 to advance the collective understanding of technical and policy issues associated with background ozone, which includes impacts from anthropogenic sources outside the U.S., as part of the agency's ongoing efforts to engage with states and stakeholders on implementation of the 2015 ozone NAAQS. While this workshop focused on ozone, the modeling issues and approaches for ozone are similar to those for visibility-impairing pollutants. More information on the EPA's activities and current understanding of this area can be found in the white paper available at *https://www.epa.gov/ozone-pollution/background-ozone-workshop-and-information* and other documents available in EPA number EPA–HQ–OAR–2016–0097 at *https://www.regulations.gov.*

[110] CAA section 169A(b)(2).

proposed adjustment, it has an obligation to do so.

Finally, we disagree with the comment that we should provide rule language for states to adjust their frameworks for assessing visibility on the 20 percent clearest days to account for any impacts of international anthropogenic sources. First, particular days on which international anthropogenic sources have particularly strong impacts due to unusual source events or transport conditions are unlikely to be among the 20 percent clearest days in their respective years. The commenter presented no basis for anticipating that increasing impacts from anthropogenic sources on the clearest days might cause a state to be unable to satisfy the no degradation requirement without employing unreasonable measures for domestic sources. Second, our analysis indicates that such an adjustment would not have been necessary in the first implementation period, in that nearly all Class I areas in fact have had no degradation during this period so far, and the few that have experienced degradation have not done so because of impacts attributable to international anthropogenic sources. Improvements in visibility on the 20 percent clearest days have been significant enough so that we expect that states impacted by increased emissions from international anthropogenic sources in the second implementation period will still be able to comply with the requirement that visibility on those days show no degradation compared to 2000–2004 baseline conditions. The RTC contains more information on this improvement trend. The EPA will continue to assess this relationship throughout the second and subsequent implementation periods. Third, on clear days when there is relatively little visibility-impairing air pollution, it is difficult with our current tools to discern the portion of that air pollution originating from international anthropogenic sources, as opposed to domestic anthropogenic or natural sources and as compared to the assessment of the impact of international anthropogenic sources on the most impaired days. It would thus be unlikely that a state could estimate international anthropogenic impacts on the 20 percent clearest days with the requisite degree of accuracy at this time or when developing a SIP for the second implementation period.

3. Final Rule

The EPA is finalizing the provision to allow an adjustment of the URP by adding an estimate for international anthropogenic impacts to 2064 natural visibility conditions. We are not finalizing the alternative approach to accounting for international anthropogenic impacts that would have involved removing the influence of emissions from anthropogenic sources outside the U.S. when developing the estimates of 2000–2004 baseline visibility conditions, current visibility conditions and the RPGs. We are finalizing only one approach to provide consistency and transparency, as the alternative approach would have been more complicated and involved presenting numerous counterfactual values of visibility levels that could be mistaken as actual measured values.

Because this adjustment is permitted only if the Administrator determines that a state has estimated the international impacts from anthropogenic sources outside the U.S. using scientifically valid data and methods, we are finalizing the rule text of 40 CFR 51.308(f)(1)(vi)(B) as proposed, with a small change to clarify singular versus plural,[111] as well as the aforementioned change to clarify that the Administrator's approval for an adjustment will be part of the Administrator's review of the full SIP submission for an implementation period, and not a separate action in advance of SIP submission.

In addition, we are finalizing the proposed rule text changes in 40 CFR 51.308(f)(1)(i) and 40 CFR 51.308(f)(1)(vi) to remove ''needed to attain natural visibility conditions'' from the reference to ''uniform rate of progress,'' because when adjusted to reflect international impacts the ''uniform rate of progress'' would not be the rate of progress that would reach true natural visibility conditions.

Because the manner in which a state with a Class I area calculates the URP may affect other states with sources that contribute to visibility impairment at the Class I area,[112] we recommend that a state seeking approval for such an adjustment first consult with contributing states. Such an adjustment should also be a topic for the required consultation with the FLM for the Class I area at issue.

G. Impacts on Visibility From Wildland Fires

1. Summary of Proposal

Fires on wildlands within and outside the U.S. can significantly impact visibility in some Class I areas on some days but have little to no impact in other Class I areas. And even in those Class I areas significantly impacted by fires on wildlands on some days, there are a greater number of days where fires do not have such impacts. The EPA presented an extensive discussion of wildland fire concepts, including actions that the manager of a prescribed fire can take to reduce the amount of smoke generated by a prescribed fire and/or to reduce public exposure to the smoke that is generated (*i.e.,* basic smoke management practices), in the proposed and recently finalized revisions to the Exceptional Events Rule.[113] That discussion is not repeated here.

The preamble for our proposed action discussed at length how the RHR relates to the management of wildland wildfires and wildland prescribed fires. The information presented there is applicable to states as guidance under these final RHR revisions, except as revised or supplemented as follows. There were many public comments on the subject of wildland fires, some of which are addressed in this section. We address the remaining comments in the RTC document for this action.

We proposed new definitions for wildland, wildfire and prescribed fire. These proposed definitions were consistent with the definitions we had recently proposed be added to the Exceptional Events Rule. We said in the proposal for the Exceptional Events Rule that wildland can include

[111] Our proposed rule text used the phrase ''the State must add the estimated impacts [of international anthropogenic sources (or certain prescribed fires)] to *natural visibility conditions* and compare the resulting value to *baseline visibility conditions.*'' For consistency with our final definitions, this part of the final rule text instead refers to the *natural visibility condition* and *the baseline visibility condition.* The use of the plural form for ''natural visibility conditions'' and ''baseline visibility conditions'' could give the impression that multiple values of impacts are to be added to multiple values of natural visibility conditions, when actually a single value reflecting impacts from international anthropogenic sources (or certain prescribed fires) is to be added to the single value of the ''natural visibility condition'' for the 20 percent most impaired days. The final rule text does not specify that the average of estimates of daily international impacts be used in this addition step, so that states can propose and the Administrator can approve another statistic to represent the distribution of daily values, for example the median value, if more appropriate.

[112] Contributing states may be affected because under the final version of 40 CFR 51.308(f)(3)(iv)(B), a contributing state will have an additional analytical requirement if the RPG does not provide for the URP at an affected Class I area in another state.

[113] 80 FR 72840 (November 20, 2015); 81 FR 68216 (October 3, 2016). Both the preamble and final rule of the Exceptional Events Rule listed six basic smoke management practices with an important footnote which recognizes that those listed are not intended to be all-inclusive for the purpose of the Exceptional Events Rule. Section IV.G.2 of this document discusses the term ''basic smoke management practices'' in the context of the Regional Haze Rule.

forestland, shrubland, grassland and wetlands, and that the proposed definition of wildland includes lands that are predominantly wildland, such as land in the wildland-urban interface. The proposed definition for wildfire included a provision that a wildfire that occurs predominantly on wildland is a natural event.

We also proposed language for new 40 CFR 51.308(f)(2)(vi)(E) based on the provisions of the 1999 RHR's 40 CFR 51.308(d)(3)(v)(E), with updates to reflect terminology used within the air quality and land management communities. Specifically, we proposed to use the term ''basic smoke management *practices*'' to better align with current usage of ''smoke management practices'' in the fire management community to refer to steps that a burn manager can take to reduce emissions during a prescribed fire. We also proposed to use the term ''wildland vegetation management purposes'' in lieu of ''forestry management purposes.'' This latter change was proposed in recognition of the fact that not all wildland for which fire and smoke are issues is forested. We also proposed to replace the phrase ''including plans as currently exist within the State for these purposes'' with ''and smoke management programs for prescribed fire as currently exist within the State.'' The term ''smoke management program'' is used within the fire management community to refer to a multi-participant program that seeks to influence or regulate both whether and when prescribed fires are conducted and, typically, the smoke management practices employed during a prescribed fire. We stated in the preamble of the proposal that this required consideration of smoke management programs only applies if the existing smoke management program has six key features: (i) Authorization to burn, (ii) minimizing air pollutant emissions, (iii) smoke management components of burn plans, (iv) public education and awareness, (v) surveillance and enforcement and (vi) program evaluation.

We proposed that for a state with a long-term strategy that includes a smoke management program for prescribed fires on wildland, each required progress report must include a summary of the most recent periodic assessment of the smoke management program including conclusions the managers of the smoke management program or other reviewing body reached in the assessment as to whether the program is meeting its goals regarding improving ecosystem health and reducing the damaging effects of catastrophic wildfires. (Comments on this proposal are summarized in Section IV.H of this document.)

We proposed that the Administrator may approve a state's proposal to adjust the URP to avoid subjecting a state to the additional analytical requirement of 40 CFR 51.308(f)(3)(ii) due to the impacts of wildland fire conducted with the objective to establish, restore and/or maintain sustainable and resilient wildland ecosystems, to reduce the risk of catastrophic wildfires, and/or to preserve endangered or threatened species for purposes of ecosystem health (objectives that we refer to here as ''wildland ecosystem health'') and public safety during which appropriate basic smoke management practices were applied. This aspect of the proposal did not address and did not apply to fires of any type on lands other than wildland or to burning on wildland that is for purposes of commercial logging slash disposal rather than wildland ecosystem health and public safety. This aspect of the proposal was not restricted to prescribed fires within the U.S.

We proposed to revise the definition of ''fire'' to remove the phrase ''prescribed natural fire.'' However, we stated that the definition of ''fire'' that would be revised appears in 40 CFR 51.301, when it actually appears in 40 CFR 51.309(b)(4) and applies only to 40 CFR 51.309. We inadvertently did not make any change to 40 CFR 51.309(b)(4) in our proposed rule text. We proposed this revision to remove ''prescribed natural fire'' from the ''fire'' definition because the concept of a ''prescribed natural fire'' is inconsistent with our proposal that all prescribed fires be considered anthropogenic sources. We recognize that some prescribed fires are intended to emulate and/or mitigate natural wildfires that would otherwise occur at some point in time. We also recognize that some wildfires are appropriately allowed to proceed for some time over an area without suppression in order to help achieve land management objectives. However, to use the term ''natural'' and ''prescribed'' in one definition would cause confusion.

While the direction of these proposals was towards providing states considerable flexibility regarding measures to limit emissions from wildland prescribed fire after having given reasonable consideration to their options, it was not and is not our intention to in any way discourage federal, state, local or tribal agencies or private land owners from taking situation-appropriate steps to minimize emissions from prescribed fires on wildland or prescribed fires on other types of land.

2. Comments and Responses

With regard to the definitions of prescribed fire and wildfire and the related question of whether each type of wildland fire should be considered as an anthropogenic versus non-anthropogenic event or source, some commenters said that all wildland prescribed fires, or at least all prescribed fires conducted under a smoke management program, should be treated as non-anthropogenic. Other commenters said that all or some wildfires should be treated as anthropogenic, noting that the occurrence of wildfires is not purely natural in that past human actions have affected fire risks and that current actions by humans initiate some wildfires. We disagree with these and similar comments. We recognize that prescribed fires in many cases are conducted because natural wildfires have been previously suppressed, or as a substitute for waiting for a wildfire to take place because conditions are such that a wildfire would pose high risks. We also recognize that human actions, in particular the suppression of wildfires in the past, have affected the propensity of some wildlands to experience wildfires from natural ignition sources such as lightning and that human actions such as arson or careless smoking, fireworks, target practice or backyard burning are the sources of the ignition of many wildland wildfires. Thus, there is some basis for the perspective that prescribed fires merit being treated somewhat like natural sources, as well as for the opposite view that wildfires merit being treated somewhat as anthropogenic sources. However, by declaring in section 169A(a) of the CAA a national goal of remedying visibility impairment in Class I areas ''which impairment results from man-made air pollution,'' Congress established a bifurcation between anthropogenic and non-anthropogenic sources of air pollution. Given that prescribed fires involve conscious planning by humans, it would be unreasonable for the rule to categorically consider them to be natural events and natural sources of air pollution.[114] We consider wildfires

[114] As explained in footnote 95, the rationale for allowing an adjustment of the URP framework to address the impacts of wildland prescribed fires does not stem from the fact that we are treating these fires as natural sources of air pollution, as this is not the case. Rather, we are providing for an adjustment because we acknowledge that anthropogenic prescribed fire conducted for purposes of ecosystem health and public safety

having natural causes of ignition to be natural sources of air pollution. The provision that a wildfire that occurs predominantly on wildland is a natural event also encompasses wildfires initiated by human action because it is not always possible to determine the cause of ignition for some wildfires, and because once ignited the progress of these wildfires is largely determined by factors beyond human control at the time. Therefore, it is appropriate to treat both wildland wildfires with natural sources of ignition and the other types of wildfires encompassed by the definition in 40 CFR 51.301 as natural events and natural sources of air pollution.

These categorizations do not mean that prescribed fires necessarily should or can be regulated in a manner similar to sources that are more purely anthropogenic, such as industrial sources, or that no consideration should be given to how human actions affect wildfire occurrence. For the regional haze program, an implication of these categorizations is that states are not required to consider additional measures to reduce visibility impacts from wildfires when they develop their regional haze SIP submissions. However, we believe that it is in the public interest for states, and all managers of wildland, to consider such measures to limit wildfire impacts on visibility on an ongoing basis. We encourage them to do so, to help improve visitor experiences in Class I areas, to protect public safety and health and to protect ecosystems from the impacts of catastrophic wildfires. We also believe that it is in the public interest for states, and all land managers using prescribed fire, to consider measures that can reduce the impact of prescribed fires on visibility in Class I areas and other air quality objectives. As they consider measures to reduce the impacts of prescribed fires on visibility, states may consider the benefits of wildland prescribed fire use (including benefits to ecosystem health and reduction in the risk of catastrophic wildfires) and the opportunity provided by the final rule for a state to make an adjustment to the URP to account for the impact of certain prescribed fires.

Regarding the proposal that would allow the Administrator to approve an adjustment to the URP for impacts from at least some wildland prescribed fires, some comments were in favor of this provision while others suggested minor changes to the proposed approach. Many comments did not support all the specifics of our proposal for adjustment of the URP. Many commenters also said that the EPA or the FLMs should provide guidance on how to estimate prescribed fire impacts for the purposes of this adjustment and/or provide the adjustment values themselves.

Of those commenters who did not support all the specifics of our proposal, one commenter said that states should be required to apply the four statutory factors to prescribed fire in order to be eligible to make any adjustment to the URP for prescribed fire impacts. Other commenters said that adjustment should be allowed only for prescribed fires conducted in accordance with any applicable smoke management program. However, other commenters said that an adjustment should be allowed to reflect the impacts of all types of prescribed fire and not merely those that met the conditions proposed by the EPA based on ecosystem or public health protection and use of basic smoke management practices.

We disagree with commenters that the adjustment of the URP should be based on the impact of all prescribed fires, or all wildland prescribed fires, rather than only wildland prescribed fire conducted for purposes of ecosystem health and public safety during which appropriate basic smoke management practices have been applied. The fires that meet these conditions are fires conducted for purposes and in accordance with practices that are consistent with the goal of making reasonable progress towards natural visibility. We note, however, that the availability of an adjustment to the URP for the impacts of these particular prescribed fires does not in any way restrict a state from considering additional measures or management programs to address their impacts on visibility. We recommend that as a state considers such measures, it should consult with managers of federal, state and private lands that would be subject to such measures; this may include federal agencies in addition to the federal land manager of the Class I areas affected by sources in the state, with whom consultation on the development of the SIP is a requirement of the final rule. Furthermore, it is appropriate that for prescribed fires conducted on lands other than wildlands, wildland fires conducted for other purposes and wildland fires conducted without application of basic smoke management practices, the URP should assume their impacts will diminish to zero by 2064, just as the URP effectively assumes with respect to other types of anthropogenic sources within the U.S.[115] This will focus public and state attention on whether there are any reasonable measures for reducing impacts from these other types of prescribed fires. We also disagree with other commenters who recommended that the adjustment be more restrictive and apply only to prescribed fires conducted in compliance with a smoke management program, because this would make the adjustment unavailable to some states where it would be consistent with the goal of making reasonable progress and where an adjustment would be an appropriate efficiency and public communication approach.

We also disagree with commenters that states should be required to conduct a four-factor analysis for prescribed fire before being eligible to adjust their URPs for the impacts of such fires. As we explained earlier, we are limiting the availability of an adjustment to only those wildland prescribed fires conducted for the purposes of ecosystem health and public safety and in accordance with basic smoke management practices. These particular types of fires are generally consistent with the goal of making reasonable progress because they are most often conducted to improve ecosystem health and to reduce the risk of catastrophic wildfires, both of which can result in net beneficial impacts on visibility.[116] Therefore, as

during which appropriate basic smoke management practices have been applied can be consistent with the goal of making reasonable progress towards natural visibility.

[115] If there is no adjustment of the 2064 endpoint of the URP line for impacts from international anthropogenic sources, the URP effectively assumes that emissions from these sources will be zero in 2064. If there is an adjustment, the URP effectively assumes that these sources continue to have emissions in 2064.

[116] There is similarity and a difference in the rationales for an adjustment of the URP related to impacts from anthropogenic sources outside the U.S. and an adjustment related to impacts from wildland prescribed fire conducted for reasons of ecosystem health and public safety with appropriate basic smoke management practices applied. Because states cannot control and should not be expected to compensate for impacts from international anthropogenic sources, such international impacts should not be the sole reason that the RPG is above the URP line. In contrast, states generally have authority to regulate wildland prescribed fires within their borders. However, because it is generally reasonable for wildland prescribed fires of the type described to be conducted as determined to be needed through appropriate planning processes, with appropriate basic smoke management practices to reduce smoke impacts on the public, states should have the flexibility to determine that limiting the number of such wildland prescribed fires is not necessary for reasonable progress. SIP development can be more efficient and the public will better understand the progress being made to control other types of sources if the URP is adjusted to remove the influence of any projected increase in application of this type of wildland prescribed fire. Also, as with international anthropogenic impacts, this will avoid such fire impacts from being a critical factor in whether the RPG is above the URP line.

long as these fires are conducted in accordance with basic smoke management practices, an additional four-factor analysis in this specific case might serve no purpose. States may consider additional measures to address the impacts of these and other types of prescribed fires, on the basis of a formal four-factor analysis if they choose or after another form of consideration.[117]

One commenter suggested that an adjustment for the impacts of prescribed fires also be allowed as part of the demonstration that the long-term strategy and RPGs ensure no degradation on the clearest days. We disagree with this suggestion. First, the impacts from prescribed fires will necessarily be small on the clearest days. The commenter presented no basis for anticipating that increasing impacts from prescribed fire on the clearest days might cause a state to be unable to satisfy the no degradation requirement without employing unreasonable measures for other source types. Second, our analysis indicates that such an adjustment would not have been necessary in the first implementation period, in that nearly all Class I areas in fact have had no degradation during this period so far, and the few that have experienced degradation have not done so because of impacts attributable to prescribed fire. Improvements in visibility on the 20 percent clearest days have been significant enough so that we expect that states impacted by increased emissions from prescribed fire in the second implementation period will still be able to comply with the requirement that visibility on those days show no degradation compared to 2000–2004 baseline conditions. The RTC contains more information on this improvement trend. The EPA will continue to assess this relationship throughout the second and subsequent implementation periods. Finally, on clear days when there is relatively little visibility-impairing air pollution, it is difficult with our current tools to discern the portion of that air pollution originating from prescribed fire, as opposed to the assessment of the impact of prescribed fire on the most impaired days. It would thus be unlikely that a state could estimate prescribed fire impacts on the 20 percent clearest days with the requisite degree of accuracy at this time or when developing a SIP for the second implementation period.

Regarding our proposal to use updated terminology in proposed 40 CFR 51.308(f)(2)(vi)(E), some commenters said that ''basic smoke management practices'' was not the appropriate update of the term ''smoke management techniques'' because the latter term is not explicitly restricted to ''basic'' techniques. We disagree with the commenter that the phrase ''basic smoke management practices'' could be interpreted as requiring a state to consider a narrower set of practices than the phrase ''smoke management techniques.'' The EPA listed six basic smoke management practices in both the preamble and final rule of the Exceptional Events Rule with an important footnote which recognizes that those listed are not intended to be all-inclusive for the purposes of the Exceptional Events Rule. We similarly consider the term ''basic smoke management practices'' in the context of the Regional Haze Rule as allowing for additional basic smoke management practices to be developed to address Class 1 visibility impacts. In addition, this paragraph of the Regional Haze Rule specifies what a state at a minimum must consider, and a state may consider other measures as well. Accordingly, the final rule text in 308(f)(2)(iv)(D) contains the phrase ''basic smoke management practices.''

No commenters opposed the use of ''and smoke management programs'' in proposed 40 CFR 51.308(f)(2)(vi)(E) in place of ''including plans'' in 40 CFR 51.308(d)(3)(v)(E). However, there were other comments on proposed 40 CFR 51.308(f)(2)(vi)(E) that concern the proposed retention and meaning of the phrase ''as currently exist within the State for these purposes.'' One commenter supported the concept that only states with existing smoke management programs should be subject to this specific requirement to consider smoke management programs. Another commenter said that even with this restricted applicability, the requirement to consider smoke management programs was too prescriptive and states should be allowed to apply the same consideration to prescribed fires as generally apply for all sources. One group of commenters opposed the restriction to only states with existing smoke management programs, and further suggested that listing only smoke management practices and smoke management programs was insufficient and that the rule should also require all states to consider other measures to mitigate the impact of fire.

After consideration of these comments and a review of how the EPA and the states have applied 40 CFR 51.308(d)(3)(v)(E) during the first implementation period, we decided that finalization of the phase ''as currently exist with the State for these purposes'' cannot be said to clearly be only a preservation of the existing requirement of the 1999 RHR, particularly when combined with the replacement of ''including plans'' with ''and smoke management programs.'' In the first implementation period the EPA never relied on a narrow interpretation of the applicability of this part of 40 CFR 51.308(d)(3)(v)(E) in reviewing a SIP. The final rule does not include the phrase ''as currently exist with the State for these purposes'' because we have decided that there is no rational basis for the restriction.[118]

The final version of 40 CFR 51.308(f)(2)(iv)(D) (renumbered) requires that states *consider* basic smoke management practices and smoke management programs when developing their long-term strategies. As discussed in the preamble to our proposed action,[119] these requirements do not require a state to adopt basic smoke management practices or programs into its regional haze SIP.[120] As states consider whether to adopt new measures that might affect the ability of land managers to use prescribed fire, they may newly consider both the effectiveness of their smoke management programs in protecting visibility and the benefits of wildland prescribed fire for ecosystem health and public safety. There are many ways that a state can give new consideration to such practices and programs. For example, a state can consider the need for including such measures in its SIP without shoehorning them into a formal four-factor analysis. A state can also consider them by determining based on analysis of IMPROVE data that fires in general, and thus prescribed fires in

[117] Another way of considering whether measures in addition to BSMP are appropriate for prescribed fires conducted to improve ecosystem health and to reduce the risk of catastrophic wildfires, and/or considering what measures are appropriate for other types of prescribed fires, could be to assess and conclude that a particular subcategory of prescribed fires does not meaningfully impact visibility at any Class I area. Such a conclusion could support a decision not to require additional measures for that subcategory in the LTS even though a formal four-factor analysis has not been completed. A state might also include in its LTS measures aimed at reducing impacts from a subcategory of prescribed fire because those measures are already in effect in the state due to another CAA requirement or due to state-only considerations. If so, a new formal four-factor analysis of those measures would not be useful.

[118] Given the removal of the phrase ''as currently exist within the state,'' the interpretation we articulated in the proposal that this phrase refers only to smoke management programs with the six listed features listed in the proposal is no longer relevant.

[119] *See* 81 FR 26958–59.

[120] Also, the EPA is not recommending that all states adopt any particular measures for wildland fire because situations vary too much from state to state and within states for any general recommendation to be appropriate.

particular, are not a significant contributor to reduced visibility at the Class I areas in the state (or impacted by the state). Therefore, this requirement of the final rule will not impose a difficult analytical burden on states or require them to adopt unreasonable measures. However, a state cannot unreasonably determine that a requirement for burn managers to use certain basic smoke management practices *is not* necessary to make reasonable progress. If a state determines that a requirement for burn managers to use certain smoke management practices *is* necessary to make reasonable progress, the long-term strategy must include such measure(s) in enforceable form. The same applies to consideration of a smoke management program. One possible outcome may be that a state reasonably does not make such a formal determination, but nevertheless decides to revise its current program regarding prescribed fires without incorporating the program (or the program enhancements) into the SIP. Such an action could indicate that the state has satisfied the requirement to consider basic smoke management practices and smoke management programs.

States also have the flexibility to allow reasonable use of prescribed fire. As previously noted, one approach to reducing the occurrence of wildland wildfires, and the risk of wildfires having catastrophic impacts, is appropriate use of prescribed fire. The EPA and the federal land management agencies will continue to work with the states as they consider how use of prescribed fire may reduce the frequency, geographic scale and intensity of natural wildfires, such that vistas in Class I areas will be clearer on more days of the year, to the enjoyment of visitors. States may also consider how the use of prescribed fire on wildland can benefit ecosystem health, protect public health from the air quality impacts of catastrophic wildfires and protect against other risks from catastrophic wildfires. These final rule revisions give states that have considered these factors, and other relevant factors, the flexibility to provide and plan for the use of prescribed fire, with basic smoke management practices applied, to an extent and in a manner that states and the EPA believe appropriate. The EPA is committed to working with states, tribes, federal land managers, other stakeholders and other federal agencies on matters concerning the use of prescribed fire, as appropriate, to reduce the impact of wildland fire emissions on visibility.

3. Final Rule

We are finalizing the fire-related definitions as proposed, including the revision of the definition of ''fire'' in 40 CFR 51.309(b)(4), with one change from proposal. We are finalizing a different definition of ''wildfire'' than we proposed. The final revised definition of a wildfire includes ''a prescribed fire that has developed into a wildfire'' instead of the proposed language ''a prescribed fire that has been declared to be a wildfire.'' Two comments in this rulemaking objected to or asked for clarification of the meaning of the ''declared to be a wildfire'' portion of the definition. The definition of wildfire being finalized for the RHR in this final action is the same definition as recently finalized for the revised Exceptional Events Rule, as commenters in both rulemakings raised similar concerns about the proposed definition. Consistent with the approach taken in the final revised Exceptional Events Rule, we concluded that whether a prescribed fire should be treated as a wildfire for regional haze program purposes depends on the facts of the situation. Specifically, the final definition includes the phrase ''a prescribed fire that has developed into a wildfire,'' which means a prescribed fire that has ''developed in an unplanned way such that its management challenges are essentially the same as if it had been initiated by an unplanned ignition.'' *See* 81 FR 68250. While we proposed, and are finalizing, a definition of ''wildfire'' that includes a statement that a wildfire that predominantly occurs on wildland is a natural event, we do not intend to restrict a wildfire on other types of land from also being treated as a natural event or source, based on specific facts about the wildfire.

We are also finalizing 40 CFR 51.308(f)(3)(ii) as proposed to provide an adjustment to the URP framework for the 20 percent most impaired days due to the impacts of wildland fire conducted with the objective to establish, restore and/or maintain sustainable and resilient wildland ecosystems, to reduce the risk of catastrophic wildfires, and/or to preserve endangered or threatened species for purposes of ecosystem health and public safety during which appropriate basic smoke management practices were applied. Such an adjustment is not available for fires of any type on lands other than wildland or to burning on wildland that is for purposes of commercial logging slash disposal rather than wildland ecosystem health and public safety.

We are also finalizing the term ''basic smoke management practices'' as an update of the term ''smoke management techniques'' in 40 CFR 51.308(f)(2)(iv)(D) (renumbered). We are also finalizing the use of ''smoke management programs'' where the 1999 RHR used the term ''plans.'' The final rule differs from the proposal in that it does not include the phrase ''as currently exist within the State for these purposes.''

This action also deletes the obsolete and duplicative definition of ''base year'' in 40 CFR 51.309(b)(8) and reserves that section number. The definition of ''base year'' in 40 CFR 51.309(b)(7) is the operative definition for this section of the RHR. The definition being deleted refers to 40 CFR 51.309(f) which is reserved in the current rule.

H. Clarification of and Changes to the Required Content of Progress Reports

1. Summary of Proposal

The proposed rule detailed additional revisions to 40 CFR 51.308(g) in order to clarify the substance of the regional haze progress reports, given ambiguities in the 1999 RHR with respect to, among other things, the period to be used for calculating current visibility conditions, and whether forward-looking, quantitative modeling is required in the progress reports to assess whether RPGs will be met. These proposed revisions were numerous and often independent of one another, and are summarized briefly as follows.

A proposed revision to the opening portion of 40 CFR 51.308(g) would have required that a state provide the public with a 60-day comment period on a draft progress report that is not a SIP revision, before submitting it to the EPA. The 1999 RHR did not explicitly say that a public comment period was required for progress reports, because other EPA rules require public notice for all SIP revisions and under the 1999 RHR progress reports have been SIP revisions.

Proposed revisions to 40 CFR 51.308(g)(3)(ii) added a number of explanatory sentences to better indicate what ''current visibility conditions'' are and how to calculate them, given that it is not clear what ''current visibility conditions'' are in the 1999 RHR. Practicality requires that ''current conditions'' should mean ''conditions for the most recent period of available data.'' [121] The proposed text also made

[121] In our guidance on the preparation of progress reports, the EPA indicated that for ''current visibility conditions,'' the reports should include

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clear that the period for calculating current visibility conditions is the most recent rolling 5-year period for which IMPROVE data are available as of a date 6 months preceding the required date of the progress report, given our belief that (since we also proposed that progress reports no longer be submitted as SIP revisions) this period would be sufficient for states to incorporate the most recent available data into their progress reports.[122] We also invited comment on other specific appropriate timeframes, including 3 months, 9 months and 12 months.

Proposed revisions to 40 CFR 51.308(g)(3)(iii) were designed to remedy a gap in the 1999 RHR, which failed to make clear what the ''past 5 years'' are for assessing the change in visibility impairment. We proposed to delete the ''past 5 years'' text and replace it with text indicating the change in visibility impairment is to be assessed over the span of time since the period addressed in the most recent periodic comprehensive SIP revision. The EPA believed this would remedy the issue that, because of data reporting delays, the period covered by available monitoring data will not line up with the periods defined by the submission dates for progress reports, and would ensure that each year of visibility information is included either in a periodic comprehensive SIP revision or the progress report that follows it. We proposed to make the same change to the 1999 RHR's ''past 5 years'' text in the first sentence of 40 CFR 51.308(g)(4) for the purposes of reporting changes in emissions of pollutants contributing to visibility impairment, for similar reasons.

We proposed several other revisions, particularly to 40 CFR 51.308(g)(4), to revise and clarify the states' obligations regarding emissions inventories. One issue was that the 1999 RHR's text seemingly required a state to project emissions inventories to the end of the ''applicable 5-year period'' whenever that endpoint is not the year of a triennial inventory (2011, 2014, etc.) required by 40 CFR part 51 subpart A (Air Emissions Reporting Requirements). For a variety of reasons more fully explained in the preamble to our proposal, we proposed text changes that explain clearly that states must include in their progress reports the emissions, by sector, from all sources and activities up to the triennial year for which information has already been submitted to the NEI. With regard to emissions data for EGUs, states would need to include data up to the most recent year for which the EPA has provided a state-level summary of such EGU-reported data. Finally, the last sentence of the proposed text for 40 CFR 51.308(g)(4) made clear that if emission estimation methods have changed from one reporting year to the next, states need not backcast (*i.e.,* use the newest methods to repeat the estimation of emissions in earlier years) in order to create a consistent trend line over the whole period, since although some states expressed concern that other parties may interpret the 1999 RHR as requiring it, the EPA has never expected states to backcast in this context.

We also proposed changes to 40 CFR 51.308(g)(5), which requires assessments of any significant changes in anthropogenic emissions that have occurred, consistent with our proposed changes to other sections. Specifically, we proposed to delete the reference to the ''past 5 years'' and instead direct states that the period to be assessed involves that since the last periodic comprehensive SIP revision. We also proposed text that would require states to report whether these changes were anticipated in the most recent SIP, given that this would assist the FLMs, the public and the EPA in understanding the significance of any change in emissions for the adequacy of the SIP to achieve established visibility improvement goals.

The EPA further proposed to renumber the 40 CFR 51.308(g)(6) of the 1999 RHR as 40 CFR 51.308(g)(7), and proposed to change that provision to clarify that the RPGs to be assessed are those established for the period covered by the most recent periodic comprehensive SIP revision. The proposed change did not alter the intended meaning of this section, and simply clarified that in a progress report, a state is not required to look forward to visibility conditions beyond the end of the current implementation period.

The proposed, new 40 CFR 51.308(g)(6) included a provision requiring a state with a long-term strategy that includes a smoke management program for prescribed fires on wildland to include in each required progress report a summary of the most recent periodic assessment of the smoke management program, including conclusions that were reached in the assessment as to whether the program is meeting its goals regarding improving ecosystem health and reducing the damaging effects of catastrophic wildfires.

A final proposed change to 40 CFR 51.308(g) removed the provisions of 40 CFR 51.308(g)(7) of the 1999 RHR entirely, relieving the state of the need to review its visibility monitoring strategy within the context of the progress report, a change that had been requested by many states during our pre-proposal consultations. Such a change was appropriate since all states currently rely on their participation in the IMPROVE monitoring program (and expect to continue to do so), so continuing the requirement for every state to submit a distinct monitoring strategy element in each progress report would consume state and EPA resources with little or no practical value for visibility protection.

Finally, we proposed minor changes to 40 CFR 51.308(h) and 40 CFR 51.308(i). Proposed changes to 40 CFR 51.308(h) regarding actions the state is required to take based on the progress report merely removed the implication that all progress reports are to be submitted at 5-year intervals, and aimed to improve public understanding of the declaration that a state must make when it determines that no SIP revisions are required. The proposed changes to 40 CFR 51.308(i) created a stand-alone requirement that states must consult with FLMs regarding progress reports because the 1999 RHR only applies FLM consultation requirements to SIP revisions (and the proposal would remove the formal SIP revision requirement from progress reports).

2. Comments and Responses

Several commenters pointed out that while there is no explicit provision in the 1999 RHR for the public to comment prior to the submission of progress reports for the first implementation period, which are required to be SIP revisions, other provisions in EPA rules require states to provide at least a 30-day notice to the public on any type of SIP revision, in contrast to the 60-day period we proposed to require for progress reports that are not SIP revisions. The commenters generally opposed the longer period and noted that it, in combination with the requirement to consult with FLMs well ahead of the start of public comment, would make it more difficult to meet the requirement that progress reports contain emissions and air quality

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the 5-year average that includes the most recent quality assured public data available at the time the state submits its 5-year progress report for public review. *See* section II.C of General Principles for the 5-Year Regional Haze Progress Reports for the Initial Regional Haze State Implementation Plans, April 2013.

[122] Note that we are not proposing this specification of 6 months for the progress report aspects of a periodic comprehensive SIP revision (*see* Section IV.E of this document), in light of the longer time needed for administrative steps between completion of technical work and submission to the EPA.

information no older than 6 months. We agree that retaining the current requirement for a 30-day public comment period is appropriate and are finalizing that period. States may provide a longer comment period, either initially or upon request, and we recommend that states do so when it would not prevent timely submission to the EPA.

Some commenters opposed the proposed provision in 40 CFR 51.308(g)(3)(ii) making clear that the period for calculating current visibility conditions is the most recent rolling 5-year period for which IMPROVE data are available as of a date 6 months preceding the required date of the progress report. As discussed previously, we also invited comment on other specific timeframes, and most of these commenters felt 12 months to be a more appropriate timeframe. However, in general these comments pointed specifically to the proposed provision requiring consultation with FLMs 60 to 120 days prior to a public hearing or other public comment opportunity on progress reports, and/or pointed to the proposed requirement for a 60-day public comment opportunity, as the reason for a 12-month period for IMPROVE data availability. However, as noted elsewhere in this document these two review/comment periods are not being finalized as proposed. In addition, the argument of several commenters that 6 months is an insufficient period to incorporate IMPROVE data even without the extended FLM consultation period was not well supported. Therefore, the EPA does not find these comments persuasive given the other content of the final rule.

One commenter on the proposed 40 CFR 51.308(g)(3)(ii) noted that given the fact that progress reports for the first implementation period have often not been submitted on time, the EPA should adjust the language of the rule text such that the period for calculating current visibility conditions should be based on the later of the required date or submittal date of the progress report. The EPA disagrees with this assessment because this could create a situation requiring a state to re-analyze data (and substantially re-draft portions of a progress report) in situations where submittal of a progress report is delayed for valid or unforeseeable reasons. We note that there will be other avenues for the public and the EPA to obtain the most recent IMPROVE data if a late progress report does not have the most current information.

Comments on the proposed revisions to 40 CFR 51.308(g)(4) regarding emissions tracking were numerous and varied, with many commenters expressing reservations about the proposed text. In general, these commenters asked that the EPA either not require states to use NEI data unless such data are available in final form a minimum of 12 months prior to the due date of the progress report, or that states should use the most recent final NEI data available at the time the progress report is prepared. In response, we want to reiterate that our proposal addressed only the requirement for the time period for the emissions information to be included in a progress report. We did not propose to require that the emissions data actually submitted to or contained in any version of the NEI be used in a progress report. Our intention is that a state have the flexibility to update and revise such data prior to presenting it in a progress report, but not the flexibility to limit its presentation to only emissions information for earlier years.[123] Second, we acknowledge that, as proposed, this subsection could be interpreted to trigger a requirement to present emissions data for a certain year should data for that year be made available for the first time the day before the planned submission of a progress report. We are therefore finalizing additional text in 40 CFR 51.308(g)(4) (similar to text proposed and being finalized in 40 CFR 51.308(g)(3)) making clear that only NEI emissions data submitted by the state to the Administrator (or, in the case of data submitted directly by sources to a centralized emissions data system, made available in a state-level summary by the Administrator) at least 6 months prior to the due date for the progress report triggers the requirement that the progress report include emissions information for that year.

Proposed changes to 40 CFR 51.308(g)(5) involving assessments of any significant changes in anthropogenic emissions that have occurred since the period addressed in the last SIP revision were generally well received, however, one commenter asked that the EPA require additional specificity in this assessment. The EPA did not make any changes in response to this comment because the rule we are finalizing already includes the required information.

Comments on the proposed, new 40 CFR 51.308(g)(6) regarding a progress report including a summary of the most recent periodic assessment of any existing smoke management program that is part of the long-term strategy were numerous, with some commenters generally favoring and all but one state opposing this additional rule provision. The comments in opposition to the new provision appear to interpret it as creating a requirement that states periodically assess their smoke management programs and whether these programs are meeting their goals. However, the proposed provision was not intended to create any such requirement. It merely intended that if there is a smoke management program in the long-term strategy that already has a periodic program assessment element, the findings and recommendation of the most recent assessment must be summarized in the regional haze progress report. We are finalizing small changes from the proposed provision to make this intention clear. We reiterate that we interpret this provision to only apply to smoke management programs that have been made part of the long-term strategy in the regional haze SIP, and only to programs that have a program evaluation element. A state that has such a smoke management program and has included its program in its regional haze SIP has acknowledged that management of smoke is a significant concern with respect to visibility. Providing the public with easy access to a summary of the most recent program assessment via the regional haze progress report will facilitate public participation in the state's development of its next SIP revision. The benefit of including a summary of the program assessment for a smoke management program that is not part of the SIP in the progress report, if there has been a program assessment, may be less, and we believe a state should have flexibility to include or not include such a summary in its progress report.

Regarding the proposed 40 CFR 51.308(g)(7) (which as proposed was simply a modified version of the 1999 RHR's 40 CFR 51.308(g)(6) that clarified that a progress report's required assessment of whether a SIP is sufficient to meet established RPGs should address the RPGs defined for the end of the particular implementation period), the few comments received from states indicated a general opposition to the requirement to evaluate SIP adequacy to meet RPGs. The EPA did not propose to remove this function of the progress reports, so comments in favor of removing it are outside the scope of this rulemaking.

[123] This point about updating and revising data for a particular year also applies to emissions information made available by the Administrator in a state-level summary. It is possible that a state may have more recent, more complete or more accurate data for its sources than the Administrator has been able to include in his or her state-level summary for a particular year.

The proposed removal of the provisions of the 1999 RHR's 40 CFR 51.308(g)(7), designed to relieve the state of the need to review its visibility monitoring strategy within the context of the progress report, received few comments, but was generally opposed by conservation organization commenters and favored by state commenters. With respect to the progress reports that will be due in the second and subsequent implementation period, the reasoning for eliminating these provisions as explained in the proposal remains valid even in light of the comments received. However, upon further consideration it is appropriate to leave in place the requirement for a monitoring strategy element for the remaining progress reports due in the first implementation period, as many progress reports have already been submitted and many others are well under development. Being consistent with respect to this requirement for all progress reports during the first implementation period will not be a significant burden on the states. We have not disapproved the monitoring strategy element of any progress report to date.

The RTC responds to these comments in more detail.

Public comments on 40 CFR 51.308(i) regarding the requirement for consultation with FLMs on progress reports are discussed elsewhere in this document.

3. Final Rule

The EPA is finalizing all of the rule text detailed in the preceding discussion as proposed with changes. Instead of removing the 1999 RHR's 40 CFR 51.308(g)(7) regarding monitoring strategies entirely, we are retaining it but making it applicable only to progress reports for the first implementation period. With the retention of 40 CFR 51.308(g)(7), the numbering of other sections in the final rule is different than proposed and is consistent with the numbering in the 1999 RHR. We are revising the opening text of 40 CFR 51.308(g) to make the required public comment period be 30 days rather than 60 days. We are revising 40 CFR 51.308(g)(4) to provide a 6-month grace period for the trigger of the requirement to include emissions information for a recent year. The final version of new 40 CFR 51.308(g)(8) (numbered as (g)(6) in the proposal) has been revised from the proposal to clarify its applicability.

We are finalizing rule text in 40 CFR 51.308(g)(7) that makes it clear that all remaining progress reports for the first implementation period submitted after these rule revisions are finalized must address the monitoring strategy, as has been the requirement of the 1999 RHR for progress reports already submitted. A progress report for the second or a subsequent implementation period will not have to address the monitoring strategy.

I. Changes to Reasonably Attributable Visibility Impairment Provisions

1. Summary of Proposal

The EPA proposed extensive changes to 40 CFR 51.300 through 51.308 with regard to reasonably attributable visibility impairment. The motivation for these changes was discussed in detail in the proposal. In summary, in the time since the reasonably attributable visibility impairment provisions were originally promulgated in 1980, advances in ambient monitoring, emissions quantification, emission control technology and meteorological and air quality modeling have been built into the regional haze program, such that state compliance with the RHR's requirements will largely ensure that progress is made towards the goal of natural visibility conditions. Therefore, some aspects of the reasonably attributable visibility impairment provisions of the visibility regulations have less potential benefit than they did when they originally took effect. These provisions have received few revisions over the years resulting in a substantial amount of confusing and outdated language within the current visibility regulations including seemingly overlapping and redundant requirements. While there have historically been very few certifications of existing reasonably attributable visibility impairment by an FLM, in several situations a certification by an FLM has ultimately resulted in new controls or changes in source operation.

The EPA therefore proposed to (1) eliminate recurring requirements on states that we believe have no significant benefit for visibility protection; (2) clarify and strengthen the 1999 RHR's provisions under which states must address reasonably attributable visibility impairment when an FLM certifies that such impairment is occurring in a particular Class I area due to a single source or a small number of sources; (3) remove FIP provisions that require the EPA to periodically assess whether reasonably attributable visibility impairment is occurring and to respond to FLM certifications; and (4) edit various portions of 40 CFR 51.300 through 40 CFR 51.308 to make them clearer and more compatible with each other. The EPA solicited comment on each of the proposed changes as well as suggestions for alternative approaches.

Specific proposed provisions included:

- Revisions to 40 CFR 51.300, Purpose and applicability, to expand the reasonably attributable visibility impairment requirements to all states in light of the evolved understanding that pollutants emitted from one or a small number of sources can affect Class I areas many miles away.
- Revisions to 40 CFR 51.301, Definitions, to change the definition of *reasonably attributable* in order to make clear that a state does not have complete discretion to determine what techniques are appropriate for attributing visibility impairment to specific sources.
- Deletion of the entire text of 40 CFR 51.302 and replacement with new language clearly describing a state's responsibilities upon receiving a FLM certification of reasonably attributable visibility impairment. The following aspects of the proposed 40 CFR 51.302 are of particular relevance in summarizing comments and explaining our final action.
  - The proposed 40 CFR 51.302(b) described the required state action in response to any FLM certification of reasonably attributable visibility impairment, namely that a state shall revise its regional haze implementation plan to include a determination, based on the four reasonable progress factors set forth in 40 CFR 51.308(d)(1)(i)(A), of any controls necessary on the certified source(s) to make reasonable progress toward natural visibility conditions in the affected Class I area. This would preserve the existing state obligation, including the fact that a certification by an FLM would not create a definite state obligation to adopt a new control requirement, but rather only to submit a SIP revision that provides for any controls necessary for reasonable progress. It would be the EPA, not the certifying FLM, that would determine whether the responding SIP is adequate and the response reasonable.
  - The proposed 40 CFR 51.302(c) addressed those situations where an FLM certifies as a reasonably attributable visibility impairment source a BART-eligible source where there is at that time no SIP or FIP in place setting BART emission limits for that source or addressing BART requirements via a better-than-BART alternative program.[124] In such an instance, the

[124] Although most of the BART requirements have been addressed in most states, there remain a handful of states with BART obligations. In addition, there is litigation over the BART element in some approved SIPs and promulgated FIPs. We expect that this situation may exist in one or more

proposed rule would require the state to revise its regional haze SIP to meet the requirements of 40 CFR 51.308(e), BART requirements for regional haze visibility impairment, and notes that this requirement exists in addition to the requirements of 40 CFR 51.302(b) regarding imposition of controls for reasonable progress. The proposed version of 40 CFR 51.302(c) also clarified two aspects of the 1999 RHR to match the EPA's past and current interpretations. First, while a certification of reasonably attributable visibility impairment for a BART-eligible source prior to the EPA's approval of a state's BART SIP for that source does not impose any substantive obligation on a state that is over and above the BART obligation imposed by 40 CFR 51.308, the state's response to the certification of reasonably attributable visibility impairment for a BART-eligible source must take into account current information. Second, a certification of reasonably attributable visibility impairment for a BART-eligible source after the state's BART SIP for that source has been approved by the EPA does not trigger a requirement for a new BART determination based on the five statutory factors for BART, but rather, the state's obligation with respect to that source is the same as for a non-BART eligible source.

○ Three alternatives were proposed for 40 CFR 51.302(d) regarding the time schedule for state response to an FLM certification of reasonably attributable visibility impairment.

• Revisions to 40 CFR 51.303, Exemptions from control, to correctly refer to the new 40 CFR 51.302(c) as well as to the BART provisions in 40 CFR 51.308(e). Note that these revisions were described in the preamble of the proposal, but were inadvertently not included in the proposed rule text.

• Revisions to 40 CFR 51.304, Identification of integral vistas, to remove antiquated language in light of the fact that FLMs were required to identify any such integral vistas on or before December 31, 1985, and to list those few integral vistas that were properly identified.

• Revisions to 40 CFR 51.305, Monitoring for reasonably attributable visibility impairment, to state that the requirement to include in a periodic comprehensive SIP revision a monitoring strategy specifically for reasonably attributable visibility impairment in Class I area(s) only applies in situations where the Administrator, Regional Administrator or FLM has advised the state of a need for it.

• Complete removal of 40 CFR 51.306.

• Revisions to 40 CFR 51.308 (in addition to those discussed elsewhere in this document and in the proposal) related to reasonably attributable visibility impairment.

• Revisions to 40 CFR 51.308(e), BART, relating to a state's option to enact an emissions trading program or other alternative measure in lieu of source-specific BART.

Finally, consistent with our proposal to remove the requirement for states to periodically assess reasonably attributable visibility impairment, the EPA proposed to revise many sections of 40 CFR part 52 to remove provisions that establish FIPs that require the EPA to periodically assess whether reasonably attributable visibility impairment exists at Class I areas in certain states and to address it if it does, and to respond to any certification of reasonably attributable visibility impairment that may be directed to a state that does not have an approved reasonably attributable visibility impairment SIP.

2. Comments and Responses

Comments on the proposed revisions to 40 CFR 51.300 regarding the expansion of reasonably attributable visibility impairment to states that do not have Class I areas were mixed across stakeholder groups. While few commenters expressed disagreement with the EPA's statements surrounding the improved scientific understanding of long-range pollutant transport showing that reasonably attributable visibility impairment can be an interstate issue, commenters opposing the reasonably attributable visibility impairment expansion generally pointed to the alleged redundant nature of the reasonably attributable visibility impairment and regional haze requirements, as well as asserting that any and all FLM concerns can be raised during the SIP development process. Using similar arguments, a number of commenters urged the EPA to remove the reasonably attributable visibility impairment requirements entirely, although this was not an option outlined in the proposal.

A number of comments on the proposed revisions to 40 CFR 51.301 regarding definitions opined that changing the definition of ''reasonably attributable'' (to remove implied state discretion in determining whether the technique used was appropriate) would significantly alter the federal-state relationship in the visibility program and give FLMs authority beyond that afforded in sections 169A and 169B of the CAA. In response, the EPA is clarifying that the text edit to remove the phrase ''the state deems'' from the definition of ''reasonably attributable'' was not intended to give the FLMs sole power to determine what technique is appropriate for attributing visibility impairment to a source or small number of sources. If and when an FLM makes a certification, it can base the certification on a technique that it thinks appropriate. Whether that technique is appropriate is an issue that the affected state may opine on during the consultation opportunity the FLM is required to offer (details of this consultation opportunity are discussed later) and as part of its responsive SIP revision. If the state believes that the technique is not appropriate and that no appropriate technique would verify the attribution alleged by the FLM, the state may submit a narrative-only SIP revision that disagrees with the certification and explains the reason for the disagreement, and accordingly contains no additional measures for the identified source or sources. However, it will be the EPA that ultimately determines whether the technique was appropriate, when we approve or disapprove the responsive SIP revision after considering the information that supports the certification, the information in the SIP revision, and public comments. This change in the rule text does not alter the federal-state relationship, because even under the wording of the 1999 RHR, the EPA would review the reasonableness of a state's determination as to what technique is appropriate for attributing visibility impairment.

Several of these comments also ask that, if the EPA finalizes this change in definition, that the scope of attribution techniques which would qualify as ''appropriate'' be better stated. On this point, the EPA does not believe imposing such limits on the scope of techniques that qualify as ''appropriate'' is justified, particularly given that continually improving scientific understanding of pollutant transport and the continually evolving scope of modeling will no doubt result in even better attribution techniques in the future.

Other comments on 40 CFR 51.301 asked for a more descriptive and thorough definition of ''reasonably attributable visibility impairment'' and its related terms. Comments on 40 CFR 51.302 regarding FLM certification of reasonably attributable visibility impairment contained similar requests,

states at some time after the effective date of the final rule.

with most states and industry expressing concern that the proposed rule did not define sufficiently limiting principles for FLMs, failed to identify information about the scientific basis for any certification of reasonably attributable visibility impairment, and did not provide any basis by which a state or source could review or object to any certification of reasonably attributable visibility impairment before it triggered a mandatory obligation to respond. Several commenters asked for guidance or criteria in the final rule for the certification process and techniques for attribution, with some providing a suggested list of elements to include in a certification of reasonably attributable visibility impairment.

The comments in favor of a more specific provision in the final rule for what type of source impact, assessed by what method, constitutes reasonable attributable visibility impairment did not offer any particular more specific definition of reasonably attributable visibility impairment, and we had not proposed any more specific definition. While the EPA acknowledges the comments, we do not think it is necessary to finalize a more specific definition in the rule text. The EPA agrees with the portion of one comment letter suggesting that a thorough certification of reasonably attributable visibility impairment should describe the location(s) within the Class I area where the impairment occurs, when (*e.g.,* year-round or only during certain times of the year) the impairment occurs, what attribution methods were used to determine impairment (such as photographs or videos, monitoring, and/or modeling), a description of how the impairment adversely impacts visibility, an identification of the source or sources believed by the FLM to be causing the impairment and the methods used to make this determination. Past reasonably attributable visibility impairment certifications have generally included these elements or the certifying FLM otherwise shared such information with the state.

Additional comments on 40 CFR 51.302 asked for some degree of state participation in certification development, such as a pre-certification consultation requirement whereby FLMs must consult with states (and possibly EPA) before certifying, as well as an option for the state to appeal a certification once received. In response to these comments, we are including a consultation obligation on the FLMs in the final rule text. We would like to reiterate the importance of state-FLM consultation for all aspects of the RHR, including reasonably attributable visibility impairment. While the final rule requires the FLM to offer a state an in-person consultation meeting at least 60 days prior to making a certification of reasonably attributable visibility impairment, we encourage FLMs and state to have conversations and exchange technical information even earlier. The FLMs have conveyed to the EPA their expectation that a reasonably attributable visibility impairment certification will be an unusual ''backstop'' for a situation that is not otherwise addressed under the regional haze program despite good communication between the FLM and the state. In addition, in each instance since the original regulations were promulgated since 1980, FLMs have consulted with states and EPA and only made the decision to certify reasonably attributable visibility impairment when these conversations did not lead to a resolution of the issue.

One commenter said that there is no provision in the 1980 rule on reasonably attributable visibility impairment that allows an FLM to make a certification for a source that is not BART-eligible. This commenter objected to the explicit provisions in our proposed rule revisions that provide for such a certification. We disagree with the commenter's description of the 1980 rule. We recognize that the term ''existing stationary facility'' was defined in the 1980 rule as including only BART-eligible sources, and that many of the provisions of the 1980 rule were specific to these sources. However, the 1980 rule's definition of reasonably attributable visibility impairment refers to ''air pollutants from one, or a small number of sources,'' not more narrowly to ''existing stationary facilities.'' Also, 40 CFR 51.302(c)(2)(i) as promulgated in 1980 says that a state plan to address reasonably attributable visibility impairment must include a strategy ''as may be necessary to make reasonable progress towards the national goal'' and 40 CFR 51.302(c)(2)(ii) requires an assessment of how each element of the plan relates to preventing visibility impairment. Neither of these sections is limited to only ''existing stationary facilities.'' In addition, 40 CFR 51.302(c)(3) as promulgated in 1980 required plans to require ''each source'' to maintain control equipment and to establish procedures to ensure the equipment is properly operated and maintained. While the remaining parts of 40 CFR 51.302(c) contain more specific requirements that apply when a certification of reasonably attributable visibility impairment has identified an ''existing stationary facility'', the existence of these requirements does not mean that an FLM may not make a certification for another type of source or that a state has no obligation to submit a SIP revision to respond to the certification. Furthermore, as explained in more detail in the RTC, we believe that the CAA provides broad enough authority for the EPA to promulgate the provisions in the final rule regarding the certification of reasonably attributable visibility impairment by sources that are not BART-eligible, regardless of how these sources were addressed in the 1980 rule. If a certification is made for a source (or a small number of sources) that is not BART-eligible (or for a BART-eligible source for which the EPA has already approved or promulgated a plan addressing the BART requirement), the responsive SIP revision must provide for whatever measures for that source are necessary to make reasonable progress considering the four statutory factors, unless the SIP revision establishes that there is no reasonably attributable visibility impairment due to the identified source.

There were a number of comments on 40 CFR 51.302(d) regarding the proposed three options for a schedule for state response to a certification of reasonably attributable visibility impairment. Some commenters recommended the first proposed approach of keeping the 1999 RHR's schedule under which a state response is due within 3 years of a certification of reasonably attributable visibility impairment. Most commenters found the third proposed approach to be unnecessarily complicated, while some objected to how much time could elapse between a certification and the state's responsive SIP revision; we are not finalizing the third approach and will not discuss it further. Some commenters favored a modified version of the second proposed option (in which the deadline would be the earlier of the due date for the next progress report or periodic comprehensive SIP revision, so long as that submission is due at least 2 years after the certification), but with more time to respond. These commenters generally stated that the minimum workable time was either 3 or 4 years. It is noteworthy, however, that other commenters opposed this second option, largely due to the fact that in some situations a state response would not be due for some time after an FLM certification (up to 7 years).

We noted that if the second approach were finalized but with the minimum time to respond to a certification increased to 3 or 4 years (as recommended by some states),

responses to FLM certifications may not be due until 8 or 9 years after certification, which is an excessive amount of time. The EPA believes that retaining the fixed 3-year deadline of the existing rule is workable for all parties and is most appropriate and hence is finalizing the first option in this rulemaking, with an added provision that no response will be due before the July 31, 2021, due date of the next SIP revision.[125] While not specifically proposed, this provision is being finalized in response to the general concern of some commenters with a state having to respond to a reasonably attributable visibility impairment certification before it has had an opportunity to systematically consider what additional emission reductions measures are necessary for reasonable progress for the second implementation period taking into account all the requirements of this final rule.

While we did not publish specific proposed rule changes for removing all mention of integral vistas from the visibility protection rules, we invited comment on such a step. We did so because it appeared that if we finalized our other proposals, there would be no requirement in our rules that actually depends on whether an integral vista associated with a Class I area had been identified. Thus, removing mention of integral vistas would simplify the rule text without changing any party's obligations under our visibility protection rules. A number of commenters agreed with our assessment and supported the removal of all mention of integral vistas, and no commenter opposed this change. However, we now realize that because the definition in 40 CFR 51.301 that ''*visibility in any mandatory Class I Federal area* includes any integral vista associated with that area'' and because there are several provisions that after our final action continue to use the term ''visibility in any mandatory Class I Federal area,'' there are some provisions where the existence of a single identified integral vista could conceivably make a difference to the obligation of some party or to an EPA action. For this reason, we are finalizing only what we proposed, which is removal of antiquated language in section 40 CFR 51.304, but not removal of all references to integral vistas in subpart P.

[125] The added provision that refers to July 31, 2021, will have the effect of providing additional time for the state's response only for a reasonably attributable visibility impairment certification made prior to July 31, 2018.

For a discussion of the comments on other areas proposed and being finalized related to reasonably attributable visibility impairment, please *see* the RTC document available in the docket for this rulemaking.

3. Final Rule

We are finalizing the proposed revisions to the reasonably attributable visibility impairment and related provisions, with four changes.

First, as mentioned in the Section IV.I.2 of this document, we are finalizing a modified version of one of the proposed alternatives regarding the deadline for state response to a certification of reasonably attributable visibility impairment certification, namely that the response would always be due within 3 years (as required by the existing rule). The final rule retains this option's 3-year, fixed deadline rather than one of the alternative schemes proposed that would have always aligned the deadline with the next SIP revision or progress report, but adds an additional one-time provision such that a state response to a certification of reasonably attributable visibility impairment will in no case be due earlier than July 31, 2021. The final rule retains the language indicating that the state is not required at the time of response to also revise its RPGs to reflect the additional emission reductions required from the source or sources.

Second, we are adding to 40 CFR 51.308(e)(2)(v) and 40 CFR 51.308(e)(4) references to the reasonably attributable visibility impairment provisions in 40 CFR 51.302(b) and 40 CFR 51.302(c). We proposed to add to each of these parts of the rule only a reference to 40 CFR 51.302(b) but have realized that a reference in each to 40 CFR 51.302(c) is also needed. With these revisions, it is clear that for a BART-eligible source participating in a trading program that has been determined to be better-than-BART, if an FLM certifies that there is reasonably attributable visibility impairment due to that source a state may include a geographic enhancement of the trading program to satisfy both the reasonable progress obligation under 40 CFR 51.302(b) and any outstanding BART obligation under 40 CFR 51.302(c). While most BART-eligible sources cannot become subject to 40 CFR 51.302(c) because an approved BART SIP (or a SIP under 40 CFR 51.309) or a FIP is in place as a result of planning efforts in the first implementation period, there are a small number of BART-eligible sources that might become subject to 40 CFR 51.302(c) and it is important to be clear that a geographic enhancement is an option for them, as it has been under the 1999 RHR.

Third, also mentioned in the preceding section, we are finalizing a requirement in 40 CFR 51.302(a) that the FLM making a certification of reasonably attributable visibility impairment must offer an opportunity to the state(s) containing the identified sources to consult regarding the basis for the certification, in person and at least 60 days before the FLM makes the certification. This change was added in response to comments received that specifically asked for such consultation.

Fourth, we are not finalizing the proposed changes to 40 CFR 51.308(c), for the following reasons. Because we are finalizing a 3-year, fixed deadline for state response to a certification of reasonably attributable visibility impairment, the first part of the proposed provision (regarding the need to respond as part of an upcoming, otherwise due SIP revision) no longer applies. As to the second part of the proposed provision (regarding monitoring to assess reasonably attributable visibility impairment), we now realize this aspect is adequately covered by 40 CFR 51.308(f)(4) and that duplication of requirements in different subsections would only cause confusion. Therefore, 40 CFR 51.308(c) will remain unchanged from the 1999 RHR.

J. Consistency Revisions Related To Permitting of New and Modified Major Sources

1. Summary of Proposal

Proposed changes to 40 CFR 51.307, New source review, were limited to a few proposed changes to maintain consistency with other sections of the RHR and with the CAA. These changes were minor and therefore will not be repeated here.

2. Comments and Responses

There were no significant comments received on the proposed changes to this subsection.

3. Final Rule

Changes to 40 CFR 51.307 are being finalized as proposed. The EPA does wish to emphasize the requirement for FLM consultation during the new source review permitting process. As discussed in the preamble for the proposal, 40 CFR 51.307(a) requires FLM consultation for any new major source or major modification that would be constructed in an area designated attainment or unclassifiable that may affect visibility in any Federal Class I

area. FLM consultation is also required under 40 CFR 51.307(b)(2) for any major source or major modification that proposes to locate in a nonattainment area that may affect visibility in any mandatory Federal Class I area. Two EPA guidance documents interpret this consultation requirement, particularly with regard to evaluating whether a proposed new major source or major modification may affect visibility in a Federal Class I area.[126] The EPA regional offices can provide additional assistance to states in ensuring that their permitting programs meet the regulations and that the appropriate consultation is being conducted for affected permits.

K. Changes to FLM Consultation Requirements

1. Summary of Proposal

As discussed in the proposed rule, state consultation with FLMs is a critical part of the development of quality SIPs. We proposed not only to apply the FLM consultation requirements of 40 CFR 51.308(i)(2) to progress reports that are not SIP revisions, but to make further edits to this subsection to support such consultations. The proposed changes were motivated by a concern that the 1999 RHR's requirement for consultation at least 60 days prior to a public hearing may not result in a state offering an in-person consultation meeting sufficiently early in the state's planning process to meaningfully inform the state's development of the long-term strategy. We proposed to add a requirement that such consultation on SIPs and progress reports occur early enough to allow the state time for full consideration of FLM input, but no fewer than 60 days prior to a public hearing or other public comment opportunity. A consultation opportunity that takes place no less than 120 days prior to a public hearing or other public comment opportunity would then be deemed to have been ''early enough.''

2. Comments and Responses

Overall, the comments were split with many favoring any enhanced FLM participation in regional haze planning, while most states generally disfavored enhanced participation.

Regarding comments specific to the proposed changes to 40 CFR 51.308(i)(2), states were split in supporting or opposing the inclusion of a reference using the phrase ''early enough.'' Some commenters said the criteria were not clear and asked for clarity on what would be needed to satisfy the requirement. In addition, many states and industry said the current 60-day period is long enough for SIPs, and that a longer period could delay their submission.

For progress reports, several state and industry commenters indicated that the 60-day period described in the 1999 RHR is sufficient, or that FLMs should not be consulted on progress reports at all if they are no longer required to be SIP revisions. A main concern was that anything more than a 60-day period would conflict with the proposed requirement in 40 CFR 51.308(g)(3) to assess current conditions based on the IMPROVE data available 6 months before the progress report due date. As discussed earlier in this document, this requirement under 40 CFR 51.308(g)(3) is being finalized as proposed. The EPA agrees that a requirement to consult with FLMs on progress reports more than 60 days prior to opening a public comment period may interfere with the revised provisions in 40 CFR 51.308(g)(3) and is therefore finalizing the 60-day requirement without referring to consultation being ''early enough'' and without referring to the 120-day point in the process.

Finally, some multi-state organization commenters asked for confirmation that state and FLM participation in the RPO process would continue to meet the consultation requirement. The EPA does not agree that such participation would suffice for consultation because being informed of the technical work performed by the multi-state organizations is not the same as the FLMs being substantively involved in regulatory decisions a state makes on what controls to require based on that work (*i.e.,* the decisions on the long-term strategy on which public comment will be sought prior to submission to the EPA in the form of a SIP revision). Furthermore, the objective of these provisions is not to achieve FLM consultation with states on setting RPGs, since that process is largely mechanical in nature because RPGs are to be based on the long-term strategy and do not involve any additional policy decisions. We note that a standing invitation for FLM participation in the work performed by multi-state organizations may be part of the procedures that a SIP provides for continuing consultation between the state and the FLM, as required by 40 CFR 51.308(i)(4).

For a more thorough discussion of the comments on FLM consultation requirements, please *see* the RTC document available in the docket for this rulemaking.

3. Final Rule

After consideration of public comments, we are finalizing the revisions to 40 CFR 51.308(i)(2) with changes from proposal. The proposed requirement for consultation no fewer than 60 days prior to a public hearing or other public comment opportunity (with a consultation opportunity that takes place no less than 120 days prior to a public hearing or other public comment opportunity being deemed ''early enough'') is being finalized for SIP revisions. For progress reports (which, as discussed elsewhere in this document, will no longer be subject to the formalities of a SIP revision), the EPA is finalizing a requirement for consultation no fewer than 60 days prior to a public hearing or other public comment opportunity, with no reference to the consultation opportunity being ''early enough.'' We are also finalizing somewhat different wording regarding the purpose of the consultation on SIP revisions, to convey the idea that consultation that takes place via an in-person meeting 60 to 120 days prior to a public hearing or comment opportunity will be about decisions that are about to be made by the state on its long-term strategy rather than about the plan for the technical analysis that informs these decisions, because by that time the technical analysis will have already been largely completed.[127] The final wording on the purpose of the consultation also emphasizes the content of the long-term strategy rather than the setting of the RPGs, consistent with the concept that the RPGs are a reflection of the requirements of the long-term strategy.

L. Extension of Next Regional Haze SIP Deadline From 2018 to 2021

1. Summary of Proposal

The EPA proposed to revise 40 CFR 51.308(f) to move the deadline for the submission of the next periodic comprehensive SIP revisions from July 31, 2018, to July 31, 2021, with states retaining the option of submitting their SIP revisions before July 31, 2021. We proposed to leave the end date for the second implementation period at 2028,

[126] Notification to Federal Land Manager Under Section 165(d) of the Clean Air Act, memo from David G. Hawkins, EPA Assistant Administrator for Air, Noise, and Radiation to EPA's Regional Administrators, March 19, 1979; 1990 New Source Review Workshop Manual, Chapter E, Section III A. Source Applicability.

[127] We expect that the FLM would have already provided input into the planning of the technical analysis including steps to gather information to be analyzed, as part of the ongoing consultation required under 40 CFR 51.308(h)(4) and as part of FLM participation in multi-state planning groups.

regardless of when SIP revisions are submitted. The proposed change was to be a one-time schedule adjustment such that the due dates for periodic comprehensive SIP revisions for the third and subsequent planning periods would still be due on July 31, 2028, and every 10 years thereafter. The EPA proposed this extension to allow states to coordinate regional haze planning with other regulatory programs, including but not limited to the Mercury and Air Toxics Standards,[128] the 2010 1-hour SO_2 NAAQS,[129] the 2012 annual $PM_{2.5}$ NAAQS [130] and the Clean Power Plan,[131] with the further expectation that this cross-program coordination would lead to better overall policies and enhanced environmental protection.

2. Comments and Reponses

Many commenters, especially state air agencies, expressed support for this extension, while other commenters opposed it. A primary concern from the latter group of commenters was that, given the fact that many initial regional haze SIPs were submitted late (in some cases, well into the first implementation period), this pattern was likely to continue and many periodic comprehensive SIP revisions would not be submitted by July 31, 2021, which would leave even less time during the second implementation period for any emission reductions necessary for reasonable progress to occur. One commenter stated that the 2021 date would be workable provided EPA acts promptly on each state's periodic comprehensive SIP revision, and that EPA should indicate now that it will make prompt findings of nonsubmittal or substantial inadequacy when the time comes.

As a general matter, making findings of nonsubmittal or substantial inadequacy are well within the EPA's authority. While we recognize the commenter's concern regarding the timing of SIP submissions, we expect that the length of the second implementation period will be sufficient to secure the emission reductions necessary for reasonable progress. The EPA anticipates that the experience states and the EPA have gained from the first round of regional haze planning will result in a more efficient process of SIP submission and review moving forward. Furthermore, the EPA has clarified in the final rule that whether or not a control measure can be installed and become operational before the end of the planning period is not a factor in determining whether that measure is necessary to achieve reasonable progress. Thus, the length of the implementation period should not be a barrier to achieving the emission reductions identified by the reasonable progress analysis. Finally, this rule change grants states additional time up front (before 2021) for regional haze planning and analysis and thus makes it more likely they will submit their SIP revisions for the second implementation period either on or ahead of schedule.

Some commenters contended that the EPA's rationales do not justify the proposed extension, and that giving states an additional 3 years to coordinate their planning would frustrate Congress's policy goals and impair human health. One commenter said that the EPA should evaluate the public health impacts of its proposal to delay the SIP deadline to 2021. We disagree with these comments. As we explained at proposal, the RHR requires states to include the impacts of other regulatory programs when developing their regional haze SIPs. Many industries, including the utility sector, are currently in the midst of developing mid- to long-term plans that will govern how they navigate the numerous recent additions to the regulatory landscape that include, but are not limited to, the programs discussed in the proposal and mentioned previously (*i.e.,* the Mercury and Air Toxics Standards,[132] the 2010 1-hour SO_2 NAAQS,[133] the 2012 annual $PM_{2.5}$ NAAQS [134] and the Clean Power Plan).

Decisions that states and regulated entities make in response to one program may affect the options available for addressing their regional haze obligations, and vice versa. Providing time for regulated entities to coordinate their planning will allow them to design pollution control strategies that make efficient and effective use of their resources over the long term. Congress's goal of attaining natural visibility conditions will not be achieved in the next implementation period—it is necessarily a longer-term effort that will require states and regulated entities to make careful, considered decisions about how to balance the requirement to achieve sustained and sustainable visibility improvement moving forward with their business, regulatory and other priorities. Additionally, with the extension of the due date for the second implementation period SIPs, we are maintaining 2028 as the end date of the implementation period. We thus disagree that providing states 3 additional years to coordinate planning is inconsistent with continuing to make reasonable progress towards the ultimate goal of natural visibility conditions. We also disagree that providing 3 additional years will seriously undermine the goal of coordinated, regional planning among states. While we are aware that some states in the eastern U.S. are considering submitting SIPs before July 31, 2021, these states are coordinating among themselves on their technical analyses and they have not indicated that the extension will obstruct their coordination with other states.

Although Congress did not establish an explicit role for health considerations in the regional haze program, reductions of visibility-impairing pollutants also have important health related co-benefits. However, because the purpose of the regional haze program is improving visibility in Class I areas, we disagree that the EPA should evaluate the human health impacts of moving the deadline for regional haze SIP submissions from 2018 to 2021. Importantly, the emission reductions achieved in the first implementation period will continue to be in effect, and emissions will continue to be addressed during this period under the existing structure of federal, state and local clean air programs. Insofar as states and sources were already planning to undertake emission control projects in response to other regulatory requirements, the timing of these projects will be unaffected by the change in the SIP due date in the regional haze program. Furthermore, states are not required to wait until 2021 to submit their regional haze SIP revisions for the second implementation period, although they may choose to do so.

One commenter asserted that EPA's proposal to extend the deadline for submission of regional haze SIPs for the second implementation period violates the plain language of the section 169B(e)(2) of the CAA. The commenter argues that this statutory provision requires EPA to mandate that states submit regional haze SIP revisions within 12 months of promulgating RHR revisions under section 169A. We disagree. Section 169B(e)(2) states that ''[a]ny regulations promulgated under section [169A] of this title pursuant to *this subsection* shall require affected

[128] 77 FR 9304, February 16, 2012.

[129] 75 FR 35520, June 22, 2010.

[130] 78 FR 3086, January 15, 2013.

[131] 80 FR 64662, October 23, 2015. The Clean Power Plan was stayed by the Supreme Court for the duration of litigation. Order in Pending Case, *West Virginia* v. *EPA,* No. 15A773 (February 9, 2016). As a result, states have no compliance obligations with respect to the Clean Power Plan at this time.

[132] 77 FR 9304, February 16, 2012.

[133] 75 FR 35520, June 22, 2010.

[134] 78 FR 3086, January 15, 2013.

States to revise within 12 months their implementation plans under section [110].'' (emphasis added). The subsection at issue, 169B(e)(1), requires EPA to promulgate regional haze regulations within 18 months of receiving the report required of Visibility Transport Commissions under 169B(d)(2). This report was a one-time requirement intended to inform EPA's yet-to-be-promulgated regulations. Thus, section 169B(e)(1) clearly expresses Congress's intent to establish a timetable for the EPA's initial regional haze rulemaking in order to ensure that the regulations would be promulgated in a timely fashion and would be informed by the studies and report required under 169B(a)(1) and (d)(2), respectively. Section 169B(e)(2) states that regulations promulgated pursuant to (e)(1)—which addresses only EPA's obligation to undertake that initial regional haze rulemaking—must require states to submit SIP revisions within 12 months. We disagree with the commenter's assertion that Congress intended this 12-month deadline to apply in the case of subsequent rule revisions, as subsection (e) describes a one-time process of research, reports and rulemaking to get the regional haze program off the ground. Neither 169(e)(1) nor (e)(2) contains any indication that Congress intended this specific timeline to apply for additional, future rulemakings.

Another commenter said that in lieu of formally extending the deadline, the Agency should consider granting an administrative waiver to a state that affirmatively shows that a delay in submitting its periodic comprehensive SIP revisions is warranted. The EPA does not believe the additional effort required on the part of a state and the EPA would be worthwhile for such an undertaking because many states have good reason to coordinate their planning for their periodic comprehensive SIP revisions with that for other regulatory requirements and programs. A waiver process would thus add considerable administrative burden with minimal benefit, as the EPA would be likely to grant most or all of the waiver requests based on this need to coordinate planning.

3. Final Rule

The EPA is finalizing this one-time deadline extension with no changes from proposal.

M. Changes to Scheduling of Regional Haze Progress Reports

1. Summary of Proposal

The EPA proposed to revise the requirements in 40 CFR 51.308(g) and (h) regarding the timing of submission of reports evaluating progress towards the natural visibility goal. The 1999 RHR required states to submit regional haze progress reports every 5 years, with the first progress report due 5 years after submission of the first periodic comprehensive SIP revisions. Because states submitted these first SIP revisions on dates spread across several years, many of the due dates for progress reports currently do not fall mid-way between the due dates for periodic comprehensive SIP revisions, as the EPA initially envisioned. Looking forward, continued operation of the 1999 RHR would in many cases require a progress report shortly before or shortly after a periodic comprehensive SIP revision, at which time it could not be expected to have much utility as a mid-course review of environmental progress or much incremental informational value for the public compared to the data contained in that SIP revision.

Complementing the revisions to 40 CFR 51.308(f) regarding the deadlines for submittal of periodic comprehensive revisions, we proposed to revise 40 CFR 51.308(g) and (h) such that the second and subsequent progress reports would be due by January 31, 2025, July 31, 2033, and every 10 years thereafter, placing one progress report mid-way between the due dates for periodic comprehensive SIP revisions. As we explained, this timing provides a balance between allowing the implementation of the most recent SIP revision to proceed long enough for a review to be possible and worthwhile, and having enough time remaining before the next comprehensive SIP revision for state action to make changes in its rules or implementation efforts, if necessary, separately from the actions in that next SIP.

As explained in the proposal, the EPA no longer believes a progress report is useful at or near the time of submission of a periodic comprehensive SIP revision, since in practical terms a progress report provides little additional information beyond that required in a periodic comprehensive SIP revision (with the exception of the 1999 RHR's requirement that a progress report include information on the trend in visibility over the whole period since the baseline period of 2000–2004). In order to substantially reduce administrative burdens and make progress reports more useful to the public with no attendant reduction in environmental protection, we proposed to limit the requirement for separate progress reports to the one due mid-way between periodic comprehensive SIP revisions and to add to the requirement for periodic comprehensive SIP revisions a requirement to include the visibility trend information that the 1999 RHR previously required exclusively in progress reports.

2. Comments and Responses

Commenters generally supported the change to progress report scheduling such that due dates would fall mid-way between those of periodic comprehensive SIP revisions, though some comments recommended that a periodic SIP revision be explicitly required to include all the required progress report elements listed in 40 CFR 51.308(g) of the 1999 RHR and in particular element (g)(6), which requires an assessment of whether the current SIP is sufficient to meet all established RPGs. There are seven listed progress report elements in the 1999 RHR and eight listed elements in the revised final rule. The subjects of the first five of the elements are the same in the two versions of the rule, and we proposed and are finalizing a requirement that each periodic SIP revision address these five elements. We are not requiring periodic SIP revisions to assess whether the SIP is sufficient to meet all established RPGs (element (g)(6) in the 1999 RHR and the revised final rule). Given that the SIP is being revised, there would be no utility in assessing whether the previous terms of the SIP for the previous implementation period were sufficient to meet the progress goals for the previous period. Also, since the new SIP revision will contain new progress goals for the end of the currently applicable implementation period and these goals will be calculated to reflect the new measures in that SIP revision and previously adopted measures, it necessarily will be that this revised SIP is sufficient to meet the new goals. The seventh element of a progress report as listed in the 1999 RHR (which EPA is eliminating in the revised rule for progress reports for the second and subsequent implementation periods for reasons described elsewhere in this document) is a review of the monitoring strategy. However, periodic SIP revisions are required to address the monitoring strategy under 40 CFR 308(f)(6) of the final rule text, so no further mention of monitoring strategies is needed. The newly added element of a progress report in the revised final rule (now numbered as element (g)(8)) is

the summary of the most recent assessment of a smoke management program if any. Our reasons for not requiring periodic SIP revisions to include such a summary are given elsewhere in this document.

Some commenters requested that the progress report due January 1, 2025, be removed from the rule, given the fact that it would be due only 3.5 years after the July 31, 2021, due date of the next periodic comprehensive SIP revision. These commenters felt this time period prohibitively short and that this information could be better be included in the next periodic comprehensive SIP revision due July 31, 2028. A few commenters asked that EPA entirely remove the requirement for progress reports from the regional haze program. As noted previously, progress reports are an important tool for states to review and potentially make changes in their rules or implementation efforts, if necessary. Although the progress report for the second implementation period will be due only 3.5 years after the due date of the preceding periodic comprehensive SIP revisions, we still believe in the usefulness of such a mid-course review. In addition, some states have indicated that they intend to submit periodic comprehensive SIP revisions closer to the 1999 RHR's July 31, 2018 deadline, so for those states substantially more than 3.5 years will have elapsed before the progress report becomes due.

3. Final Rule

The EPA is finalizing these provisions regarding scheduling of progress reports, and the aforementioned additional requirement that periodic comprehensive SIP revisions include gap-filling visibility trend information, with no change from proposal.

N. Changes to the Requirement That Regional Haze Progress Reports Be SIP Revisions

1. Summary of Proposal

We proposed to revise 40 CFR 51.308(g) regarding the requirements for the form of progress reports, which under the 1999 RHR were required to take the form of SIP revisions that comply with certain procedural requirements.[135] As explained in the proposed rule and elsewhere in this document, the EPA originally included the requirement for progress reports in the 1999 RHR primarily to ensure that the states remain on track between periodic comprehensive SIP revisions. In the 1999 RHR, we required progress reports to be in the form of SIP revisions that meet the procedural requirements of 40 CFR 51.102 and 51.103 (which in turn refer to the requirements of Appendix V of 40 CFR part 51). Given the requirements for what a state should include in its progress report, we anticipated that these submittals would typically contain narrative descriptions of such things as current visibility conditions and emissions inventories. We did not anticipate that progress reports would typically include new or revised emission limits.[136] Although the EPA specifically intended for progress reports to involve significantly less effort than a periodic comprehensive SIP revision, a state must provide public notice and an opportunity for a public hearing for SIP revisions. In addition, they must conform to certain administrative procedural requirements, provide various administrative material, and must be submitted by an official who is authorized by state law to submit a SIP revision.

We proposed to revise our regulations so that progress reports need not be in the form of SIP revisions, but to require states to consult with FLMs and obtain public comment on their progress reports before submission to the EPA. We also proposed that the SIP revision due in 2021 must include a commitment to prepare and submit these progress reports to the EPA according to the revised schedule being finalized in this rule (*see* previous section). While these progress reports would be acknowledged and assessed by the EPA, our review of these reports would not result in a formal approval or disapproval of them. In addition, relieving states of the obligation to follow the procedural requirements of 40 CFR 51.102 and 51.103 would free up state resources for other important environmental planning, given the fact that they are resource-intensive. Other advantages to the proposed approach were discussed in detail at proposal.

2. Comments and Responses

Many commenters expressed support, with some suggesting that EPA do away with progress reports entirely (similar sentiments were expressed in comments on progress report timing; see previously in this document). Other commenters opposed eliminating the requirement that progress reports take the form of SIP revisions, and expressed that review by EPA should at least involve a finding of adequacy or inadequacy.

In response to comments opposing eliminating the requirement that progress reports be SIP revisions, the EPA would like to reiterate that as part of our review of a progress report, we will follow up with the state on any appropriate next steps, and we note again that there are additional remedies (such as undertaking a less formal assessment of the results of the implementation of the previously submitted SIP) available to the EPA in the event a state fails to properly submit a progress report.

Some comments expressed concern that the EPA would use progress reports as a basis for a ''SIP call'' and opined that progress reports should only provide information for subsequent SIP submittals. It should be noted, however, that 40 CFR 51.308(h), which we are not revising in any material way, already requires that if a state has determined in its progress report that its implementation plan is or may be inadequate to ensure reasonable progress due to emissions within that state, it must revise its current SIP to address its deficiencies. Thus, there is already a mechanism under which states must use the information in their progress reports to assess the adequacy of their existing SIPs. Additionally, under CAA section 110(k)(5), the EPA has the authority to review a SIP and assess the adequacy of that SIP. While this authority is discretionary, when and if the EPA does make a determination about the adequacy of a regional haze SIP it must do so reasonably, and this may require consideration of the information in a progress report. Therefore, we are not including in the final rule any provision saying that the content of a progress report may not be used as part of the basis for a SIP call action.

We will further consider a suggestion from one commenter that we provide a centralized Web site that would inform the public of which progress reports are currently available for public comment at the state level and the planned end of each comment period.

3. Final Rule

The EPA is finalizing the proposal to eliminate the requirement that progress reports take the form of SIP revisions. The EPA would like to emphasize (as explained at proposal) that although progress reports will no longer be

[135] These procedural requirements are detailed in 40 CFR 51.102, 40 CFR 51.103 and Appendix V to Part 51—Criteria for Determining the Completeness of Plan Submissions.

[136] Under our regulations, if a state were to determine at the time of submitting its progress report that its SIP is or may be inadequate to ensure reasonable progress due to emissions from sources within the state, the state has 1 year in which to submit a SIP revision addressing the inadequacy of its plan. 40 CFR 51.308(h)(4). This SIP revision would contain any required new or revised emission limits.

required to take the form of SIP revisions, states will still be required to include the required progress report elements listed in 40 CFR 51.308(g)(1) through 40 CFR 51.308(g)(8), in particular the assessment of whether the existing SIP elements are sufficient to enable a state to meet all established RPGs for the period covered by the most recent periodic SIP revision. We are also retaining the requirement that states consult with FLMs and obtain public comment on their progress reports before submission to the EPA.[137] Also, 40 CFR 51.308(h) will continue to require that at the same time the state is required to submit a progress report, it must also take one of four listed actions concerning whether the SIP is adequate to achieve established goals for visibility improvement, and the state will continue to have an obligation to revise its SIP to address any plan deficiencies within 1 year of submission of a determination that the SIP is or may be inadequate.

O. Changes to Requirements Related to the Grand Canyon Visibility Transport Commission

1. Summary of Proposal

As noted in the proposal, 40 CFR 51.309 has limited applicability going forward because its provisions apply only to 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report, only to three states that chose to rely on the special provisions in this section and only to SIPs for the first regional haze implementation period (*i.e.,* through 2018). However, we proposed certain conforming revisions to avoid confusion going forward, including the following:

- Revising 40 CFR 51.309(d)(4)(v) to correctly refer to the new 40 CFR 51.302(b) (in lieu of (e), which no longer exists in the proposed 40 CFR 51.302) and to delete the reference to BART since it does not appear in 40 CFR 51.302(b).
- Changing the title of 40 CFR 51.309(c)(10), Periodic implementation plan revisions, to include ''and progress reports'' at the end, to complement the revisions that will no longer require progress reports be considered SIP revisions.
- Revising 40 CFR 51.309(c)(10) to preserve the 1999 RHR's requirement that the progress reports due in 2013 take the form of SIP revisions, but direct the reader to the provisions of 40 CFR 51.308(g) for subsequent progress reports.
- Revising 40 CFR 51.309(c)(10)(iv) to indicate that subsequent progress reports are subject to the requirements of 40 CFR 51.308(h) regarding determinations of adequacy of existing SIPs.
- Revising 40 CFR 51.309(g)(2)(iii) to correct a typographical error.

2. Comments and Responses

Few comments were received on the proposed revisions to 40 CFR 51.309. Of those, most concerned fire issues, and this subject matter is treated elsewhere in this document. One commenter requested clarification on what happens to states participating in the GCVTC after 2018, and in response the EPA would like to clarify that all measures and obligations contained in a SIP approved pursuant to 40 CFR 51.309 must continue to be implemented unless the SIP itself provides for that measure or obligation to sunset, that the revised provisions of 40 CFR 51.309 will apply to any SIP revision that would revise a SIP provision that was part of the basis of EPA initially approving the SIP as meeting the requirements of the 1999 RHR's 40 CFR 51.309 and that future periodic comprehensive SIP revisions and progress reports from these states will be subject to the requirements of 40 CFR 51.308(f) and (g), respectively.

3. Final Rule

All revisions to 40 CFR 51.309 are being finalized without change from proposal.

V. Environmental Justice Considerations

The EPA believes this action will not have disproportionately high and adverse human health, well-being or environmental effects on minority, low-income or indigenous populations because it will not negatively affect the level of protection provided to human health, well-being or the environment under the CAA's visibility protection program. These revisions to the RHR alter procedural and timing aspects of the SIP requirements for visibility protection but do not substantively change the requirement that SIPs provide for reasonable progress towards the goal of natural visibility conditions. These SIP requirements are designed to protect all segments of the general population.

The EPA acknowledges that the delay in submitting SIP revisions from 2018 to 2021 might, but will not necessarily, affect the schedule on which sources must comply with any new requirements. One commenter said that any such delay in reducing emissions is likely to disproportionately impact children, communities of color and the economically disadvantaged. However, because neither the CAA nor the 1999 RHR set specific deadlines for when sources must comply with any new requirements in a state's next periodic comprehensive SIP revision, states have substantial discretion in establishing reasonable compliance deadlines for measures in their SIPs. Given this, we expect to see a range of compliance deadlines in the next round of regional haze SIPs from early in the second implementation period to 2028, depending on the types of measures adopted, and this would have occurred regardless of whether these changes had been finalized. Thus, the EPA believes the delay in the periodic comprehensive SIP revision submission deadline from 2018 to 2021 will not meaningfully reduce the overall progress towards better visibility made by the end of 2028 and will not meaningfully adversely affect environmental protection for any segments of the population. Furthermore, by reducing uncertainty about the requirements of the RHR and in some regards making those requirements more protective, we believe this action is likely to improve public health protection.

VI. Statutory and Executive Order Reviews

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

The information collection activities in this final rule have been submitted for approval to the OMB under the PRA. The ICR document that the EPA prepared has been assigned the EPA ICR number 2540.02. A copy of the ICR supporting statement is available in the docket for this rule, and it is briefly summarized here.

The EPA is finalizing revisions to requirements for state regional haze planning to change the requirements that must be met by states in developing regional haze SIPs, periodic comprehensive SIP revisions, and progress reports for regional haze. The main intended effects of this rulemaking are to provide states with additional time to submit regional haze plans for the second implementation period and

[137] We discuss the timing for consultation elsewhere in this preamble.

to provide states with an improved schedule and process for progress report submission. Further reductions in burden on states for the second planning period include removal of the requirement for progress reports to be SIP revisions, clarifying that states are not required to project emissions inventories as part of preparing a progress report, and relieving the state of the need to review its visibility monitoring strategy within the context of the progress report. With all of these changes considered, the overall burden on states would represent a reduction compared to what would otherwise occur if the provisions of the 1999 RHR were to stay in place. However, we agree with public comments received on the ICR for the proposed rule indicating that the EPA's previous estimates of burden for the 1999 RHR, as well as estimates of burden for the proposed rule, did not accurately reflect the level of effort required to draft SIPs and progress reports. Although at proposal, the total estimated burden for the applicable period of this ICR (*i.e.,* 2016–2019) was estimated to be reduced from 10,307 hours (per year) to 5,974 hours (per year), and total estimated cost was expected to be reduced from $510,498 (per year) to $295,876 (per year), taking into account the information submitted by the commenters, the EPA now estimates burden under the final rule for the applicable period of 2016–2019 to be 13,310 hours (per year) and total estimated cost to be $659,245 (per year). Please note that the EPA believes the final rule will allow for a reduction in effort compared to the 1999 RHR. Thus, if the SIP development and other were undertaken under the 1999 RHR, the costs would be higher than with this final rule. The apparent increase in estimated hours and cost is related to updates of prior estimates in light of more accurate information. Despite this, the EPA projects that the total estimated burden and cost associated with the final rule are less than would be required if the rule revisions were not made. The revisions, for example, extend planning deadlines, reduce the number of SIP submissions to the EPA, relieve states of the need to supply progress reports in the form of formal SIP revisions, and relieve the state of the need to review its visibility monitoring strategy within the context of the progress report. In addition, in accordance with OMB guidance, these numbers reflect the average burden on states per year over the next 3 years only. This burden will vary from year to year, and due to the nature of an average, some states may be above the average while other states may be below the average. The ''per-year'' numbers provided here are the 3-year averages, and these 3-year averages will also vary. For example, the prior 3-year period (associated with the prior ICR) was not an active SIP development period, and therefore burden on states was relatively low in comparison to the 3-year period associated with this ICR. During this 3-year period states will be taking steps to prepare their next SIPs. SIP development and adoption will continue into the following 3-year period (approximately 2019–2022), and then subside until the next SIP is due in 2028, resulting in a reduced burden compared to the estimates reflected here. For more information and a summary and response to comments received on the proposed rule ICR, please see the Information Collection Request Supporting Statement for EPA ICR Number 2540.02. ICR for Final Revisions to the Regional Haze Regulations, in the docket for this rule. All states are required to submit regional haze SIPs and progress reports under this rule.

Respondents/affected entities: All state air agencies.

Respondent's obligation to respond: Mandatory, in accordance with the provisions of the 1999 RHR.

Estimated number of respondents: 52: 50 states, District of Columbia and U.S. Virgin Islands.

Frequency of response: Approximately every 10 years (SIP) and approximately every 10 years (progress report).

Total estimated burden: 13,310 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $659,245 (per year), includes $0 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Entities potentially affected directly by these rule revisions include state governments, and for the purposes of the RFA, state governments are not considered small governments. Tribes may choose to follow the provisions of the RHR but are not required to do so. Other types of small entities are not directly subject to the requirements of this rule.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. It does not have a substantial direct effect on one or more Indian tribes. Furthermore, these regulation revisions do not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the TAR establish the relationship of the federal government and tribes in characterizing air quality and developing plans to protect visibility in Class I areas, and these revisions to the regulations do nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, the EPA held public hearings attended by members of tribes and separate meetings with tribal representatives to discuss the revisions proposed in this action. The EPA also provided an opportunity for all interested parties to provide oral or written comments on potential concepts for the EPA to address during the rule revision process. Summaries of these meetings are included in the docket for this rule. The EPA also offered to consult with any tribal government to discuss this proposal. A copy of this offer for consultation can be found in the docket for this rulemaking. No tribes requested consultation. One tribal organization submitted comments, which generally endorsed the proposed revisions. However, this commenter said that this action does have implications to tribes and that the EPA must develop an accountability process to ensure meaningful and timely input to states as they implement the revised

requirements of the RHR. We acknowledge this comment but we do not find it to contain a basis for changing our finding that Executive Order 13175 does not apply to this action. *See* also Section III.B.5 of this document for further discussion regarding the role of tribes in visibility protection.

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

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

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action may not have disproportionately high and adverse effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898.[138] The results of our evaluation are contained in Section V of this document.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the U.S. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VII. Statutory Authority

The statutory authority for this action is provided by 42 U.S.C. 7403, 7407, 7410 and 7601.

[138] 59 FR 7629 (February 16, 1994).

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Nitrogen dioxide, Particulate matter, Sulfur oxides, Transportation, Volatile organic compounds.

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Sulfur oxides, Transportation, Volatile organic compounds.

Dated: December 14, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, part 51 and part 52 of chapter I of title 40 of the Code of Federal Regulations are amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart P—Protection of Visibility

■ 2. Section 51.300 is amended by revising paragraph (b) to read as follows:

§ 51.300 Purpose and applicability.

* * * * *

(b) *Applicability* The provisions of this subpart are applicable to all States as defined in section 302(d) of the Clean Air Act (CAA) except Guam, Puerto Rico, American Samoa, and the Northern Mariana Islands.

■ 3. Section 51.301 is amended by:
■ a. Adding the definitions in alphabetical order for ''Baseline visibility condition'', ''Clearest days'', and ''Current visibility condition'';
■ b. Revising the definition of ''Deciview'';
■ c. Adding the definitions in alphabetical order for ''Deciview index'' and ''End of the applicable implementation period'';
■ d. Revising the definition of ''Least impaired days'', ''Mandatory Class I Federal Area'', ''Most impaired days'', and ''Natural conditions'';
■ e. Adding the definitions in alphabetical order for ''Natural visibility'', ''Natural visibility condition'', and ''Prescribed fire'';
■ f. Revising the definitions of ''Reasonably attributable'' and ''Regional haze'';
■ g. Adding the definition in alphabetical order for ''Visibility'';
■ h. Removing the definition of ''Visibility impairment'';
■ i. Adding the definition of ''Visibility impairment or anthropogenic visibility impairment''; and,
■ j. Adding the definitions in alphabetical order for ''Wildfire'' and ''Wildland''.

The revisions and additions read as follows:

§ 51.301 Definitions.

* * * * *

Baseline visibility condition means the average of the five annual averages of the individual values of daily visibility for the period 2000–2004 unique to each Class I area for either the most impaired days or the clearest days.

* * * * *

Clearest days means the twenty percent of monitored days in a calendar year with the lowest values of the deciview index.

Current visibility condition means the average of the five annual averages of individual values of daily visibility for the most recent period for which data are available unique to each Class I area for either the most impaired days or the clearest days.

Deciview is the unit of measurement on the deciview index scale for quantifying in a standard manner human perceptions of visibility.

Deciview index means a value for a day that is derived from calculated or measured light extinction, such that uniform increments of the index correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to very obscured. The deciview index is calculated based on the following equation (for the purposes of calculating deciview using IMPROVE data, the atmospheric light extinction coefficient must be calculated from aerosol measurements and an estimate of Rayleigh scattering):

Deciview index = 10 ln (b_{ext}/10 Mm^{-1}).

b_{ext} = the atmospheric light extinction coefficient, expressed in inverse megameters ($Mm-1$).

End of the applicable implementation period means December 31 of the year in which the next periodic comprehensive implementation plan revision is due under § 51.308(f).

* * * * *

Least impaired days means the twenty percent of monitored days in a calendar

year with the lowest amounts of visibility impairment.

* * * * *

Mandatory Class I Federal Area or *Mandatory Federal Class I Area* means any area identified in part 81, subpart D of this title.

Most impaired days means the twenty percent of monitored days in a calendar year with the highest amounts of anthropogenic visibility impairment.

Natural conditions reflect naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration, and may refer to the conditions on a single day or a set of days. These phenomena include, but are not limited to, humidity, fire events, dust storms, volcanic activity, and biogenic emissions from soils and trees. These phenomena may be near or far from a Class I area and may be outside the United States.

Natural visibility means visibility (contrast, coloration, and texture) on a day or days that would have existed under natural conditions. Natural visibility varies with time and location, is estimated or inferred rather than directly measured, and may have long-term trends due to long-term trends in natural conditions.

Natural visibility condition means the average of individual values of daily natural visibility unique to each Class I area for either the most impaired days or the clearest days.

* * * * *

Prescribed fire means any fire intentionally ignited by management actions in accordance with applicable laws, policies, and regulations to meet specific land or resource management objectives.

Reasonably attributable means attributable by visual observation or any other appropriate technique.

* * * * *

Regional haze means visibility impairment that is caused by the emission of air pollutants from numerous anthropogenic sources located over a wide geographic area. Such sources include, but are not limited to, major and minor stationary sources, mobile sources, and area sources.

* * * * *

Visibility means the degree of perceived clarity when viewing objects at a distance. Visibility includes perceived changes in contrast, coloration, and texture elements in a scene.

Visibility impairment or *anthropogenic visibility impairment* means any humanly perceptible difference due to air pollution from anthropogenic sources between actual visibility and natural visibility on one or more days. Because natural visibility can only be estimated or inferred, visibility impairment also is estimated or inferred rather than directly measured.

* * * * *

Wildfire means any fire started by an unplanned ignition caused by lightning; volcanoes; other acts of nature; unauthorized activity; or accidental, human-caused actions, or a prescribed fire that has developed into a wildfire. A wildfire that predominantly occurs on wildland is a natural event.

Wildland means an area in which human activity and development is essentially non-existent, except for roads, railroads, power lines, and similar transportation facilities. Structures, if any, are widely scattered.

■ 4. Revise § 51.302 to read as follows:

§ 51.302 Reasonably attributable visibility impairment.

(a) The affected Federal Land Manager may certify, at any time, that there exists reasonably attributable visibility impairment in any mandatory Class I Federal area and identify which single source or small number of sources is responsible for such impairment. The affected Federal Land Manager will provide the certification to the State in which the impairment occurs and the State(s) in which the source(s) is located. The affected Federal Land Manager shall provide the State(s) in which the source(s) is located an opportunity to consult on the basis of the planned certification, in person and at least 60 days prior to providing the certification to the State(s).

(b) The State(s) in which the source(s) is located shall revise its regional haze implementation plan, in accordance with the schedule set forth in paragraph (d) of this section, to include for each source or small number of sources that the Federal Land Manager has identified in whole or in part for reasonably attributable visibility impairment as part of a certification under paragraph (a) of this section:

(1) A determination, based on the factors set forth in § 51.308(f)(2), of the control measures, if any, that are necessary with respect to the source or sources in order for the plan to make reasonable progress toward natural visibility conditions in the affected Class I Federal area;

(2) Emission limitations that reflect the degree of emission reduction achievable by such control measures and schedules for compliance as expeditiously as practicable; and

(3) Monitoring, recordkeeping, and reporting requirements sufficient to ensure the enforceability of the emission limitations.

(c) If a source that the Federal Land Manager has identified as responsible in whole or in part for reasonably attributable visibility impairment as part of a certification under paragraph (a) of this section is a BART-eligible source, and if there is not in effect as of the date of the certification a fully or conditionally approved implementation plan addressing the BART requirement for that source (which existing plan may incorporate either source-specific emission limitations reflecting the emission control performance of BART, an alternative program to address the BART requirement under § 51.308(e)(2) through (4), or for sources of SO_2, a program approved under paragraph § 51.309(d)(4)), then the State shall revise its regional haze implementation plan to meet the requirements of § 51.308(e) with respect to that source, taking into account current conditions related to the factors listed in § 51.308(e)(1)(ii)(A). This requirement is in addition to the requirement of paragraph (b) of this section.

(d) For any existing reasonably attributable visibility impairment the Federal Land Manager certifies to the State(s) under paragraph (a) of this section, the State(s) shall submit a revision to its regional haze implementation plan that includes the elements described in paragraphs (b) and (c) of this section no later than 3 years after the date of the certification. The State(s) is not required at that time to also revise its reasonable progress goals to reflect any additional emission reductions required from the source or sources. In no case shall such a revision in response to a reasonably attributable visibility impairment certification be due before July 31, 2021.

■ 5. Section 51.303 is amended by revising paragraph (a)(1) to read as follows:

§ 51.303 Exemptions from control.

(a)(1) Any existing stationary facility subject to the requirement under § 51.302(c) or § 51.308(e) to install, operate, and maintain BART may apply to the Administrator for an exemption from that requirement.

* * * * *

■ 6. Revise § 51.304 to read as follows:

§ 51.304 Identification of integral vistas.

(a) Federal Land Managers were required to identify any integral vistas on or before December 31, 1985, according to criteria the Federal Land

Managers developed. These criteria must have included, but were not limited to, whether the integral vista was important to the visitor's visual experience of the mandatory Class I Federal area.

(b) The following integral vistas were identified by Federal Land Managers: At Roosevelt Campobello International Park, from the observation point of Roosevelt cottage and beach area, the viewing angle from 244 to 256 degrees; and at Roosevelt Campobello International Park, from the observation point of Friar's Head, the viewing angle from 154 to 194 degrees.

(c) The State must list in its implementation plan any integral vista listed in paragraph (b) of this section.

■ 7. Revise § 51.305 to read as follows:

§ 51.305 Monitoring for reasonably attributable visibility impairment.

For the purposes of addressing reasonably attributable visibility impairment, if the Administrator, Regional Administrator, or the affected Federal Land Manager has advised a State containing a mandatory Class I Federal area of a need for monitoring to assess reasonably attributable visibility impairment at the mandatory Class I Federal area in addition to the monitoring currently being conducted to meet the requirements of § 51.308(d)(4), the State must include in the next implementation plan revision to meet the requirement of § 51.308(f) an appropriate strategy for evaluating reasonably attributable visibility impairment in the mandatory Class I Federal area by visual observation or other appropriate monitoring techniques. Such strategy must take into account current and anticipated visibility monitoring research, the availability of appropriate monitoring techniques, and such guidance as is provided by the Agency.

§ 51.306 [Removed and Reserved]

■ 8. Section 51.306 is removed and reserved.

■ 9. Section 51.307 is amended by revising paragraphs (a) introductory text and (b)(1) and (2) to read as follows:

§ 51.307 New source review.

(a) For purposes of new source review of any new major stationary source or major modification that would be constructed in an area that is designated attainment or unclassified under section 107(d) of the CAA, the State plan must, in any review under § 51.166 with respect to visibility protection and analyses, provide for:

* * * * *

(b) * * *

(1) That may have an impact on any integral vista of a mandatory Class I Federal area listed in § 51.304(b), or

(2) That proposes to locate in an area classified as nonattainment under section 107(d)(1) of the Clean Air Act that may have an impact on visibility in any mandatory Class I Federal area.

* * * * *

■ 10. Section 51.308 is amended by:

■ a. Revising paragraph (b);

■ b. Revising paragraphs (d)(2)(iv), (d)(3) introductory text, (e)(2)(v), (e)(4) and (5), (f), (g) introductory text, and (g)(3) through (7);

■ c. Adding paragraph (g)(8); and

■ d. Revising paragraphs (h) introductory text, (h)(1), (i)(2) introductory text, (i)(2)(ii), and (i)(3) and (4).

The revisions and additions read as follows:

§ 51.308 Regional haze program requirements.

* * * * *

(b) *When are the first implementation plans due under the regional haze program?* Except as provided in § 51.309(c), each State identified in § 51.300(b) must submit, for the entire State, an implementation plan for regional haze meeting the requirements of paragraphs (d) and (e) of this section no later than December 17, 2007.

* * * * *

(d) * * *

(2) * * *

(iv) For the first implementation plan addressing the requirements of paragraphs (d) and (e) of this section, the number of deciviews by which baseline conditions exceed natural visibility conditions for the most impaired and least impaired days.

(3) *Long-term strategy for regional haze.* Each State listed in § 51.300(b) must submit a long-term strategy that addresses regional haze visibility impairment for each mandatory Class I Federal area within the State and for each mandatory Class I Federal area located outside the State that may be affected by emissions from the State. The long-term strategy must include enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals established by States having mandatory Class I Federal areas. In establishing its long-term strategy for regional haze, the State must meet the following requirements:

* * * * *

(e) * * *

(2) * * *

(v) At the State's option, a provision that the emissions trading program or other alternative measure may include a geographic enhancement to the program to address the requirement under § 51.302(b) or (c) related to reasonably attributable impairment from the pollutants covered under the emissions trading program or other alternative measure.

* * * * *

(4) A State whose sources are subject to a trading program established under part 97 of this chapter in accordance with a federal implementation plan set forth in § 52.38 or § 52.39 of this chapter or a trading program established under a SIP revision approved by the Administrator as meeting the requirements of § 52.38 or § 52.39 of this chapter need not require BART-eligible fossil fuel-fired steam electric plants in the State to install, operate, and maintain BART for the pollutant covered by such trading program in the State. A State may adopt provisions, consistent with the requirements applicable to the State's sources for such trading program, for a geographic enhancement to the trading program to address any requirement under § 51.302(b) or (c) related to reasonably attributable impairment from the pollutant covered by such trading program in that State.

(5) After a State has met the requirements for BART or implemented an emissions trading program or other alternative measure that achieves more reasonable progress than the installation and operation of BART, BART-eligible sources will be subject to the requirements of paragraphs (d) and (f) of this section, as applicable, in the same manner as other sources.

* * * * *

(f) *Requirements for periodic comprehensive revisions of implementation plans for regional haze.* Each State identified in § 51.300(b) must revise and submit its regional haze implementation plan revision to EPA by July 31, 2021, July 31, 2028, and every 10 years thereafter. The plan revision due on or before July 31, 2021, must include a commitment by the State to meet the requirements of paragraph (g) of this section. In each plan revision, the State must address regional haze in each mandatory Class I Federal area located within the State and in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State. To meet the core requirements for regional haze for these areas, the State must submit an implementation plan containing the following plan elements and supporting documentation for all required analyses:

(1) *Calculations of baseline, current, and natural visibility conditions; progress to date; and the uniform rate of progress.* For each mandatory Class I Federal area located within the State, the State must determine the following:

(i) *Baseline visibility conditions for the most impaired and clearest days.* The period for establishing baseline visibility conditions is 2000 to 2004. The State must calculate the baseline visibility conditions for the most impaired days and the clearest days using available monitoring data. To determine the baseline visibility condition, the State must calculate the average of the annual deciview index values for the most impaired days and for the clearest days for the calendar years from 2000 to 2004. The baseline visibility condition for the most impaired days or the clearest days is the average of the respective annual values. For purposes of calculating the uniform rate of progress, the baseline visibility condition for the most impaired days must be associated with the last day of 2004. For mandatory Class I Federal areas without onsite monitoring data for 2000–2004, the State must establish baseline values using the most representative available monitoring data for 2000–2004, in consultation with the Administrator or his or her designee. For mandatory Class I Federal areas with incomplete monitoring data for 2000–2004, the State must establish baseline values using the 5 complete years of monitoring data closest in time to 2000–2004.

(ii) *Natural visibility conditions for the most impaired and clearest days.* A State must calculate natural visibility condition by estimating the average deciview index existing under natural conditions for the most impaired days or the clearest days based on available monitoring information and appropriate data analysis techniques; and

(iii) *Current visibility conditions for the most impaired and clearest days.* The period for calculating current visibility conditions is the most recent 5-year period for which data are available. The State must calculate the current visibility conditions for the most impaired days and the clearest days using available monitoring data. To calculate each current visibility condition, the State must calculate the average of the annual deciview index values for the years in the most recent 5-year period. The current visibility condition for the most impaired or the clearest days is the average of the respective annual values.

(iv) *Progress to date for the most impaired and clearest days.* Actual progress made towards the natural visibility condition since the baseline period, and actual progress made during the previous implementation period up to and including the period for calculating current visibility conditions, for the most impaired and for the clearest days.

(v) *Differences between current visibility condition and natural visibility condition.* The number of deciviews by which the current visibility condition exceeds the natural visibility condition, for the most impaired and for the clearest days.

(vi) *Uniform rate of progress.* (A) The uniform rate of progress for each mandatory Class I Federal area in the State. To calculate the uniform rate of progress, the State must compare the baseline visibility condition for the most impaired days to the natural visibility condition for the most impaired days in the mandatory Class I Federal area and determine the uniform rate of visibility improvement (measured in deciviews of improvement per year) that would need to be maintained during each implementation period in order to attain natural visibility conditions by the end of 2064.

(B) As part of its implementation plan submission, the State may propose (1) an adjustment to the uniform rate of progress for a mandatory Class I Federal area to account for impacts from anthropogenic sources outside the United States and/or (2) an adjustment to the uniform rate of progress for the mandatory Class I Federal area to account for impacts from wildland prescribed fires that were conducted with the objective to establish, restore, and/or maintain sustainable and resilient wildland ecosystems, to reduce the risk of catastrophic wildfires, and/or to preserve endangered or threatened species during which appropriate basic smoke management practices were applied. To calculate the proposed adjustment(s), the State must add the estimated impact(s) to the natural visibility condition and compare the baseline visibility condition for the most impaired days to the resulting sum. If the Administrator determines that the State has estimated the impact(s) from anthropogenic sources outside the United States and/or wildland prescribed fires using scientifically valid data and methods, the Administrator may approve the proposed adjustment(s) to the uniform rate of progress.

(2) *Long-term strategy for regional haze.* Each State must submit a long-term strategy that addresses regional haze visibility impairment for each mandatory Class I Federal area within the State and for each mandatory Class I Federal area located outside the State that may be affected by emissions from the State. The long-term strategy must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to (f)(2)(i) through (iv). In establishing its long-term strategy for regional haze, the State must meet the following requirements:

(i) The State must evaluate and determine the emission reduction measures that are necessary to make reasonable progress by considering the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected anthropogenic source of visibility impairment. The State should consider evaluating major and minor stationary sources or groups of sources, mobile sources, and area sources. The State must include in its implementation plan a description of the criteria it used to determine which sources or groups of sources it evaluated and how the four factors were taken into consideration in selecting the measures for inclusion in its long-term strategy. In considering the time necessary for compliance, if the State concludes that a control measure cannot reasonably be installed and become operational until after the end of the implementation period, the State may not consider this fact in determining whether the measure is necessary to make reasonable progress.

(ii) The State must consult with those States that have emissions that are reasonably anticipated to contribute to visibility impairment in the mandatory Class I Federal area to develop coordinated emission management strategies containing the emission reductions necessary to make reasonable progress.

(A) The State must demonstrate that it has included in its implementation plan all measures agreed to during state-to-state consultations or a regional planning process, or measures that will provide equivalent visibility improvement.

(B) The State must consider the emission reduction measures identified by other States for their sources as being necessary to make reasonable progress in the mandatory Class I Federal area.

(C) In any situation in which a State cannot agree with another State on the emission reduction measures necessary to make reasonable progress in a mandatory Class I Federal area, the State must describe the actions taken to resolve the disagreement. In reviewing the State's implementation plan, the

Administrator will take this information into account in determining whether the plan provides for reasonable progress at each mandatory Class I Federal area that is located in the State or that may be affected by emissions from the State. All substantive interstate consultations must be documented.

(iii) The State must document the technical basis, including modeling, monitoring, cost, engineering, and emissions information, on which the State is relying to determine the emission reduction measures that are necessary to make reasonable progress in each mandatory Class I Federal area it affects. The State may meet this requirement by relying on technical analyses developed by a regional planning process and approved by all State participants. The emissions information must include, but need not be limited to, information on emissions in a year at least as recent as the most recent year for which the State has submitted emission inventory information to the Administrator in compliance with the triennial reporting requirements of subpart A of this part. However, if a State has made a submission for a new inventory year to meet the requirements of subpart A in the period 12 months prior to submission of the SIP, the State may use the inventory year of its prior submission.

(iv) The State must consider the following additional factors in developing its long-term strategy:

(A) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment;

(B) Measures to mitigate the impacts of construction activities;

(C) Source retirement and replacement schedules;

(D) Basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes and smoke management programs; and

(E) The anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy.

(3) *Reasonable progress goals.* (i) A state in which a mandatory Class I Federal area is located must establish reasonable progress goals (expressed in deciviews) that reflect the visibility conditions that are projected to be achieved by the end of the applicable implementation period as a result of those enforceable emissions limitations, compliance schedules, and other measures required under paragraph (f)(2) of this section that can be fully implemented by the end of the applicable implementation period, as well as the implementation of other requirements of the CAA. The long-term strategy and the reasonable progress goals must provide for an improvement in visibility for the most impaired days since the baseline period and ensure no degradation in visibility for the clearest days since the baseline period.

(ii)(A) If a State in which a mandatory Class I Federal area is located establishes a reasonable progress goal for the most impaired days that provides for a slower rate of improvement in visibility than the uniform rate of progress calculated under paragraph (f)(1)(vi) of this section, the State must demonstrate, based on the analysis required by paragraph (f)(2)(i) of this section, that there are no additional emission reduction measures for anthropogenic sources or groups of sources in the State that may reasonably be anticipated to contribute to visibility impairment in the Class I area that would be reasonable to include in the long-term strategy. The State must provide a robust demonstration, including documenting the criteria used to determine which sources or groups or sources were evaluated and how the four factors required by paragraph (f)(2)(i) were taken into consideration in selecting the measures for inclusion in its long-term strategy. The State must provide to the public for review as part of its implementation plan an assessment of the number of years it would take to attain natural visibility conditions if visibility improvement were to continue at the rate of progress selected by the State as reasonable for the implementation period.

(B) If a State contains sources which are reasonably anticipated to contribute to visibility impairment in a mandatory Class I Federal area in another State for which a demonstration by the other State is required under (f)(3)(ii)(A), the State must demonstrate that there are no additional emission reduction measures for anthropogenic sources or groups of sources in the State that may reasonably be anticipated to contribute to visibility impairment in the Class I area that would be reasonable to include in its own long-term strategy. The State must provide a robust demonstration, including documenting the criteria used to determine which sources or groups or sources were evaluated and how the four factors required by paragraph (f)(2)(i) were taken into consideration in selecting the measures for inclusion in its long-term strategy.

(iii) The reasonable progress goals established by the State are not directly enforceable but will be considered by the Administrator in evaluating the adequacy of the measures in the implementation plan in providing for reasonable progress towards achieving natural visibility conditions at that area.

(iv) In determining whether the State's goal for visibility improvement provides for reasonable progress towards natural visibility conditions, the Administrator will also evaluate the demonstrations developed by the State pursuant to paragraphs (f)(2) and (f)(3)(ii)(A) of this section and the demonstrations provided by other States pursuant to paragraphs (f)(2) and (f)(3)(ii)(B) of this section.

(4) If the Administrator, Regional Administrator, or the affected Federal Land Manager has advised a State of a need for additional monitoring to assess reasonably attributable visibility impairment at the mandatory Class I Federal area in addition to the monitoring currently being conducted, the State must include in the plan revision an appropriate strategy for evaluating reasonably attributable visibility impairment in the mandatory Class I Federal area by visual observation or other appropriate monitoring techniques.

(5) So that the plan revision will serve also as a progress report, the State must address in the plan revision the requirements of paragraphs (g)(1) through (5) of this section. However, the period to be addressed for these elements shall be the period since the most recent progress report.

(6) *Monitoring strategy and other implementation plan requirements.* The State must submit with the implementation plan a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the State. Compliance with this requirement may be met through participation in the Interagency Monitoring of Protected Visual Environments network. The implementation plan must also provide for the following:

(i) The establishment of any additional monitoring sites or equipment needed to assess whether reasonable progress goals to address regional haze for all mandatory Class I Federal areas within the State are being achieved.

(ii) Procedures by which monitoring data and other information are used in determining the contribution of emissions from within the State to regional haze visibility impairment at mandatory Class I Federal areas both within and outside the State.

(iii) For a State with no mandatory Class I Federal areas, procedures by which monitoring data and other information are used in determining the contribution of emissions from within the State to regional haze visibility impairment at mandatory Class I Federal areas in other States.

(iv) The implementation plan must provide for the reporting of all visibility monitoring data to the Administrator at least annually for each mandatory Class I Federal area in the State. To the extent possible, the State should report visibility monitoring data electronically.

(v) A statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area. The inventory must include emissions for the most recent year for which data are available, and estimates of future projected emissions. The State must also include a commitment to update the inventory periodically.

(vi) Other elements, including reporting, recordkeeping, and other measures, necessary to assess and report on visibility.

(g) *Requirements for periodic reports describing progress towards the reasonable progress goals.* Each State identified in § 51.300(b) must periodically submit a report to the Administrator evaluating progress towards the reasonable progress goal for each mandatory Class I Federal area located within the State and in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State. The first progress report is due 5 years from submittal of the initial implementation plan addressing paragraphs (d) and (e) of this section. The first progress reports must be in the form of implementation plan revisions that comply with the procedural requirements of § 51.102 and § 51.103. Subsequent progress reports are due by January 31, 2025, July 31, 2033, and every 10 years thereafter. Subsequent progress reports must be made available for public inspection and comment for at least 30 days prior to submission to EPA and all comments received from the public must be submitted to EPA along with the subsequent progress report, along with an explanation of any changes to the progress report made in response to these comments. Periodic progress reports must contain at a minimum the following elements:

* * * * *

(3) For each mandatory Class I Federal area within the State, the State must assess the following visibility conditions and changes, with values for most impaired, least impaired and/or clearest days as applicable expressed in terms of 5-year averages of these annual values. The period for calculating current visibility conditions is the most recent 5-year period preceding the required date of the progress report for which data are available as of a date 6 months preceding the required date of the progress report.

(i)(A) Progress reports due before January 31, 2025. The current visibility conditions for the most impaired and least impaired days.

(B) Progress reports due on and after January 31, 2025. The current visibility conditions for the most impaired and clearest days;

(ii)(A) Progress reports due before January 31, 2025. The difference between current visibility conditions for the most impaired and least impaired days and baseline visibility conditions.

(B) Progress reports due on and after January 31, 2025. The difference between current visibility conditions for the most impaired and clearest days and baseline visibility conditions.

(iii)(A) Progress reports due before January 31, 2025. The change in visibility impairment for the most impaired and least impaired days over the period since the period addressed in the most recent plan required under paragraph (f) of this section.

(B) Progress reports due on and after January 31, 2025. The change in visibility impairment for the most impaired and clearest days over the period since the period addressed in the most recent plan required under paragraph (f) of this section.

(4) An analysis tracking the change over the period since the period addressed in the most recent plan required under paragraph (f) of this section in emissions of pollutants contributing to visibility impairment from all sources and activities within the State. Emissions changes should be identified by type of source or activity. With respect to all sources and activities, the analysis must extend at least through the most recent year for which the state has submitted emission inventory information to the Administrator in compliance with the triennial reporting requirements of subpart A of this part as of a date 6 months preceding the required date of the progress report. With respect to sources that report directly to a centralized emissions data system operated by the Administrator, the analysis must extend through the most recent year for which the Administrator has provided a State-level summary of such reported data or an internet-based tool by which the State may obtain such a summary as of a date 6 months preceding the required date of the progress report. The State is not required to backcast previously reported emissions to be consistent with more recent emissions estimation procedures, and may draw attention to actual or possible inconsistencies created by changes in estimation procedures.

(5) An assessment of any significant changes in anthropogenic emissions within or outside the State that have occurred since the period addressed in the most recent plan required under paragraph (f) of this section including whether or not these changes in anthropogenic emissions were anticipated in that most recent plan and whether they have limited or impeded progress in reducing pollutant emissions and improving visibility.

(6) An assessment of whether the current implementation plan elements and strategies are sufficient to enable the State, or other States with mandatory Class I Federal areas affected by emissions from the State, to meet all established reasonable progress goals for the period covered by the most recent plan required under paragraph (f) of this section.

(7) For progress reports for the first implementation period only, a review of the State's visibility monitoring strategy and any modifications to the strategy as necessary.

(8) For a state with a long-term strategy that includes a smoke management program for prescribed fires on wildland that conducts a periodic program assessment, a summary of the most recent periodic assessment of the smoke management program including conclusions if any that were reached in the assessment as to whether the program is meeting its goals regarding improving ecosystem health and reducing the damaging effects of catastrophic wildfires.

(h) *Determination of the adequacy of existing implementation plan.* At the same time the State is required to submit any progress report to EPA in accordance with paragraph (g) of this section, the State must also take one of the following actions based upon the information presented in the progress report:

(1) If the State determines that the existing implementation plan requires no further substantive revision at this time in order to achieve established goals for visibility improvement and emissions reductions, the State must provide to the Administrator a declaration that revision of the existing

implementation plan is not needed at this time.

* * * * *

(i) * * *

(2) The State must provide the Federal Land Manager with an opportunity for consultation, in person at a point early enough in the State's policy analyses of its long-term strategy emission reduction obligation so that information and recommendations provided by the Federal Land Manager can meaningfully inform the State's decisions on the long-term strategy. The opportunity for consultation will be deemed to have been early enough if the consultation has taken place at least 120 days prior to holding any public hearing or other public comment opportunity on an implementation plan (or plan revision) for regional haze required by this subpart. The opportunity for consultation on an implementation plan (or plan revision) or on a progress report must be provided no less than 60 days prior to said public hearing or public comment opportunity. This consultation must include the opportunity for the affected Federal Land Managers to discuss their:

* * * * *

(ii) Recommendations on the development and implementation of strategies to address visibility impairment.

(3) In developing any implementation plan (or plan revision) or progress report, the State must include a description of how it addressed any comments provided by the Federal Land Managers.

(4) The plan (or plan revision) must provide procedures for continuing consultation between the State and Federal Land Manager on the implementation of the visibility protection program required by this subpart, including development and review of implementation plan revisions and progress reports, and on the implementation of other programs having the potential to contribute to impairment of visibility in mandatory Class I Federal areas.

■ 11. Section 51.309 is amended by:

■ a. Revising paragraph (b)(4);

■ b. Removing and reserving paragraph (b)(8);

■ c. Revising paragraphs (d)(4)(v), (d)(10) introductory text, (d)(10)(i) introductory text, and (d)(10)(ii) introductory text;

■ d. Adding paragraphs (d)(10)(iii) and (iv); and

■ e. Revising paragraph (g)(2)(iii).

The revisions and additions read as follows:

§ 51.309 Requirements related to the Grand Canyon Visibility Transport Commission.

* * * * *

(b) * * *

(4) *Fire* means wildfire, wildland fire, prescribed fire, and agricultural burning conducted and occurring on Federal, State, and private wildlands and farmlands.

* * * * *

(d) * * *

(4) * * *

(v) *Market trading program.* The implementation plan must include requirements for a market trading program to be implemented in the event that a milestone is not achieved. The plan shall require that the market trading program be activated beginning no later than 15 months after the end of the first year in which the milestone is not achieved. The plan shall also require that sources comply, as soon as practicable, with the requirement to hold allowances covering their emissions. Such market trading program must be sufficient to achieve the milestones in paragraph (d)(4)(i) of this section, and must be consistent with the elements for such programs outlined in § 51.308(e)(2)(vi). Such a program may include a geographic enhancement to the program to address the requirement under § 51.302(b) related to reasonably attributable impairment from the pollutants covered under the program.

* * * * *

(10) *Periodic implementation plan revisions and progress reports.* Each Transport Region State must submit to the Administrator periodic reports in the years 2013 and as specified for subsequent progress reports in § 51.308(g). The progress report due in 2013 must be in the form of an implementation plan revision that complies with the procedural requirements of §§ 51.102 and 51.103.

(i) The report due in 2013 will assess the area for reasonable progress as provided in this section for mandatory Class I Federal area(s) located within the State and for mandatory Class I Federal area(s) located outside the State that may be affected by emissions from within the State. This demonstration may be based on assessments conducted by the States and/or a regional planning body. The progress report due in 2013 must contain at a minimum the following elements:

* * * * *

(ii) At the same time the State is required to submit the 5-year progress report due in 2013 to EPA in accordance with paragraph (d)(10)(i) of this section, the State must also take one of the following actions based upon the information presented in the progress report:

* * * * *

(iii) The requirements of § 51.308(g) regarding requirements for periodic reports describing progress towards the reasonable progress goals apply to States submitting plans under this section, with respect to subsequent progress reports due after 2013.

(iv) The requirements of § 51.308(h) regarding determinations of the adequacy of existing implementation plans apply to States submitting plans under this section, with respect to subsequent progress reports due after 2013.

* * * * *

(g) * * *

(2) * * *

(iii) The Transport Region State may consider whether any strategies necessary to achieve the reasonable progress goals required by paragraph (g)(2) of this section are incompatible with the strategies implemented under paragraph (d) of this section to the extent the State adequately demonstrates that the incompatibility is related to the costs of the compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, or the remaining useful life of any existing source subject to such requirements.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

§ 52.26 [Removed and Reserved]

■ 13. Section 52.26 is removed and reserved.

§ 52.29 [Removed and Reserved]

■ 14. Section 52.29 is removed and reserved.

§ 52.61 [Amended]

■ 15. Section 52.61 is amended by removing and reserving paragraph (b).

■ 16. Section 52.145 is amended by revising paragraph (b) and removing and reserving paragraph (c).

The revision reads as follows:

§ 52.145 Visibility protection.

* * * * *

(b) Regulations for visibility monitoring and new source review. The provisions of §§ 52.27 and 52.28 are hereby incorporated and made part of

the applicable plan for the State of Arizona.

* * * * *

§ 52.281 [Amended]

■ 17. Section 52.281 is amended by removing and reserving paragraphs (b) and (e).

■ 18. Section 52.344 is amended by revising paragraph (b) to read as follows:

§ 52.344 Visibility protection.

* * * * *

(b) The Visibility NSR regulations are approved for industrial source categories regulated by the NSR and PSD regulations which have previously been approved by EPA. However, Colorado's NSR and PSD regulations have been disapproved for certain sources as listed in 40 CFR 52.343(a)(1). The provisions of 40 CFR 52.28 are hereby incorporated and made a part of the applicable plan for the State of Colorado for these sources.

■ 19. Section 52.633 is amended by revising paragraph (b) and removing and reserving paragraph (c).

The revision reads as follows.

§ 52.633 Visibility protection.

* * * * *

(b) Regulations for visibility monitoring and new source review. The provisions of §§ 52.27 and 52.28 are hereby incorporated and made part of the applicable plan for the State of Hawaii.

* * * * *

§ 52.690 [Amended]

■ 20. Section 52.690 is amended by removing and reserving paragraphs (b) and (c).

§ 52.1033 [Amended]

■ 21. Section 52.1033 is amended by removing and reserving paragraphs (a) and (c).

■ 22. Section 52.1183 is amended by revising paragraph (b) and removing and reserving paragraphs (a) and (c).

The revision reads as follows.

§ 52.1183 Visibility protection.

* * * * *

(b) Regulation for visibility monitoring and new source review. The provisions of § 52.28 are hereby incorporated and made a part of the applicable plan for the State of Michigan.

* * * * *

■ 23. Section 52.1236 is amended by revising paragraph (b) and removing and reserving paragraph (c).

The revision reads as follows:

§ 52.1236 Visibility protection.

* * * * *

(b) Regulation for visibility monitoring and new source review. The provisions of § 52.28 are hereby incorporated and made a part of the applicable plan for the State of Minnesota.

* * * * *

§ 52.1339 [Amended]

■ 24. Section 52.1339 is amended by removing and reserving paragraph (b).

§ 52.1387 [Amended]

■ 25. Section 52.1387 is amended by removing and reserving paragraph (b).

■ 26. Section 52.1488 is amended by revising paragraph (b) and removing and reserving paragraph (c).

The revision reads as follows.

§ 52.1488 Visibility protection.

* * * * *

(b) Regulation for visibility monitoring and new source review. The provisions of § 52.28 are hereby incorporated and made a part of the applicable plan for the State of Nevada except for that portion applicable to the Clark County Department of Air Quality and Environmental Management.

* * * * *

■ 27. Section 52.1531 is amended by revising paragraph (b) and removing and reserving paragraph (c).

The revision reads as follows.

§ 52.1531 Visibility protection.

* * * * *

(b) Regulation for visibility monitoring and new source review. The provisions of § 52.28 are hereby incorporated and made a part of the applicable plan for the State of New Hampshire.

* * * * *

§ 52.2132 [Amended]

■ 28. Section 52.2132 is amended by removing and reserving paragraphs (b) and (c).

■ 29. Section 52.2179 is amended by revising paragraph (b) and removing and reserving paragraph (c).

The revision reads as follows:

§ 52.2179 Visibility protection.

* * * * *

(b) Regulation for visibility monitoring and new source review. The provisions of § 52.28 are hereby incorporated and made a part of the applicable plan for the State of South Dakota.

* * * * *

§ 52.2304 [Amended]

■ 30. Section 52.2304 is amended by removing and reserving paragraph (b).

■ 31. Section 52.2383 is amended by revising paragraph (b) to read as follows:

§ 52.2383 Visibility protection.

* * * * *

(b) Regulations for visibility monitoring and new source review. The provisions of § 52.27 are hereby incorporated and made part of the applicable plan for the State of Vermont.

■ 32. Section 52.2452 is amended by revising paragraph (a) and removing and reserving paragraphs (b) and (c).

The revision reads as follows:

§ 52.2452 Visibility protection.

(a) Reasonably Attributable Visibility Impairment. The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.305 for protection of visibility in mandatory Class I Federal areas.

* * * * *

■ 33. Section 52.2533 is amended by revising paragraphs (a) and (b) and removing and reserving paragraph (c).

The revision reads as follows:

§ 52.2533 Visibility protection.

(a) *Reasonably Attributable Visibility Impairment.* The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.305 and 51.307 for protection of visibility in mandatory Class I Federal areas.

(b) Regulation for visibility monitoring and new source review. The provisions of § 52.28 are hereby incorporated and made a part of the applicable plan for the State of West Virginia.

* * * * *

§ 52.2781 [Amended]

■ 34. Section 52.2781 is amended by removing and reserving paragraphs (b) and (c).

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Privacy Act Compilation — **741–6050**

Public Laws Update Service (numbers, dates, etc.) — **741–6043**

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FEDERAL REGISTER PAGES AND DATE, JANUARY

1–710 3
711–1138 4
1139–1592 5
1593–2192 6
2193–2848 9
2849–3130 10

CFR PARTS AFFECTED DURING JANUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
9558 1139
9559 1149
9560 1157
9561 1159
9562 1161

Executive Orders:
13694 (amended by 13757) 1
13757 1

5 CFR

2411 2849
9301 711

Proposed Rules:
9401 2921

7 CFR

210 2193
220 2193
271 2010
272 2010
273 2010
274 2010
275 2010
276 2010
277 2010
278 2010
279 2010
280 2010
281 2010
282 2010
283 2010
285 2010

Proposed Rules:
250 1231

9 CFR

201 2193

10 CFR

429 ..... 1052, 1426
430 ..... 1426, 1786
431 1052
435 2857

Proposed Rules:
430 1608

12 CFR

Proposed Rules:
1805 2251

14 CFR

1 2193
23 ..... 1163, 2193
25 2193
27 2193
29 2193
39 ..... 5, 7, 10, 12, 712, 716, 718, 1170, 1172, 1175, 1179, 1593, 1595
61 2193
71 ..... 720, 1181, 2868, 2870, 2871, 2873
91 2193
121 2193
125 2193
135 2193

Proposed Rules:
39 ..... 48, 50, 52, 54, 734, 737, 1252, 1254, 1258, 1260, 1262, 1265, 1267, 1269, 1621, 1623, 1627
71 ..... 1276, 1279

15 CFR

740 2875
742 2875
744 ..... 722, 2883
750 2875
774 2875

Proposed Rules:
4 56
922 ..... 2254, 2269

16 CFR

1500 2193

Proposed Rules:
1015 59

18 CFR

375 1183
388 1183

19 CFR

360 1183

20 CFR

Proposed Rules:
725 739

21 CFR

201 2193
801 2193
884 1598
888 2217
1100 2193
1308 2218

Proposed Rules:
1308 2280

22 CFR

120 15
121 2889
123 15
126 15
241 2218
305 1185

23 CFR

Proposed Rules:
655 770

26 CFR

1.....2046, 2124
31.....2046
301.....2046, 2124

Proposed Rules:

1.....1629, 1645

27 CFR

16.....2892
18.....1108
19.....1108
24.....1108
25.....1108
26.....1108
27.....1108
28.....1108
30.....1108

Proposed Rules:

18.....780
19.....780
24.....780
25.....780
26.....780
27.....780
28.....780
30.....780

28 CFR

16.....725

29 CFR

1.....2221
3.....2221
4.....2221
5.....2221
6.....2221
500.....2221
505.....2221
516.....2221
519.....2221
520.....2221
525.....2221
530.....2221
547.....2221
549.....2221
553.....2221
570.....2221
575.....2221
578.....2221
580.....2221
801.....2221
825.....2221
1614.....654
1910.....2470
1915.....2470
1926.....2470

30 CFR

Proposed Rules:

57.....2284
70.....2284
72.....2284
75.....2284, 2285
250.....1284

31 CFR

Proposed Rules:

40.....67

32 CFR

154.....1192
286.....1192

33 CFR

110.....2893
165.....20
Ch. II.....1860

Proposed Rules:

100.....2291, 2930
117.....787
165.....789
401.....1285
402.....1287

36 CFR

1195.....2810

Proposed Rules:

1.....1647

38 CFR

Proposed Rules:

17.....1288

39 CFR

20.....1206
265.....2896

Proposed Rules:

111.....2293
501.....1294

40 CFR

22.....2230
51.....3078
52.....22, 792, 912, 1206, 1603, 2237, 2239, 3078
81.....1603, 2239
124.....2230
171.....952
180.....1208, 2897, 2900
300.....2760

Proposed Rules:

7.....2294
9.....2294
35.....2933
52.....792, 1296, 2295, 2305, 2308
81.....792, 2308
372.....1651
721.....80

42 CFR

10.....1210
414.....24
416.....24
419.....24
431.....24, 37
433.....24, 37
438.....24, 37
440.....24, 37
457.....24, 37
482.....24
486.....24
488.....24
495.....24, 37
510.....180
512.....180

43 CFR

3160.....2906

44 CFR

204.....40
206.....40
207.....40

45 CFR

1171.....44
1230.....1606
2554.....1606

46 CFR

502.....46
503.....2248

48 CFR

504.....46
516.....2249
552.....2249

49 CFR

383.....2915
384.....2915

Proposed Rules:

1300.....805

50 CFR

Proposed Rules:

17.....1296, 1657, 1665, 1677
217.....684
622.....810, 1308
660.....812
679.....2916

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List January 5, 2017

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